



Australian Government
Sport Integrity Australia



SPORT INTEGRITY
AUSTRALIA

Procedure

Determining Breaches of the APS Code of Conduct

Policy owner: Human Resources

Endorsed by: David Sharpe, Chief Executive Officer

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I, David Sharpe, acting in my capacity as Chief Executive Officer of Sport Integrity Australia, establish these procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

These procedures commence on 29 October 2020.



David Sharpe APM OAM

Chief Executive Officer

1. Application of procedures

1.1 These procedures apply in determining whether a person who is an Australian Public Service (APS) employee in Sport Integrity Australia, or who is a former APS employee who was employed at Sport Integrity Australia at the time of 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 for any APS employee at Sport Integrity Australia who has been found to have breached the Code.

1.3 For determining if there has been a breach of the Code, these procedures apply to any decision to investigate made after 29 October 2020.

1.4 For determining sanctions, these procedures apply to any sanction decision under consideration on or after 29 October 2020.

1.5 In these procedures, a person breaches the Code by engaging in conduct set out in subsection 15(2A) of the Act in connection with their engagement as an APS employee.

2. Availability of procedures

2.1 These procedures are available on Sport Integrity Australia's website.

3. Breach decision-maker

3.1 If a suspected breach of the Code is reported, either the Chief Executive Officer (CEO), any of the Senior Executive Service (SES) Deputy Chief Executive Officers or the Chief Financial Officer may decide to deal with the suspected breach under these procedures. 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 whether a breach of the Code has occurred and document their determination.

3.3 The breach decision-maker must be more senior than the person who has committed the alleged breach and at least at EL1 level. They must be, and must appear to be, independent, unbiased and capable of expressing good judgement.

3.4 The breach decision-maker must advise the person appointing them in writing if they consider 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.

3.5 Once appointed, the breach decision-maker must cause an investigation to be undertaken. The breach decision-maker can undertake the investigation themselves or with the assistance of an investigator. The investigator must have relevant training in conducting workplace and misconduct investigations and be familiar with the administrative law principles. They must investigate the alleged breach, gather evidence and make a report of their findings.

3.6 The breach decision-maker must then make their determination.

3.7 The breach decision maker must have regard to the Commission's publication, '[Handling Misconduct: A human resources manager's guide](#)' in making their determination and the decision in relation to sanction.

4. Sanction delegate

4.1 The sanction delegate is the person who decides what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code.

4.2 The Chief Operating Officer and the Deputy Chief Executive Officers hold the delegation of the powers under the Act to impose sanctions.

4.3 The sanction delegate must be, and must appear to be, independent and unbiased.

4.4 The sanction delegate must advise the CEO in writing if they consider 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.

4.5 The breach decision-maker and the sanction delegate can be the same person.

5. The determination process

5.1 The process for determining whether a person who is, or was, an APS employee at Sport Integrity Australia 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 as set out in the 'Handling Misconduct: a human resource manager's guide'.

5.3 A determination must not be made in relation to a suspected breach of the Code 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
 - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act
- 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 the person should provide it within 7 calendar days, or any longer period the decision-maker allows.

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 A formal hearing is not required to determine whether a person has breached the Code.

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 at Sport Integrity Australia 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 made
 - ii. the sanction or sanctions under consideration
 - iii. the factors under consideration in determining any sanction

- 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 the person should provide it within 7 calendar days, or any longer period the sanction delegate allows.

7. Record of determination and sanction

7.1 If a determination is made in relation to a suspected breach of the Code, a written record must be made of:

- a) the suspected breach
- b) the determination and a statement of reasons for the determination
- c) any sanctions imposed and a statement of reasons for the sanction imposed