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# Procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions

I, David Shankey, Chief Executive Officer, Net Zero Economy Authority (the Authority) have established these procedures in accordance with section 15(3) of the [Public Service Act 1999](#) (the PS Act).

These procedures supersede any previous procedures made under section 15(3) of the PS Act that applied to the Authority.

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Chief Executive Officer

April 2025

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## Application of Procedures

1. These procedures apply in determining:
  - whether an APS employee in the Net Zero Economy Authority (the Authority), or a former APS employee who was employed in the Authority at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) as established through section 13 of the [Public Service Act 1999](#) (the PS Act)
  - any sanction to be imposed on an APS employee in the Authority who has been found to have breached the Code in accordance with section 15(1) of the PS Act.
2. In these procedures, a reference to a breach of the Code includes a reference to a current or former employee who has engaged in conduct set out in section 15(2A) of the PS Act in connection with their engagement as an APS employee.
3. Note: not all suspected breaches of the Code need to be dealt with by way of a determination under these procedures. In particular circumstances, dealing with a suspected breach of the Code through an alternative approach may be more appropriate.

## Availability of Procedures

4. These procedures are made publicly available on the Authority's website in accordance with section 15(7) of the PS Act.

## Breach Decision-Maker

5. As soon as practicable after a suspected breach of the Code has been identified, the Chief Executive Officer of the Authority or one of the following Authority employees:
  - First Assistant Secretary, Policy, Communications and Corporate Division
  - Chief Operating Officer (AS, Corporate Strategy and Services Branch)
  - Director, Human Resources

will consider if it is appropriate for a preliminary assessment to be conducted to establish whether the suspected breach of the Code should be formally investigated under these procedures. Once a decision is made to formally investigate the suspected breach under these procedures, the CEO will appoint a decision-maker ('the breach decision-maker') to make a determination under these procedures.

6. These procedures do not prevent the CEO from appointing themselves as the breach decision-maker.
7. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
8. The breach decision-maker may undertake the investigation, or seek the assistance of an investigator who may be external to the Authority. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision-maker.

## Sanction Delegate

9. The delegate determining whether a sanction should be imposed for any breach of the Code is referred to in these procedures as the Sanction Delegate and will hold a delegation of the power under section 15(1) of the PS Act.

10. These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

### **Suspension Delegate**

11. The delegate determining whether an employee should be suspended from duties is referred to in these procedures as the suspension delegate and will hold a delegation of the powers and functions under section 28 of the PS Act and regulation 14 of the [Public Service Regulations 2023](#) (PS Regulations).
12. Where suspension from duties is being considered, it is desirable to appoint a separate decision-maker.

### **Breach Decision-Maker and Sanction Delegate to be Independent and Unbiased**

13. The Authority will take reasonable steps to ensure the breach decision-maker and the sanction delegate are, and appear to be, independent and unbiased.

### **The Determination Process**

14. The process for determining whether a current or former APS employee in the Authority has breached the Code must be carried out with as much expedition and as little formality as proper consideration of the matter allows.
15. The process must be consistent with the principle of procedural fairness.
16. Before a determination is made in relation to a suspected breach of the Code by a current or former APS employee, the Authority must take reasonable steps to:
  - a. inform them of:
    - i. the details of the suspected breach of the Code (including any subsequent variation of those details); and
    - ii. the sanction(s) that may be imposed on the APS employee under section 15(1) of the PS Act
  - b. give them a reasonable opportunity to make a statement in relation to the suspected breach.

### **Sanctions**

17. The process for imposing a sanction must be consistent with the principle of procedural fairness.
18. If a determination is made that an APS employee in the Authority has breached the Code, a sanction may not be imposed on the APS employee unless reasonable steps have been taken to:
  - a. Inform them of:
    - i. the determination that has been made; and
    - ii. the sanction or sanctions that are under consideration in accordance with section 15(1) of the PS Act; and
    - iii. the factors that are under consideration in determining any sanction to be imposed.

- b. give them a reasonable opportunity to make a statement in relation to the sanction(s) under consideration.
19. If a determination is made that a current APS employee has breached the Code, the following sanctions may be imposed under section 15(1) of the PS Act:
- a reprimand
  - deduction from salary, by way of a fine
  - reduction in salary
  - re-assignment of duties
  - reduction in classification
  - termination of employment.

### **Support Person**

20. A current or former APS employee who is under investigation for a suspected breach of the Code may bring a support person with them to meetings. The support person can support and assist the person under investigation, but is not permitted to advocate or speak on their behalf. The person under investigation should advise the investigator, or the breach decision-maker, who the support person is before the meeting, and seek permission for them to attend.
21. The support person should not be involved in the investigation, including as a witness. Although the investigator should accommodate attendance by a support person, their unavailability will not generally provide a reason to delay the investigation.

### **Reassignment of Duties or Suspension from Duty**

22. An employee suspected of breaching the Code may be reassigned to alternative duties pursuant to section 25 of the PS Act, or may be suspended from duty by the suspension delegate in accordance with regulation 3.10 of the PS Regulations.

### **Record of Determination and Sanction**

23. If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in the Authority a written record must be made of:
- the suspected breach; and
  - the determination; and
  - any sanctions imposed as a result of the determination; and
  - any statement of reasons provided to the employee.

Note: The [Archives Act 1983](#) and the [Privacy Act 1988](#) apply to a record made under this clause.

### **Movement between agencies during an investigation**

24. This clause applies if:
- an APS employee in the Authority is suspected of having breached the Code; and
  - reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with section 16 of these procedures; and

- a decision is made to promote an APS employee and the matter to which the suspected breach relates has not yet been resolved before the employee moves to take up the promotion; or
  - a decision has been made, apart from these procedures that would result in the movement of the employee under section 26 of the PS Act to another Agency.
- 25.** Unless the losing Agency Head and the gaining Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 26.** For paragraph 25, the matter is taken to be resolved when:
- a determination is made as to whether the APS employee has breached the Code; or
  - it is decided that such a determination is not necessary.

### **SES Employees**

- 27.** In accordance with section 64 of the [Australian Public Service Commissioner's Directions 2022](#), the delegate will consult with the APS Commissioner on the process for determining whether an SES employee has breached the Code, and before any sanction is imposed.

### **Seeking a Review of Decision**

- 28.** Where a determination has been made that a current or former non-SES employee has breached the Code, they may be eligible to seek review of the action under section 33 of the PS Act. A review may also be sought in respect of a sanction decision, unless the sanction was termination of employment. Applications for review should be made to the [Merit Protection Commission](#) directly within the statutory timeframe.