



PROCEDURE

Handling Suspected Code of Conduct Breaches

Document details

Classification	UNCLASSIFIED		
Point of contact	Director – HR	Last updated	24/02/2020
Approval authority	Commissioner	Date of approval	24/02/2020

I, Stephen John McBurney, acting in my capacity as Commissioner, Australian Building and Construction Commission, establish these procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

These procedures commence on Monday, 24 February 2020.

Application of procedures

1. These procedures apply in determining whether a person who is an Australian Public Service (APS) employee at the Australian Building and Construction Commission (ABCC), or who is a former APS employee who was employed at the ABCC at the time of the suspected misconduct, has breached the APS Code of Conduct ('the Code') in section 13 of the Act.
2. These procedures also apply in determining any sanction to be imposed on an APS employee at the ABCC who has been found to have breached the Code.
3. These procedures, as they apply to determining whether there has been a breach of the Code, apply to any suspected breach of the Code except where a decision had been made, before 24 February 2020, to begin an investigation to determine whether there had been a breach of the Code.
4. These procedures, as they apply to determining any sanction for breach of the Code, apply where a sanction decision is under consideration on or after 24 February 2020.
5. 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.

Availability of procedures

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

Breach decision-maker and sanction delegate

7. As soon as practicable after a suspected breach of the Code has been identified and the Commissioner, or a person authorised by the Commissioner, has decided to deal with the suspected breach under these procedures, the Commissioner or delegate will appoint a decision-maker ('the breach decision-maker') to make a determination under these procedures.
8. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
9. 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.
10. 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.
11. 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

12. The breach decision-maker and the sanction delegate must be, and must appear to be, independent and unbiased.
13. The breach decision-maker and the sanction delegate must advise the Commissioner or delegate 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

14. The process for determining whether a person who is, or was, an APS employee at the ABCC 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.
15. The process must be consistent with the principles of procedural fairness.
16. A determination will 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.
17. 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.
18. 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.
19. For the purpose of determining whether a person who is, or was, an APS employee at the ABCC has breached the Code, a formal hearing is not required.

Sanctions

20. The process for imposing a sanction must be consistent with the principles of procedural fairness.
21. If a determination is made that an APS employee at the ABCC 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 written statement in relation to the sanction or sanctions under consideration.

22. 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.

Record of determination and sanction

23. If a determination is made in relation to a suspected breach of the Code by a person who is, or was, an APS employee at the ABCC, 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.

Document History

Version	Date	Author	Summary of changes	Authorised by
1.0	1/07/2013	Heather Hausler	Approval of document	Heather Hausler
2.0	24/02/2020	Joshua Banks, Director – HR	Update following review through PSU, HR and Executive Team	Commissioner McBurney
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