



CDPP

*Australia's Federal Prosecution Service*



**PROCEDURES FOR DETERMINING SUSPECTED BREACHES OF THE APS CODE OF CONDUCT AND DECIDING SANCTIONS**

I, Sarah McNaughton SC, Director of the Office of the Commonwealth Director of Public Prosecutions, (CDPP) establish these procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

These procedures commence on 12 November 2019.

Director

## **1. Application of procedures**

1.1 These procedures apply in determining whether a person who is an Australian Public Service (APS) employee in the CDPP, or who is a former APS employee who was employed in the CDPP at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) in section 13 of the Act.

1.2 These procedures do not apply to employees who are subject to a probationary period.

1.3 These procedures also apply in determining any sanction to be imposed on an APS employee in the CDPP who has been found to have breached the Code.

1.4 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 Act in connection with their engagement as an APS employee.

## **2. Availability of procedures**

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

## **3. Breach Decision-Maker and Sanction Delegate**

3.1 As soon as is practicable after a suspected breach of the Code has been identified, one of the following positions will appoint a decision-maker (the Breach Decision-Maker) to make a determination under these procedures:

- Commonwealth Director of Public Prosecutions (Director)
- Commonwealth Solicitor for Public Prosecutions (CSPP)
- Chief Corporate Officer (CCO) or
- National Manager, People and Communications (NMPC)

3.2 The role of the Breach Decision-Maker is to determine in writing whether a breach of the Code has occurred.

3.3 The Breach Decision-Maker may be assisted by a suitably qualified and/or experienced person(s) who will investigate the suspected breach, gather evidence and submit a report of recommendations to the Breach Decision-Maker. The person(s) who assists the Breach Decision-Maker and investigates the suspected breach may be an APS employee or an external party, for example a consultant.

3.4 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 ('the Sanction Delegate') will be a person holding a delegation of the powers under the Act to impose sanctions.

3.5 These procedures do not prevent the Breach Decision-Maker from being the Sanction Delegate in the same matter.

## **4. Person or persons making breach determination and imposing any sanction to be independent and unbiased**

4.1 The Breach Decision-Maker and the Sanction Delegate must be, and must appear to be, independent and unbiased.

4.2 The Breach Decision-Maker and/or the Sanction Delegate must advise the Director or her delegate 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.

## **5. The determination process**

5.1 The process for determining whether a person has breached the Code should be carried out with as much expedition as proper consideration of the matter allows.

5.2 The process must be consistent with the principles of procedural fairness.

5.3 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
  - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act
- b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.

5.4 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.

## **6. Sanctions**

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

6.2 If a determination is made that a person 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
  - iii. the factors that are under consideration in determining any sanction to be imposed
- b) give the employee a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.

## **7. Record of determination and sanction**

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

- a) the suspected breach
- b) the determination
- c) any sanctions imposed as a result of a determination that the employee has breached the Code

7.2 If a statement of reasons was given to the person regarding the:

- a) determination in relation to the suspected breach of the Code, or
- b) sanction decision

that statement of reasons or those statements of reasons must be placed with the records.

7.3 The *Archives Act 1983* (Cth) and the *Privacy Act 1988* (Cth) apply to Office records.

## **8. Process where an ongoing employee is to move to another agency**

8.1 This clause applies if:

- a) a person who is an ongoing APS employee in the CDPP is suspected of having breached the Code, and
- b) the employee has been informed of the allegations against them, and
- c) the matter has not yet been resolved, and
- d) a decision has been made that, apart from this clause, the employee would move to another agency in accordance with section 26 of the Act, including on promotion

8.2 Unless the Director and the new agency head agree otherwise, the movement (including promotion) will not take effect until the matter is resolved.

8.3 The matter is taken to be resolved when:

- a) a determination in relation to a suspected breach of the Code is made, or
- b) the Director or her delegate decides that a determination is not necessary.