Australian Government
Tertiary Education Quality and Standards Agency

TEQSA

Procedures for determining breaches of the Code of Conduct and for determining sanction

I, Dr Mary Russell, as Chief Executive Officer of the Tertiary Education Quality and Standards Agency (the 'Agency'), establish these procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

These procedures commence on the date signed.

These procedures supersede the previous procedures dated 26 April 2022 made for the Agency under subsection 15(3) of the Act.

1. Application of procedures

1.1 These procedures apply in determining:

- Whether an APS employee in the Agency has breached the APS Code of Conduct (the Code') in section 13 of the Act.
- What sanction, if any, should be imposed on an APS employee in the Agency for a breach of the Code.

1.2 Unless the contrary intention appears, a reference to an APS employee includes a reference to a former APS employee who is suspected of having breached the Code while an employee in TEQSA.

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

Note: Not all suspected breaches of the Code need to be dealt with by way of a process which results in a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.

2. Breach decision-maker and sanction delegate

2.1 As soon as practicable after a suspected breach of the Code has been identified and the Chief Executive Officer, or person authorised by the Chief Executive Officer, has decided to deal with the suspected breach under these procedures, the Chief Executive Officer or authorised person will appoint a decision-maker to make a determination under these procedures.

2.2 The role of the breach decision-maker is to determine whether a breach of the Code has occurred.

2.3 The breach decision-maker may undertake the investigation or seek the assistance of an investigator. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision-maker.

2.4 The person who is to decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code will be a person holding a delegation of the powers under the Act to impose sanctions.

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

3. Person or persons making breach determination and imposing any sanction to be independent and unbiased

3.1 The Chief Executive Officer must take reasonable steps to ensure that the breach

decision-maker and the sanction delegate are, and appear to be, independent and unbiased.

3.2 The breach decision-maker and the sanction delegate must advise the Chief Executive Officer in writing if they consider that 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. The determination process

4.1 The process for determining whether an APS employee 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.

4.2 The process must be consistent with the principles of procedural fairness.

Note: Procedural fairness generally requires that:

- *The APS employee 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 APS employee or their interests and that is credible, relevant and significant);*
- *The APS employee is given a reasonable opportunity to respond and put their case, in accordance with these procedures, before any decision is made on breach or sanction;*
- *The decision maker acts without bias or appearance of bias.*

4.3 A determination may not be made in relation to a suspected breach of the Code by an APS employee unless reasonable steps have been taken to:

a) inform the APS employee of:
   - the specific details of the suspected breach of the Code, including any subsequent variation of those details; and
   - where the person is a current APS employee, the sanctions that may be imposed on them under subsection 15(1) of the Act; and

b) give the APS employee a reasonable opportunity to make a statement in relation to the suspected breach.

4.4 The statement may be written or oral statement and should be provided within 7 calendar days or any longer period that is allowed by the decision-maker.

4.5 An APS employee 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.

4.6 For the purpose of determining whether an APS employee has breached the Code, a formal hearing is not required.

Note: this clause is designed to ensure that by the time the breach decision-maker comes to make a determination, reasonable steps have been taken for the APS employee suspected of breach to be informed of the case against them. It will generally also be good practice to give the APS employee notice at an early stage in the process of a summary of the details of the suspected breach that are available at that time and notice of the elements of the Code that are suspected to have been breached.

5. Sanctions

5.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.

5.2 If a determination is made that a current APS employee has breached the Code, a sanction may not be imposed unless reasonable steps have been taken to:

a) inform the APS employee of:

- the determination; and
- the sanction or sanctions that are under consideration; and
- the factors that are under consideration in determining any sanction to be imposed; and

b) give the APS employee a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.

5.3 The statement may be a written or oral statement and should be provided within 7 calendar days or any longer period that is allowable by the sanction delegate.

6. Record of determination and sanction

6.1 If a determination is made in relation to a suspected breach of the Code by an APS employee, a written record must be made of:

a) the suspected breach; and

b) the determination; and

- any sanctions imposed as a result of a determination that the APS employee has breached the Code; and

c) any statement of reasons given to the APS employee regarding a determination made under these procedures.