

## Procedures for determining breaches of the Code of Conduct and for determining sanction

I, Daryl Karp, Director & CEO of Australian National Maritime Museum ('the Museum'), establish these procedures under subsection 15 (3) of the public Service Act 1999 ('the Act').

These procedures commence on 9th April 2025



Signed: \_\_\_\_\_  
Daryl Karp AM – Director & CEO

These procedures should be read in conjunction with the Australian Public Service Code of Conduct.

### 1. Application of procedures

- 1.1. These procedures apply in determining whether a person who is an APS employee in the Museum, or who is a former APS employee who was employed in the Museum at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code') in section 13 of the *Public Service Act 1999* ('the Act')<sup>1</sup>.
- 1.2. These procedures apply in determining any sanction to be imposed on an APS employee in the Museum who has been found to have breached the Code.
- 1.3. 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: Not all suspected breaches of the Code need to be dealt with by way of determination under these procedures, in particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate, including performance management.*

### 2. Availability of procedures

- 2.1. As provided for in subsection 15 (7) of the Act, these procedures are publicly available on the Museum's 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 (see HR Delegations), 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.

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<sup>1</sup> [Federal Register of Legislation - Public Service Act 1999](#)

- 3.2. Nothing prevents the Director or the Director's delegates from appointing themselves as the breach decision maker.
- 3.3. The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.
- 3.4. The breach decision maker may seek the assistance of an investigator with matters including investigating the alleged breach, gathering evidence, and making a report of recommended factual findings to the breach decision maker.
- 3.5. 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 Act to impose sanctions ('the sanction delegate').
- 3.6. 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 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 the Museum 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.

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 written statement or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed. The breach decision maker may decide to give the person the opportunity to make both a written and an oral statement.

5.4. 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.

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

5.6. The breach decision maker (or the person assisting the breach decision maker, if any) 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.

#### **Additional procedural requirements for current Museum Senior Executive Service employees**

5.7. If a current Senior Executive Service (SES) employee in the Museum is suspected of breaching the Code, the Director as the Agency Head of the Museum or a delegate of the Director, must comply with the requirements at section 64 of the Australian Public Service Commissioner's Directions 2022 (Directions) to consult, with the Australian Public Service Commissioner, or their delegate for the purposes of this requirement:

- a) on the process for determining whether the employee has breached the Code; and
- b) if considering imposing a sanction, before imposing the sanction

#### **Additional procedural requirements for current Statutory Office Holders**

5.8. The Australian Public Service Commissioner (the Commissioner) has the function of inquiring into suspected breaches of the Code by statutory office holders, and determining whether the statutory office holder has breached the Code (regulation 6.1A of the Public Service Regulations). While the Commissioner can determine that a statutory office holder has breached the Code, the Commissioner is unable to impose a sanction. However, the Commissioner may make recommendations about the matter.

5.9. Where it is suspected that a statutory office holder covered by the Code may have breached the Code in relation to their treatment of an APS employee, guidance should be sought from the Australian Public Service Commission.

- 5.10. For any suspected breach of the code of conduct by a statutory office holder or SES employee, the Museum, if following consultation with the APSC, determines that an investigation is warranted, will engage an external investigator to remove any perception of bias or lack of independence.

## 6. Reassignment or suspension from duty

- 6.1. An APS employee, including SES employees, who is under investigation for a suspected breach may be reassigned to alternative duties, either temporarily or on an ongoing basis. In the case of a suspected serious breach, they may be suspended from duty.
- 6.2. The decision to suspend must be made by a suspension delegate who will hold a delegation of powers and functions under section 28 of the *Public Service Act* and section 14 of the *Public Service Regulations 2023*. They should be an officer other than the breach decision maker.
- 6.3. The suspension must immediately end if a sanction has been imposed on the APS employee for the relevant breach of the Code of Conduct.

## 7. Sanctions

- 7.1. The process for deciding on sanction must be consistent with the principles of procedural fairness.
- 7.2. If a determination is made that an APS employee in the Museum 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 7 calendar days, or any longer period that is allowed by the sanction delegate.

The sanction delegate may decide to give the employee the opportunity to make both a written and an oral statement.

## 8. Record of determination and sanction

- 8.1. If a determination in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Museum is made, 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) 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.

## 9. Procedure when an ongoing employee is to move to another agency.

9.1. This clause applies if:

- a) a person who is an ongoing APS employee in the Museum is suspected of having breached the Code, and
- b) the employee has been informed of the matters mentioned in 5.3.(a); 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 Act (including on promotion).

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

9.3. For the purpose of this clause 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 Director decides that a determination is not necessary.

## 10. References

Australian Public Service Commission, [Code of Conduct](#)

Australian Public Service Commission [APS Values, Code of Conduct and Employment Principles](#)

Australian Public Service Commissioner's Directions 2022. [Federal Register of Legislation - Australian Public Service Commissioner's Directions 2022](#)

*Public Service Act*, 1999 [Federal Register of Legislation - Public Service Act 1999](#)

*Public Service Regulations*, 2023 [Federal Register of Legislation - Public Service Regulations 2023](#)