



Australian Government



ABORIGINAL
HOSTELS LIMITED

PROCEDURES FOR DETERMINING BREACHES OF THE APS CODE OF CONDUCT AND THE IMPOSITION OF SANCTIONS

I, Dave Chalmers, Aboriginal Hostels Limited (AHL) Chief Executive Officer (CEO),
establish these procedures under subsection 15(3) of the *Public Service Act 1999*.

These procedures commence on the date signed.

Signed:

3 May 2024



Version	Approval	Review due date	Details
1	21 October 2021	Not listed	Separation of procedures into a standalone document.
2	May 2024	May 2025	Reviewed and updated to new branding.

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1. APPLICATION OF PROCEDURES

- 1.1 These procedures must be complied with when determining:
- a) whether a person who is an Australian Public Service (APS) employee in Aboriginal Hostels Limited (AHL), or who is a former APS employee who was employed in AHL 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* (PS Act), and
 - b) any sanction/s to be imposed on a current APS employee in AHL, in accordance with subsection 15(1), where a breach of the Code has been determined.
- 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 subsection 15(2A) of the PS Act in connection with their engagement as an APS employee¹.
- 1.3 In these procedures, powers afforded to the Chief Executive Officer (CEO) under legislation may be delegated to other employees of AHL. For information about delegations, this procedure should be read together with AHL's Human Resources Instrument of Delegations.

2. AVAILABILITY OF PROCEDURES

- 2.1 These procedures are made publicly available on AHL's website in accordance with subsection 15(7) of the PS Act.

3. BREACH DECISION MAKER

- 3.1 As soon as practicable after a suspected breach of the Code has been identified and the CEO or one of his delegates has decided to deal with the suspected breach under these procedures, the CEO or delegate will appoint a breach decision maker to make a determination under these procedures.
- 3.2 Nothing prevents the CEO or his delegate 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 undertake the investigation, or seek the assistance of an investigator who may be external to AHL. The investigator may investigate the alleged

¹ Not all suspected breaches of the Code of Conduct are required/need to be dealt with by way of a 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.

breach, gather evidence and make a report of recommended factual findings to the breach decision maker.

4. SANCTION DECISION MAKER

- 4.1 The delegate who is to decide what, if any, sanction is to be imposed on an APS employee found to have breached the Code is referred to as the sanction delegate and will hold a delegation of the powers under subsection 15(1) of the PS Act.
- 4.2 These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

5. PERSON OR PERSONS MAKING BREACH DETERMINATION AND IMPOSING ANY SANCTION TO BE INDEPENDENT AND UNBIASED

- 5.1 The CEO or the employee taking action under subclause 6.1 will take reasonable steps to ensure that:
- a) The person who determines whether a current or former APS employee in AHL has breached the Code is, and appears to be, independent and unbiased, and
 - b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.
- 5.2 The breach decision-maker and sanction delegate must advise the CEO or the employee taking action under subclause 6.1 in writing if they consider that they may not be independent or unbiased or if they consider that they may reasonably be perceived not to be independent or unbiased; for example, if they are a witness in the matter.

6. DECISION TO COMMENCE INVESTIGATION

- 6.1 As soon as practicable after a suspected breach of the Code has been identified, the CEO or one of the following AHL employees will consider if it is appropriate for a preliminary assessment to be conducted to assess whether the suspected breach of the Code should be formally investigated under these procedures:
- a) any General Manager or SES equivalent, or
 - b) Director Human Resources
- 6.2 Once a decision is made to formally investigate the suspected breach under these procedures, the CEO or the employee taking action under subclause 6.1 will appoint a decision-maker (the 'breach decision-maker') to make a determination under these procedures.

7. THE DETERMINATION PROCESS

- 7.1 The process for determining whether a person who is, or was, an APS employee in AHL 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.
- 7.2 The process for determining a breach of the Code, must be consistent with the principles of procedural fairness².
- 7.3 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 or oral statement, or provide further evidence in relation to the suspected breach, within seven calendar days or any longer period that is allowed by the decision maker.
- 7.4 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.
- 7.5 For the purpose of determining whether a person who is, or was, an APS employee in AHL has breached the Code, a formal hearing is not required.

8. SANCTIONS

- 8.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 8.2 If a determination is made that an APS employee in AHL 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:

² **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 make a written or oral statement, or provide further evidence in relation to the suspected breach, within seven calendar days or any longer period that is allowed by the decision maker, before any decision is made on breach or sanction; the person is informed of the sanctions that may be imposed on them under subsection 15(1) of the PS Act, and there is logically probative evidence to support the making, on the balance of probabilities, of a finding.

- 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.
- b) give the employee a reasonable opportunity to make a written or oral 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.

8.3 A sanction cannot be imposed on a person who is a former APS employee.

9. RECORD OF DETERMINATION AND SANCTION

9.1 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 AHL, a written record must be made of:

- a) the suspected breach,
- b) the determination
- 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 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.