

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

IP Australia  
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### **Revision History**

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## 1. Application of Procedures

1.1. These procedures apply in determining whether a person who is an 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 ('the Act').

1.2. These procedures apply in determining any sanction to be imposed on an APS employee in IP Australia who has been found to have breached the Code.

1.3. These procedures, as they apply to determining whether there has been a breach of the Code, apply to any suspected breach of the Code except for one in respect of which a decision had been made before 1. July 2013 to begin an investigation to determine whether there had been a breach of the Code.

1.4. 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 1 July 2013.

1.5. 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.

## 2. Availability of procedures

2.1. As provided for in subsection 15 (7) of the Act, these procedures are publicly available on IP Australia's website.

## 3. Breach decision maker and sanction delegate

3.1 As soon as practicable after a suspected breach of the Code has been identified and the delegate has decided to deal with the suspected breach under these procedures, they will appoint a decision maker ('the breach decision maker'), in their capacity as appointing officers, to make a determination. The appointment of the breach decision maker shall be in accordance with the current [People Management Delegations and Authorisations](#).

3.2. The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.

3.3. The breach decision maker may seek the assistance of an investigator with matters including investigating the alleged breach, gathering evidence and making a report of recommended factual findings to the breach decision maker.

3.4. 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 the power under the Act to impose sanctions ('the sanction delegate').



3.5. These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

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

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

4.2. The breach decision maker and the sanction delegate must advise the appointing officer 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.

#### 5. The determination process

5.1. 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.

5.2. The process must be consistent with the principles of procedural fairness.

5.3. 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 Act; and

b) give the person a reasonable opportunity to make a written statement or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed.

5.4. 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.

5.5. 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.

5.6. 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.



## 6. Sanctions

6.1. The process for deciding on sanction must be consistent with the principles of procedural fairness. The appointment of the sanction delegate shall be in accordance with the current [People Management Delegations and Authorisations](#).

6.2. 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:

- a) inform the employee of:
  - i. the determination that has been made;
  - ii. the sanction or sanctions that are under consideration; and
  - iii. the factors that are under consideration in determining any sanction to be imposed; and
- b) give the employee a reasonable opportunity to make a written statement in relation to the sanction or sanctions under consideration within 7 calendar days, or any longer period that is allowed by the sanction delegate.

## 7. Record of determination and sanction

7.1. 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:

- a) the suspected breach; and
- b) the determination; and
- c) where the person is an APS employee - any sanctions 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.

## 8. Procedure when an ongoing employee is to move to another agency

8.1. This clause applies if:

- a) a person who is an ongoing APS employee in IP Australia is suspected of having breached the Code, and
- b) the employee has been informed of the matters mentioned in 5.3.(a); and



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c) 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 Act (including on promotion).

8.2. Unless the Director General and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

8.3. For the purpose of this clause the matter is taken to be resolved when:

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