



Procedure

Procedures for Determining Suspected Breaches of the Australian Public Service Code of Conduct

I, Mike Mrdak AO, acting in my capacity as Secretary of the Department of Infrastructure and Regional Development, (the Department) establish these procedures under subsection 15(3) of the *Public Service Act 1999* ('the PS Act').

Dated *29 April* 2017

MIKE MRDAK AO
Secretary of the Department of Infrastructure and Regional Development

These procedures commence on the date signed by the Secretary.

These procedures replace and supersede all previous procedures dealing with Australian Public Service (APS) Code of Conduct, including but not limited to the APS Code of Conduct Procedure approved on 2 July 2013.

These Procedures do not apply to any matters relating to a suspected breach of the APS Code of Conduct where a complaint or notice of a suspected breach was received by the People and Performance Branch before the date signed by the Secretary.

Application of procedures

1. These procedures apply in determining whether a person who is an APS employee in the Department, or who is a former APS employee (who left the APS on or after 1 July 2013) who was employed in the Department at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) in section 13 of the PS Act.
2. These procedures also apply in determining any sanction to be imposed on an APS employee in the Department who has been found under procedures established under subsection 15(3) of the PS Act to have breached the Code.
3. In these procedures, a reference to a breach of the Code by a person includes a reference to a person engaging in conduct set out in subsection 15(2A) of the PS Act in connection with their engagement as an APS employee.

Availability of procedures

4. As provided for in subsection 15(7) of the PS Act, these procedures are publicly available on the Department's website.

Breach Decision-Maker and Sanction Delegate

5. As soon as is practicable after a suspected breach of the Code has been identified and a person authorised by the Secretary has decided to deal with the suspected breach under these procedures, the Secretary or their delegate will appoint a decision-maker (Breach Decision-Maker) to make a determination under these procedures.
6. The role of the Breach Decision-Maker is to determine in writing whether a breach of the Code has occurred.
7. The Breach Decision-Maker will usually be assisted by a suitably qualified and/or experienced person who will investigate the suspected breach, gather evidence and submit a report of recommended findings of fact to the Breach Decision-Maker. The person who assists the Breach Decision-Maker and investigates the suspected breach may be an APS employee or an external consultant.
8. The person who is to decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code (Sanction Delegate) will be a person holding a delegation of the powers under the PS Act to impose sanctions.
9. These procedures do not prevent the Breach Decision-Maker from being the Sanction Delegate in the same matter.

Person or persons making breach determination and imposing any sanction to be independent and unbiased

10. The Breach Decision-Maker and the Sanction Delegate must be, and must appear to be, independent and unbiased.
11. The Breach Decision-Maker and the Sanction Delegate must advise the Secretary or the Chief Operating Officer in writing if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased; for example, if they are a witness in the matter.

The determination process

12. The process for determining whether a person who is, or was, an APS employee in the Department has breached the Code must be carried out with as little formality, and with as much expedition, as a proper consideration of the matter allows.
13. The process must be consistent with the principles of procedural fairness.
14. A determination may not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken to:
 - a) inform the person of:
 - i. the details of the suspected breach of the Code, including any subsequent variation of those details; and
 - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15(1) of the PS Act; and

- b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.

15. A person who does not make a statement in relation to the suspected breach is not, for that reason alone, to be taken to have admitted to committing the suspected breach.

16. For the purpose of determining whether a person who is, or was, an APS employee in the Department has breached the Code, a formal hearing is not required.

Sanctions

17. The process for imposing a sanction must be consistent with the principles of procedural fairness.

18. If a determination is made that an APS employee in the Department has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to:

- a) inform the employee of:
 - i. the determination that has been made;
 - ii. the sanction or sanctions that are under consideration; and
 - iii. the factors that are under consideration in determining any sanction to be imposed; and
- b) give the employee a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.

Record of determination and sanction

19. If a determination is made in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Department, a written record must be made of:

- a) the suspected breach; and
- b) the determination; and
- c) any sanctions imposed as a result of a determination that the employee has breached the Code; and
- d) if a statement of reasons was given to the person regarding the determination in relation to suspected breach of the Code, or, in the case of an employee, regarding the sanction decision, that statement of reasons relating to that decision or those decisions.

Related Employment Procedures and Publications

- [Suspected Misconduct Guidelines](#)
- [Workplace Respect and Courtesy Guidelines](#)
- [Public Service Act 1999](#)
- [Public Service Regulations 1999](#)

Contacts

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