



Procedures under section 15(3) of the *Public Service Act 1999*

I, Anne Hollonds, acting in my capacity as Director of the Australian Institute of Family Studies (AIFS), establish these procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

These procedures commence on 28 May 2020.



1. Application of procedures

- 1.1 These procedures apply in determining whether a person who is an Australian Public Service (APS) employee in AIFS, or who is a former APS employee who was employed in AIFS at the time of the suspected misconduct, has breached the APS Code of Conduct ('the Code') in section 13 of the Act.
- 1.2 These procedures also apply in determining any sanction to be imposed on an APS employee in AIFS who has been found to have breached the Code.
- 1.3 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 28 May 2020 to begin an investigation to determine whether there had been a breach of the Code.
- 1.4 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 28 May 2020.
- 1.5 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.

Note: *These procedures apply only in relation to a suspected breach of the Code of Conduct by an APS employee in respect of which a determination is to be made. Not all suspected breaches of the Code of Conduct may need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.*

2. Availability of procedures

- 2.1 As provided for in subsection 15(7) of the Act, these procedures are publicly available on AIFS website.

3. Breach decision-maker and sanction delegate

- 3.1 As soon as practicable after a suspected breach of the Code has been identified and the Director, or a person authorised by the Director, has decided to deal with the suspected breach under these procedures, the Director or that person will appoint a decision-maker ('the breach decision-maker') to make a determination under these procedures.



- 3.2 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 3.3 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.
- 3.4 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.
- 3.5 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 Director, or the person authorised by the Director to appoint the breach decision-maker, 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.

5. The determination process

- 5.1 The process for determining whether a person who is, or was, an APS employee in AIFS 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.
- 5.2 The process must be consistent with the principles of procedural fairness.

Note: *Procedural fairness generally requires that:*

- *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);*
 - *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;*
 - *The decision maker acts without bias or an appearance of bias;*
 - *There is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.*
- 5.3 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 Act; and
 - b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.
 - 5.4 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.



- 5.5** 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.
- 5.6** For the purpose of determining whether a person who is, or was, an APS employee in AIFS 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 in AIFS 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.
- 6.3** 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.

7. Record of determination and sanction

- 7.1** 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 AIFS, 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.

8. Procedure where an employee is to move to another Agency during an investigation

- 8.1** These procedures apply if an ongoing APS employee in the Institute is suspected of having breached the Code of Conduct and:
- a) the employee has been informed of the matters mentioned in paragraphs 4.1(a) and 4.1(b).
 - b) the matter has not yet been resolved; and
 - c) a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the Act to another Agency (including on promotion).
- 8.2** Unless the Director and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 8.3** The matter is taken to be resolved when a determination is made in relation to the suspected breach or it is decided that a determination is not necessary.