



Australian Government

Australian Law Reform Commission

ALRC Written Procedures for Determining a Breach of the Code of Conduct

In accordance with s 15(3) of the *Public Service Act 1999* (the Act) the President of the Australian Law Reform Commission (the ALRC), as the agency head of the ALRC, has established procedures for determining whether an APS employee, or former employee, in the ALRC has breached the APS Code of Conduct (the Code), and for determining sanctions. These procedures are made publicly available on the ALRC's website in accordance with s 15(7) of the Act.

I, Justice Mordecai Bromberg, as President of the ALRC, establish these procedures under s 15(3) of the Act.

These procedures commence on the day they are made.

These procedures supersede any previous procedures made for the ALRC under s 15(3) of the Act.

A handwritten signature in blue ink, appearing to read 'M. Bromberg', written over a horizontal line.

Justice Mordecai Bromberg
President, Australian Law Reform Commission

A handwritten date in blue ink, '10 June 2024', written over a horizontal line.

Date

1. Application of procedures

1.1 These procedures apply in determining:

- a. whether a person who is an Australian Public Service (APS) employee employed by the ALRC, or who is a former APS employee who was employed in the ALRC at the time of the suspected misconduct, has breached the Code; and
- b. any sanction to be imposed on an APS employee in the ALRC who has been found under these procedures to have breached the Code.

1.2 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 s 15(2A) of the Act in connection with their engagement as an APS employee.

2. Breach decision-maker and sanction delegate

- 2.1 As soon as practicable after a suspected breach of the Code has been identified and the President of the ALRC, or a person authorised by the President, has decided to deal with the suspected breach under these procedures, the President or that person will appoint a breach decision-maker to make a determination under these procedures.
- 2.2 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 2.3 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 findings of fact to the breach decision-maker.
- 2.4 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 will be a person holding a delegation of the powers under the Act to impose sanctions.
- 2.5 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

3. Person or persons making breach determination and imposing any sanction to be independent and unbiased

- 3.1 The breach decision-maker and the sanction delegate must be, and must appear to be, independent and unbiased.
- 3.2 The breach decision-maker and the sanction delegate must advise the President 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.

4. The determination process

- 4.1 The process for determining whether a person who is, or was, an APS employee in the ALRC has breached the Code must be carried out with as little formality, and with as much expedition, as a fair and proper consideration of the matter allows.
- 4.2 The process must be consistent with the principles of procedural fairness.
- 4.3 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.
- 4.4 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 breach decision-maker.
- 4.5 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.
- 4.6 For the purpose of determining whether a person who is, or was, an APS employee in the ALRC has breached the Code, a formal hearing is not required.

5. Sanctions

- 5.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 5.2 If a determination is made that an APS employee in the ALRC 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 statement in relation to the sanction or sanctions under consideration.
- 5.3 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.

6. Record of determination and sanction

- 6.1 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 the ALRC, 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 the 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.