

Productivity Commission

Procedures for determining breaches of the Code of Conduct and for determining sanctions

I, **Michael Brennan**, Chair of the Productivity Commission ('the Commission'), establish these procedures under subsection 15 (3) of the *Public Service Act 1999* ('the Act').

These procedures commence on the date they are signed by me.

These procedures supersede the previous procedures made for the Commission under subsection 15 (3) of the Act.

Signed:



Dated:

5/5/21

1. Application of procedures

- 1.1. These procedures apply in determining whether a person who is an Australian Public Service (APS) employee in the Productivity Commission, or who is a former APS employee who was employed in the Commission at the time of the suspected misconduct, has breached the APS Code of Conduct ('the Code') in section 13 of the Act.¹
- 1.2. These procedures also apply in determining any sanction to be imposed on an APS employee in the Commission who has been found to have breached the Code.
- 1.3. 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 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 Commission's website.

3. Breach decision maker and sanction delegate

- 3.1. As soon as practicable after a suspected breach of the Code has been identified and the Chair, or the person occupying the position of Head of Office (or another person authorised by the Chair) has decided to deal with the suspected breach under these procedures, the Chair, or that person will appoint a decision-maker ('the breach decision-maker') to make a determination under these procedures.

¹ Not all suspected breaches of the Code need to be dealt with by way of determination under these procedures. In certain circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.

- 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 undertake the investigation or seek the assistance of an investigator. The investigator may investigate the alleged breach, gather evidence, and make a report of recommended factual findings to the breach decision-maker.
- 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.²
- 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 the sanction delegate must advise the Chair, or the person authorised by the Chair to appoint the breach decision-maker, 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.

5. The determination process

- 5.1. The process for determining whether a person who is, or was, an APS employee in the Commission 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.
- 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) and,
 - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act; and
 - b. give the person a reasonable opportunity to make a statement in relation to the suspected breach.
- 5.4. The statement may be a written or oral statement and should be provided within seven calendar days or any longer period that is allowed by the decision-maker.

² The sanction delegates in the Productivity Commission are the persons occupying the positions of Head of Office and Assistant Commissioner Corporate Services.

- 5.5. 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.
- 5.6. For the purpose of determining whether a person who is, or was, an APS employee in the Commission has breached the Code, a formal hearing is not required.

6. Sanctions

- 6.1. The process for deciding on sanction must be consistent with the principles of procedural fairness.
- 6.2. If a determination is made that an APS employee in the Commission 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 written statement in relation to the sanction or sanctions under consideration.
- 6.3. The statement may be a written or oral statement and should be provided within seven calendar days or any longer period that is allowed by the sanction delegate.

7 Record of determination and sanction

- 7.1. 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 Commission, a written record must be made of:
 - a. the suspected breach;
 - b. the determination;
 - c. any sanctions imposed as a result of the determination; and
 - d. if a statement of reasons was given to the person regarding the determination, or, in the case of an employee, regarding the sanction decision, that statement of reasons or those statements of reasons.
