



## Procedures for determining suspected breaches of the *APS Code of Conduct*

I, Barry Sandison, Chief Executive Officer (CEO) of the Australian Institute of Health and Welfare (the Institute), as Agency Head of the Institute, establish these procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

These procedures commence from the date of signing.

Signature

30/10/19

Date

### Application of procedures

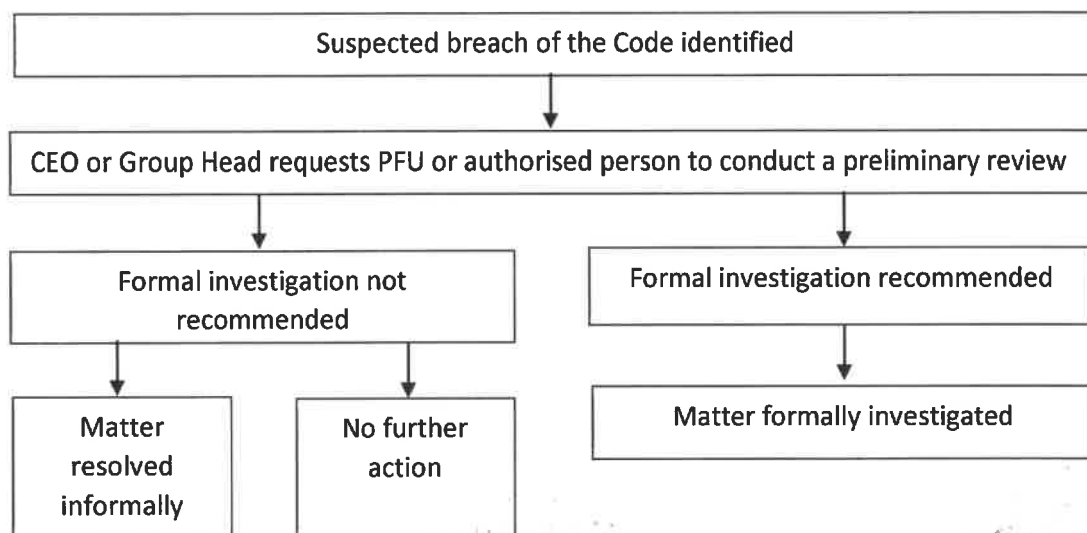
1. These procedures apply in determining:
  - whether an Australian Public Service (APS) employee in the Institute, or who is a former APS employee who was employed in the Institute at the time of the suspected misconduct and left the APS on or after 1 July 2013, has breached the APS Code of Conduct (the Code) in section 13 of the Act.
  - any sanction to be imposed on an APS employee in the Institute 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 Act in connection with their engagement as an APS staff member.

### Breach decision-maker and sanction delegate

3. As soon as practicable after a suspected breach of the Code has been identified the CEO or Group Head may request People and Facilities Unit (PFU), or an authorised person, to conduct a preliminary review to gather evidence and determine how the matter would be best dealt with. Where the findings of a preliminary investigation recommend a formal investigation, or where suspected breach is considered to be serious, it will be dealt with under these procedures and the CEO will appoint a decision-maker to make a determination.
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 a suitably qualified and/or experienced person(s) or 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 CEO will decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code.
7. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

*Flowchart for handling suspected breaches of the Code*



**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 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 Institute 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
  1. inform the person concerned of:
    - a. the details of the suspected breach of the Code, including any subsequent variation of those details; and
    - b. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act; and
  2. give the person a reasonable opportunity to make a statement in response 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 staff member in the Institute has breached the Code, a formal hearing is not required.

## Formal investigation process

The investigator will commence investigating the matter in a professional and impartial manner in line with the procedures outlined in the [Handling Misconduct – A Human Resource Manager's Guide](#), which has been designed by the Australian Public Service Commission to support managers to take the most appropriate action at every stage of the misconduct process.

## 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 staff member in the Institute has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to
  1. inform the employee of:
    - a. the determination that has been made; and
    - b. the sanction or sanctions that are under consideration; and
    - c. the factors that are under consideration in determining any sanction to be imposed; and
  2. 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 Institute, a written record must be made of:
  1. the suspected breach; and
  2. the determination; and
  3. any sanctions imposed as a result of a determination that the employee has breached the Code; and
  4. 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.

## Moving to a different agency or resignation

20. Movement between agencies (including on promotion) for employees suspected of a breach of the Code will not take effect until the matter is resolved, unless agreed by the respective Agency Heads. Resolution is by:
  - a determination being made, or
  - a decision that a determination is not necessary.
21. Should the Agency Heads agree to a move prior to the resolution of a suspected breach of the Code, the receiving agency may continue an investigation and/or impose a sanction based on the former agency's investigation.

Where an employee resigns during the course of an investigation the CEO or delegate may choose, depending on the circumstances, to discontinue the process.

## Recording keeping

Any record of a determination or sanction for breaching the Code of Conduct will be retained by the AIHW in accordance with the AIHW recordkeeping policy, the AIHW recordkeeping guidelines, and any other legislated requirements or applicable Australian Standard for Records

Management, as may be in force from time to time. Refer to the [APSC Part III: Administrative Issues and Quality webpage](#) for further information.

### **Review of action**

22. An APS employee is entitled to review, in accordance with the regulations, any APS action that relates to his or her APS employment under section 33 of the Act. Applications for review are made directly to the Merit Protection Commissioner.
23. A former APS employee may also seek a review of a determination that they breached the Code where the determination was made after the employee ceased APS employment. The relevant provisions are in Division 7.3 of the PS Regulations. As no sanction can be imposed on a former employee, there is no provision for former employees to have review rights in relation to sanction decisions.
24. An employee whose APS employment has been terminated for misconduct cannot apply for review of that decision under s33 of the Act but may have access to the remedies under the Fair Work Act 2009 by making an application to the Fair Work Commission. Further information is available from the Fair Work Commission at [www.fwc.gov.au](http://www.fwc.gov.au).