



Australian Government

Department of Finance

PROCEDURES FOR DETERMINING BREACHES OF THE APS CODE OF CONDUCT

I, Jane Halton, Secretary of the Department of Finance (Finance), revoke previous Procedures for Determining Breaches of the Code of Conduct (Procedures) and establish these Procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

A handwritten signature in black ink, appearing to read 'Jane Halton'.

Jane Halton

23 March 2015

1. Application of Procedures

These Procedures must be complied with in determining whether an employee, or a former employee, in Finance has breached the APS Code of Conduct (**the Code**) while a Finance employee and determining what sanction, if any, should be imposed on an APS employee for a breach of the Code.

Note: These Procedures apply only in relation to a suspected breach of the Code by an employee in respect of which a determination is to be made. Not all suspected breaches of the Code may need to be dealt with by way of a determination. In particular circumstances, and when dealing with a non-ongoing, irregular or intermittent employee or temporary employee, another way of dealing with a suspected breach of the Code may be more appropriate.

2. Selection of decision maker

2.1 The person who determines whether an employee, or a former employee, has breached the Code (**the decision maker**) is to be selected by a Finance employee who, from time to time, is performing the duties of:

- (i) Secretary
- (ii) Chief Operating Officer
- (iii) First Assistant Secretary, Corporate Services Division
- (iv) Assistant Secretary, People Branch

2.2 All reasonable steps must be taken to ensure that the decision maker is, and appears to be, independent and unbiased.

3. Sanction Delegate

- 3.1 The Secretary has the power to impose a sanction in relation to a breach of the Code, as does a sanction delegate consistent with Item 4 of the HR Delegations who is a Finance employee performing the duties of:
- (i) Chief Operating Officer
 - (ii) First Assistant Secretary, Corporate Services Division
 - (iii) Assistant Secretary, People Branch
 - (iv) Deputy Secretaries
- 3.2 All reasonable steps must be taken to ensure that the employee who determines any sanction to be imposed is, and appears to be, independent and unbiased.

4. Suspension Delegate

- 4.1 The employee who determines the suspension of an employee from duties, with or without remuneration, in accordance with section 28 of the Act will act consistently with regulation 3.10 of the *Public Service Regulations 1999*.
- 4.2 The sanction delegate will not be the person who determines whether an employee should be suspended from duty with or without remuneration, the period of the suspension and any review to lessen or extend the period of the suspension.
- 4.3 The Suspension Delegate will be consistent with Item 7 of the HR Delegations.

5. Information to be given to employee before determination is made

- 5.1 Before a determination is made in relation to a suspected breach of the Code by an employee, reasonable steps must be taken to:
- (a) Inform the employee of:
 - (i) the details of the suspected breach of the Code (including any variation of those details); and
 - (ii) the sanctions that may be imposed on the employee under subsection 15(1) of the Act.
 - (b) Give the employee a reasonable opportunity of not less than seven calendar days to make a statement in relation to the suspected breach.
- 5.2 Before a determination is made in relation to a suspected breach of the Code by a former employee, reasonable steps must be taken to:
- (a) inform the former employee of the details of the suspected breach of the Code (including any variation of those details); and
 - (b) give the former employee a reasonable opportunity of not less than seven calendar days to make a statement in relation to the suspected breach.
- 5.3 An employee, or former employee, who does not make a statement in relation to the suspected breach, is not, only for that reason, to be taken to have admitted committing the suspected breach.

6. Determination process

- 6.1 The decision maker may determine the most appropriate process for applying these Procedures to determine whether an employee, or former employee, has breached the Code.
- 6.2 The process must be carried out with as little formality and as much expedition as a proper consideration of the matter allows, while still providing procedural fairness to the employee.

7. Record of Determination

- 7.1 After a determination in relation to a suspected breach of the Code is made, a written record stating whether the employee, or former employee, has been found to have breached the Code must be prepared. This record must include:
 - a) the suspected breach; and
 - b) the determination; and
 - c) if a statement of reasons was given to the employee, or former employee – the statement of reasons.
- 7.2 The employee, or former employee, will be notified of the decision maker's determination.

Note: The Archives Act 1983 and the Privacy Act 1988 apply to a record made under this clause.

8. Sanction process

- 8.1 Where the decision maker has determined that an employee has breached the Code, the decision maker will, separately, make a recommendation to the sanction delegate of the recommended sanction(s) to be imposed under subsection 15(1) of the Act subject to any limitations prescribed in the *Public Service Regulations 1999*.
- 8.2 If a determination is made that an employee has breached the Code, a sanction may not be imposed unless reasonable steps have been taken to
 - a) inform the employee of
 - i. the determination; and
 - ii. the sanction(s) that are under consideration; and
 - iii. the factors that are under consideration in determining any sanction(s) to be imposed and
 - b) Give the employee a reasonable opportunity of not less than seven calendar days to make a statement in relation to the sanction(s) under consideration.
- 8.3 Following consideration of the recommended sanction and any statement from the employee, the sanction delegate will determine whether or not a sanction will be imposed and what the sanction(s) will be, and advise the employee in writing.

9. Record of Sanction(s)

- 9.1 After the sanction delegate determines the sanction(s) to be imposed a written record must be prepared. This record must include:
- a) the suspected breach; and
 - b) the determination; and
 - c) the sanction(s) imposed as a result of the determination that the employee breached the Code; and
 - d) if a statement of reasons was given the employee - the statement of reasons.

Note: The Archives Act 1983 and the Privacy Act 1988 apply to a record made under this clause.

10. Appropriate procedures if an employee moves to a different Agency

- 10.1 This clause applies if:
- a) an ongoing Finance employee is suspected of having breached the Code; and
 - b) the employee has been informed of the details of the suspected breach of the Code and the sanctions that may be imposed under subsection 15(1) of the Act; and
 - c) the matter has not yet been resolved; and
 - d) a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the Act to another Agency (including on promotion).
- 10.2 Unless Finance's Agency Head and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 10.3 For this clause, the matter is taken to be resolved when:
- a) a determination in relation to the suspected breach is made; or
 - b) it is decided that a determination is not necessary.
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