



Australian Government

Austrade

PROCEDURES FOR DETERMINING BREACHES OF THE CODE OF CONDUCT

I, Sally Deane, Assistant General Manager, Human Resource, Human Resources Branch, of the Australian Trade and Investment Commission (**Austrade**), establish these procedures in accordance with subsection 15(3) of the *Public Service Act 1999* (**the Act**).

These procedures supersede any previous procedures made for, or adopted by, Austrade under subsection 15(3) of the Act, but any previous procedures may continue to apply for transitional purposes.

These procedures commence on 13 March 2018

A handwritten signature in black ink that reads 'Sally Deane'.

Sally Deane

1. Introduction

These procedures provide a framework for Austrade to determine breaches of the Code of Conduct and the imposition of any follow up action or sanction for all employees.

2. Application of procedures

- 2.1. These procedures apply to current or former employees of Austrade employed under the Act who were employed in Austrade at the time of the suspected breach.
- 2.2. These procedures must be complied with in determining:
 - a) whether an employee of Austrade, or former employee of Austrade, has breached the APS Code of Conduct in section 13 of the Act (**'the Code of Conduct'**).
 - b) the sanction/s, if any, that should be imposed on the Austrade employee, or former employee of Austrade, in accordance with subsection 15(1), where a breach of the Code of Conduct has been determined.
- 2.3. These procedures do not apply where a suspected breach of the Code of Conduct does not require a determination to be made. It is acknowledged that in certain circumstances another way of dealing with a suspected breach of the Code of Conduct may be more appropriate.

3. Availability of procedures

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



4. Notification of alleged breach

- 4.1. An employee, or former employee, must be informed as soon as practicable that an allegation has been made against them which alleges they have breached the Code of Conduct and a determination is being considered.

5. The determination process

- 5.1. The process for determining whether an Austrade employee, or former employee of Austrade, has breached the Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.
- 5.2. The process must be consistent with the principles of procedural fairness.
- 5.3. If an investigation is implemented, the investigator will gather evidence and make a report of the recommended factual findings to the breach decision-maker.
- 5.4. A determination may not be made in relation to a suspected breach of the Code of Conduct by an Austrade employee, or former employee of Austrade, unless reasonable steps have been taken to:
 - a) inform the person of:
 - i. the details of the suspected breach (including any subsequent variation of those details); and
 - ii. the sanctions that may be imposed on the employee under subsection 15(1) of the Act
 - b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.

6. Breach decision maker and sanction delegate

- 6.1. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 6.2. The sanction delegate will decide what, if any, sanction is to be imposed on the Austrade employee, or former Austrade employee, who is found to have breached the Code.
- 6.3. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.
- 6.4. The breach decision-maker and sanction delegate must be, and must appear to be, independent and unbiased.

7. Sanctions

- 7.1. An employee, or former employee, must be informed before any sanction/s is imposed.
- 7.2. If a determination is made that an Austrade employee, or former employee of Austrade, has breached the Code of Conduct, a sanction may not be imposed on the Austrade employee, or former employee of Austrade, unless reasonable steps have been taken to:
 - a) inform the Austrade employee, or former employee of Austrade of:
 - a. the details of the determination of breach of the Code of Conduct; and



- b. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the Act; and
 - c. the factors that are under consideration in determining any sanction to be imposed; and
- b) give the Austrade employee, or former employee of Austrade, reasonable opportunity to make a statement in relation to the sanction/s under consideration.

8. Record of the determination and sanction

- 8.1. If a determination is made in relation to a suspected breach of the Code of Conduct by an Austrade employee, or former employee of Austrade, a written record must be made of:
- a) the suspected breach; and
 - b) the determination; and
 - c) any sanctions imposed as a result of the determination that the Austrade employee breached the Code of Conduct; and
 - d) any statement of reasons provided to the employee.

The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this clause.

9. Procedure when an employee seeks to move to another Agency during an investigation

- 9.1. This clause applies if:
- a) an Austrade employee is suspected of having breached the Code of Conduct; and
 - b) reasonable steps have been taken to formally advise the Austrade employee of the suspected breach in accordance with these procedures; and
 - c) the Austrade employee is selected to move to another Agency and the matter to which the suspected breach relates has not yet been resolved before the employee is to take up the new role.
- 9.2. Unless the Austrade CEO, or their delegate, and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 9.3. For this clause, the matter is taken to be resolved when:
- a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
 - b) it is decided that such a determination is not necessary.