



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

Introduction



In accordance with section 15(3) of the *Public Service Act 1999* (PS Act) the CEO, as Agency Head, of the Infrastructure and Project Financing Agency (IPFA), has established procedures for determining whether an APS employee, or former employee, in IPFA has breached the Code of Conduct, and for determining sanctions.

These procedures are made publicly available in accordance with section 15(7) of the PS Act.



Agency Head Statement

I, Lani Frew, as Agency Head of the Infrastructure and Project Financing Agency (IPFA), establish these procedures under subsection 15(3) of the Public Service Act 1999. These procedures commence March 2021.

These procedures supersede the previous procedures made for IPFA under subsection 15(3) of the Act.

Leilani Frew
CEO, IPFA

Team Members Subject to Procedures

The following procedures, apply to all Team Members, except Team Members who are engaged through a Labour Hire Arrangement on a Commonwealth Contract for Professional Services.

Team Members engaged through Labour Hire Arrangement are required to comply with the APS Code of Conduct. However, if such a Team Member is suspected or identified to have breached the APS Code of Conduct it will be dealt with under terms of the Commonwealth Contract for Professional Services, not these procedures.

Provision of Information

A determination may not be made in relation to a suspected breach of the APS Code of Conduct by a Team Member (or former Team Member), unless reasonable steps have been taken to:

- inform the Team Member of:
 - the details of the suspected breach (including any subsequent variation of those details)
 - the sanctions that may be imposed under subsection 15(1) of the PS Act
- give the Team Member a reasonable opportunity to make a statement in relation to the suspected breach.

If a determination is made that a Team Member has breached the APS Code of Conduct, a sanction may not be imposed on that Team Member unless reasonable steps have been taken to:

- inform the Team Member of:
 - the details of the determination of breach of the APS Code of Conduct
 - the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act
 - the factors that are under consideration in determining any sanction to be imposed
- give the Team Member reasonable opportunity to make a statement in relation to the sanction/s under consideration.

Person making determination to be independent and unbiased

IPFA will take reasonable steps to ensure that:

- the person who determines whether a Team member (or former IPFA Team Member) has breached the APS Code of Conduct, is, and appears to be, independent and unbiased
- the person who determines any sanction to be imposed is, and appears to be, independent and unbiased

Given the small size of IPFA, it may be appropriate that the breach decision maker and the sanction decision maker is the same person. This is to be considered on a case by case basis taking into account the considerations listed above.

Investigation Process

The process for determining whether a Team Member has breached the APS Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

Involvement of the Merit Protection Commissioner

The Merit Protection Commissioner (Commissioner) is an independent statutory office holder with functions aimed at ensuring accountability and integrity in APS employment decision-making.

The Commissioner is supported by staff of the Australian Public Service Commission. The functions of the Commissioner are set out in section 50 and 50A of the PS Act and include conducting independent reviews of employment actions, including APS Code of Conduct decisions and promotion reviews and providing recruitment services and APS Code of Conduct inquiry services to APS agencies.

In determining whether a suspected breach of the APS Code of Conduct should be investigated IPFA may refer the matter to the Commissioner. This may be appropriate to assist IPFA in ensuring the investigation process demonstrates the appropriate integrity and independence.

If a suspected breach is investigated by the Commissioner, they (or their delegate) will make a binding decision on whether or not there has been a breach of the APS Code of Conduct only. Any decision on sanctions to be applied to the Team Member in relation to the breach finding will be made by IPFA.

External Investigation

In undertaking an investigation of a suspected breach of the APS Code of Conduct IPFA may seek the services of an external investigator. This may be appropriate to assist IPFA in ensuring the investigation process demonstrates the appropriate integrity and independence.

Record of Determination and Sanction

If a determination is made in relation to a suspected breach of the APS Code of Conduct by a current or former Team Member, a written record must be made of:

- the suspected breach
- the determination
- any sanctions imposed as a result
- any statement of reasons provided to the Team Member

Procedure when a Team Member seeks to move to another Commonwealth agency during an investigation

If:

- A Team Member is suspected of having breached the APS Code of Conduct; and
- reasonable steps have been taken to formally advise the Team Member of the suspected breach in accordance with this Policy; and
- a decision is made to promote a Team Member and the matter to which the suspected breach relates has not yet been resolved before they move to take up the promotion; or
- a decision has been made, apart from this Policy, which would result in the movement of the Team Member under section 26 of the PS Act to another agency.

Then:

- Unless the IPFA's CEO and the Agency Head of the agency which the Team Member is intending to move agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

The matter is taken to be resolved when:

- a determination is made as to whether or not the Team Member has breached the APS Code of Conduct; or
- it is decided that such a determination is not necessary.

Further Information

Contact the IPFA Chief Corporate Officer ipfa@ipfa.gov.au.