



ONI Workplace Behaviours – Public Service Act Section 15(3) Procedures for determining breaches of the APS Code of Conduct

The Office of National Intelligence has established these procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

These procedures commence on 13 November 2024.

These procedures supersede any previous procedures made for the Office of National Intelligence (ONI) under subsection 15(3) of the Act.

'Signed'

Assistant Director-General, Workforce

Workforce Branch

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1. Application of procedures

- 1.1 These procedures apply in determining:
- a) whether a person who is an Australian Public Service employee in ONI, or who is a former APS employee who was employed in ONI at the time of the suspected misconduct, has breached the APS Code of Conduct in section 13 of the Act.
 - b) any sanction to be imposed on an APS employee in ONI who has been found under these procedures to have breached the Code.
- 1.2 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.

2. Breach decision-maker and sanction delegate

- 2.1 As soon as practicable after a suspected breach of the Code has been identified and the Director-General of National Intelligence (DGNI), or a person authorised by DGNI, has decided to deal with the suspected breach under these procedures, DGNI or that authorised person will appoint a decision-maker (or decision-makers) to make determinations in accordance with these procedures.
- 2.2 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 2.3 The breach decision-maker may investigate the alleged breach or seek the assistance of an investigator. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision-maker.
- 2.4 Only a person holding a delegation of powers under the Act to impose sanctions for a breach of the Code can decide what, if any, sanction is to be imposed on an APS employee found in breach of the Code.
- 2.5 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.
- 2.6 A sanction delegate may determine to suspend an APS employee in ONI if the sanction delegate believes on reasonable grounds that
- a) the employee has, or may have, breached the Code of Conduct
 - b) the employee's suspension is in the public, or ONI's, interest.
- 2.7 The suspension must be in accordance with section 28 of the Act and section 14 of the Public Service Regulations 2023 and may or may not be with remuneration.

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

- 3.1 The breach decision-maker and the sanction delegate must be, and must appear to be, independent and unbiased.
- 3.2 The breach decision-maker and the sanction delegate must advise DGNI in writing if they consider they may not be independent and unbiased or if they consider they may reasonably be perceived not to be independent and unbiased (for example, if they are a witness in the matter).

4. The determination process

- 4.1 The process for determining whether a person who is, or was, an APS employee in ONI has breached the Code must be carried out with as little formality, and as quickly as possible, as proper consideration of the matter allows.
- 4.2 The process must be consistent with the principles of procedural fairness.
- 4.3 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
 - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act
 - b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.
- 4.4 The statement may be written or oral and should be provided within 7 calendar days or any longer period allowed by the decision-maker.
- 4.5 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.
- 4.6 To determine whether a person who is, or was, an APS employee in ONI has breached the Code, a formal hearing is not required.

5. Sanctions

- 5.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.

- 5.2 If a determination is made that an APS employee in ONI 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
 - iii. the factors under consideration in determining any sanction to be imposed
 - b) give the employee a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.
- 5.3 The statement may be written or oral and should be provided within 7 calendar days or any longer period allowed by the sanction delegate.

6. Record of determination and sanction

- 6.1 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 ONI, a written record must be made of
- a) the suspected breach
 - b) the determination
 - c) any sanctions imposed because of a determination that the employee has breached the Code
 - d) any statement of reasons 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.

7. Definitions

- 7.1. The following definitions apply to this policy:

Definitions	
APS	Australian Public Service
DGNI	Director-General of National Intelligence
(ONI) employee	A person engaged by ONI under the <i>Public Service Act 1999</i>
ONI	Office of National Intelligence

8. Review and authorisation

Version	Review/changes made	Authorised by	Authorised date
1	Procedure developed	Assistant Director-General, Workforce	13 Nov 2024