



safe work australia

**Procedures for Determining Breaches of the
Australian Public Service Code of Conduct and
for Determining Sanction**

February 2014

TABLE OF CONTENTS

1. APPLICATION OF PROCEDURES	3
2. DATE OF EFFECT	3
3. AVAILABILITY OF PROCEDURES	3
4. WHO IS TO DETERMINE BREACHES OF THE CODE	3
5. DETERMINATION PROCESS.....	4
6. SANCTIONS	4
7. RECORD OF DETERMINATION AND SANCTION	5
8. PROCEDURE WHEN AN EMPLOYEE IS TO MOVE TO ANOTHER AGENCY	5

1. APPLICATION OF PROCEDURES

- 1.1 These procedures are made under subsection 15(3) of the *Public Service Act 1999* (Cth) (the Act).
- 1.2 These procedures must be complied with in determining:
 - whether an Australian Public Servant (APS) employee or a former APS employee of Safe Work Australia has breached the APS Code of Conduct (the Code) including under subsection 15(2A) of the Act, and
 - the sanction to be imposed if a breach of the Code is established.
- 1.3 Transitional arrangements apply. These procedures do not apply if the decision to begin a Code of Conduct investigation was made before 1 July 2013. They apply however to any decision to impose a sanction taken on or after 1 July 2013.
- 1.4 A reference in these procedures to:
 - **APS employee** means a current or former APS employee.
 - **Determination** means a decision about an alleged Code of Conduct breach.
 - **Decision maker** includes a person who is empowered to make a breach determination or a sanction decision.

Note: Not all suspected breaches of the Code need to be dealt with by way of a determination. Others ways of dealing with a suspected breach of the Code may be more appropriate in the circumstances, for example including performance management. Please refer any enquiries to the Director, People and Planning Section for clarification and assistance.

2. DATE OF EFFECT

- 2.1 These procedures take effect from 17 February 2014.

3. AVAILABILITY OF PROCEDURES

- 3.1 These procedures are available to the public by request. Requests can be made through the [Safe Work Australia website](#).

4. WHO IS TO DETERMINE BREACHES OF THE CODE

- 4.1 The Chief Executive Officer (CEO) of Safe Work Australia may determine:
 - whether an APS employee has breached the Code, or
 - appoint a decision maker (the breach decision maker) to determine whether an APS employee has breached the Code.
- 4.2 Alternatively a breach decision maker may be appointed by the Director of the People and Planning Section.
- 4.3 The CEO must take reasonable steps to ensure that:
 - the person who makes a breach determination or sanction decision is, and appears to be, independent and unbiased.

It may be necessary to appoint an inquiry officer from outside Safe Work Australia depending on the circumstances.

- 4.4 A decision maker must advise the CEO in writing at any point 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.



- 4.5 The CEO or breach decision maker may appoint an investigator to assist with investigating the alleged breach, gathering evidence and preparing factual findings.
- 4.6 Only the CEO or a Branch Manager may make a decision to impose a sanction (sanction decision).
- 4.7 A breach decision and related sanction decision may be made by the same person provided there are appropriate delegations in place to perform both functions.
- 4.8 All decision makers must have regard to the Australian Public Service Commission's publication entitled '[Handling Misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct](#)' in making their decisions under these procedures.

Note: Delegations must be in place for the exercise of these powers by anyone other than the CEO. The CEO may only delegate these powers to someone who is not an APS employee or Australian Government appointee with the Public Service Commissioner's consent: see subsection 78(8) of the Act.

Note: Making a breach decision and imposing a sanction are two different functions. Separate delegations must be in place for a person other than the CEO to carry out both functions.

5. DETERMINATION PROCESS

5.1 The determination process must be carried out:

- with procedural fairness, and
- as informally and quickly as a proper consideration of the matter allows.

Note: Procedural fairness generally requires:

- *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, and*
- *there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.*

5.2 Before making a determination reasonable steps must be taken to:

- inform the APS employee under investigation of:
 - the details of the suspected breach of the Code including any subsequent changes to those details, and
 - the sanctions that may be imposed on them under subsection 15(1) of the Act, and
- give the APS employee a reasonable opportunity to make a written statement in relation to the suspected breach within seven calendar days or longer as allowed by the decision maker.

5.3 An APS employee being interviewed as part of a determination process may ask to have a support person present during the interview. The request may only be refused on reasonable grounds.

Note: The decision maker may decide to give the employee the opportunity to make both a written and an oral statement.

6. SANCTIONS

6.1 Before imposing a sanction reasonable steps must be taken to:

- inform the APS employee of:
 - the determination
 - the sanction or sanctions that are under consideration, and
 - the factors that are under consideration in determining any sanction to be imposed, and
- give the APS employee a reasonable opportunity to make a written statement in response, within seven calendar days or longer as allowed by the decision maker.

Note: The decision maker may decide to give the employee the opportunity to make both a written and an oral statement.

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

7. RECORD OF DETERMINATION AND SANCTION

7.1 A written record must be made of a determination process including:

- the suspected breach
- the determination
- any sanctions imposed as a result of a determination that the APS employee breached the Code, and
- if a statement of reasons was given to the APS employee—the statement of reasons.

7.2 The *Archives Act 1983* (Cth) and the *Privacy Act 1988* (Cth) apply to these records.

8. PROCEDURE WHEN AN EMPLOYEE IS TO MOVE TO ANOTHER AGENCY

8.1 This clause applies if:

- an ongoing APS employee of Safe Work Australia is suspected of having breached the Code
- the employee has been informed that a determination is being considered—including the details of the suspected breach and sanctions that may be imposed
- the matter has not yet been formally resolved, and
- a decision has been made that—apart from this clause—would result in the employee moving under section 26 of the Act to another Agency (including on promotion).

8.2 Unless the CEO of Safe Work Australia and the receiving Agency head agree otherwise the movement does not take effect until the matter is resolved. The matter is taken to be resolved when a determination is made under these procedures or it is decided a determination is not necessary.