



Department of Defence – Procedures for determining breaches of the APS code of conduct and determining sanctions

I, STAN MITCHELL, Delegate of the Secretary of the Department of Defence, establish these procedures under subsection 15(3) of the *Public Service Act 1999*.

Dated 11 July 2018

Stan Mitchell

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Defence People Group

- 1. Name**
This is the Department of Defence's procedures for determining breaches of the APS code of conduct and determining sanctions.
- 2. Commencement**
The procedures commence from the date of signature of this instrument.
- 3. Authority**
The procedures are made under the authority of the *Public Service Act 1999* (the Act)
- 4. Revocation**
The procedures supersede the previous procedures made for the Department of Defence on 1 March 2017 under subsection 15 (3) of the Act, but the previous procedures may continue to apply for transitional purposes.
- 5. Procedures**
The procedures are set out in Schedule 1.



APS People Policy

CODE OF CONDUCT PROCEDURES

Policy Statement

1. These procedures explain how alleged breaches of the APS Code of Conduct (the Code) are managed in Defence.
2. These procedures are in accordance with sections 15(3) and 15(5) of the PS Act which require Defence to establish and make readily available procedures for determining whether an APS employee in Defence has breached the Code.
3. Defence takes misconduct very seriously.
4. Taking action in cases of suspected misconduct is primarily aimed at protecting the integrity of Defence and the APS thereby maintaining public confidence in public administration. Sanctions are intended to be proportionate to the nature of the breach, to be a deterrent to others and confirm that misconduct is not tolerated in Defence.
5. At the same time, Defence seeks to maintain balance and proportion in managing alleged breaches of the Code. For this reason, not all alleged breaches of the Code may require formal investigation and determination under these procedures.

Application of Procedures

6. Not all reported alleged breaches of the Code require investigation. Depending on their nature, alleged breaches of the Code may be approached informally. For example, if a manager becomes aware of minor misconduct that may be a breach of the Code, it may be sufficient for the manager to counsel the employee about his or her conduct, noting that further similar behaviour could lead to formal action under these procedures. In such cases, managers should be careful not to imply that there has been any formal determination of a breach of the Code.
7. These procedures apply in determining whether a person who is an APS employee in Defence, or who is a former APS employee who was employed by Defence at the time of the suspected misconduct, has breached the Code in section 13 of the PS Act.
8. These procedures apply in determining any sanction to be imposed on an APS employee in Defence who has been found to have breached the Code.
9. 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.

Date of effect and transitional arrangements

10. These procedures came into effect on 11 July 2018.
11. They apply to determining whether there has been a breach of the Code, except where a decision had been made to begin an investigation before these procedures commenced.

12. These procedures apply to determining any sanction for breach of the Code where a sanction decision is under consideration on or after the date these procedures commenced.

Availability of Procedures

13. As required by subsection 15(7) of the PS Act, these procedures are available on Defence's intranet at [PeopleConnect](#) and publicly available at www.defence.gov.au.

Decision Maker and Sanction Delegate

14. A person occupying or performing the duties of the following positions is the decision maker for deciding whether a breach of the Code has occurred.

- Associate Secretary
- Deputy Secretary Defence People
- First Assistant Secretary People Services
- Assistant Secretary HR Services
- Director Conduct and Performance
- Assistant Director Conduct and Performance

15. In addition, Assistant Secretary People Policy and Employment Conditions may authorise any other person to be a decision maker for specific circumstances.

16. The decision maker may seek the assistance of an investigator to investigate the alleged breach, gather evidence and make a report of facts and findings for the decision maker. The decision maker may brief an investigator to help establish the facts of the matter and prepare a brief for the decision maker. The investigator may make recommendations to the decision maker as to whether breaches of the Code have occurred, however it remains the responsibility of the decision maker to ultimately determine whether a breach of the Code has occurred.

17. 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 must hold a delegation of the power under the PS Act to impose sanctions (the sanction delegate).

18. On occasion there may be a separate decision maker and sanction delegate.

Procedural Fairness

19. The process for determining whether a person who is, or was, an APS employee in Defence 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.

20. The process must be consistent with the principles of procedural fairness. Procedural fairness generally requires that:

- (a) the decision maker and the sanction delegate must be, and appear to be, independent and unbiased;
- (b) the person suspected of breaching the Code is informed of the case against them (i.e. any material that is before the decision maker that is adverse to the person or their interests and that is credible, relevant and significant);
- (c) the person is provided with a reasonable opportunity to respond and put their case, in accordance with these procedures, before any decision is made on breach or sanction; and
- (d) there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.

Determination of a Breach

21. 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 a current 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 written statement, or provide further evidence in relation to the suspected breach, within a minimum period of seven calendar days or any longer period that is allowed.

22. 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.

23. The decision maker or an investigator assisting the decision maker, where they consider in all the circumstances that the request is reasonable, must agree to a request made by the person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.

Sanctions

24. If a determination is made that an APS employee in Defence 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 within a minimum period of seven calendar days, or any longer period that is allowed by the sanction delegate.

Record of Determination and Sanction

25. If a determination is made in relation to a suspected breach of the Code by an employee or a former employee, a written record must be made of:

- (a) the suspected breach; and
- (b) the determination; and
- (c) where the person is an APS employee, any sanctions imposed as a result of a determination that the employee has breached the Code; and
- (d) a statement of reasons regarding the determination in relation to the suspected breach of the Code, and, in the case of a current APS employee, the sanction decision which must be provided to the employee.

26. The Archives Act 1983 and the Privacy Act 1988 apply to Defence records.

Procedure when an ongoing employee is to move to another agency

27. This section applies if:

Code of Conduct

- (a) a person who is an ongoing APS employee in Defence is suspected of having breached the Code; and
- (b) the employee has been informed of:
 - i) the details of the suspected breach (including any subsequent variation of those details);
 - ii) the sanctions that may be imposed on the employee under subsection 15(1) of the PS Act; and
- (c) the matter has not yet been resolved; and
- (d) a decision has been made that, apart from this clause, the employee would move to another agency in accordance with section 26 of the PS Act (including on promotion).

28. Unless the Secretary or delegate and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

29. For the purpose of this section the matter is taken to be resolved when:

- (a) a determination in relation to suspected breach of the Code is made in accordance with these procedures; or
- (b) the Secretary or delegate decides that a determination is not necessary.

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