Procedures for determining breaches of the Australian Public Service (APS) Code of Conduct and for determining sanction

In accordance with section 15(3) of the *Public Service Act 1999* (the Act) the NDIS Quality and Safeguards Commissioner, as the agency head of the NDIS Quality and Safeguards Commission (the Commission) has established procedures for determining whether an APS employee, or former employee, in the Commission has breached the APS Code of Conduct (the Code), and for determining sanctions. These procedures are made publicly available in accordance with section 5(7) of the Act.

I, **Graeme Head**, as Agency Head of the NDIS Quality and Safeguards Commission, establish these procedures under subsection 15 (3) of the *Public Service Act 1999*.

These procedures commence on the date signed.

Graeme Head
NDIS Commissioner

Dated this   21st   day of November 2018

Application of procedures

1. These procedures apply in determining:

    a. whether a person who is an Australian Public Service (APS) employee in the Commission, or who is a former APS employee who was employed in the Commission at the time of the suspected misconduct, has breached the APS Code of Conduct in section 13 of the Act.

    b. Any sanction to be imposed on an APS employee in the Commission 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 employee.

Breach decision-maker and sanction delegate

3. As soon as practicable after a suspected breach of the Code has been identified and the Commissioner or one of the following employees:

    •   the Chief Operating Officer
    •   the Director, Human Resources

has decided to deal with the suspected breach under these procedures, the Commissioner or that employee will appoint a decision maker to make a determination under these procedures.

4. The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.

5. Nothing prevents the Commissioner or the above employees from appointing themselves as the breach decision maker.

6. The breach decision maker 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 findings of fact to the breach decision-maker.

7. 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 will be a person who holds a delegation of the powers under the Act to impose sanctions.

8. 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

9. The breach decision-maker and the sanction delegate must be, and must appear to be, independent and unbiased.

10. The breach decision-maker and the sanction delegate must advise the Commissioner 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

11. The process for determining whether a person who is, or was, an APS employee in the Commission 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.

12. The process must be consistent with the principles of procedural fairness.

13. 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 in relation to the suspected breach.

14. 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.

15. 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.

16. For the purpose of determining whether a person who is, or was, an APS employee in the Commission has breached the Code, a formal hearing is not required.

Sanctions

17. The process for imposing a sanction must be consistent with the principles of procedural fairness.

18. If a determination is made that an APS employee in the Commission has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to:

    a) inform the person 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) the person a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.

19. 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

20. 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 Commission, a written record must be made of:

    a) the suspected breach; and
    b) the determination; and
    c) any sanction 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 statement of reasons.