



TITLE

Procedures for Determining Breaches of the APS Code of Conduct and for Determining Sanctions

LEGISLATIVE REQUIREMENT

Section 15(3) *Public Service Act 1999*

EMPLOYEES AFFECTED

All Australian Public Service employees and former employees of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*

SUPERSEDES

Arrangements that applied in the Federal Court of Australia and National Native Title Tribunal from 1 July 2013 following amendments to the misconduct and other related provisions of the *Public Service Act 1999* which operated, for non-Senior Executive Service Staff, in conjunction with clause 81 of the *Federal Court of Australia Enterprise Agreement 2011-2014* and, for Senior Executive Service Staff (SES), in conjunction with provisions equivalent to clause 81 of that Enterprise Agreement set out in individual determinations made under subsection 24(1) of the Public Service Act subject to the savings noted in the body of the procedures below.

Procedures that applied in the Family Court and Federal Circuit Court from 27 November 2013 for determining breaches of the Code of Conduct and for determining sanctions

AVAILABILITY

These procedures are publicly available under section 15(7) of the Public Service Act.

DATE OF ISSUE

6 December 2017

I, **Warwick Graeme SODEN**, Chief Executive Officer and Principal Registrar of the Federal Court of Australia (CEO), as Agency Head of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976* (the Statutory Agency), establish these procedures under subsection 15(3) of the *Public Service Act 1999* (PS Act).

These procedures commence on 6 December 2017 and, subject to the savings noted below, supersede all previous procedures made under subsection 15(3) of the PS Act in relation to the Australian Public Service employees and former employees of that Statutory Agency.



W.G. Soden
Chief Executive Officer and Principal Registrar
Federal Court of Australia

Application of procedures

1. These procedures apply in determining:
 - a. whether a person who is an Australian Public Service (APS) employee in the Statutory Agency, or who is a former APS employee who was employed in the Statutory Agency at the time of the suspected misconduct, has breached the APS Code of Conduct (Code) in section 13 of the PS Act.
 - b. any sanction to be imposed on an APS employee in the Statutory Agency who has been found under these procedures to have breached the Code.
2. 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.

Breach decision-maker and sanction delegate

3. As soon as practicable after a suspected breach of the Code has been identified and the CEO, or a person authorised by the CEO, has decided to deal with the suspected breach under these procedures, the CEO or that person will appoint a decision-maker to make a determination under these procedures.
4. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
5. 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 findings of fact to the breach decision-maker.
6. 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 will be a person holding a delegation of the powers under the PS Act to impose sanctions.
7. 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

8. The breach decision-maker and the sanction delegate must be, and must appear to be, independent and unbiased.
9. The breach decision-maker and the sanction delegate must advise the CEO 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

10. The process for determining whether a person who is, or was, an APS employee in the Statutory Agency 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.
11. The process must be consistent with the principles of procedural fairness.
12. 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.
13. The statement may be a written or oral statement and should be provided within 7 calendar days or any longer period that is allowed by the decision-maker.
14. 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.
15. For the purpose of determining whether a person who is, or was, an APS employee in the Statutory Agency has breached the Code, a formal hearing is not required.

Sanctions

16. The process for imposing a sanction must be consistent with the principles of procedural fairness.
17. If a determination is made that an APS employee in the Statutory Agency 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; and
 - 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.
18. The statement may be a written or oral statement and should be provided within 7 calendar days or any longer period that is allowed by the sanction delegate.

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 Statutory Agency, 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 or those statements of reasons.

Savings

20. The superseded procedures will continue to apply for investigations that commenced before the date of issue of these procedures.
19. While the *Federal Court of Australia Enterprise Agreement 2011-2014* remains in force and effect, these procedures do not derogate from the operation of clause 81 of that Agreement (for non-SES staff covered by that Agreement) or provisions equivalent to clause 81 set out in individual determinations made under subsection 24(1) of the Public Service Act (for SES staff) and apply in conjunction with that clause or those equivalent provisions.