

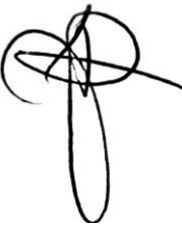
Workplace Gender Equality Agency

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

March 2024

Document Information

Publication details

Document Reference	WGEA – 2024 – HR 15
Version Number	1.2
Released for publication by (Signature)	
Appointment	Chief Operating Officer
Date of Publication	12/03/2024

Version history

Version	Issue date	Author	Reviewers	Outcome of Review
1.0	December 2016	Human Resources	Agency Head	
1.1	August 2021	Operations	Agency Head	Updated for new Agency Head
1.2	March 2024	Operations	COO	Update to reflect CEO title

Date for next review

Two years from review or in accordance with legislative amendments.

Contents

Document Information	1
Publication details	1
Version history	1
Date for next review	1
Acronyms and abbreviations	3
Resources	3
Application of procedures	3
Scope	4
Availability of procedures	4
Breach decision maker and sanction delegate	4
Person or persons making breach determination and imposing any sanction to be independent and unbiased	4
The determination process	5
Record of determination and sanction	6
Procedure when an ongoing employee is to move to another agency	6

Acronyms and abbreviations

Agency	Workplace Gender Equality Agency
Agency Head	Agency Head means the CEO or their delegate
APS	Australian Public Service
Breach decision maker	An individual appointed by the CEO or their delegate to make a determination as to whether a breach of the Code has occurred.
CEO	Chief Executive Officer. A reference to the CEO may also mean a reference to a person holding a delegation from the CEO.
Code	APS Code of Conduct
Employee	Means an employee engaged by the Agency under the <i>Public Service Act 1999</i> (Cth) and may include a former employee
PS Act	<i>Public Service Act 1999</i> (Cth)
Sanction delegate	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. This person must hold a delegation of power under the PS Act to impose sanctions.

Resources

Resources and legislation relevant to this policy include:

- [APS Code of Conduct](#)
- *Archives Act 1983* (Cth)
- Australian Public Service Commissioner's Directions 2022
- *Privacy Act 1988* (Cth)
- *Public Service Act 1999* (Cth)

Application of procedures

1. These procedures apply in determining:
 - a. Whether a person who is an APS employee of the Agency, or who is a former APS employee who was employed by the Agency 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).
 - b. Any sanction to be imposed on an APS employee in the Agency who has been found to have breached the Code.
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 employee.

Note: Not all suspected breaches of the Code need to be dealt with by way of 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.

Scope

3. These procedures apply to all employees of the Agency. Contractors are bound by any relevant Code of Conduct provisions in their contract for service with the Agency.

Availability of procedures

4. As provided for in subsection 15(7) of the PS Act, these procedures are publicly available on the Agency website.

Breach decision maker and sanction delegate

5. As soon as practicable after a suspected breach of the Code has been identified and the CEO or their delegate has decided to deal with the suspected breach under these procedures, the CEO or their delegate will appoint a decision maker ('the breach decision maker') to make a determination under these procedures.

Note: The Australian Public Service Commissioner's Directions 2022 provide that where the conduct of an APS employee raises concerns that relate both to effective performance and possible breaches of the Code, the Agency Head must, before making a decision to commence formal misconduct action, have regard to any relevant standards and guidance issued by the APS Commissioner (clause 52).

6. The role of the breach decision maker is to determine, in writing, whether a breach of the Code has occurred.
7. 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. An investigator may be a person internal or external to the organisation.
8. 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 must hold a delegation of power under the PS Act to impose sanctions ('the sanction delegate').
9. These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

Note: Any delegation of powers under the PS Act that is proposed to be made to a person who is not an APS employee must be approved in writing in advance by the APS Commissioner. This is required by subsection 78(8) of the PS Act. This would include delegation of the power under subsection 15(1) to impose a sanction.

Note: Appointment as a breach decision maker under these procedures does not empower the breach decision maker to make a decision regarding sanction. Only the CEO or a person delegated the power under Section 15 of the PS Act, and related powers, such as under Section 29 of the PS Act, may make a sanction decision.

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

10. The breach decision maker and the sanction delegate must be, and must appear to be, independent and unbiased.

11. The breach decision maker and the sanction delegate must advise the CEO in writing, and within a reasonable timeframe, 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.
12. The breach decision maker may be an employee from another APS agency.

The determination process

13. The process for determining whether a person who is, or was, an APS employee in the Agency has breached the code must be carried out with as little formality, and with and as much expedition, as a proper consideration of the matter allows.
14. The process must be consistent with the principles of procedural fairness.

Note: Procedural fairness generally requires that:

- *The person suspected of breaching the Code is informed of the case against them (i.e. is informed of 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 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 an appearance of bias.*
- *There is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.*

15. 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 PS Act.
 - 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 breach decision maker.

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 person suspected of breaching the Code to be informed of the case against them. It will generally be good practice to give the person 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.

16. 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.
17. For the purpose of determining whether a person who is, or was, an APS employee in the Agency has breached the Code, a formal hearing is not required.
18. The breach decision maker (or the person assisting the breach decision maker, if any) may agree to a request made by the person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.
19. Sanctions that may be imposed on an APS employee who is found to have breached the Code include:
 - a. Termination of employment

- b. Reduction in classification
 - c. Re-assignment of duties
 - d. Reduction in salary
 - e. Deductions from salary, by way of fine
 - f. A reprimand.
20. The process for deciding on sanction must be consistent with the principle of procedural fairness.
21. If a determination is made that an APS employee in the Agency 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:
 - i. The determination that has been made; and
 - ii. The sanction or sanctions that are under consideration; and
 - iii. The factors that are under consideration in determining any sanctions to be imposed; and
 - b. Give the employee a reasonable opportunity to make a written or oral statement in relation to the sanction or sanctions under consideration within seven calendar days, or any longer period that is allowed by the sanction delegate.

Record of determination and sanction

22. If a determination in relation to a suspected breach of the Code by a person who is, or was, an APS employee within the Agency is made, a written record must be made of:
- a. The suspected breach; and
 - b. The determination; and
 - c. Where the person is an APS employee – any sanction 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.

Note: The Archives Act 1983 and the Privacy Act 1988 apply to Agency records.

Procedure when an ongoing employee is to move to another agency

23. This clause applies if:
- a. A person who is an ongoing APS employee within the Agency is suspected of having breached the Code, and
 - b. The employee has been informed of the matters mentioned in 15.a of this policy; and
 - c. The matter has not yet been resolved, and
 - d. A decision has been made that, apart from this clause, the employee would move to another agency in accordance with section 26 of the PS Act (including on promotion).
24. Unless the CEO and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
25. For the purpose of this clause the matter is taken to be resolved when:

- a. A determination in relation to a suspected breach of the Code is made in accordance with these procedures; or
- b. The CEO decides that a determination is not necessary.