Factsheet

Imposing a sanction

Once a determination has been made that an employee has breached the APS Code of Conduct (Code), the next stage in the misconduct process is the consideration of an appropriate sanction. A sanction can only be imposed on an employee who has been found under agency procedures established in accordance with s.15(3) of the *Public Service Act 1999* (PS Act) to have breached the Code.

Before a sanction may be imposed, the employee must be informed of the sanctions under consideration and the factors under consideration in deciding a sanction, and given reasonable opportunity to make a statement in relation to the sanctions under consideration (s.60 of the *Australian Public Service Commissioner’s Directions 2022*).

Where there are separate decision-makers for breach and sanction, it is open to the breach decision-maker to make recommendations about sanction. However, the sanction decision-maker needs to exercise the sanction power independently, based on their own consideration of the relevant matters. In making the sanction decision, the sanction decision-maker accepts, and acts on the basis of, the findings of the breach decision-maker.

## Available sanctions

A sanction decision-maker may impose one or more of the following sanctions (s.15(1) of the PS Act):

* termination of employment
* reduction in classification
* re-assignment of duties
* reduction in salary
* deductions from salary, by way of fine
* a reprimand.

## Factors for consideration

A sanction should provide a clear message to the employee that their behaviour was not acceptable, and deter them from repeating the behaviour. The ability of agencies to impose sanctions on employees found to have breached the Code is also intended to act as a general deterrent to all employees.

Sanctions should always be proportionate to the nature of the breach—where a sanction is too lenient, it is unlikely to change behaviour; if it is too severe, it is likely to be seen as unfair and may be counterproductive. There is no necessary link between the number of elements of the Code that an employee has breached and the severity of the sanction.

Management action such as counselling, training, mentoring, closer supervision, or alternative dispute resolution may be considered more appropriate than a sanction in some cases. If this is decided, agencies should make clear to the employee that no sanction has been imposed. Such actions may also be taken in addition to a sanction if they are likely to assist the employee to change their behaviour. Again, agencies should clearly distinguish sanctions from management actions in such cases.

Prior misconduct is relevant to the imposition of a sanction, and should be taken into account by the sanction decision-maker where it:

* indicates that the employee was, or should have been, well aware of the standard of conduct expected and the potential consequences of misconduct, or
* demonstrates that the employee may be unwilling to adhere to the standard of conduct expected.

Sanction decision-makers should have regard to the impact of unconscious bias on their deliberations and decisions.

## Recording the sanction decision and advising the outcome

Under s.63 of the Commissioner’s Directions, a written record must be made of the sanction decision, and, if the employee was provided with a statement of reasons, the record must include that statement. Agency s.15(3) procedures may prescribe the form of such a written record.

Further information can be found in
**Chapters 6 and 9** of **Handling Misconduct.**

The employee should be promptly notified in writing of the sanction decision and of their review rights.

## Procedural fairness in the sanction decision

Provisions in the PS Act and the Commissioner’s Directions emphasise the need to ensure procedural fairness in relation to any decision to impose a sanction on an employee.

Sanctions may only be imposed consistent with the agency’s s.15(3) procedures. In line with s.60 of the Commissioner’s Directions, agency s.15(3) procedures must include a requirement to the effect that a sanction may not be imposed unless reasonable steps have been taken to:

1. inform the employee of:
2. the determination, and
3. the sanction or sanctions that are under consideration, and
4. the factors that are under consideration in determining any sanction to be imposed, and
5. give the employee a reasonable opportunity to make a statement in relation to sanction(s) under consideration.

The sanction decision-maker must consider the employee’s comments before finalising the sanction decision. This deliberative process should include an impartial consideration of the employee’s comments concerning both the sanction(s) that might be applied, and any information or personal factors that may be relevant to that decision.