



Workplace Behaviours, Complaints and Reviews Policy (HPR04)

Determining Breaches of the APS Code of Conduct Procedure (P04.05)

This procedure should be read in conjunction with the IP Australia Enterprise Agreement 2024 (Enterprise Agreement) and other Human Resource (HR) policies and guidance material including, *Workplace Behaviours, Complaints and Reviews Policy (HRP04)*.

1. Scope

- 1.1. This procedure applies to employees covered by the *IP Australia Enterprise Agreement 2024* (Enterprise Agreement).
- 1.2. Provisions within this procedure will be administered in accordance with the Enterprise Agreement and relevant IP Australia policies and procedures.

2. Delegations

- 2.1. When making decisions, managers and supervisors should ensure they are authorised to do so, having regard to the role they are performing. Where practical, appropriate delegations have been referenced throughout this Procedure. For any clarification, IP Australia's [People Management Delegations and Authorisations](#) outlines in detail powers or functions for each classification.
- 2.2. A delegate exercising powers or functions under the delegations can only exercise those powers for employees up to and including the classification one level below the delegates classification.

3. Application of procedure

- 3.1. These procedures apply in determining:
 - 3.1.1. Whether a person who is an Australian Public Service (**APS**) employee in IP Australia, or who is a former APS employee who was employed in IP Australia 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* (Cth) (the **PS Act**); and
 - 3.1.2. In determining any sanction(s) to be imposed on a current APS employee in IP Australia, in accordance with subsection 15(1) of the PS Act, who has been found to have breached the Code.

- 3.2. These procedures apply to all suspected breaches of the Code, except where, before the commencement date of these procedures, a decision had already been made to begin an investigation into whether a breach occurred.
- 3.3. These procedures, as they apply to determining any sanction for breach of the Code, apply where a sanction decision is under consideration on or after the date these procedures commenced.
- 3.4. 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.
- 3.5. In these procedures, powers and functions afforded to the Director General (as the Agency Head) under legislation (for example, the power to determine a breach of the Code) may be delegated to other employees of IP Australia. Where practical, appropriate delegations have been referenced throughout this procedure. For information about delegations, these procedures should be read alongside IP Australia's [People Management Delegations and Authorisations](#), which outline in detail the delegation of specific powers or functions.
- 3.6. A delegate exercising powers or functions under the delegations can only exercise those powers for employees up to and including the classification one level below the delegate's classification.

4. Availability of procedures

- 4.1. In accordance with subsection 15 (7) of the PS Act, these procedures are publicly available on IP Australia's website.

5. Breach decision maker

- 5.1. As soon as practicable after a suspected breach of the Code has been identified and the Director General or their delegate has decided to deal with the suspected breach under these procedures, the Director General or their delegate will appoint a decision maker (the **breach decision maker**) to make a determination under these procedures.
- 5.2. The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.
- 5.3. The breach decision maker may seek the assistance of an investigator with matters including (but not limited to) investigating the alleged breach, gathering evidence and making a report of recommended factual findings to the breach decision maker.
- 5.4. Where practical, a breach decision maker should not also be the suspension or sanction delegate. However, if necessary, these procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

6. Sanction delegate

- 6.1. Where a breach of the Code has been determined, the Director General or their delegate will appoint a decision maker (the **sanction delegate**) who will determine what, if any, sanction is to be imposed on an employee of IP Australia who is found to have breached the Code.

- 6.2. Where practical, a sanction delegate should not also be the breach decision maker or suspension delegate. However, if necessary, these procedures do not prevent the sanction delegate from being the breach decision maker in the same matter.

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

- 7.1. The breach decision maker and the sanction delegate must be, and must appear to be, independent and unbiased.
- 7.2. The breach decision maker and the sanction delegate must advise the Director General or the delegate responsible for appointment 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).

8. Breach determination process

- 8.1. The process for determining whether a person who is, or was, an APS employee in IP Australia 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.
- 8.2. The process must be consistent with the principles of procedural fairness.
- 8.3. A determination may not be made in relation to a suspected breach of the Code unless reasonable steps have been taken to:
 - 8.3.1. Inform the person of:
 - 8.3.1.1. the details of the suspected breach of the Code (including any subsequent variation of those details); and
 - 8.3.1.2. where the person is an aps employee, the sanctions that may be imposed on them under subsection 15(1) of the PS Act; and
 - 8.3.1.3. give the person a reasonable opportunity to make a statement (in writing or orally) or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed.
- 8.4. 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.
- 8.5. For the purpose of determining whether a person who is, or was, an APS employee in IP Australia has breached the Code, a formal hearing is not required.
- 8.6. The breach decision maker (or the person assisting the breach decision maker, if any) where they consider in all the circumstances that the request is reasonable, must 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. The [People Support](#) team is available to provide further guidance on these procedures as required. The Employee Assistance Program (EAP) provides confidential, free counselling and coaching on a wide

range of topics to employees, and their family members to support them through any workplace issue or challenge.

9. Sanctions

- 9.1. The process for determining sanction must be consistent with the principles of procedural fairness.
- 9.2. If a determination is made that an APS employee in IP Australia has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to:
 - 9.2.1. Inform the employee of:
 - 9.2.1.1. the determination that has been made;
 - 9.2.1.2. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act; and
 - 9.2.1.3. the factors that are under consideration in determining any sanction to be imposed; and
 - 9.2.1.4. give the employee a reasonable opportunity to make a written statement (or oral statement if the employee requests this and the delegate agrees) in relation to the sanction or sanctions under consideration within 7 calendar days, or any longer period that is allowed by the sanction delegate.

10. Record of determination and sanction

- 10.1. If a determination in relation to a suspected breach of the Code by a person who is, or was, an APS employee in IP Australia is made, a written record must be made of:
 - 10.1.1. the suspected breach; and
 - 10.1.2. the determination; and
 - 10.1.3. where the person is an APS employee, any sanctions imposed as a result of a determination that the APS employee has breached the Code; and
 - 10.1.4. if a statement of reasons was given to the person regarding the determination in relation to the 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.

11. Additional procedural requirements for SES employees

- 11.1. SES employees have additional obligations under the PS Act to promote ASP Values, the APS Employee Principles and compliance with the Code of Conduct by personal example and other appropriate means.
- 11.2. If a Senior Executive Service (**SES**) employee in IP Australia is suspected of breaching the Code, the Director General or their delegate must consult with the APS Commissioner (or

their delegate) in accordance with section 64 of the *Australian Public Service Commissioner's Directions 2022* (Cth) with respect to:

- 11.2.1. the process for determining whether the SES employee has breached the Code; and
- 11.2.2. if considering imposing a sanction, before imposing the sanction.
- 11.3. When dealing with a suspected breach of the Code by an SES employee, these additional obligations should be considered as well as the greater impact of the conduct of the SES employee on the public confidence of the APS.
- 11.4. The APS Commissioner's role is advisory and is not a formal decision-making role.

12. Suspension delegate

- 12.1. The person with appropriate delegation to decide to suspend an employee in IP Australia from duties (the **suspension delegate**) will hold a delegation of the powers and functions under section 28 of the PS Act and section 14 of the *Public Service Regulations 2023* (Cth) (the **Regulations**).
- 12.2. The suspension delegate must be and must appear to be, independent and unbiased, and where practical, should not also be the breach decision maker or the sanction delegate.

13. Reassignment of duties or suspension from duty

- 13.1. An employee in IP Australia who is suspected of breaching the Code may be:
 - 13.1.1. reassigned to alternative duties, either for a temporary period or on an ongoing basis, pursuant to section 25 of the PS Act; or
 - 13.1.2. suspended from duty by the suspension delegate in accordance with section 28 of the PS Act and section 14 of the Regulations.

14. Movement between agencies during an investigation

- 14.1. This clause applies if:
 - 14.1.1. a person who is an ongoing APS employee in IP Australia is suspected of having breached the Code; and
 - 14.1.2. reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with section 7.3 of these procedures; and
 - 14.1.3. the matter has not yet been resolved, and 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).
- 14.2. Unless the Director General (or their delegate) and the gaining Agency Head (or their delegate) agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

- 14.3. For the purpose of this clause the matter is taken to be resolved when:
- 14.3.1. a determination in relation to suspected breach of the Code is made in accordance with these procedures; or
 - 14.3.2. the Director General or their delegate decides that a determination is not necessary.

15. Support

- 15.1. IP Australia's [Employee Assistance Program](#) is available to provide support to all employees and their immediate family members.

16. Related documents

- 16.1. Resources relevant to this guidance material include:
- 16.1.1. Workplace Behaviours, Complaints and Reviews Policy (HRP04)
 - 16.1.2. Complaints and Reporting Procedure (04.01)
 - 16.1.3. Appropriate Workplace Behaviours Procedure (04.02)
 - 16.1.4. Preventing Sexual Harassment Procedure (04.03)
 - 16.1.5. Review of Action Procedure (04.04)