



AUSTRALIAN
**CRIMINAL
INTELLIGENCE
COMMISSION**

OFFICIAL

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

I, Nicole Mayo, Delegate of the Chief Executive Officer (CEO) of the Australian Criminal Intelligence Commission (ACIC), establish these procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

These procedures commence from the date of this instrument.

These procedures supersede the previous procedures made for the ACIC under subsection 15(3) of the Act.

A handwritten signature in blue ink, appearing to read 'Nicole Mayo', is written over the printed name and title.

Nicole Mayo

A/g Chief Operating Officer

Australian Criminal Intelligence Commission

7 September 2021

OFFICIAL

Application of procedures

1. These procedures apply in determining:
 - a. whether a person who is an Australian Public Service (APS) employee in the ACIC, or who is a former APS employee who was employed in the ACIC at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) in section 13 of the Act.
 - b. any sanction to be imposed on an APS employee in the ACIC who has been found under these procedures to have breached the Code.
2. 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.

Availability of procedures

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

Breach decision-maker and sanction delegate

4. As soon as practicable after a suspected breach of the Code has been identified and the CEO, or a person authorised by the CEO, has decided to deal with the suspected breach under these procedures, the CEO or that person will appoint a decision-maker to make a determination under these procedures.
5. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
6. The breach decision-maker may undertake the investigation, or seek the assistance of an investigator. The investigator may:
 - a. investigate the alleged breach;
 - b. gather evidence; and
 - c. make a report to the breach decision-maker regarding recommended findings of fact, and in addition, if required, recommended elements of the Code that may have been breached.
7. 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 will be a person holding a delegation of the powers under the Act to impose sanctions.
8. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

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

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

10. The breach decision-maker and the sanction delegate must advise the CEO, or a person authorised by the CEO, 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.

The determination process

11. The process for determining whether a person who is, or was, an APS employee in the ACIC 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.
12. The process must be consistent with the principles of procedural fairness.
13. 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 statement in relation to the suspected breach.
14. The statement may be a written or oral statement and should be provided within seven (7) calendar days or any longer period that is allowed by the decision-maker.
15. 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.
16. For the purpose of determining whether a person who is, or was, an APS employee in the ACIC has breached the Code, a formal hearing is not required.
17. The breach decision maker (or the person assisting the breach decision maker, if any) where they consider in all the circumstances 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.

Sanctions

18. The process for imposing a sanction must be consistent with the principles of procedural fairness.
19. If a determination is made that an APS employee in the ACIC 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; and
 - ii. the sanction or sanctions that are under consideration; and

OFFICIAL

- 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 statement in relation to the sanction or sanctions under consideration.
20. The statement may be a written or oral statement and should be provided within seven (7) calendar days or any longer period that is allowed by the sanction delegate.

Record of determination and sanction

21. If a determination is made in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the ACIC, 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 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, and, in the case of an APS employee, regarding the sanction decision, that statement of reasons or those statements of reasons.

Procedure when an employee seeks to move to another agency during an investigation

22. This section applies if:
- a. a person who is an APS employee in the ACIC is suspected of having breached the Code; and
 - b. reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with clause 13; and
 - c. the matter has not yet been resolved; and
 - d. a decision is made to promote an APS employee and the matter to which the suspected breach relates has not yet been resolved before the employee moves to take up the promotion at another Agency; or
 - e. a decision has been made, apart from these procedures, that would result in the movement of the employee under section 26 of the Act to another Agency.
23. Unless the CEO and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
24. For the purpose of clauses 22 and 23 the matter is taken to be resolved when:
- a. a determination in relation to the suspected breach or breaches of the Code is made in accordance with these procedures; or
 - b. the CEO decides that a determination is not necessary.

OFFICIAL