

OFFICIAL

PROCEDURES FOR MANAGING SUSPECTED BREACHES OF THE APS CODE OF CONDUCT

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I, Barry Jackson, acting in my capacity as the Managing Director of Defence Housing Australia, establish these procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

These procedures commence on 17 October 2022.

These procedures supersede the previous procedures established under subsection 15(3) of the Act, dated May 2017 (**Previous Procedures**). In accordance with the terms of these procedures, the Previous Procedures may apply to a particular process for determining whether an APS employee, or a former APS employee has breached the APS Code of Conduct.



Barry Jackson
Managing Director
Defence Housing Australia

1. Application of procedures

- 1.1 These procedures apply:
- (a) if the Managing Director has decided to deal with the suspected breach of the Code of Conduct (the Code) by an APS employee, or a former APS employee under these procedures
 - (b) in determining whether a person who is an APS employee, or former APS employee at the time of the suspected misconduct has breached the Code; and
 - (c) in determining any sanctioned to be imposed on an APS employee who has been found to have breached the Code.
- 1.2 In these procedures, a reference of a breach of the Code by an APS employee includes a reference to a person engaging in conduct set out in subsection 15(2A) of the *Public Service Act 1999* (the Act) in connection with their engagement as an APS employee.

2. Availability of procedures

- 2.1 In accordance with subsection 15(7) of the Act, these procedures are publicly available on the [DHA website \(www.dha.gov.au\)](http://www.dha.gov.au).

3. Breach decision-maker and sanction delegate

- 3.1 As soon as reasonably practicable, the Managing Director will appoint a decision-maker (**breach decision-maker**) to determine whether an APS employee, or a former APS employee, has breached the Code.
- 3.2 The role of the breach decision-maker is to determine in writing whether the APS employee, or the former APS employee, has breached the Code.
- 3.3 In determining whether an APS employee, or a former APS employee, has breached the Code, the breach decision-maker may:
- (a) undertake an investigation; and/or
 - (b) seek the assistance of an investigator.
- 3.4 The investigator may be appointed to investigate any aspect of the alleged breach, gather evidence and make a report of recommended factual findings to the breach decision-maker.
- 3.5 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 power under the Act to impose sanctions.
- 3.6 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 Managing Director in writing if they consider that:
- (a) they may not be independent and unbiased; or
 - (b) they may reasonably be perceived not to be independent and unbiased.

Note: For example, the breach decision-maker and the sanction delegate may not be independent and unbiased, or they may reasonably be perceived not to be independent and unbiased, if they are a witness in the matter.

5. The determination process

- 5.1 The process for determining whether an APS employee, or a former APS employee, has breached the Code must be:
- (a) carried out with as little formality, and with as much expedition, as a proper consideration of the matter allows; and
 - (b) consistent with the principles of procedural fairness.
- 5.2 A breach decision-maker must not make a determination that an APS employee, or a former APS employee, has breached the Code unless reasonable steps have been taken to:
- (a) inform the APS employee or former APS employee 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 APS employee, or former APS employee, a reasonable opportunity to make a statement in relation to the suspected breach.
- 5.3 The statement referred to in paragraph 5.2 above may be a written or oral statement and should be provided within 7 calendar days or any longer period that is allowed by the breach decision-maker.
- 5.4 A person who does not make a statement in relation to the suspected breach of the Code is not, for that reason alone, to be taken to have admitted to committing the suspected breach.
- 5.5 For the purpose of determining whether an APS employee, or a former APS employee, has breached the Code, a formal hearing is not required.

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 an APS employee 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 by the breach decision-maker; and
 - ii. the sanction or sanctions that the sanction delegate is considering imposing on the APS employee; and
 - iii. the factors that are under consideration by the sanction delegate in determining any sanction to be imposed; and
 - (b) give the employee a reasonable opportunity to make a written or oral statement in relation to the sanction or sanctions under consideration.
- 6.3 The statement referred to in paragraph 6.2(b) above may be a written or oral statement and should be provided by the employee to the sanction delegate within 7 calendar days or any longer period that is allowed by the sanction delegate.

7. Record of the determination

- 7.1 If a determination is made in relation to a suspected breach of the Code by an APS employee, or a former APS employee, a written record must be made of:
- (a) the suspected breach; and
 - (b) any determination as to whether the APS employee, or former APS employee, has breached the Code;
 - (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:
 - i. regarding the determination in relation to suspected breach of the Code; and
 - ii. in the case of an APS employee, regarding the sanction decision that statement of reasons or those statements of reasons.

8. Moving to another agency or resignation

- 8.1 This clause applies if:
- (a) an APS employee is suspected of having breached the Code of Conduct; and
 - (b) reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with these procedures; and
 - (c) the APS employee is selected to move to another Agency and the matter to which the suspected breach relates has not yet been resolved before the employee is to take up the new role.
- 8.2 Unless the Managing Director, or their delegate, and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 8.3 For this clause, the matter is taken to be resolved when:
- (a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.
- 8.4 Should the Agency Heads agree to a move prior to the resolution of a suspected breach of the Code, the gaining agency may initiate an investigation in accordance with the gaining agency's s15(3) procedures. It would be open to the gaining agency to use information and any assessment conducted by DHA in undertaking a suspected misconduct investigation.
- 8.5 Where an employee resigns during the course of an investigation the Managing Director or delegate may choose, depending on the circumstances, to discontinue the process to determine whether or not the APS employee has breached the Code.

9. Definitions

For the purposes of these procedures:

the Act means the Public Service Act 1999.

APS employee means a person engaged in DHA pursuant to section 22 or section 72 of the Act.

Code means the APS Code of Conduct set out in section 13 of the Act.

DHA means Defence Housing Australia which has been established under the Defence Housing Australia Act 1987.

former APS employee means a person who was engaged in DHA pursuant to section 22 or section 72 of the Act but is no longer employed by DHA.

Managing Director means the agency head of DHA for the purposes of the Act, and includes a person authorised to exercise the Managing Director's powers and functions mentioned in these procedures.

Previous Procedures means the procedures established by the Managing Director under subsection 15(3) of the Act that were in effect immediately before these procedures were established.

10. Transition

- 10.1 From the date of signature, these procedures also apply (instead of the Previous Procedures):
- (a) in determining whether a person who is an APS employee, or a former APS employee at the time of the suspected misconduct, has breached the Code; and/or
 - (b) in determining any sanction to be imposed on an APS employee who has been found to have breached the Code, even if the Managing Director has previously made a decision to deal with the suspected breach of the Code by an APS employee, or a former APS employee, under the Previous Procedures.