



Australian Government
Australian Financial Security Authority

1982

PROCEDURES FOR DETERMINING BREACHES OF THE APS CODE OF CONDUCT AND SANCTIONS

EMPLOYEE RELATIONS ADVICE – INTERNAL USE ONLY

PEOPLE AND CAPABILITY

ERA 14/02: July 2014 (updated June 2015)

I, Veronique Ingram, Inspector General in Bankruptcy and Chief Executive of the Australian Financial Security Authority, establish these procedures under subsection 15 (3) of the *Public Service Act 1999* (the Act).

These procedures commence on 11 June 2015

These procedures supersede the previous procedures made under subsection 15(3) of the Act on 13 March 2014.


Veronique Ingram

Dated: 11 June 2015

APPLICATION OF PROCEDURES

1. These procedures apply in determining whether a person who is an APS employee in the Australian Financial Security Authority or is a former APS employee who was employed in the Australian Financial Security Authority at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) in section 13 of the Act.
2. These procedures apply in determining any sanction to be imposed on an APS employee in the Australian Financial Security Authority who has been found to have breached the Code.
3. 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 Act in connection with their engagement as an APS employee in the Australian Financial Security Authority.

Note: These procedures, as they relate to determining a breach of the Code, apply only in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Australian Financial Security Authority in respect of which a determination is to be made. Not all suspected breaches of the Code of Conduct need to be dealt with by way of determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate, including performance management.

Note: The Australian Public Service Commissioner's Directions provide that where the conduct of an APS employee raises concerns that relate both to effective performance and possible breaches of the Code, the Chief Executive 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.

SELECTION OF BREACH DECISION-MAKER AND SANCTION DELEGATE

4. The person who determines whether an APS employee has breached the Code (the breach decision-maker) is to be selected by:
 - The Chief Executive; or
 - The Chief Operating Officer; or
 - The Chief Finance Officer.
5. The decision as to whether or not a sanction will be imposed may be made by any of the following (this does not apply in relation to a former employee):
 - The Chief Executive;
 - The Chief Operating Officer;
 - The Chief Finance Officer;
 - The Director, People and Capability; or
 - A person selected by the Chief Executive, the Chief Operating Officer, or the Chief Finance Officer.

DETERMINATION PROCESS TO BE INFORMAL

6. The process for determining whether an APS employee has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows. For the purpose of determining whether an APS employee has breached the Code, a formal hearing is not required.

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7. The process must be consistent with the principles of procedural fairness, which generally requires that:
 - the person suspected of breaching the Code must be informed of the case against them (i.e. any adverse, credible, relevant and significant information before the decision maker)
 - the person must be provided with 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 must act without bias or an appearance of bias
 - there must be logically probative evidence to support the making, on the balance of probabilities, of adverse findings.

PERSON OR PERSONS MAKING DETERMINATION AND IMPOSING ANY SANCTION TO BE INDEPENDENT AND UNBIASED

8. The breach decision maker and the sanction delegate must be, and must appear to be, independent and unbiased.
9. The breach decision maker and the sanction delegate must advise the Chief Executive in writing if at any stage in the process there is any reason that they may not be, or may not appear to be, independent and unbiased e.g. if they may be a witness in the matter.

Employee must be informed before final breach determination

10. 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:
 - inform the employee of:
 - the details of the suspected breach (including any subsequent variation of those details); and
 - the sanctions that may be imposed on the employee under subsection 15(1) of the Act; and
 - give the employee a reasonable opportunity (usually seven calendar days) to make a written or an oral statement (or both) in relation to the suspected breach

Employee must be informed before a sanction is imposed

11. If a determination is made that an APS employee has breached the Code, a sanction may not be imposed unless reasonable steps have been taken to:
 - inform the 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 as well as any adverse, credible, relevant and significant information before the sanction delegate; and
 - give the employee a reasonable opportunity (usually seven calendar days) to make a written or an oral statement (or both) in relation to sanctions under consideration.

12. Alternatively, no sanction may be imposed. If no sanction is imposed then the sanction delegate may decide that no action is required or may decide to select one of the following options:

- informal discussions between a manager and the employee who has breached the Code;
- counselling of the employee;
- direction and warning;
- requiring the employee to attend a training program;
- adverse performance assessment.

Record of determination and sanctions

13. 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:

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

Note: The Archives Act 1983 and the Privacy Act 1988 apply to records of determination and sanction.

Procedure when an employee is to move to another Agency

14. This paragraph applies if:

- an ongoing APS employee in the Australian Financial Security Authority is suspected of having breached the Code; and
- the employee has been informed of the matters mentioned in paragraph 5(a); and
- the matter has not yet been resolved; and
- a decision has been made that, apart from this paragraph, would result in the movement of the employee under section 26 of the Act to another Agency (including on promotion).

15. Unless the Chief Executive and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until a determination is made about whether or not the employee has breached the Code or it is decided that a determination is not necessary.

Procedure for former APS employees

16. A former employee can be found to have breached the Code of Conduct. A sanction cannot be imposed on a former employee. Therefore everything in these procedures applies to persons who were formerly APS employees in the Australian Financial Security Authority, except the provisions regarding sanction (e.g. paragraph 5 (a)(ii) and paragraph 6).

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Disclosure of Information related to Code of Conduct matters

17. PS Regulation 9.2 permits an Agency Head to disclose personal information about an employee to another agency head where this is necessary for the performance of the functions of either agency head (such as recruitment activity), and to the Public Service Commissioner and the Merit Protection Commissioner where this is necessary for the performance of their duties.

18. If an employee:

- is found to have breached the Code of Conduct and been sanctioned and subsequently leaves AFSA; or
- is found to have breached the Code of Conduct and leaves AFSA before a decision about imposing a sanction is made; or
- becomes the subject of a conduct allegation and leaves AFSA before the matter is resolved,

then information about the breach or allegation may be disclosed to any prospective or new employing APS agency.

19. It is AFSA's usual practice to pass such information to another agency where AFSA believes that the information might be relevant to employment related decisions which might need to be considered or made by the other agency, including recruitment decisions and decisions as to whether the employee has breached the Code and whether or not they should be sanctioned for any Breach that is determined.

20. In the case of Code of Conduct investigations instigated as a result of a complaint, AFSA may provide general information about the outcome to the complainant, to provide assurance that the matter has been properly investigated. Personal information about the employee subject to the investigation, however, will only be released where this is considered necessary, appropriate and reasonable because of the particular circumstances of an individual case and provided certain conditions are met. A decision whether or not to release personal information will be informed in each case by the nature and seriousness of the misconduct, the likelihood of consequences to the person about whom the information relates, and the implications for AFSA.

21. For some kinds of misconduct (such as fraud, inappropriate use of internet and email facilities, or unnecessary browsing of clients' records) AFSA may decide it is necessary, appropriate and reasonable to disseminate the outcome of an investigation more widely, in order to:

- maintain public confidence in AFSA and public administration as a whole, and specifically, to prevent or lessen damage to AFSA's reputation and provide reassurance to the public that AFSA takes its accountability obligations seriously; and/or
- educate, deter or prevent similar misconduct by other AFSA employees.

22. In these circumstances AFSA will consider, on a case by case basis, whether personal information needs to be disclosed, or if general information about the misconduct and the consequences will be sufficient. Factors that will be taken into account include whether releasing personal information about the employee is proportionate to the seriousness and level of misconduct and the subsequent impact of this disclosure on the employee.

Released pursuant to the Freedom of Information Act 1982