

Safe Work Australia

Procedures for determining breaches of the Australian Public Service Code of Conduct and for determining sanctions

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Document revision

Date	Version	Changes
March 2019	1.0	New document template, removal of references to Deputy Chief Executive Officer and inclusion of new paragraph 4.3.
24 April 2024	2.0	Updated clauses related to APS Commissioner's Directions 2022, new CEO and requirement under s15(2) Public Service Act 1999 for external publishing.
14 October 2024	3.0	Updated with approval and commencement date, and entered review date

Supporting resources

Key legislation	Relevant documents
<ul style="list-style-type: none"> • <u>Public Service Act 1999</u> • <u>Public Service Regulations 1999</u> • <u>Australian Public Service Commissioner's Directions 2022</u> 	<ul style="list-style-type: none"> • <u>Handling misconduct: a human resource manager's guide</u> • <u>APS Values and Code of Conduct in practice</u>

Contents

Establishment of Procedures	4
1. Purpose	5
2. Availability of procedures	5
3. Breach Decision Makers and Sanction Delegates	5
4. Breach Decision Process	6
5. Sanction Decision Process.....	7
6. Record of decision and sanction	8
7. Procedure when an employee is to move to another agency	8

Establishment of Procedures

I, Marie Boland, Chief Executive Officer (CEO), of Safe Work Australia, establish these procedures under section 15(3) of the *Public Service Act 1999* (the PS Act).

These procedures commence on 24 April 2024.

These procedures supersede any previous procedures made for the Agency under section 15(3) of the PS Act.

Marie Boland

CEO, Safe Work Australia

1. Purpose

1.1 These procedures must be complied with in determining:

1. whether an Australian Public Service (APS) employee in the Agency has breached the Code or section 15(2A) of the PS Act; and
2. the sanction to be imposed if an APS employee is found to have breached the APS Code of Conduct (Code) or section 15(2A) of the PS Act.

1.2 A reference in these procedures to:

3. **APS employee** means a current or former APS employee. However, where these procedures deal with sanction, 'APS employee' only means a current APS employee.
- **Breach Decision** means a decision about whether an APS employee has breached the Code or section 15(2A) of the PS Act.
 - **Breach Decision Maker** means a person who can make a Breach Decision against the Code under these procedures.
 - **Breach Decision Process** means the process for determining whether an APS employee has breached the Code or section 15(2A) of the PS Act. The Breach Decision Process includes, but is not limited to, when the Breach Decision Maker makes a Breach Decision including Misconduct Action.
 - **Code** means the Code of Conduct in section 13 of the PS Act.
 - **Misconduct Action** means action taken to investigate suspected breaches of the Code or section 15 (2A) of the PS Act.
 - **Sanction Decision** means a decision about what sanction will be imposed, if any, under section 15(1) of the PS Act for a breach of the Code.
 - **Sanction Decision Maker** means a person who can impose a sanction, if any, under these procedures for a breach of the Code or section 15(2A) of the PS Act.
 - **Sanction Decision Process** means the process for determining which sanction, if any, should be imposed on an APS employee who has been found to have breached the Code or section 15(2A) of the PS Act.
 - **Sanction Delegate** means a person to whom the CEO has delegated their power under section 15(3) of the PS Act.
 - **The Agency** means Safe Work Australia.

Note: Not all suspected breaches of the Code need to be dealt with by way of a determination and/or sanction under these procedures. Other ways of dealing with a suspected breach of the Code may be more appropriate in the circumstances, for example restricting an employee's access to the internet or taking informal action. Please refer any enquiries to the Director, People Strategies for clarification and assistance.

2. Availability of procedures

2.1 As stated in section 15(7) of the PS Act, these procedures must be made publicly available and will be available on the [Safe Work Australia website and intranet](#).

3. Breach Decision Makers and Sanction Delegates

3.1 The following persons can be a Breach Decision Maker:

- The CEO;

Procedure

Determining Breaches of the APS Code of Conduct and determining sanctions

- Senior Director, Enabling Services;
 - Director, People Strategies; and
 - A person appointed in writing by the CEO, the Senior Director, Enabling Services or the Director, People Strategies.
- 3.1 The following persons may be a sanction delegate and make a decision to impose a sanction, if any, on an APS employee who is found to have breached the Code or section 15(2A) of the PS Act:
- The CEO;
 - Senior Director, Enabling Services; or
 - Any other person to whom the CEO delegates this power.
- 3.2 The Breach Decision Maker or Sanction Decision Maker must be, and appear to be, independent and unbiased.
- 3.3 A Breach Decision Maker and a Sanction Decision Maker must advise the CEO in writing immediately if they reasonably believe they are not (or are no longer) independent and unbiased or may not reasonably be perceived to be so, for example, if they are to be a witness to a matter under investigation.
- 3.4 The Breach Decision Maker may seek the assistance of an investigator with matters including identifying the alleged breach/es, gathering evidence, investigating and making a report of the recommended factual findings to the Breach Decision Maker. It may be prudent to appoint an investigator from outside the Agency depending on the circumstances.
- 3.5 A Breach Decision and related Sanction Decision may be made by the same person provided the person has the authority and power to make both decisions under these procedures.
- 3.6 In making decisions under these procedures, a Breach Decision Maker and a Sanction Decision Maker must have regard to the Australian Public Service Commission's publications:
- [Handling misconduct: a human resource manager's guide; and](#)
 - [APS Values and Code of Conduct in practice.](#)

4. Breach Decision Process

- 4.1 The Breach Decision Process must be carried out with:
- procedural fairness; and
 - as little formality and as much expedition as a proper consideration of the matter allows.

Note: Procedural fairness generally requires:

- *the APS employee suspected of breaching the Code or the PS Act is informed of the case against them (i.e. is informed of any material that is before the Breach 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 to that material and put their case before the Decision Maker, in accordance with these procedures, before a Breach Decision is made;*
- *the Decision Maker is and appears to be independent and unbiased; and*
- *if adverse findings are to be made, there is logically and probative evidence to support the making, on the balance of probabilities, of adverse findings.*

- 4.2 Before making a Breach Decision, reasonable steps must be taken, as part of the Breach Decision Process to:
- inform the APS employee, in writing of:

- the details of the suspected breach/es of the Code, and/or section 15(2A) of the PS Act, including any subsequent changes to those details; and
 - the potential sanctions that may be imposed under section 15(1) of the PS Act; and
 - give the APS employee a reasonable opportunity to respond to the suspected breach/es and supporting material/evidence. The period of time the APS employee has to respond is usually seven calendar days. A shorter or longer period of time to respond may be provided, at the discretion of the Breach Decision Maker on a case-by-case basis.
- 4.3 An APS employee may be required to attend an interview as part of a Breach Decision Process or Sanction Decision Process.
- 4.4 An APS employee being interviewed as part of a Breach Decision Process or Sanction Decision Process may ask to have a support person present during the interview. The request may only be refused by the Decision Maker on reasonable grounds. A support person cannot speak or advocate on the APS employee's behalf during the interview and are only there to provide support.

Note: The Breach Decision Maker may decide to give the APS employee the opportunity to respond both in writing or orally.

Note: Section 52 of the Australian Public Service Commissioner's Directions 2022 provides that where the conduct of an APS employee raises concerns that relate to both effective performance issues and possible breaches of the Code/PS Act, the Agency Head must, before making a decision to commence formal Misconduct Action, have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner.

5. Sanction Decision Process

- 5.1 The Sanction Decision Process must be carried out with:
- procedural fairness; and
 - as little formality and as much expedition as a proper consideration of the matter allows.
- 5.2 Before making a Sanction Decision as to the sanction to be imposed, reasonable steps must be taken to:
- inform the APS employee in writing of:
 - the details of the Breach Decision
 - the potential sanction/s that are being proposed and considered; and
 - the relevant or supporting factors that are under consideration in determining the sanction to be imposed; and
 - give the APS employee a reasonable opportunity to respond to the proposed sanctions, if any. The period in which the APS employee may respond will be determined by the Sanction Decision Maker, but is usually seven calendar days. A shorter or longer period of time to respond may be determined at the discretion of the Sanction Decision Maker on a case by case basis.

Note: Procedural fairness generally requires:

- *the APS employee found to have breached the Code or the PS Act is informed of any material that is before the Sanction 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 to that material and put their case before the Decision Maker, in accordance with these procedures, before a Sanction Decision is made;*
- *the Decision Maker is and appears to be independent and unbiased; and*
- *if an adverse finding or imposition of the proposed sanction is to be made, there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings and/or the imposition of the proposed sanction/s.*

Note: The Sanction Decision Maker may decide to give the APS employee the opportunity to respond in writing and orally.

Note: There is no power to impose sanctions on former APS employees.

5.3 The Sanction Decision Maker may impose any of the following sanctions to an APS employee who is found to have breached the Code or section 15(2A) of the PS Act.

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary;
- a fine (to a maximum of 2 per cent of annual salary); and/or
- a reprimand.

6. Record of breach or sanction decisions

6.1 A written record must be made of a decision/s in relation to a suspected breach of the Code or section 15(2A) of the PS Act, or a sanction in relation to the same. The written record must include details about the:

- suspected breach of the Code or section 15(2A) of the PS Act;
- Breach Decision;
- sanctions imposed, including if none were imposed; and
- statement of reasons if one was given to the APS employee.

7. Procedure where there is Misconduct Action and an APS employee is to move to another agency

7.1 This section 7 applies if

- a decision has been made that would otherwise result in the APS employee moving under section 26 of the PS Act to another agency for an ongoing or temporary term (including on promotion) and either:
 - an ongoing APS employee in the Agency is suspected of having breached the Code or section 15(2A) of the PS Act; or
 - the APS employee has been formally advised of the details of a suspected breach/es in accordance with these procedures; or
 - there is Misconduct Action underway; or
 - the matter has not yet been resolved.

7.2 In such circumstances, the transfer/movement (which includes a promotion decision) cannot take effect until the matter to which the suspected breach is resolved.

7.3 A suspected breach will be resolved when either a determination is made about the suspected breach, or it is decided that such a determination is not necessary.

7.4 Written approval from the CEO of the Agency and the receiving agency head is required to approve a transfer outside of the requirements in paragraph 7.2.