



**Australian Government**  
**Australian Public Service**  
**Commission**

# **VALUES AND CODE OF CONDUCT IN PRACTICE**

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## Preface

Employees of the Australian Public Service (APS) occupy a position of trust. They are entrusted by the Government and the community to undertake important work on their behalf. With this trust comes a high level of responsibility which should be matched by the highest standards of ethical behaviour from each APS employee.

Together the APS Values, the APS Employment Principles and the APS Code of Conduct set out the standard of behaviour expected of agency heads and APS employees. They provide the public with confidence in the way public servants behave, including in their exercise of authority when meeting government objectives.

The *Public Service Act 1999* (PS Act) requires APS employees and agency heads at all times to behave in a way that upholds the APS Values. Agency heads and Senior Executive Service employees must also promote the Values. All employees must inform themselves of their obligations under the PS Act.

The conduct of public servants, both inside and outside the workplace, can have implications for the confidence the community has in the administration of an agency or the APS as a whole.

This guide is structured around the three professional relationships that are a central part of work in the public service: relationships with the Government and the Parliament; with the public; and with public service colleagues.

The guide also contains information about how to deal with ethical problems that commonly arise in particular circumstances. It does not have the answer to every ethical problem that an employee may be faced with at work. It does however provide principles which will point to an answer in many cases.

## APS Values and Code of Conduct in practice

### Relationships

1

with the Government and the Parliament

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with the public

3

in the workplace

### Responsibilities

4

managing information

5

managing conflict of interest

6

employees as citizens

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using Commonwealth resources

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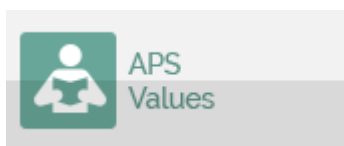
working overseas

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reporting suspected misconduct



## Section 1: Working with the Government and the Parliament



### 1.1 Summary

- 1.1.1 A good relationship between Australian Public Service (APS) agencies, ministers and their offices is central to effective government.
- 1.1.2 The APS Values, set out in the *Public Service Act 1999* (PS Act), help APS employees to build effective working relationships between the political and administrative arms of government.
- 1.1.3 Each of the Values is of equal importance. Particular situations may arise where there is tension between the different Values that are to be applied. For example, it is right to be responsive to ministers and their advisers by providing quick advice, but it is also right to follow due process and established protocols. In such cases, the 'right' course of action may not be set out by statute, instruction or policy and good judgement will need to be exercised.
- 1.1.4 This section provides guidance on how the APS Values apply when interacting with ministers and their advisers and when interacting with the Parliament. The section also provides guidance on public servants appearing in government advertising and awareness campaigns.

### 1.2 APS Values

- 1.2.1 The APS Values are set out in the PS Act. The *Australian Public Service Commissioner's Directions 2013* (the Directions) determine the scope and application of the Values. Agency heads and employees are required to comply with the Directions. The Directions that are most relevant for those employees whose duties involve working directly with the Government and the Parliament are outlined below in relation to each of the Values.

#### Committed to Service

- 1.2.2 The Committed to Service Value provides for an APS that is professional, objective, innovative and efficient, that works collaboratively to achieve the best results for the Australian community and the Government.
- 1.2.3 The Directions about this Value require employees to encourage innovative thought and support innovative solutions. Employees should be open to good ideas, thinking beyond traditional boundaries and challenging the 'business as usual' approach.
- 1.2.4 Employees should contribute to a culture of achievement, and support a unified APS that is focused on serving the Government and the Australian community. They should identify and manage potential areas of risk, and be responsive to ministers—taking account of resource and time constraints—by:
  - a. being knowledgeable about the Government's policies

- b. understanding the relevant issues and options
- c. understanding the Government's objectives and the environment in which it operates.

### **Ethical**

- 1.2.5 The Ethical Value provides for an APS that demonstrates leadership, is trustworthy, and acts with integrity at all times.
- 1.2.6 APS employees must comply with:
  - a. all relevant Australian laws
  - b. appropriate professional standards
  - c. the APS Code of Conduct (the Code).
- 1.2.7 One element of the Code is that APS employees must maintain appropriate confidentiality about dealings with any minister or a member of a minister's staff.
- 1.2.8 APS employees should act in a way that models and promotes the highest standard of ethical behaviour, following through on commitments made and having the courage to address difficult issues. Employees should take account of whole of government issues and concerns in developing and implementing policies and programs.
- 1.2.9 When working with the Government, to uphold this Value employees should act in the right way, as well as the technically and legally correct way. The 'right decision' or the 'right action', depending on context, is likely to require having regard to the intent of a relevant law or policy. In practice this means employees need to understand the reasons for the law or the policy. The more senior the employee, the greater the expectation that they will have this understanding.

### **Respectful**

- 1.2.10 The Respectful Value provides for an APS that respects all people, including their rights and their heritage.
- 1.2.11 APS employees must treat all people with dignity and recognise that all people have value. Employees should also collaborate, and be open to ideas in policy development, implementation, program management and regulation.
- 1.2.12 It is generally appropriate that employees engage relevant stakeholders, including those affected by decisions, and have appropriate regard to their views when developing new approaches.
- 1.2.13 Employees should maintain respectful and constructive relationships with ministers and their staff. This is best achieved when all parties have a sound appreciation of their respective roles and boundaries.

### **Accountable**

- 1.2.14 The Accountable Value provides for an APS that is open and accountable to the Australian community under the law and within the framework of ministerial responsibility.



- 1.2.15 APS employees are answerable to ministers for the exercise of delegated authority and, through them, to parliament. Employees should be able to demonstrate that actions and decisions have been made with appropriate consideration, and that resources have been used efficiently, effectively, economically and ethically.
- 1.2.16 Employees should understand the accountability relationships in the Australian constitutional and legal system. They should assist ministers to fulfil their accountability obligations to parliament and the public, and meet their own accountability obligations as employees, in particular through good recordkeeping.
- 1.2.17 Employees should document significant decisions or actions consistent with the *Archives Act 1983* and to a standard that will withstand independent scrutiny. Good recordkeeping allows others to understand the reasons why a decision was made or an action taken and can guide future decision-makers. See [Section 4: Managing information](#) for further information.

### **Impartial**

- 1.2.18 The Impartial Value provides for an APS that is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.
- 1.2.19 Advice provided to the Government must also be:
- a. objective and non-partisan
  - b. relevant, comprehensive and unaffected by fear of consequences, not withholding important facts or bad news
  - c. mindful of the context in which a policy is to be implemented, the broader policy directions set by the Government and its implications for the longer term.
- 1.2.20 APS employees must serve the needs of the Government. This entails providing the same standard of high quality policy advice and implementation, irrespective of which political party is in power and irrespective of an employee's political beliefs. Employees should ensure that their actions do not provide grounds for a reasonable person to question their ability to serve the government of the day.
- 1.2.21 To uphold this Value when working with the Government, employees should provide forthright and professional advice; and develop robust and innovative options, supported with persuasive argument, good analysis and strong evidence. Once the agency's advice has been considered, the option chosen by the Minister should be implemented to best effect.
- 1.2.22 Impartiality does not mean that the APS gives equal treatment to all sides of politics. It is not the role of the APS to serve the Opposition. Employees should generally have limited contact with the Opposition and other non-government parties. At the same time, it is a routine and proper role for employees to provide information to the Parliament about the implementation of the Government's policies, including when appearing before parliamentary committees.

### **1.3 Australia's structure of government and the role of the Australian Public Service**

- 1.3.1 APS employees, ministers and parliamentarians have specific roles within Australia's democratic system of government.
- 1.3.2 Ministers and the APS are part of the executive branch of government. They operate under the law within a democratic political system where the ultimate accountability of governments to the Australian people is through the electoral process. A framework of accountability and external review applies whereby the courts and tribunals, and offices established by the Parliament, such as the Auditor-General and the Ombudsman, operate as checks and balances within the system.
- 1.3.3 The Parliament is the legislative branch of government. Parliament makes laws, authorises the Government to spend public money and scrutinises government activities.
- 1.3.4 Accountability relationships in the Australian constitutional and legal system may be summarised as:
  - a. governments are accountable to the Australian people at elections
  - b. ministers are responsible for the overall administration of their portfolios and accountable to the Parliament for the exercise of ministerial authority
  - c. public servants are accountable to ministers and, through them, to the Parliament for the exercise of delegated authority.<sup>1</sup>
- 1.3.5 Within the laws established by parliament, it is ministers who decide what is in the public interest and how it should be brought about. Agency heads and employees advise and implement. The role of the APS is to serve the government of the day and to assist in developing and delivering its policy agenda and priorities. Ministers make decisions and issue policy guidelines. Employees must comply with those guidelines when implementing policy. Such ministerial decisions and policy guidance must, of course, comply with the law.
- 1.3.6 The third arm of government is the judiciary which interprets and applies the law. In Australia, the High Court is the final court of appeal on federal matters and matters dealt with by state and territory courts.
- 1.3.7 Employees should have a sound appreciation of the respective roles of the Parliament, the executive and the judiciary.

### **1.4 Complying with the law**

- 1.4.1 Employees have a responsibility to comply with all applicable Australian laws. As well as acts administered by, or relevant to, specific agencies, this responsibility also includes laws applying to the APS as a whole, such as the PS Act, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and laws dealing with anti-discrimination, privacy and freedom of information. Laws frequently refer to the powers and authority of ministers.

- 1.4.2 It is common for there to be subordinate legislation and agency instructions and/or directions binding on employees. For example, accountable authorities issue instructions to officials under the PGPA Act, and managers may issue directions to employees about the performance of their duties. Employees may also be required to apply guidelines and take account of judgements by the courts.
- 1.4.3 Employees should be familiar with the statutes and instructions that apply to them and the scope of ministerial authority in legislation they administer. They should also know when and how to obtain more information about relevant legislation and instructions.
- 1.4.4 Ministerial decisions and policy guidance must, of course, comply with the law.<sup>2</sup> If an employee has doubts about whether a ministerial decision or policy guidance is consistent with the law, they should bring the matter to the attention of their manager.

## 1.5 Working with ministers' offices

- 1.5.1 Ministerial advisers have a political role to help the Minister fulfil his or her aims across the portfolio. Employees are responsible to the Minister through the agency head and have an apolitical role. Employees help the Minister to draw on the depth of knowledge and experience in the APS and ensure due process under the law.
- 1.5.2 The way in which ministers' offices interact with agencies will vary from one office to another. However, some general principles apply.
- a. It is normal practice for ministers and ministerial advisers to deal directly with a range of employees, not just the agency head. This allows the Minister and his or her advisers to seek advice from those with expertise or experience in the particular topic under consideration. It is important that more senior employees are kept informed and the agency head immediately advised about matters of particular sensitivity or significance.
  - b. Not all communication will be in writing. However, care should be exercised to ensure that oral communication is limited to routine issues.
  - c. When policy advice is given orally, it should be followed up in writing.
  - d. Differences might on occasion arise in the relationship. These are best resolved through discussion. Employees should discuss any concerns they have with their manager. Where a disagreement does not involve the agency head directly, his or her intervention may be needed to resolve the issue.
  - e. It is ministers who have final authority and accountability to parliament, and employees, through their agency head, are responsible to their Minister.<sup>3</sup> The relationship between the APS and ministerial advisers needs to recognise this final authority. Employees should, if in doubt, check that directions conveyed by advisers have ministerial authority and that professional APS advice has been conveyed to the Minister.
  - f. If a public servant needs to contact an adviser from another ministerial portfolio, in most cases contact should be made through their Minister's office. It is usually advisable that the relevant agency in the other portfolio be involved in any discussions. Similarly, an

adviser needing to contact an employee in another portfolio would generally make contact through that portfolio's ministerial office.

- 1.5.3 Ministerial staff are employed under the *Members of Parliament (Staff) Act 1984* (the MOP(S) Act) administered by the Minister for Finance and the Special Minister of State. A [Statement of Standards for Ministerial Staff](#) published by the Special Minister of State, sets out the standards that ministerial staff are expected to meet in the performance of their duties. The standards include provisions covering working relationships between ministerial staff and employees.
- 1.5.4 Ministerial advisers provide important guidance about the Minister's policy and requirements and, by so doing, help employees to be responsive. However, they cannot direct employees.
- 1.5.5 Ministers can engage a limited number of consultants under the MOP(S) Act to work on specific projects, or conduct reviews on their behalf or under the direction of the agency head. This requires the Prime Minister's approval. It is important to establish a common understanding between all parties about the consultant's role and reporting requirements.

## **1.6 APS employees working as ministerial advisers**

- 1.6.1 APS employees may apply to work in a minister's office under the MOP(S) Act. An APS employee who is engaged under the MOP(S) Act is granted leave without pay from the APS.<sup>4</sup>
- 1.6.2 Working in a minister's office is an opportunity to gain experience and should contribute positively to a person's career in the APS. Public servants can also work for Members and Senators including the Leader of the Opposition and shadow ministers.
- 1.6.3 When an adviser's position is vacant for less than 12 weeks, it is generally the responsibility of the Minister's portfolio department to provide staffing relief. This relief may be provided by an APS employee. In such cases the person performs the duties as an APS employee, and the Minister's office and the agency head negotiate working arrangements. It is important for each party to understand that the APS employee remains bound by the Code and the APS Values, including the requirement to act impartially. The parties should ensure that there is a common understanding of what is expected of the particular employee's behaviour.

## **1.7 Departmental liaison officers**

- 1.7.1 Departmental liaison officers (DLOs) working in ministers' offices are employed under the PS Act and the APS Values, Employment Principles and the Code apply. The DLO's role and employment arrangements should be agreed between the Minister and the agency head. It is generally good practice for the DLO to report to the Minister's chief of staff, day-to-day. The DLO's role is to facilitate a cooperative and professional relationship between the agency and the Minister. A DLO must not be involved in party political activities or political advocacy. A DLO should be recalled when an election is announced unless it is appropriate for them to remain in the Minister's office to manage liaison work, while not being used directly or indirectly for party political purposes.

## 1.8 Questions from parliament

- 1.8.1 The legislature cannot direct the APS in its day-to-day work. However, it is a responsibility of the Parliament to scrutinise the activities of government and to examine the expenditure of public money. Employees may be required to provide information directly to the Parliament, in particular to its committees.
- 1.8.2 Employees may be required to brief ministers, prepare for parliamentary debates, draft answers to parliamentary questions or draft letters of response to Members, Senators and constituents.
- 1.8.3 Public servants assist ministers to fulfil their accountability obligations by providing parliament with full and accurate information about the factual and technical background to policies and their administration. This may include reasons for the policy. It does not extend to providing personal comment on the policy. By resolution of the Senate:<sup>5</sup>

an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.

- 1.8.4 Employees must behave honestly and with integrity. Answers to questions from parliament or its committees must always be accurate and any errors corrected quickly. Employees must never deliberately mislead the Parliament. If necessary, they should consult the Minister before answering committee questions and should not refuse to answer questions allowed by the committee chair, unless directed by the Minister. They should help explain the Government's policies and decisions, although they are not obliged to reveal policy advice given. Where questions from a committee are likely to be politically sensitive, they should discuss the matter beforehand with the Minister or the Minister's office. Employees should always seek to maintain the trust of ministers and the Parliament in their professionalism.
- 1.8.5 Further guidance on appearing before parliamentary committees is available in the [Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters](#) (February 2015) available from the Department of the Prime Minister and Cabinet's [website](#).
- 1.8.6 The guidelines also include advice about providing information to an individual Member of Parliament (MP). Arrangements for this should be settled by the Minister and agency head, unless legislative provisions pertain. A request from an MP for a briefing on a policy or program should be forwarded to the Minister for advice on handling the request. MPs requesting information are treated the same as a constituent or community group seeking information. See [Section 4: Managing Information](#) for more information.

## 1.9 Exercise of statutory powers

- 1.9.1 APS employees are frequently required to exercise statutory powers, often delegated by, or under authorisation from, ministers or other office-holders. Some statutory powers are exercised independently of ministers. The accountability requirements will vary according to the nature of the power.

- 1.9.2 In all cases employees must understand the requirements of the legislation when exercising statutory powers. This includes understanding how the legislation interacts with other laws, any requirements for procedural fairness and the degree of independence of the decision-maker from the views of others.
- 1.9.3 APS employees provide services on behalf of the Government to a wide range of groups and individuals and in doing so:
- a. must adhere to the law, the Government's policies and guidelines and not pursue a personal view about the public interest
  - b. are accountable to the Government to provide quality service
  - c. are accountable for their decisions. See [Section 2: Relationship with the public](#) for more information.

## 1.10 Working with external review bodies

- 1.10.1 A number of agencies and offices provide checks and balances on the actions of government. The Auditor-General, the Commonwealth Ombudsman and the Administrative Appeals Tribunal are examples of such bodies. APS employees are expected to be frank, open and cooperative when providing information to these bodies as part of external review processes.

## 1.11 Political activities

- 1.11.1 APS employees should not engage in party political activities at work, such as distributing political material, producing political publications or conducting market research. While acting as private citizens, APS employees nonetheless enjoy most of the same rights to participate in the political life of the community as other citizens.
- 1.11.2 When APS employees make public comment in an unofficial capacity, it is inappropriate to make comment that is, or could be reasonably perceived to be, made on behalf of their agency or the Government. See [Section 6: Employees as citizens](#) for more information.

## 1.12 Explaining Government policy

- 1.12.1 APS employees have an important role to explain policies and the reasons behind them, to assist the elected government to achieve its policy aims, and help meet program objectives. A wide variety of situations occur where employees may be required, as part of their duties, to explain the Government's policies. Examples include:
- a. engaging directly with the public by working in call centres or 'on the counter' at government shopfronts
  - b. responding to correspondence from the public, including correspondence to ministers
  - c. responding to media queries and participating in media interviews and discussions, including on radio and television
  - d. participating in international meetings or in meetings with other Australian jurisdictions
  - e. contributing articles to non-government newspapers, magazines and journals

- f. developing and appearing in written information material targeting the public such as leaflets, booklets and newsletters associated with the Government's policies.
- 1.12.2 Sometimes public servants, including agency heads, may be required to draw attention to a proposed Government policy, or forthcoming legislation, in order to canvass opinion or to prepare the community and stakeholders for change. This activity is consistent with the roles and responsibilities of public servants but care should be taken to explain the policy, rather than to advocate for it on political grounds.
- 1.12.3 When explaining the Government's policies and programs, an APS employee may need to counter community and stakeholder misconceptions. In doing so, employees need to be mindful that this explanation is not reasonably perceived as criticism of the Opposition or other political parties. A statement of the facts in neutral language is less likely to be perceived as partisan than directly refuting misconceptions.
- 1.12.4 APS employees may be required to explain the Government's policies when speaking at public forums and engaging external stakeholders. Employees need to do this professionally, and avoid partisan comment. Their approach to speaking publicly about policies needs to support public confidence in the capacity of the APS to remain impartial. See [Section 4: Managing information](#) for more information.

### 1.13 Election periods

- 1.13.1 The relationship between the Government and the APS is subject to particular scrutiny around elections. It is particularly important at that time for the APS to be seen to be politically impartial.
- 1.13.2 Employees need to be familiar with the Department of the Prime Minister and Cabinet's [Guidance on Caretaker Conventions](#).
- 1.13.3 In summary, the caretaker conventions are a series of practices that have been followed by successive governments during the period preceding an election for the House of Representatives. Their primary purpose is to avoid actions that would bind an incoming Government and limit its freedom of action. A number of the practices are directed at protecting the apolitical nature of the APS and avoiding the use of Commonwealth resources in a way that advantages a particular party. The conventions deal with issues such as requests from ministers' offices for information or advice and the conduct of information campaigns during the caretaker period.
- 1.13.4 Guidelines apply to pre-election consultation with the Opposition under which shadow ministers may, with the agreement of the relevant Minister, hold discussions with appropriate APS employees.
- 1.13.5 The ordinary business of government continues during the caretaker period and the application of the conventions requires judgement and common sense. If employees are unsure about how to handle issues that arise during the caretaker period, they should raise the matter with senior agency management in the first instance.



## 1.14 Involvement of public servants in government advertising and information campaigns

- 1.14.1 APS employees have an important role to explain policies to assist the elected Government to achieve its policy aims and help meet program objectives. In some limited circumstances this may involve appearing in government advertising and information campaigns.
- 1.14.2 The [Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth entities](#) set out the principles applying to information and advertising campaigns undertaken in Australia. These guidelines are published on the Department of Finance's website and are mandatory for APS agencies under the PGPA Act. During the period preceding an election for the House of Representatives the [Guidance on Caretaker Conventions](#) also applies. The Caretaker Conventions provide further advice on the handling of advertising and information campaigns during the caretaker period.
- 1.14.3 It is generally not appropriate, or necessary, for agency heads or employees to appear in government advertising or information campaigns. However, it may be appropriate for agency heads or employees to appear in the following circumstances:
- a. where their appearance is warranted on grounds of a demonstrated public interest, such as public safety or national security. A public servant can lend expertise and credibility, for example a Chief Medical Officer warning of a pandemic
  - b. in recruitment campaigns where the use of public servants is designed to promote the attractiveness of a public service career, provided there are no political messages contained in the campaign.
- 1.14.4 If an agency head is in any doubt about the propriety of accepting a request to appear in government advertising or information campaigns they should consult the Australian Public Service Commissioner. Employees in such circumstances should consult their agency head. The Australian Public Service Commissioner's [Ethics Advisory Service](#) can provide employees with advice about the factors that they might take into account in considering their responsibilities in such circumstances.
- 1.14.5 This guidance is relevant for government advertising and information campaigns involving placement of advertising and information activities in any medium, including print, radio, online, cinema, television and out of home.
- 1.14.6 This guidance is not relevant for non-campaign advertising as advertising of this type is usually placed on a limited basis, contains only factual statements and has a low level of creative content. Examples are:
- a. auction and tender notices
  - b. invitations to make submissions or apply for grants
  - c. notification of date and/or location specific information, for example to attend a public meeting.

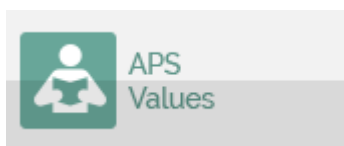


1.14.7 Any involvement of public servants in advertising and information campaigns must be consistent with the requirement for employees to be impartial in the performance of their duties.

#### **Agency policies and procedures**

- i. Agencies have found it useful to provide guidelines to employees, developed in consultation with the Minister, on handling interactions with the Minister and their office in an effective and professional way.
- ii. Agency guidance might specify employees, or the level of employees, who are authorised to provide advice to the Minister.
- iii. It may be useful to have in place procedures, agreed with Ministers, to handle media enquiries and make public statements.
- iv. APS agencies should ensure that all employees who are likely to have communication with ministerial staff, including those employed in electorate offices, are aware of the [Statement of Standards for Ministerial Staff](#) and where it can be accessed.
- v. Agency guidance on advertising and information campaigns should refer to the guidance in Section 1.14 on employees appearing in advertising and information campaigns.
- vi. APS employees may require training on the relevant statutes and instructions that apply to their work.

## Section 2: Relationship with the public



### 2.1 Summary

- 2.1.1 Trust in government and a nation's democratic institutions is significantly influenced by the experience of business and the public as clients of the public service. Trust is also sustained by open and inclusive policy-making, as noted in recent reports of the Organisation for Economic Co-operation and Development (OECD).<sup>6</sup>
- 2.1.2 The public's experience of service delivery has been transformed by advances in information and communications technology, enabling the government not only to deliver services in a more citizen-friendly manner, but also to incorporate business and community perspectives into service design and delivery.
- 2.1.3 Australian Public Service (APS) employees at all points along the service delivery chain—from those involved in high-level policy development to the people delivering front line services—must engage effectively with the community in the performance of their duties.
- 2.1.4 Employees should understand the legal and institutional framework in which they operate, and administer the law fairly and equitably, providing responsive, efficient and effective services. Public servants undertaking service delivery roles should provide reasonable assistance to help the public understand their entitlements and obligations; and must engage with the public respectfully and courteously.

### 2.2 APS Values

- 2.2.1 The APS Values are set out in the *Public Service Act 1999* (PS Act). The *Australian Public Service Commissioner's Directions 2013* (the Directions) determine the scope and application of the Values. Agency heads and employees are required to comply with the Directions. The Directions that are most relevant to those employees whose duties involve working directly with the public are outlined below in relation to each of the Values.

#### Committed to Service

- 2.2.2 The Committed to Service Value provides for an APS that is professional, objective, innovative and efficient, that works collaboratively to achieve the best results for the Australian community and the Government.

- 2.2.3 The Directions about this Value require APS employees to engage effectively with the community, working actively to provide responsive, client-focused service delivery. Employees must provide appropriate information to clients and the community about rights and entitlements, and the process for gaining access to them. Employees must also ensure that decisions and interactions with clients are objective and impartial, and in accordance with government policy.
- 2.2.4 Government and the community expect prompt and high-quality service from APS employees. It is important that their work contributes to maintaining these high standards.
- 2.2.5 Information about rights and entitlements should be provided in accordance with government policy, agency procedures and the law. This information should be conveyed effectively and respectfully, recognising the diversity of our community. Information should be presented in plain English, avoiding use of jargon, acronyms, abbreviations and references to which the community may not have access, including unnecessary references to legislation. Information should be targeted to the audience, providing relevant information such as the right to review and how to complain.
- 2.2.6 Discrimination in the provision of services on a range of grounds, including disability, sex, marital status, pregnancy, family responsibility, race, colour and national or ethnic origin, is generally unlawful. More information about the promotion and protection of human rights can be found on the Australian Human Rights Commission [website](#).

### **Ethical**

- 2.2.7 The Ethical Value provides for an APS that demonstrates leadership, is trustworthy, and acts with integrity in all it does.
- 2.2.8 The Directions about this Value require APS employees to comply with all relevant laws, appropriate professional standards and the APS Code of Conduct. Employees must act in accordance with government policy and decisions. An employee's actions must also comply with the law.<sup>7</sup>
- 2.2.9 The law can sometimes be complex. The work of public servants may be subject to many different statutes, regulations, other legislative instruments and other rules. Employees should ensure they know and understand the laws that are relevant to their duties.
- 2.2.10 When working with the public, employees must follow through on commitments made and must be able to demonstrate that they have acted with honesty and integrity. Employees are expected to act in the right way, as well as the technically and legally correct way.
- 2.2.11 The Directions about this Value also require employees to provide leadership in policy development, implementation and program management. This requirement is relevant to consultation with the community on these matters.

### **Respectful**

- 2.2.12 The Respectful Value provides for an APS that respects all people, including their rights and their heritage.

- 2.2.13 The Directions about this Value require APS employees to treat all people with dignity, recognising that all people have value. They should deal with all people honestly and with integrity. Employees should recognise the importance of human rights and understand Australia's human rights obligations, and comply with all relevant anti-discrimination laws. They should recognise and foster diversity and be open to ideas in policy development, implementation, program management and regulation.
- 2.2.14 An awareness of, and sensitivity to, the diversity of the Australian community is important to achieve quality advice and service provision. It ensures different perspectives are brought to bear on decision-making. Good policy and program delivery is responsive to the needs and interests of different community groups.
- 2.2.15 Consultation with the community and business sectors is critical to policy development and program design. Different perspectives promote innovation and can produce new ideas. Good policy requires a thorough understanding of the issue to be addressed and the impact any policy proposals would have on stakeholders. Governments are rarely able to impose policy solutions in isolation, and the success of resultant programs is dependent to a large extent on the ability of government to mobilise wide community support.
- 2.2.16 When working with the public, collaboration may include:
- a. ensuring members of the community have a reasonable opportunity to contribute to policy development and program design
  - b. correctly identifying relevant stakeholders in the community and understanding their interests and backgrounds
  - c. listening to, and having appropriate regard to, the views of community representatives
  - d. working with stakeholders to refine and develop approaches
  - e. notifying the community of the outcomes of the policy development or program design process and the likely impact on community members.

### **Accountable**

- 2.2.17 The APS is open and accountable to the Australian community under the law and within the framework of ministerial responsibility.
- 2.2.18 The Directions about this Value require APS employees to be open to scrutiny and transparent in decision-making. They should be able to demonstrate that actions and decisions have been made with appropriate consideration. Employees should be able to explain actions and decisions to the people affected by them. Employees are accountable for their actions and decisions through statutory and administrative reporting systems.
- 2.2.19 One of the ways in which employees contribute to the proper functioning of government is by making decisions that comply with policy and law. This applies both in the management of programs and in deciding individual cases. Decisions that may affect the rights and entitlements of people may be subject to the requirements of administrative law.

- 2.2.20 The *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) also establishes the obligation to provide reasons for decisions in many circumstances.<sup>8</sup>
- 2.2.21 Keeping a record of the reasons why a decision is made is good practice. It helps decision-makers think more carefully about their task, challenge their assumptions and logic and encourage more care in reaching a decision. It assists agencies to assess the quality of their outcomes and to improve decision-making standards.
- 2.2.22 The decisions public servants make may be reviewed by a general review body such as the Ombudsman or a court, or by a specialist body such as the Privacy Commissioner or the Australian Human Rights Commission.

### **Impartial**

- 2.2.23 The Impartial Value provides for an APS that is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.
- 2.2.24 The Directions about this Value require APS employees to implement government policies in a way that is free from bias, and in accordance with the law. When working with the public either delivering services or when co-developing policies, employees need to take account of the context in which the policies are to be implemented and be aware of the broader policy directions set by the Government and possible implications for the longer term.

## **2.3 Providing information**

- 2.3.1 In doing their work, employees are expected to exercise reasonable care in providing information. Information may be sought and provided face to face, over the telephone, electronically or in writing. In all cases it is important to have regard to the following:
- a. employees have a duty to exercise reasonable care and diligence to ensure that information provided is accurate
  - b. employees should consider the use an enquirer may make of information sought and the degree to which they may rely on that information
  - c. the standard of care required will relate to the nature of the enquiry and the possible consequences that may arise from the provision of incorrect information
  - d. when there are doubts about the relevant facts, the reliability of the information, or the authority of the employee to provide it, these should be made known to the enquirer
  - e. where information is being given on a matter that has not been finalised, the interim or conditional nature of the information should be made clear
  - f. in some circumstances, it may be relevant to suggest to enquirers that they consider seeking independent professional advice, for example from a lawyer or accountant
  - g. if information is provided orally, it is generally advisable to make a record of the information given.

## 2.4 Standards of dress

- 2.4.1 As a general guide, the appearance and dress of APS employees should be in accordance with the standards appropriate to their agency, their duties and the people with whom they are dealing. Employees are obliged to behave in a way that upholds the good reputation of their agency and the APS, and should dress in a way that reflects respect for clients and other stakeholders.
- 2.4.2 Some agencies have particular standards of dress for their employees. In addition, some employees may be required to wear uniforms or safety clothing. Agency dress codes must not discriminate unlawfully.
- 2.4.3 Employees are advised to be careful about wearing clothing, for example t-shirts with a slogan, which might be viewed as expressing a political opinion. See [Section 6: Employees as citizens](#) for further information.

## 2.5 Managing complaints

- 2.5.1 Complaints may arise when citizens access agency services, whether seeking an entitlement or benefit, access to funding or because the agency has regulatory responsibility for activities the citizen is engaged in. As the Commonwealth Ombudsman has noted:<sup>9</sup>

Good complaint management requires individual staff members to identify and support complaints in their general interaction with the public. Staff members should see complaints as valuable and know that dealing well with complaints is an important part of their job.

- 2.5.2 It is good practice to be alert to communications that might constitute a complaint, even when the word 'complaint' is not used.

## 2.6 Dealing with difficult people

- 2.6.1 From time to time, employees may have to deal with difficult, abusive or aggressive customers or clients. As the Commonwealth Ombudsman has noted:<sup>10</sup>

Anecdotal evidence from a wide range of organisations and jurisdictions indicates that this problem is widespread. What's more, the number of people who present as difficult seems to be on the increase and the nature of the difficulties that agencies have to deal with seems to be getting more complex.

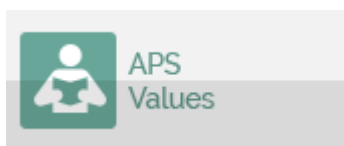
- 2.6.2 Agency heads have a duty to manage risks to the health and safety of their employees. See [Section 3: Relationships in the workplace](#) for further information. Agencies may have in place policies and procedures to assist their employees to deal with difficult clients. These may include restricted servicing arrangements that enable the needs of the clients to be addressed without subjecting employees to behaviour that is potentially damaging to employees' health and well-being.

- 2.6.3 In all circumstances if confronted with a difficult or abusive person, employees are advised to remain calm, positive and avoid taking unnecessary risks. If in doubt, they should seek the support of a supervisor or colleague. An employee should withdraw if they feel intimidated or threatened. The police should be contacted in extreme cases.

#### **Agency policies and procedures**

- i. The avenues available to agencies to assess the quality of service they provide include:
  - a. measures of performance against an agency's service charter
  - b. audits carried out by the Australian National Audit Office
  - c. complaints and own motion investigations by the Ombudsman or the Australian Human Rights Commission
  - d. inquiries by parliamentary committees
  - e. the Australian Public Service Commissioner's annual State of the Service Report
  - f. customer complaint mechanisms put in place by individual agencies
  - g. client surveys
  - h. correspondence.
- ii. The Commonwealth Ombudsman's [Better practice guide to managing unreasonable complainant conduct](#) (2009) provides guidance on dealing with difficult people. The online environment is an emerging area of concern for inappropriate behaviour and bullying, including in the workplace.
- iii. The Australian Public Service Commission's publication [Cyber-bullying of APS employees by members of the public](#) is aimed at helping APS managers to manage situations where their employees are targeted by clients or other stakeholders for actions they have taken in the performance of their duties.
- iv. Agencies are expected to ensure that decision-makers are provided with adequate policies, procedures and guidance relevant to the decision-making process, including up to date information regarding case law.

## Section 3: Relationships in the workplace



### 3.1 Summary

- 3.1.1 Workplace relationships are critical to organisational performance and individual well-being. The quality of relationships between managers and their staff, within teams, and with colleagues across the agency can make jobs more rewarding, more stimulating and more engaging. A motivated, committed and engaged workforce is crucial to productivity.
- 3.1.2 Workplace relationships cover the employer-employee work relationship and working with colleagues.

### 3.2 APS Values

- 3.2.1 The APS Values are set out in the *Public Service Act 1999* (PS Act). The *Australian Public Service Commissioner's Directions 2013* (the Directions) determine the scope and application of the Values. Agency heads and employees are required to comply with the Directions. The Directions that are most relevant to relationships between employees in the workplace are outlined below in relation to each of the Values.
- 3.2.2 The APS Employment Principles, set out in section 10A of the PS Act, are also relevant to relationships in the workplace.

#### Committed to Service

- 3.2.3 The Committed to Service Value provides for an Australian Public Service (APS) that is professional, objective, innovative and efficient, that works collaboratively to achieve the best results for the Australian community and the Government.
- 3.2.4 The Directions about this Value require APS employees to support collaboration and teamwork, internally and externally, including with other agencies.

#### Respectful

- 3.2.5 The Respectful Value provides for an APS that respects all people, including their rights and heritage.
- 3.2.6 The Directions about this Value require that employees treat all people including work colleagues with dignity and to recognise that all people have value. Diversity must be recognised and fostered.



### **Accountable, Impartial and Ethical**

- 3.2.7 The Accountable Value provides for an APS that is open and accountable to the Australian community under the law and within the framework of ministerial responsibility. The Directions about this Value require employees to demonstrate that their actions and decisions have been made with appropriate consideration and are able to be explained to the people affected by them, including their colleagues. Employees are accountable for their actions and decisions through statutory and administrative reporting systems, including through performance management systems.
- 3.2.8 The Impartial Value provides for an APS that is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence. Employees must ensure that management and staffing decisions are made on a basis that is independent of the political party system, free from political bias and not influenced by the individual's political beliefs.
- 3.2.9 The Ethical Value provides for an APS that demonstrates leadership, is trustworthy, and acts with integrity in all it does. This includes reporting and addressing misconduct and other unacceptable behaviour by colleagues in a fair, timely and effective way.

### **3.3 Additional responsibilities**

- 3.3.1 The APS Code of Conduct (the Code) and the PS Act broadly set out duties and responsibilities of employees. In addition, other enactments and the common law are the source of further duties.

#### **Compliance with a lawful and reasonable direction**

- 3.3.2 Employees are required to follow directions that are both lawful and reasonable and given by someone with authority to do so. This obligation applies pursuant to the common law and as recognised in the Code.
- 3.3.3 A direction must be reasonable in the circumstances and needs to be proportionate to the end to be achieved.
- 3.3.4 A direction needs to contain the language of command, and specify what actions should and/or should not be taken. A direction can take many forms such as a highly formal document or an oral instruction.

#### **Care and diligence in connection with employment**

- 3.3.5 Employees are required to act with care and diligence in connection with APS employment.
- 3.3.6 Care and diligence have their ordinary dictionary meanings of 'serious attention and solicitude to work' and 'earnest effort to accomplish what is undertaken'.<sup>11</sup> The standard of care and diligence required of an employee may depend on their role and level of responsibility. For example, the level of care and diligence required of senior managers responsible for the delivery of a program of work may be higher than that of other employees delivering single elements of that program. It is expected that employees are fair minded and take reasonable steps to keep themselves informed, capable and aware of the law when exercising their role and responsibilities.

- 3.3.7 In some cases, the skills and experience of the employee may be relevant to whether they have acted with care and diligence. For example:
- a. an employee who has received training in a specialist skill may be expected to exercise those skills—a person who was known not to have those skills could not reasonably be expected to exercise them
  - b. an employee with many years of relevant experience might reasonably be expected to discharge their duties more effectively than an employee who had no previous directly relevant experience.

#### **Duty of loyalty and fidelity**

- 3.3.8 The courts have confirmed that APS employees are bound by a common law duty of loyalty and fidelity to their employer and may have common law obligations that go beyond this given their role in supporting responsible government.<sup>12</sup> This may include, for example, obligations in respect of confidential information.
- 3.3.9 The application of this duty in the context of disclosing information is outlined in [Section 4: Managing information](#).

### **3.4 Unacceptable behaviour**

- 3.4.1 The Fair Work Commission has made clear that the community expects a standard of behaviour that allows employees to go to work each day and do their jobs without having their personal dignity diminished.<sup>13</sup>
- 3.4.2 The *Work Health and Safety Act 2011* (WHS Act) requires employees to manage risks to health and safety, including workplace bullying, by eliminating them as much as is reasonably practicable.
- 3.4.3 The Code requires APS employees, when acting in connection with APS employment, to treat everyone with respect and courtesy, and without harassment.
- 3.4.4 Courteous workplace behaviour is not meant to impose rigid rules on workplace styles or on workplace relationships and social activities. Rather, courteous behaviour recognises that people with different backgrounds, interests and personal values need to get along with each other in the workplace.

#### **Workplace harassment**

- 3.4.5 Workplace harassment entails offensive, belittling or threatening behaviour directed at an individual or group of employees. Such behaviour is unwelcome, unsolicited, usually unreciprocated and usually, but not always, repeated. Reasonable management action carried out in a reasonable way is not workplace harassment.
- 3.4.6 Even if the behaviour is not meant deliberately, it can still be harassment where a reasonable person would conclude that it would humiliate, offend, intimidate or cause a person unnecessary hurt or distress.
- 3.4.7 Workplace harassment can involve any person in the workplace. For example, it can occur between employees at any classification level, or may involve contractors and labour hire staff.

- 3.4.8 Some forms of harassment may also be workplace bullying. Bullying at work, as defined at section 789FD of the *Fair Work Act 2009*, occurs when a person or a group of people repeatedly behaves unreasonably towards a worker or a group of workers at work, and the behaviour creates a risk to health and safety. Bullying does not include reasonable management action carried out in a reasonable manner.
- 3.4.9 Safe Work Australia has published [Dealing with Workplace Bullying—A Workers Guide](#) to help employees determine if workplace bullying is occurring and how the matter may be resolved.
- 3.4.10 The *Fair Work Act 2009* provides that a worker may apply to the Fair Work Commission for an order to stop bullying at work from continuing. Information about how to make an application for an order to stop bullying is available on the Fair Work Commission’s [website](#).
- 3.4.11 The Fair Work Commission’s [Anti-Bullying Benchbook](#) is a useful resource for those seeking to understand what is considered reasonable in the context of the Fair Work Commission’s anti-bullying jurisdiction. It may also prove helpful in the context of understanding harassment.
- 3.4.12 Examples of behaviours that are not, in themselves, harassment include:
- a. expressing differences of opinion
  - b. making a complaint about a manager’s or other employee’s conduct, if the complaint is made in a proper and reasonable way—see also [Section 9: Reporting suspected misconduct](#)
  - c. performance management, if it is conducted in a reasonable manner.
- 3.4.13 Some forms of harassment may also be discrimination. Under discrimination law it is unlawful to treat a person less favourably on the basis of particular protected attributes such as a person’s sex, race, disability or age. The law also has specific provisions relating to sexual harassment, racial hatred and disability harassment. Examples of discriminatory harassment include:
- a. telling insulting jokes about particular racial groups
  - b. sending explicit or sexually suggestive emails or text messages
  - c. displaying racially offensive or pornographic posters or screen savers
  - d. making derogatory comments or taunts about a person’s disability
  - e. asking intrusive questions about someone’s personal life, including his or her sex life.
- 3.4.14 The Australian Human Rights Commission (AHRC) can investigate and conciliate complaints under anti-discrimination legislation. Further information is available from the AHRC’s [website](#).

#### **Failure to act with respect and courtesy**

- 3.4.15 Behaviour that falls outside the definition of workplace harassment may still constitute a failure to act with respect and courtesy. Examples include:
- a. questioning a colleague in a raised voice, accusing them of bias, or claiming they are unprincipled
  - b. yelling and/or speaking without allowing others to be heard
  - c. ignoring and working around someone who should be involved in the process
  - d. displaying a contemptuous attitude towards other employees

- e. attempting humour by diminishing the dignity of a co-worker
- f. making belittling or derogatory remarks that diminish the dignity of other staff
- g. leaning toward or standing over a person so that they feel uncomfortable.

3.4.16 Certain behaviour, on its own, is not a breach of the Code. For example:

- a. Openly recording meetings—audio or video recording a meeting is legitimate and can lead to a more reliable and accurate record than note taking. However, secretly recording colleagues without their knowledge is inappropriate and discourteous, and in some circumstances may be unlawful.
- b. Challenging decisions when appropriate—within reason, an employee is entitled to press their position, just as a manager is entitled to take that position into account and make a management decision that disagrees with it.
- c. Asserting authority—when opinions differ, it is legitimate for a manager to end a discussion, after listening to the various points of view, by asserting their seniority and management prerogative.
- d. Discussing difficult issues—while potentially stressful, having a frank, polite, calm and rational discussion between an employee and a manager is an appropriate way of resolving grievances.<sup>14</sup> It may also have the effect of clearing up any misunderstandings or inaccurate assumptions. Discussions should remain work related and focus on particular behaviours and issues, rather than the individual.

#### Internet and email use

3.4.17 Email can promote informality and the sense of ‘having a conversation’ rather than writing official correspondence. Emails and other forms of online communication, such as instant messaging and social media posts, are official records. Online communication may also be disclosed under the *Freedom of Information Act 1982*. Employees are advised to take care that the content is accurate and the language and tone appropriate. [Section 4: Managing information](#) contains further information on recordkeeping requirements.

3.4.18 Employees are advised to follow agency policies and must obey agency directions regarding internet and email use.

#### Tip

The Australian Public Service Commission publishes guidance for agencies on managing the risks of [cyber-bullying of employees by members of the public](#). While this guidance is directed to managers of employees who may be exposed to this specific risk, it is a useful starting point for employees seeking to understand their obligations when interacting with colleagues and others online.

### Harassment contact officers

- 3.4.19 APS employees have an obligation to report suspected misconduct, including harassment and other unacceptable behaviour. See [Section 9: Reporting suspected misconduct](#) for further information.
- 3.4.20 Many agencies provide employees with access to specialist contact officers, sometimes called harassment or diversity contact officers. No specific legislative requirement exists for this practice. However, it is good practice. Contact officers do not resolve complaints. Instead, they provide information to employees, managers and supervisors about:
- a. processes and options for resolving complaints
  - b. what is harassing behaviour
  - c. sources of support—for example line managers, human resources staff and employee assistance programs.

#### Tip

Contact officers cannot always guarantee confidentiality, especially if there is a risk to employee health and safety. As a general rule, a contact officer should not give advice to both the complainant and the person against whom the complaint is made.

- 3.4.21 Harassment may also be ‘disclosable conduct’ as defined in the [Public Interest Disclosure Act 2013](#). Information about how to report disclosable conduct should be published on the relevant agency’s website. Further information about the public interest disclosure scheme is available on the Commonwealth Ombudsman’s [website](#).

## 3.5 Common queries

- 3.5.1 Guidance on matters commonly raised with the Australian Public Service Commission’s [Ethics Advisory Service](#) is outlined here.

### Conduct after hours

- 3.5.2 Some elements of the Code apply to behaviours ‘in connection with employment’ while others apply ‘at all times’.
- 3.5.3 The term ‘in connection with employment’ is not confined to the performance of job-related tasks or other conduct in the course of employment. Employees are required to comply with the Code when engaged in activities outside work hours and away from the workplace where there is some connection with their APS employment. This includes, for example, on work-related travel and during training. In certain circumstances it may extend to the use of social media or other online forums.

- 3.5.4 APS employees are entitled to a private life free of employer intrusion. However, the Code may apply to behaviours that, on their face, appear to be largely private. The Code applies where there is a connection between the behaviour and the agency's confidence in the capacity of the employee to perform their duties professionally. Also, the Code may be relevant because a behaviour may impact on the reputation of the agency or the APS.
- 3.5.5 See also [Section 6: Employees as citizens](#) for further information on employees making public comment, including online comments.

### **Safe workplaces**

- 3.5.6 The WHS Act requires employers and employees to maintain healthy and safe workplaces.
- 3.5.7 The WHS Act provides for health and safety committees, comprising employer and employee representatives, to facilitate cooperation on occupational health and safety matters.
- 3.5.8 Under section 28 of the WHS Act, while at work each APS employee must:
- a. take reasonable care for his or her own health and safety
  - b. take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
  - c. comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business to allow the person to comply with the WHS Act and
  - d. co-operate with any reasonable policy or procedure of the person conducting the business relating to health or safety at the workplace that has been notified to workers.
- 3.5.9 Comcare, the work health and safety regulator for the Commonwealth jurisdiction, has developed the [Work Health and Safety Codes of Practice 2011](#) to provide guidance on meeting obligations under the WHS Act and Regulations.

### **Misuse of alcohol or other drugs**

- 3.5.10 If an APS employee misuses alcohol or other drugs before, during or after working hours they may be in breach of the Code. This may occur if their performance, the safety of colleagues or the reputation of the APS or their agency is adversely affected. For example, an employee whose performance is affected by alcohol or drugs may fail to act with care and diligence in connection with their employment (section 13(2) of the PS Act), or they may be in breach of other Australian laws such as the WHS Act (section 13(4) of the PS Act).
- 3.5.11 The use of illicit drugs brings employees into contact with criminals and makes them vulnerable to blackmail. Some agencies have implemented drug and alcohol testing. It is also open to agency heads to issue reasonable directions to employees about their use of drugs or alcohol.
- 3.5.12 Agencies generally have policies that address the misuse of alcohol and other drugs. Further information about alcohol misuse and illicit drugs can be obtained from the Department of Health's [website](#).

### **Fostering diversity**

3.5.13 The Directions relating to the Respectful value require employees, having regard to their duties and responsibilities, to recognise and foster diversity. The APS Employment Principles also provide for a safe workplace where diversity is recognised and fostered. To foster diversity in the workplace, employees may need to:

- a. develop the work skills and abilities of others to help them reach their full potential, for example through training and support mechanisms such as reasonable adjustment
- b. recognise and value diverse skills, cultural values and backgrounds of people in the workplace
- c. encourage others to celebrate diversity
- d. implement workplace structures, systems and procedures to balance work and personal responsibilities.

3.5.14 Employees should uphold the principle of equal employment opportunity and act in accordance with policies aimed at addressing disadvantage. Disadvantage may be based on sex, Indigenous status, disability, race or ethnicity, or other differences such as age, sexual orientation, working styles, socio-economic background, educational level and family responsibilities.

3.5.15 Employees should be sensitive to diverse cultures, including different customs and personal behaviour.

### **Fair employment decisions and merit**

3.5.16 The APS Employment Principles require employment decisions to be fair. Engagement and promotion decisions are to be based on merit.

3.5.17 Treating people fairly is fundamental to good management.

3.5.18 Engagement and promotion decisions must be based on merit. Section 10A(2) of the PS Act clarifies that a decision relating to engagement or promotion is based on merit if:

- a. all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties
- b. an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process
- c. the assessment is based on the relationship between the candidates' work related qualities and the work-related qualities genuinely required for the duties
- d. the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties
- e. the assessment is the primary consideration in making the decision.

3.5.19 Chapter 2 of the Directions sets out the minimum requirements that agency heads and employees must meet to uphold merit in recruitment and selection.



- 3.5.20 The Directions set out a number of affirmative measures which modify the merit principle to promote diversity. In addition, exemptions apply in certain circumstances to State and Territory and Parliamentary Service employees, election candidates, statutory office holders and former employees. Exemptions may also apply following machinery of government changes.
- 3.5.21 Employment decisions that involve assignment of duties at or below an employee's classification level and opportunities to perform higher duties must be fair. The minimum requirements for decisions relating to assignment of duties and movement of employees between agencies are set out in Part 2.3 of the Directions.

#### **Bias in recruitment and promotion**

- 3.5.22 Employees making employment decisions must take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their duties. If a conflict of interest cannot be avoided and it has the capacity to impact on the decision it must be disclosed so it can be managed. Section 5: *Conflict of interest* [subsection 5.6 Personal Relationships](#) provides guidance on managing an assessment process where an employee involved in a recruitment or promotion decision, for example as a panel member, has a relationship with an applicant.
- 3.5.23 Promotion and engagement decisions, including the assessment of each candidate's relative suitability to perform the job, should be clearly and concisely recorded.
- 3.5.24 Further information about recruitment and promotion in the APS is available on the Australian Public Service Commission's [website](#).

#### **Honesty in recruitment and promotion**

- 3.5.25 Employees who are applicants for recruitment or promotion must ensure that the information they provide is complete and accurate. This may require disclosure of information that could indicate a heightened integrity risk. Disclosure may involve prior instances of APS misconduct, or criminal convictions that may be reasonably connected with the individual's APS duties and responsibilities. Investigations into suspected misconduct that were not finalised because the employee resigned during the course of an investigation may also need to be disclosed.
- 3.5.26 It may be acceptable for an employee to assist a colleague in preparing for a selection process. This could include, for example, reviewing an application for typographical errors or structure, or practicing interview techniques. It is not appropriate for an employee to write a colleague's application for them.
- 3.5.27 Employees must behave honestly and with integrity when giving a reference. Referees should have the courage to provide adverse information about the applicant where necessary, in the full knowledge that this information will be put to the applicant as part of the process. It is good practice for a referee who would feel obliged to offer an adverse comment, to alert the applicant to this when asked to be a referee. See also [Section 4: Managing information](#).



## **Review of actions**

- 3.5.28 Employees have a right to fair treatment in the workplace. APS decision-makers may need to consider the requirements of the administrative law framework when making decisions that affect other employees. Under section 33 of the PS Act, non-Senior Executive Service employees may seek review in most circumstances where they have a complaint about an action or decision relating to their employment.<sup>15</sup> Other avenues of review may also be available.
- 3.5.29 Information about the review of actions scheme is available from the Merit Protection Commissioner's webpages on the Australian Public Service Commission's [website](#).
- 3.5.30 An employee wishing to lodge an application for review must apply to their agency head in the first instance for most employment-related decisions and actions. If an employee is not satisfied with the outcome of an agency review, or if the agency head considers the action is not reviewable, the employee can apply to the Merit Protection Commissioner for external review.
- 3.5.31 In the case of findings of Code of Conduct breaches, and sanctions other than termination of employment imposed as a result of those findings, employees and former employees can apply for review directly to the Merit Protection Commissioner.
- 3.5.32 Making an application for review does not prevent an agency from proceeding with an action, or implementing a decision, that is subject to a review application.
- 3.5.33 Employees are encouraged to discuss concerns about their employment with their immediate supervisor as they arise. They can also seek advice from other appropriate sources within their agency. Alternative dispute mechanisms are increasingly being used to good effect by agencies to resolve employee grievances, saving time and money and rebuilding trusting relationships in the workplace.

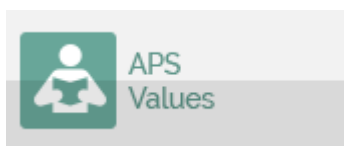
## **Review of security clearance decisions**

- 3.5.34 Security clearance decisions are made by the [Australian Government Security Vetting Agency](#), which is part of the Department of Defence. If an APS employee is not satisfied with a decision relating to their security clearance, they should first seek review by writing to the Secretary of the Department of Defence. If not satisfied with the response there may also be an avenue of review available through the Merit Protection Commissioner.

### **Agency policies and procedures**

- i. Useful sources of advice for agencies on developing productive and respectful workplace relationships include the [Guide for preventing and responding to workplace bullying](#) (2013, Safe Work Australia), the [Model Code of Practice—How to Manage Work Health and Safety Risks](#) (2011, Safe Work Australia) and the [Anti-Bullying Benchbook](#) (2014, Fair Work Commission).
- ii. Agencies that provide employees with access to specialist harassment contact officers are advised to ensure that these officers have appropriate training, support and assistance in understanding the nature of harassment, in responding to the needs of diverse employees, and in dealing with complaints in line with agency processes and the law.
- iii. Under common law, and as recognised in the Code, an agency head has the power to direct an employee and can expect these directions to be followed. The direction must be both lawful and reasonable, and must be given by someone with authority to do so. Appendix 5 of the Australian Public Service Commission’s guidance [Handling Misconduct](#) provides advice on how a lawful and reasonable direction may be expressed.
- iv. Agencies may wish to provide directions or guidance to employees on the types of private conduct that may be considered relevant to employment in the agency.

## Section 4: Managing information



### 4.1 Summary

- 4.1.1 Public access to government information is important in a healthy democracy. However, there are some circumstances where there is an overriding public interest in maintaining the confidentiality of information held by government.
- 4.1.2 Good recordkeeping is essential for good government and is an essential part of meeting accountability obligations. Records provide evidence of communications, decisions and actions.
- 4.1.3 Australian Public Service (APS) employees must be able to demonstrate that their actions and decisions have been made with appropriate consideration, with care and diligence, and using Commonwealth resources properly.

### 4.2 Public Service Regulation 2.1—disclosure of information

- 4.2.1 Leaking information is unacceptable. The inappropriate disclosure of information is against the public interest. Leaking information can damage Australia's international security or reputation and put the lives of Australian officials and others at risk. It can also damage the trust between the government, its public service advisers and the community.
- 4.2.2 Regulation 2.1 of the *Public Service Regulations 1999* (the PS Regulations) provides that an employee must not disclose information, without authority, which is obtained or generated in connection with APS employment if:
  - a. that information is communicated in confidence, or
  - b. it is reasonably foreseeable that the disclosure of the information could be prejudicial to the effective working of government.
- 4.2.3 The regulation includes some exceptions to these rules. Employees should familiarise themselves with the requirements of regulation 2.1.
- 4.2.4 The regulation is not designed to regulate the disclosure of official information comprehensively. It is intended to operate alongside other restrictions on disclosure, including in other Commonwealth laws and agency-level directions.
- 4.2.5 Regulation 2.1 is part of the APS Code of Conduct.

#### **Disclosure that may be prejudicial to effective working of government**

- 4.2.6 The restriction on disclosure provided by regulation 2.1 includes information about the deliberative process that leads to the formulation of policies or programs (regulation 2.1(3)).

4.2.7 When considering disclosing information, employees might consider on each occasion whether the disclosure of information could damage the effective working of government. This may include in situations where the information is unclassified and there is no relevant agency head direction about its disclosure.

#### **Information communicated in confidence**

4.2.8 An employee must also not disclose without authority information they obtain or generate in connection with their APS employment if the information was, or will be, communicated in confidence within government or was received in confidence from outside government. This is the case whether or not the disclosure would found an action for breach of confidence (regulation 2.1(4)).

4.2.9 Information must be communicated in confidence within government where an employee is given information on the understanding that it should not be disclosed, except in the course of official duties.

4.2.10 An understanding that information should not be disclosed except in the course of official duties may be implied by the nature and context of the information. The information may have been provided by a person outside the Government subject to an express confidentiality condition. In other circumstances it may have been implied that the information is to be used only for the purpose for which it was provided.

#### **Tip**

The exemptions and conditional exemptions set out in the Freedom of Information Act 1982 (FOI Act) are a useful starting point in determining which categories of information may fall within the scope of regulation 2.1. Further information about the operation of the FOI Act can be found on the Office of the Australian Information Commissioner's [website](#).

#### **Information already in the public domain**

4.2.11 Regulation 2.1 does not prohibit the disclosure of information that is already lawfully in the public domain.

4.2.12 However, there may be circumstances where it is not appropriate either to confirm or deny information already in the public domain. An example would be where a public servant makes a disclosure without authorisation which has the effect of confirming a previous leak of information.

### **4.3 Other non-disclosure obligations**

4.3.1 Many APS employees are subject to duties of non-disclosure contained in legislation that governs the functions of the agency for which they work. For example, an obligation on agencies that commonly impacts on the performance of an employee's duties concerns the application of the [Privacy Act 1988](#) (Privacy Act).

## Privacy law

4.3.2 The APS holds substantial personal information about the public and APS employees, including sensitive information. The principal legislation governing the management and use of personal information in the APS is the Privacy Act.

4.3.3 Section 6 of the Privacy Act defines personal information to mean:

... information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.

4.3.4 The Privacy Act includes 13 Australian Privacy Principles (APPs). The APPs set out standards, rights and obligations for the collection, use, disclosure and storage of personal information, including sensitive information. The APPs apply to all APS agencies. APS agencies need to comply with their APP obligations when managing personal information about their employees as well as clients and stakeholders.

## Personal information

4.3.5 Under APP 6, an agency can use or disclose personal information only for a purpose for which it was collected, unless an exception applies or consent is obtained. APP 6 provides a number of exceptions, such as where an individual could reasonably expect the entity to use or disclose the information for a secondary purpose which is related to the primary purpose. Another exception is where the use or disclosure is required or authorised under an Australian law, including the *Crimes Act 1914* (Crimes Act), the *Archives Act 1983* (Archives Act), the FOI Act and the *Public Service Act 1999* (PS Act) and regulation 9.2 of the [PS Regulations](#)—see subsection 4.3.7 below for more information.

4.3.6 APS employees are encouraged to familiarise themselves with these obligations before making any such disclosure. Employees should also comply with agency processes and procedures and must comply with them if directed to do so.

## Personal information of employees

4.3.7 Regulation 9.2 of the PS Regulations provides an exception to the use and disclosure provisions of the APPs by providing authority for the use and disclosure of personal information. The regulation allows agency heads to use or disclose personal information in circumstances where the use or disclosure is necessary or relevant to the performance or exercise of employer powers.

4.3.8 An employee who believes an agency has disclosed their personal information unlawfully should first raise the matter with the agency. If they are not satisfied with the agency's response, they may complain to the [Office of the Australian Information Commissioner](#).

## **Protective Security Policy Framework**

4.3.9 Employees are advised to consider the requirements of the [Protective Security Policy Framework](#) (PSPF) when considering disclosing information. The framework provides the appropriate controls for the Australian Government to protect its people, information and assets, at home and overseas. Information about the PSPF can be found on the Attorney-General's Department's [website](#).

## **Dealings with ministers and their staff**

4.3.10 APS employees who deal with ministers or with ministers' offices may have access to many types of information communicated in confidence. The APS Code of Conduct (the Code) requires APS employees to treat any dealings with ministers and their staff with appropriate confidentiality.

## **Policy and guidelines**

4.3.11 Agencies may have policies and guidelines on disclosing information. If in doubt about whether information may be lawfully used or disclosed, employees should seek the advice of someone in their agency with appropriate authority.

## **4.4 Section 70 of the Crimes Act**

4.4.1 Unauthorised disclosure of official information may breach section 70 of the Crimes Act. This section makes it an offence for a Commonwealth officer to publish or communicate any fact or document, except where authorised to do so, which comes into his or her knowledge or possession and which it is his or her duty not to disclose. A breach of section 70 carries with it a maximum penalty of two years imprisonment.

4.4.2 A disclosure that breaches regulation 2.1 of the PS Regulations may also breach section 70 of the Crimes Act.

## **Former APS employees and contractors**

4.4.3 The Crimes Act prohibits Commonwealth officers, including contractors, and former Commonwealth officers from making an unauthorised disclosure of information that was protected at the time he or she ceased employment with the Commonwealth (section 70(2)). Information that is covered by regulation 2.1 of the [PS Regulations](#) may be protected information for the purposes of the Crimes Act—see subsection 4.2 for more information.

## **4.5 Disclosure in the course of duties**

4.5.1 APS employees disclose information routinely in the course of their duties. In making these disclosures, employees must uphold the APS Values and Code of Conduct and comply with all relevant laws.

4.5.2 APS employees may disclose information in accordance with an authorisation given by an agency head or a delegate, or where disclosure is otherwise authorised by law.

## **Freedom of Information Act**

- 4.5.3 Employees have pro-disclosure obligations under the FOI Act. The principle underlying the Act is that access to documents should be granted wherever possible.
- 4.5.4 Information about the operation of the FOI Act can be found on the Office of the Information Commissioner's [website](#). Information may also be obtained from an agency's FOI Contact Officer in the first instance.

## **Commercial-in-confidence information**

- 4.5.5 Confidential information should be managed in accordance with any relevant law and any confidentiality provisions in the related contract. Irrespective of the terms of the contract, disclosure of a supplier's confidential information may be necessary in some cases, for example to a parliamentary committee.

## **Making public comment in an official capacity**

- 4.5.6 Some APS employees, as part of their official duties, speak to, or write to, the media and others in the community. Employees may be called upon to act as the public face of their agency, or to explain the operations of policies.
- 4.5.7 APS employees have an important role to explain policies and analyse the reasons behind them, to assist the elected government to achieve its policy aims and to help meet program objectives. In doing so, employees should avoid partisan comment and ensure that their approach to speaking publicly about policies supports public confidence in the capacity of the APS to be impartial.
- 4.5.8 [Section 1: Working with the Government and the Parliament](#) provides guidance on the involvement of public servants in Government advertising and awareness initiatives.
- 4.5.9 When commenting publicly in an official capacity, employees remain bound by the APS Values and Code, including the duty not to disclose certain information without authority. Employees must also have regard to their agencies' policies relating to clearance of material for public release.

## **Providing information to Parliamentary Committees of inquiry and Royal Commissions in an official capacity**

- 4.5.10 The Department of the Prime Minister and Cabinet's [Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters](#) are designed to assist APS employees providing information to Members of Parliament.

## **4.6 Proper use of information**

- 4.6.1 APS employees must not make improper use of information obtained in their official capacity in order to gain, or seek to gain, a benefit or advantage for themselves or others, or to cause, or seek to cause, a detriment to their agency, the Commonwealth or any other person (subsection 13(10) of the PS Act).

- 4.6.2 Employees must have appropriate authorisation before obtaining, accessing or using information about another person, for example, taxation or child support records. The *Criminal Code Act 1995* makes it an offence for a Commonwealth officer to use official information to obtain a benefit for themselves or another person dishonestly or to cause detriment to another person (paragraph 142.2(1)). These provisions also apply to former Commonwealth public officials in relation to information obtained while employed by the Commonwealth. The offence attracts a maximum penalty of five years imprisonment.
- 4.6.3 Employees should also consider the agency's obligations under APP 6 when using personal information. An agency can only use personal information for a purpose for which it was collected or for a secondary purpose if consent is obtained or an exception applies. One exception is where the use of the personal information is required or authorised by an Australian law, such as regulation 9.2 of the PS Regulations.

## 4.7 Recordkeeping

- 4.7.1 The creation, maintenance and accessibility of Commonwealth records are key elements of sound public administration and accountability.
- 4.7.2 Good recordkeeping is important for an agency to:
- a. demonstrate it has taken all reasonable steps to identify and manage risks
  - b. provide assurance that administrative processes are adequate and have integrity
  - c. record significant events and demonstrate consideration of policy alternatives and decisions
  - d. be able to review its decisions and processes to identify strengths and weaknesses in the process and lessons for the future
  - e. provide support for the Commonwealth's position in the event of a legal challenge.
- 4.7.3 Records are not only essential for the conduct of Commonwealth administration but also:
- a. assist the Government and the public to scrutinise the decisions and activities of Commonwealth institutions
  - b. allow the community to retain and transfer knowledge, learn from past experience, and protect the interests of Australians collectively and individually
  - c. help satisfy people's interest in the decisions and actions of Government that affect their and previous generations' lives or shaped the development of Australia.
- 4.7.4 The level and standard of recordkeeping needs to reflect the circumstances and the importance of the decision or action being recorded.
- 4.7.5 Generally, it is important to record and to maintain in an accessible form:
- a. decisions by Ministers, and the basis for them, including advice on options and risks
  - b. program decisions, including decisions affecting individuals or individual businesses that may be subject to administrative review, together with the basis for the decisions and the authority for making the decision

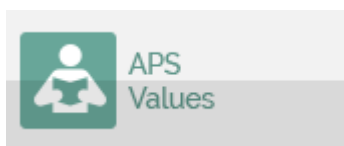


- c. significant events, including meetings and discussions with Ministers or stakeholders or members of the public which may be significant in terms of policy or program decision-making.

### **Agency policies and procedures**

- i. Agencies have found it useful to provide guidelines to employees on handling interactions with the Minister and their office in an effective and professional way.
- ii. Agencies are expected to establish clear policies and guidelines so that employees are aware of the provisions that govern the management of information in their agency, including employee obligations under privacy law.
- iii. Agencies may care to consider issuing directions:
  - a. that require employees to seek advice if they are unsure about whether to disclose information and to keep a record of that advice if authorised to disclose information
  - b. that require employees to comply with agency-level policies on the handling of information, for example protective security or record keeping policies
  - c. to specific groups of employees working with particular kinds of information, for example, employees working on a particular tender exercise.
- iv. When advertising a vacancy, agencies should determine whether a security clearance is required and, if so, at what level. Employees with access to Australian Government security classified resources must hold a security clearance at the appropriate level, in accordance with the PSPF. It is good practice to advise potential job applicants in advance about the need for a security clearance.
- v. Agencies may find it useful to develop policies on the application of the APS Values and Code of Conduct to the specific types of public comment that their employees are expected to make in their official roles.
- vi. Agencies are advised to develop protocols for handling media enquiries which are understood by all staff.

## Section 5: Conflict of Interest



### 5.1 Summary

- 5.1.1 The public is entitled to have confidence in the integrity of their public officials, and to know that an Australian Public Service (APS) employee's personal interests do not conflict with his or her public duties.
- 5.1.2 The APS Code of Conduct (the Code) requires employees to take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their employment.
- 5.1.3 A real conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.
- 5.1.4 An apparent conflict of interest occurs where it appears that an employee's personal interests could improperly influence the performance of his or her duties but this is not in fact the case.
- 5.1.5 The appearance of a conflict can be just as damaging to public confidence in public administration as a conflict which gives rise to a concern based on objective facts.
- 5.1.6 Conflicts of interest, real or apparent, cannot always be avoided. Where this is the case, the Code requires employees to disclose details of any material personal interest of the employee in connection with their employment. This obligation is analogous to the general duty of officials to disclose interests under section 29 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 5.1.7 Where there is credible evidence that a personal interest has compromised the decision made by an employee, that situation should be handled as suspected misconduct. See [Section 9: Reporting suspected misconduct](#) for further information.

### 5.2 Disclosing material interests

- 5.2.1 The Code requires that where a material personal interest cannot be avoided, the employee must disclose that interest so that it can be managed.
- 5.2.2 To be 'material' a personal interest needs to be of a type that can give rise to a real or apparent conflict of interest. Personal interests do not give rise to a conflict of interest unless there is a real or sensible possibility of conflict and not simply a remote or theoretical possibility of conflict. If no reasonable person could draw a connection between the employee's personal interest and their duties, then the personal interest is not 'material'.
- 5.2.3 The Department of Finance has published similar [guidance](#) about the meaning of a 'material' interest.<sup>16</sup>

- 5.2.4 The purpose of disclosure is to ensure that heads of agencies are aware of any personal interests or relationships of employees which improperly influence, or could be seen to improperly influence, employees in their duties.
- 5.2.5 It may be possible to make arrangements to avoid the conflict. For example, duties can be reassigned, or the employee can stand aside from relevant decisions. Disclosures and strategies to manage them should be recorded appropriately.
- 5.2.6 An employee holding a security clearance is subject to a separate requirement to notify their agency of any change in personal circumstances. The purpose of this notification is to determine the employee’s suitability to access Australian Government resources. Guidance on notification requirements under the [Protective Security Policy Framework](#) can be found in the [Agency personnel security responsibilities guidelines](#) published by the Attorney-General’s Department.

**Regular declarations**

- 5.2.7 Agency heads and Senior Executive Service (SES) employees are subject to a specific regime that requires them to submit, at least annually, a written declaration of their own and their immediate family’s financial and other material personal interests.
- 5.2.8 A [template](#) that agencies may wish to adapt for this purpose is available on the Australian Public Service Commission’s website.
- 5.2.9 To whom this declaration must be made will depend on the employee’s role. Generally, SES employees declare their interests to their agency head, and agency heads declare their interests to the Minister. Statutory office holders generally declare their interests to the Minister and in accordance with any requirements in legislation specific to their office.
- 5.2.10 If the statement discloses a conflict, the parties must take steps to resolve it. Employees do so in consultation with their agency head, and an agency head must take steps to resolve any conflict in which they, themselves, are involved, in consultation with the Minister.
- 5.2.11 Agencies may choose to require similar regular written declarations of other employees at particular risk of conflict of interest. Activities which may involve a heightened risk of conflict of interest for employees are shown in Table 1.

**Table 1: Agency activities with heightened risk of conflict of interest<sup>17</sup>**

Function	Activity
Procurement and recruitment	<ul style="list-style-type: none"> <li>i. procuring goods or services</li> <li>ii. tendering for and managing contracts</li> <li>iii. engaging and promoting employees</li> <li>iv. making appointments to statutory positions</li> </ul>
Regulating individual or business activities	<ul style="list-style-type: none"> <li>i. inspecting, regulating or monitoring standards, businesses, equipment or premises</li> <li>ii. issuing qualifications or licences</li> </ul>

Function	Activity
	iii. issuing or reviewing fines or penalties
Distributing goods, services or funds	i. providing a service ii. allocating grants of public funds iii. allocating subsidies, financial assistance, concessions or other relief
Making binding decisions	i. issuing determinations on matters ii. passing binding judgements iii. exercising statutory powers iv. voting as a member of a board or committee

5.2.12 It may be useful to require declarations when certain events occur, for example on appointment to a board or committee or before making certain types of decisions. The extent to which routine declarations are required of employees in each agency will depend on assessments of the sensitivity of the work, the administrative and resource implications, and the risks involved.

#### **What needs to be disclosed?**

5.2.13 There is no standard list of items that must be disclosed. It is the responsibility of employees to consider and disclose those personal interests or relationships that influence, or could be seen to influence, their actions.

5.2.14 The [conflicts of interest template](#) available on the Australian Public Service Commission's website provides examples of the types of interests and relationships that could be considered.

5.2.15 Factors to be taken into account in considering what to disclose include:

- a. the particular roles and responsibilities of the employee's agency and its probity concerns
- b. the particular roles and responsibilities of the employee.

5.2.16 The types of financial interests that may need to be disclosed include directorships, shareholdings, real estate, trusts or involvement in self-managed superannuation funds which have the potential to conflict with official duties.

5.2.17 Personal and other interests that may need to be disclosed include family relationships, sexual relationships or relationships formed through work or engagement with the local community, including sporting, social, cultural or voluntary activities, which have the potential to conflict with official duties.

5.2.18 As well as financial interests and personal relationships, certain types of incidents may need to be disclosed. For example, most agencies have policies on the registration of gift or benefits. Some agencies may require employees to disclose offers which were not accepted, for example where the offer could be perceived as a bribe.

- 5.2.19 The Australian Security Intelligence Organisation manages the [Australian Government Contact Reporting Scheme](#). Employees should complete a contact report when a contact, either official or social, with embassy or foreign government officials within Australia or foreign officials or nationals outside Australia, seems suspicious, persistent or unusual in any respect, or becomes ongoing. Foreign officials could include trade or business representatives. The scheme also requires employees to complete a contact report for instances when an individual or group, regardless of nationality, seeks to obtain official information for which they do not need to have access in order to fulfil their work function.
- 5.2.20 Agencies may require employees to report contact with other groups of people, for example contractors involved in a tender process, or criminal elements.
- 5.2.21 Disclosure promotes transparency, and is always better than the employee trying to manage the situation by themselves.

### **Interests of immediate family members**

- 5.2.22 Employees must disclose any personal interests or relationships of their immediate family that are known to them, where they consider that these interests influence, or could be seen to influence, the decisions they are taking or the advice they are giving. The term ‘immediate family member’ applies to spouses and dependent children. It may also apply to any other relatives and close friends who live with the employee or with whom the employee has a dependent relationship.
- 5.2.23 If a disclosure contains the personal information of a family member it will generally be necessary for the employee to obtain the family member’s consent for the collection of this information, consistent with the requirements of the Australian Privacy Principles contained in the [Privacy Act 1988](#) (Privacy Act).
- 5.2.24 If consent is not given, or is unable to be sought, then the employee should discuss with his or her agency head, in general terms, their understanding of the conflict of interest. The agency head can then decide what action may need to be taken.

## **5.3 Managing conflicts of interest**

- 5.3.1 Agency heads are responsible for ensuring that conflicts of interest are effectively managed. The agency head must also monitor compliance with the agency’s policy for disclosing and managing conflicts of interest to meet the requirements of the PGPA Act.
- 5.3.2 Agency heads may decide to put in place systems that give primary responsibility for reviewing and managing disclosures to senior SES level staff, for example a Deputy Secretary, the Head of Corporate Services or an Area or State Manager.
- 5.3.3 A system for registering interests is necessary if the interests are to be managed properly. Such systems will need to:
- ensure that disclosures of conflict of interest are managed in accordance with the Privacy Act
  - ensure that disclosures are retained in accordance with the [Archives Act 1983](#)

- c. monitor disclosures to ensure they remain current—this might include, for example, internal controls or external audit
  - d. bring any serious real or apparent conflicts of interest to the attention of the agency head.
- 5.3.4 Generally, disclosures of interest will be held with the employee’s personnel records. Where a disclosure is made for the purpose of a certain decision it is appropriate to include a copy in the file relating to the decision.

### **Assessing the materiality of a conflict of interest**

- 5.3.5 Factors that may need to be weighed in assessing the materiality of the conflict of interest include:
- a. the type or size of the employee’s personal interest, real or apparent
  - b. the nature or significance of the particular decision or activity being carried out by the agency
  - c. the extent to which the employee’s personal interest could affect, or be affected by, the agency’s decision or activity
  - d. the nature or extent of the employee’s current or intended involvement in the agency’s decision or activity.

### **Mitigating the conflict**

- 5.3.6 Where a conflict of interest, real or apparent, arises it will need to be managed. Appropriate management actions may include withdrawing from particular discussions, restricting the flow of information, abstaining from decisions, reassignment of duties, or relinquishing the interest or the position.
- 5.3.7 Agencies engaged in activities which may involve a heightened risk of conflict of interest for employees may develop a management plan that can be invoked when a conflict is disclosed. Section 16 of the PGPA Act sets out a duty for accountable authorities to establish and maintain appropriate systems of risk oversight and internal control.

## **5.4 Gifts and benefits**

- 5.4.1 Acceptance of a gift or benefit that is connected with an employee’s employment can create a real or apparent conflict of interest that should be avoided. At the extreme, it could be perceived as a bribe. Accepting a bribe is an offence under the Commonwealth *Criminal Code Act 1995* (the Criminal Code) and a breach of the Code of Conduct.
- 5.4.2 When deciding whether to accept a gift or benefit, an employee is advised to consult their agency’s policy. If an employee is uncertain about whether they should accept a gift or benefit, they should discuss the matter with their manager or supervisor.
- 5.4.3 It is not possible to establish definitive rules about accepting gifts or benefits, as the appropriate course of action will depend on the circumstances of the offer and the roles and responsibilities of the employee and the agency.

- 5.4.4 A gift or benefit may generally be accepted if the offer is open to the community, or to the APS as a whole. The risk that the offer could influence, or be perceived to influence, the decisions or actions of an individual employee in these circumstances is low. An example of this type of offer is a briefing or information session provided by a company to outline their services.
- 5.4.5 It is not usually appropriate to accept a gift or benefit from a person or company if they are involved in a tender process with the agency, either for the procurement of goods and services or sale of assets. The same principle applies where the person or company is the subject of a decision within the discretion or the sphere of influence of the APS employee concerned, for example a regulated business or a junior colleague.
- 5.4.6 Particular care should also be taken if the person or organisation is in a contractual or regulatory relationship with the agency, or if the organisation's primary purpose is to lobby Ministers, Members of Parliament or agencies.
- 5.4.7 If a gift or benefit is accepted, and its acceptance creates a material conflict of interest, it must be disclosed. Acceptance of a gift or benefit by an immediate family member may also create a material conflict of interest for an employee.
- 5.4.8 All valuable gifts or benefits should be registered. Any gift accepted by an employee because of their employment becomes the property of the agency, unless there are agency policies to the contrary.

#### **Hospitality, entertainment and sponsored travel**

- 5.4.9 The nature of work in the APS and the relationship of the APS with external clients and stakeholders is such that employees, particularly at senior levels, often deal with heads of corporations and senior business representatives, heads of non-government organisations, and international officials. In many of these sectors, offers of gifts and hospitality are commonplace.
- 5.4.10 Senior employees, and agency heads in particular, are often required to make finely balanced judgements as to whether an offered gift or benefit should be accepted.
- 5.4.11 When deciding whether to accept such an offer, an employee should balance the benefits to their agency and the APS with the risks that acceptance will raise, including the risk that agency employees or the public may view acceptance as compromising the employee's integrity.
- 5.4.12 It may be necessary to bring the offer to the attention of the agency head. An agency head may decide that the benefits to the agency of accepting an offer outweigh any risks that its acceptance creates. They may also decide that the risks can be effectively mitigated.
- 5.4.13 While it may be in the interests of the agency, or the government, for employees to accept invitations to some events, it is not generally appropriate for them to accept offers of paid travel or accommodation associated with their attendance. As a general rule, the Commonwealth pays for employees to travel as part of their official duties.

5.4.14 Loyalty reward points such as frequent flyer points ceased to accrue with the introduction of the [Whole of Australian Government Travel Arrangements](#) on 1 July 2010. Any points accrued after this date must be reversed in accordance with the guidance on the Department of Finance [website](#).

### **Accepting fees**

5.4.15 Generally, it is expected that employees will not accept outside payment for activities considered part of their normal duties. However, there will be circumstances where the agency considers acceptance of a fee to be appropriate. For example, if an employee is offered a fee to speak at a work-related conference, it may be accepted providing the agency receives the benefit, not the individual.

### **Awards and prizes**

5.4.16 A conflict of interest would not generally arise from acceptance of a prize or award that was open to the wider community.

5.4.17 A conflict of interest may arise if the award or prize is offered as a result of attendance in an official capacity at an external work-related event. Offers of awards or prizes that are connected with work should be considered in accordance with agency policy. Some agencies allow prizes to be raffled by their social clubs, or some other arrangement whereby the agency benefits rather than the individual.

## **5.5 Offering gifts and benefits**

5.5.1 Employees should ensure that their decisions are transparent and their intent clear when offering gifts and benefits—including official hospitality—to people or representatives of organisations, such as members of an international delegation. Depending on the circumstances, a payment characterised as hospitality or a promotional expense may be considered a bribe, particularly if the payment is lavish, disproportionate or over-frequent.

5.5.2 Employees must comply with the PGPA Act—see [Section 7: Using Commonwealth resources](#) and any relevant [Accountable Authority Instructions](#).

5.5.3 As a general principle, gifts and benefits should be representative of the agency and proportionate to the occasion.



- 5.5.4 Consistent with Australia’s obligations under the Organisation for Economic Co-operation and Development (OECD) [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#), under section 70.2 of the Criminal Code it is an offence to bribe a foreign public official, whether in Australia or in another country. An Australian in another country who bribes or attempts to bribe an official of that country can be prosecuted for bribery in an Australian court. Where an employee becomes aware of information which they suspect relates to the bribery of a foreign public official by another employee, they must report it—see [Section 9: Reporting suspected misconduct](#). If the information relates to a person who is not an APS employee, the employee should discuss the matter with an appropriate senior person in their agency to determine the best course of action, which may include reporting the matter to the Australian Federal Police.
- 5.5.5 More information about foreign bribery is available from the Attorney-General’s Department [website](#).

## 5.6 Personal relationships

- 5.6.1 In carrying out their duties, employees may find themselves in situations where a decision has to be made that would directly affect a person with whom the decision-maker has a relationship, or has had a relationship in the past.
- 5.6.2 Where a person involved in a recruitment or promotion exercise has a relationship with an applicant that might give rise to a conflict of interest, it must be disclosed, for example to the delegate and any other panel members. It may then be decided whether the employee making the disclosure should stand aside from the process or the consideration of the particular candidate.
- 5.6.3 Where a panel member needs to provide a reference for a candidate it is advisable to disclose this at the start of the process. It is good practice for the reference to be provided before information on other applicants has been accessed to avoid any perception that it was influenced by the claims of the other candidates.
- 5.6.4 While it is not uncommon or wrong for couples or other family members to be working in the same agency it is not usually appropriate for one to have any line responsibility over another.

## 5.7 Grant selection

- 5.7.1 The granting of money to private and public agencies is a core approach used to implement government programs. Some of these grants are awarded through competitive programs in which publicly sought applications are assessed by ‘peer review’, a process that uses expert assessors to select the best projects for funding.
- 5.7.2 Grant assessors need to be particularly alert to the scope for real or apparent conflict of interest. They may have professional or personal relationships within the sector from which grant applications are sought.

## 5.8 Working with lobbyists

- 5.8.1 The [Lobbying Code of Conduct](#) (the Lobbying Code) imposes obligations on lobbyists and APS employees dealing with them.
- 5.8.2 The Lobbying Code aims to ensure that government representatives who deal with lobbyists are able to establish the interests the lobbyist represents in order to make appropriate judgements about their motives.
- 5.8.3 Compliance with the Lobbying Code means, in short, that:
- a. public servants can only deal with registered lobbyists
  - b. lobbyists are obliged to inform public servants of the third party interests they represent and the issues that the third party wishes the lobbyist to raise.
- 5.8.4 The Lobbying Code restricts the engagement of former government representatives in lobbying activities. SES employees and equivalents who leave the APS must not, for a 12 month period, engage in lobbying Government representatives on any matters in which they have had official dealings as public servants over their last 12 months of employment.

## 5.9 Outside employment

- 5.9.1 APS employees should consult their agency's policy when considering whether to engage in outside employment, including directorships of an organisation. Outside employment includes paid work, such as running a business, maintaining a professional practice, or acting as a tax agent, as well as unpaid work. Generally, employees are able to work outside the APS if it does not conflict with their official duties.
- 5.9.2 The main risk of engaging in outside employment is that it may create a real or apparent conflict of interest.
- 5.9.3 If an employee is inclined to accept an offer of outside employment they should notify their agency head, or a nominated person, so that the risks can be assessed. In deciding whether it is appropriate for an employee to engage in outside employment, a balance needs to be struck between the agency's interests and those of the employee. However, the overriding principle is the need to maintain public confidence in the integrity and administration of the APS.
- 5.9.4 Outside employment that would not otherwise be appropriate is not made acceptable by being undertaken during a period of leave, whether the leave is unpaid or paid and including annual/recreation and long service leave.
- 5.9.5 The interests of an agency can never be the same as the interests of a company with which it is in contractual relations. Agencies may need to take steps to ensure that an APS employee does not become a director of such a company. Company directors have duties under the *Corporations Act 2001* that may conflict with an employee's obligations under the *Public Service Act 1999*.

## 5.10 Post-separation employment

- 5.10.1 Many agencies have developed policies on identifying and managing the risks that arise from post-separation employment.
- 5.10.2 There are three key risks involved when an employee accepts employment in a field that is aligned to his or her APS responsibilities:
- a. that the employee, while still employed in the APS, would use their position to influence decisions and advice in favour of the prospective new employer
  - b. that the former employee would reveal confidential Commonwealth information to their new employer or provide other information that would give the new employer an advantage in its business dealings
  - c. that the former employee would exploit their knowledge of the APS and other areas of the Commonwealth public sector and the Government to lobby, or otherwise seek advantage, for their new employer in dealing with the Commonwealth. There may be a perception that the former employee will have a greater ability to influence their former colleagues in their decision-making.

### **Before leaving the APS—managing conflicts of interest**

- 5.10.3 Employees are required to disclose any conflict of interest as it arises. Agencies are advised to ensure that their system for registering and monitoring these disclosures brings to the attention of the agency head any conflict that may arise when an employee intends to separate from the APS.
- 5.10.4 Even where an employee receives an offer of employment that they are not inclined to accept, an apparent conflict of interest may still arise, for example where an employee involved in a tender process is offered employment by a tenderer.
- 5.10.5 On receiving advice of a conflict arising from an employee's intention to leave the APS, it would be good practice for the agency head, or a nominated person, to discuss with the employee steps to be taken to avoid or mitigate any conflict of interest while the employee is still employed in the APS. The steps may include:
- a. re-allocation of the employee's duties
  - b. temporary movement of the employee to a different work area
  - c. taking leave until the new appointment commences.
- 5.10.6 Agency heads should likewise consider appropriate steps to manage any conflicts if they themselves are offered employment outside the APS which they are inclined to accept. The nature and timing of steps they need to take will depend on the circumstances of the case. However, no later than the point at which an agency head is inclined to accept an offer, they should inform the Secretary of the Department of the Prime Minister and Cabinet, the Australian Public Service Commissioner and the Minister about their intentions and any conflict of interest arising as a result. They should also outline the steps they are taking to mitigate the risks.

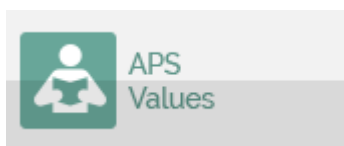
## Protecting the interests of the Commonwealth

- 5.10.7 There are clear provisions under law that protect the disclosure and use of official information after an employee has left the APS. See [Section 4: Managing information](#) for more information.
- 5.10.8 Agency heads may wish to restrict the actions of former employees in other ways. There are no legislative provisions which allow the Commonwealth to impose general post-separation employment restrictions on former employees. However, policy can operate to restrict the dealings of current employees with their former colleagues.
- 5.10.9 A restraint clause can be included in an employee's contract of employment, where an employee may agree not to work for certain employers, or establish certain types of businesses, for a period of time after they leave the APS. For such an agreement to be enforceable it would need to be 'reasonable' in terms of the interests of the parties and the interests of the public. Any such agreement must also comply with the competition provisions of the *Competition and Consumer Act 2010*.
- 5.10.10 It may also be appropriate to include provisions in contracts with successful tenderers to restrict the employment of APS employees who managed the tender process. Restrictions may apply during and after the tender process. Similar provisions may be included in requests for tender to preclude the solicitation, enticement or engagement of particular employees during the process.
- 5.10.11 Agency heads may put in place broad policy guidelines which include, for example, suggested periods of time that an employee should wait after leaving the APS before they work in business areas that have direct contact with their former agency. Some agencies, such as the Department of Defence, have developed common understandings of ethical behaviour with relevant industry associations to help promote the acceptance of agency guidelines. These arrangements are not enforceable, and depend on the goodwill of parties and their perceptions of mutual benefit.

### **Agency policies and procedures**

- i. Agency policy and guidance on identifying and managing conflicts of interest needs to be tailored to reflect the agency's key business risks.
- ii. A template for mandatory [SES conflict of interests declarations](#) is available for agencies to use, and may be adapted to meet particular requirements and for use in other situations. The template contains a consent form for immediate family members if disclosure of their interests is considered necessary.
- iii. Agencies are advised to set out clearly in their policies the circumstances in which a gift or benefit may be accepted and retained by an employee, or how it might otherwise be dealt with.
- iv. Agencies are encouraged to establish procedures to alert grant assessors to the need to identify, disclose and avoid or manage the conflicts of interest that are inherent in the grant selection process.
- v. It may be useful to develop strategies and plans to assist employees working with contractors to identify and disclose any conflicts of interest.
- vi. It is good practice for agencies to inform suppliers and contractors about their conflict of interest policies so that they can avoid making inappropriate offers.
- vii. Agencies are expected to ensure that employees are aware of the [Lobbying Code](#) and their obligations in dealing with lobbyists.

## Section 6: Employees as citizens



### 1.15 Summary

- 6.1.1 Australian Public Service (APS) employees are citizens and members of the community, but the right to serve the community as APS employees comes with certain responsibilities. These responsibilities include maintaining the confidence of the community in the capacity of the APS, and each member of it, to undertake their duties professionally and impartially.
- 6.1.2 Section 13(11) of the APS Code of Conduct (the Code) in the *Public Service Act 1999* (PS Act) requires APS employees to behave in a way that upholds the APS Values and Employment Principles in sections 10 and 10A of the PS Act, and the integrity and good reputation of the employee's agency and the APS at all times.
- 6.1.3 Areas where employees should take particular care about their behaviour as citizens and its impact on their duties include:
- when considering making public comment in an unofficial capacity
  - when participating in political activities
  - when considering an action that might raise a perception of conflict of interest, such as taking a second job, participating in voluntary activities, accepting a gift or benefit or making an investment—see [Section 5: Conflict of interest](#)
  - when working overseas—see [Section 8: Working overseas](#)
  - when they are identifiable as an APS employee.

### 1.16 Making public comment, including online

- 6.2.1 The engagement of APS employees in robust discussion is an important part of open government. The material in this section provides guidance for APS agencies about the limits on the ability of public servants to make public comments in an unofficial capacity. [Additional guidance about the limits on public comment for APS employees](#) is available on the Australian Public Service Commission website.
- 6.2.2 When making public comments, APS employees must ensure that their behaviour is consistent with the APS Values, Employment Principles and the Code.
- 6.2.3 The term 'public comment' has a broad meaning and includes comment made in forums or media such as:
- at public speaking engagements
  - during radio or television interviews
  - on online social media including blogs, social networking sites and other online media that allow user participation and interaction

- d. in correspondence with the press
- e. in books or notices
- f. in academic or professional journals
- g. in other forums where the comment is intended for, or may be accessed by, the community.

6.2.4 Some comments may be intended as private communication, but are public comment nonetheless. For example, an email from a colleague to a personal friend may be intended to be private. However, if that friend then forwards the email, or publishes it, the impact is the same as if the employee had done so.

Broadly speaking, APS employees make public comment in two capacities:

- a. official—that is, for purposes connected with their APS employment
- b. unofficial, including:
  - i. where an employee is a subject matter expert independent of their APS role and makes comment in that capacity
  - ii. in a private capacity.

#### **Making public comment in an official capacity**

6.2.5 Some APS employees, as part of their official duties, provide comment to the media and others in the community about agency activities and government programs. [Section 4: Managing information](#) describes the legal and regulatory framework that governs the disclosure and use of official information when making public comment in an official capacity.

#### **Making public comment in an unofficial capacity**

6.2.6 APS employees may generally make public comment in an unofficial capacity, so long as the comment is lawful and the employee makes it clear they are expressing their own views.

6.2.7 When employees make public comment in an unofficial capacity, it is not appropriate for them to make comment that is, or could be reasonably perceived to be:

- a. being made on behalf of their agency or the Government, rather than an expression of a personal view
- b. compromising the employee's capacity to fulfil their duties in an impartial manner—this applies particularly where comment is made about policies and programs of the employee's agency
- c. so harsh or extreme in its criticism of the Government, a Member of Parliament from any political party, or their respective policies, that the employee is no longer able to work professionally, efficiently or impartially
- d. prejudicial to the integrity or good reputation of the employee's agency or the APS
- e. so strong in its criticism of an agency's administration that it could seriously disrupt the workplace—APS employees are encouraged instead to resolve concerns by informal discussion with a manager or by using internal dispute resolution mechanisms
- f. a gratuitous personal attack that is connected with their employment

g. compromising public confidence in their agency or the APS.

6.2.8 At all times, APS employees are bound by the requirements set out in regulation 2.1 of the [Public Service Regulations 1999](#) concerning the disclosure of information.

6.2.9 In broad terms, regulation 2.1 provides that an employee must not disclose information, without authority, which is obtained or generated in connection with APS employment if:

- a. that information is communicated in confidence, or
- b. it is reasonably foreseeable that the disclosure of the information could be prejudicial to the effective working of government.

6.2.10 for further information about regulation 2.1, see [Section 4: Managing information](#)

### **Making unofficial public comment in a professional capacity**

6.2.11 Some employees are subject matter experts and might seek to make comment in that capacity.

6.2.12 In such cases, it is important for the employee to notify their manager of any comment they propose to make in their 'expert' role that might reasonably reflect on their agency or their APS employment. This would need to be considered in light of the agency's policies and the APS Values, Employment Principles and the Code.

6.2.13 Agency heads and employees need to manage situations where the relationship between the employee's professional interests and their APS employment may create ambiguity about the capacity in which the employee's comments are being made. An agency head may direct the employee not to comment where necessary, provided that such a direction is lawful and is reasonable in all the circumstances.

### **Agency policies**

6.2.14 Agencies are encouraged to develop their own policies setting out their expectations of their employees when making public comment in a private or unofficial capacity. A [template that agencies may wish to adapt](#) for this purpose is available on the Australian Public Service Commission's website.

## **1.17 Providing information to parliamentary committees of inquiry and Royal Commissions in a personal capacity**

6.3.1 An APS employee who makes a submission to, or appears as a witness before a parliamentary committee of inquiry or a Royal Commission should have regard to the [Government Guidelines for Official Witnesses Before Parliamentary Committees and Related Matters](#) (the Guidelines for Official Witnesses).



- 6.3.2 APS employee may also make submissions to a parliamentary committee of inquiry or a Royal Commission in a personal capacity. An employee appearing before a committee in a personal capacity should make it clear to the committee that their appearance is not in an official capacity. The employee must not communicate information in a way that implies their personal views are those of the agency, such as by using official letterhead or a signature block that identifies the employee's place of work. It is particularly important for senior employees to give careful consideration to the impact of any comment they might make. The Guidelines for Official Witnesses note that heads of agencies and other very senior officers need to consider carefully whether, in particular cases, it is practicable for them to claim to appear in a 'personal' rather than an 'official' capacity, particularly if they are likely to be asked to comment on matters which fall within, or impinge on, their area of responsibility.
- 6.3.3 Before submitting information in a personal capacity, employees should be aware of the legislation that restricts the disclosure and use of official information. See [Section 4: Managing information](#). The restrictions may provide grounds for the employee not to disclose certain information.

## **1.18 Participating in political activities**

- 6.4.1 APS employees may participate in political activities as part of normal community affairs. They may also join, or hold office in, political parties.
- 6.4.2 Public participation in political activities may raise perceptions of conflict of interest or partiality and should be considered carefully having regard to an employee's role and duties. Participation would generally not be appropriate where an employee's duties are directly concerned with advising on or directing the implementation or administration of government policy on those issues. See [Section 5: Conflict of interest](#).
- 6.4.3 Commonwealth anti-discrimination legislation prohibits discrimination against a person on the ground of political opinion. The legislation generally permits exemptions where action that might otherwise amount to discrimination is deemed essential to meet the requirements of the job. Such an exemption applies to employees of the Australian Electoral Commission.

### **Wearing or displaying political material while working**

- 6.4.4 Wearing or displaying political material by an employee is generally inappropriate. It may give the impression that the agency endorses the political material. In some circumstances, it may create doubts in the minds of clients as to whether their queries or applications will be handled impartially.

### **Political campaigning and fundraising**

- 6.4.5 Some employees, as private citizens, choose to campaign for candidates for political office. The role they play may range from handing out how-to-vote cards on election day to activities with a higher profile.

- 6.4.6 If an APS employee has a significant role in a political campaign, there is potential for a conflict of interest between taking a position on issues and impartially performing their official duties. The employee should discuss such potential conflicts with their agency. Ways of resolving such conflicts might include the employee taking leave, rearranging existing duties, transferring to other duties, or agreeing to take a less significant role in the political campaign.
- 6.4.7 If an APS employee is involved in political campaigning, they should make it clear they are not undertaking these activities as part of their official duties. For example, they should not wear anything that identifies them as an APS employee at party political meetings. APS employees must not use government resources including email, telephones, photocopiers and facsimile machines for any political activity.
- 6.4.8 An APS employee may apply to take leave without pay, annual/recreation or long service leave to assist with an election campaign.

### **1.19 Standing for Parliament**

- 6.5.1 APS employees must resign before nominating as a candidate for the Senate or House of Representatives. The election of a person who did not resign from the APS before nominating for election to the Federal Parliament would be held invalid.

### **1.20 Participating in state or local government activities**

- 6.6.1 APS employees may hold an office in local government organisations. However, agency policies or practices concerning outside employment may apply, particularly if participation in local government would adversely affect the capacity of the employee to carry out their duties. It is not necessary to resign to stand for election to a local government body.
- 6.6.2 APS employees should take care when considering, or commenting on, political or social issues related to their local government role, to ensure it does not conflict with their official duties.
- 6.6.3 APS employees intending to stand for election to State Parliament, or the Northern Territory or Australian Capital Territory legislative assemblies, should seek legal advice about any legislative provisions that require them to resign from the APS.<sup>18</sup>

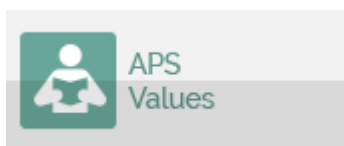
### **1.21 Participating in union activities**

- 6.7.1 APS employees are generally subject to the same workplace relations arrangements as the wider community. This is recognised in section 8 of the PS Act. Employees are free to choose whether or not to be a union member. No restriction applies under the PS Act about which union they may join, or the level at which they participate in union activities.
- 6.7.2 APS employees taking part in union activities, for example as officers or delegates of a union, must uphold the APS Values and Employment Principles and comply with the Code, including when making public comment.

### **Agency policies and procedures**

- i. Agencies may wish to develop policies, guidance, or training to help their employees uphold the APS Values and the integrity and good reputation of their agency and the APS, including when making public comment in an unofficial capacity. For example, agencies may wish to provide guidance on:
  - a. how to communicate appropriately in online forums, and how to evaluate whether a comment an employee proposes to make online is appropriate in a given set of circumstances
  - b. how to avoid potential perceptions of partiality when participating in political activities
  - c. appropriate use of ICT resources in the workplace, including appropriate use of work email and personal technology—such as smartphones—in work time. See [Section 7: Using Commonwealth resources](#).
- ii. Agencies are encouraged to ensure their managers become familiar with agency guidance on making public comment, and support them in facilitating discussions with their staff about what may be reasonable comment in a given set of circumstances. Case studies are a useful way of encouraging discussion, and the Australian Public Service Commission's [REFLECT](#) decision-making model is a helpful tool in guiding these discussions.

## Section 7: Using Commonwealth resources



### 7.1 Summary

- 7.1.1 To uphold the Accountable Value and the Code of Conduct (the Code), Australian Public Service (APS) employees are required to use Commonwealth resources in a proper manner and for a proper purpose.
- 7.1.2 'Commonwealth resources' is a broad term and includes money, goods, services, vehicles, office equipment, official records, office premises, telephones or other telecommunication devices and computers. It also includes the salary costs of APS employees.
- 7.1.3 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) is the primary piece of legislation governing financial resource management in the Commonwealth. The PGPA Act supports the efficient, effective, economical and ethical use of Commonwealth resources and is administered within the Finance portfolio. More information about the PGPA Act can be found on the Department of Finance [website](#).

### 7.2 Proper use of Commonwealth resources

- 7.2.1 APS employees and agency heads are officials for the purposes of the PGPA Act. Officials have general duties under the PGPA Act, which replicate similar provisions in the Code.
- 7.2.2 The PGPA Act duty to act honestly, in good faith and for a proper purpose requires officials to manage or use public resources in a proper manner.<sup>19</sup> This is analogous to the obligations set out in the Code for employees to act with honesty and integrity and to use Commonwealth resources in a proper manner and for a proper purpose. Generally, if employees uphold the Code they will also be complying with the general duties of officials.<sup>20</sup>
- 7.2.3 Many agencies have well-developed policies and instructions on the proper use of Commonwealth resources. Employees may need to have regard to a range of relevant legislative instruments and policies, including the [Commonwealth Grants Rules and Guidelines](#), the [Commonwealth Procurement Rules](#) and the [Protective Security Policy Framework](#).
- 7.2.4 Where there is no legislation, instruction or policy on a matter, employees should exercise good judgement to decide if a proposed use of Commonwealth resources is proper. They should ask themselves whether the action is of a kind that a reasonable person would agree was a proper use of Commonwealth resources.

#### Private use of Commonwealth resources

- 7.2.5 Commonwealth resources should not be used for private gain.

- 7.2.6 APS employees have access to computers and other technology at work. Although this equipment is provided for official use, agency-specific policies may allow for limited personal use in some circumstances, for example reasonable and necessary telephone or email communication with family.
- 7.2.7 Employees may generally have limited use of Commonwealth premises for incidental purposes such as social club activities or meetings between employees and their representatives.
- 7.2.8 Some agencies provide employees access to computers and other technology that enable them to work from home. Employees should follow their agency's policies on equipment provided for use at home.
- 7.2.9 Many agencies have Commonwealth vehicles available for general work use. Employees should follow agency policies on the use of vehicles.

### **Time**

- 7.2.10 The time that APS employees spend at work is a valuable Commonwealth resource. Employees must use this time for a proper purpose, and should not use their skills or working time, or those of other APS employees, for personal benefit or gain.
- 7.2.11 In most cases, failure of an employee to use their work time properly should be addressed through the agency's performance management system. In some circumstances, particularly more serious cases, it may be appropriate to view private use of work time as a suspected breach of the Code.

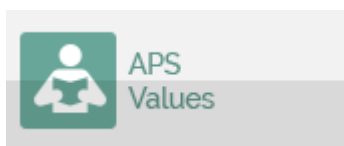
## **7.3 Fraud**

- 7.3.1 Fraud against the Commonwealth is a serious matter for all APS agencies and the community. It prevents Commonwealth funds from reaching intended targets, affects the Government's ability to deliver key services, and damages the Government's integrity.
- 7.3.2 Fraud is a criminal offence under Chapter 7 of the Commonwealth *Criminal Code Act 1995*, and a breach of the Code of Conduct.
- 7.3.3 The obligations of accountable authorities to prevent, detect and deal with fraud are set out in the PGPA Act; section 10 of the *Public Governance, Performance and Accountability Rule 2014* (fraud rule); and the *Commonwealth Fraud Control Policy* (fraud policy), coordinated by the Attorney-General's Department. *Resource Management Guide No. 210* provides guidance on best practice fraud control arrangements.
- 7.3.4 The fraud policy defines fraud as 'dishonestly obtaining a benefit, or causing a loss, by deception or other means', and sets out binding procedural requirements for APS agencies relating to fraud awareness, prevention and investigation. It also requires APS employees to take into account the need to prevent and detect fraud as part of their responsibilities.
- 7.3.5 The management of fraud risk is a collective responsibility of all Commonwealth officials or persons otherwise engaged by the Commonwealth. Everyone in an agency is responsible for the proper management of Commonwealth resources.

### **Agency policies and procedures**

- i. Agencies are expected to establish clear policies and guidelines so that employees are aware of the provisions that govern the proper use of Commonwealth resources in their agency.
- ii. Agencies may care to consider issuing directions that require employees to comply with control measures put in place to meet the requirements of the PGPA Act and other relevant legislative instruments and policies that may apply.
- iii. Most agencies have systems in place to monitor the use of equipment and facilities, such as telephones and computers. It is important that this type of monitoring takes account of employees' privacy and the maintenance of good workplace relations. Employees need to be informed of the level of privacy they can generally expect at work.

## Section 8: Working overseas



### 8.1 Summary

8.1.1 Section 13(12) of the *Public Service Act 1999* (PS Act) provides that an Australian Public Service (APS) employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia. This element of the APS Code of Conduct (the Code) applies to APS employees working overseas in addition to other elements of the Code.

8.1.2 Australian officials overseas are seen at all times as representing Australia both in the performance of their official duties and in the manner in which they conduct themselves as private individuals. Regardless of their official roles or responsibilities, their status as foreign officials means their actions will be subject to greater scrutiny and public interest than they would be at home. Australian officials abroad may also face dilemmas in the area of personal conduct which do not arise in Australia—whether in social, cultural, financial or personal settings.

8.1.3 APS employees should ensure that they understand their obligations before travelling overseas on official business. If an employee's agency does not have a policy on conduct overseas, it may be useful to refer to the [Code of Conduct for Overseas Service](#) published by the Department of Foreign Affairs and Trade (DFAT).

8.1.4 A breach of the behavioural standards set out in agency policy on conduct overseas may be a breach of the Code. Where no agency-specific policy applies, the DFAT Code of Conduct for Overseas Service provides guidance on the types of behaviour overseas that would be likely to result in misconduct action.

### 8.2 Authority of the Head of Mission

8.2.1 Heads of Mission are responsible for all aspects of Australia's relationship with their countries or organisations of accreditation, and for leading and managing the whole-of-government policies at posts.

8.2.2 An employee who is not employed by DFAT is subject to the overall management and control of their agency head while overseas. However, they may be subject to the direction of the Head of Mission on any matters within that employee's area of responsibility that could affect:

- a. Australia's bilateral relations with the host government
- b. the administration of the mission, or
- c. the good reputation of the mission or Australia in the host country.

8.2.3 APS employees should discuss their responsibilities to the Head of Mission with their managers.

8.2.4 In the event of any difference between a Head of Mission and an APS employee not employed by DFAT concerning the extent of the Head of Mission's authority, either the Head of Mission or the employee may request their agency to take up the matter with the other agency. Pending the resolution of any such differences by those agencies, the employee is expected to comply with the written directions of the Head of Mission.

### 8.3 Conflicts of interest

8.3.1 Gift giving is a social custom in many countries, but acceptance may create a perception that the employee's integrity has been compromised. [Section 5: Conflict of interest](#) sets out the requirement for APS employees to take reasonable steps to avoid any real or apparent conflict of interest in connection with their employment. If a material conflict of interest cannot be avoided, it must be declared.

8.3.2 Agencies may have specific policies on when gifts or benefits may be accepted when working overseas and how such gifts or benefits should be declared. For example, the DFAT Code of Conduct for Overseas Service sets out the circumstances in which a gift may be accepted by DFAT employees working overseas.

### 8.4 Improper use of position

8.4.1 Australians expect the highest levels of ethical behaviour by their representatives overseas, even when these representatives are off duty. The Code may govern the private behaviour of APS employees overseas insofar as that behaviour is in some way connected to the employee's duties. Inappropriate conduct in the private life of an APS employee who is working overseas is likely to reflect poorly on the good reputation of Australia, as well as the employee's agency and the APS.

8.4.2 An APS employee working overseas must take care not to participate in any activity designed to circumvent local rules. Examples of this type of activity may include purchase of duty free goods on behalf of locally engaged employees, and exchange of funds at unofficial or 'black market' rates. If an employee is uncertain about whether an activity falls in this category they should consult the Head of Mission.

8.4.3 Bribing or attempting to bribe a foreign public official is a serious crime. Australian companies or individuals that bribe, or attempt to bribe, an official in a foreign country can be prosecuted under Australian law and the laws of foreign countries. Engaging in such conduct may also affect an employee's suitability to work for the Australian Government and/or to hold a security clearance. [Section 5: Conflict of interest](#) provides further information about employee obligations in this regard.



## Household members

- 8.4.4. Unless they are APS employees themselves, household members of APS employees serving overseas are not subject to any obligations under the PS Act or agency directions in relation to conduct. However, the high visibility of household members as part of an Australian official community means that any inappropriate behaviour or violation of the host country's laws by a household member can damage the reputation of the agency, the post and Australia. Consequently, incidents of misconduct by household members may result in an APS employee's posting being terminated.
- 8.4.5. The DFAT Code of Conduct for Overseas Service provides further information about the responsibilities of DFAT employees in this regard.

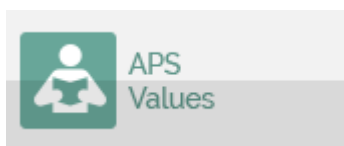
## 8.5 Reporting inappropriate behaviour

- 8.5.1. How an employee reports behaviour they suspect may be a breach of the Code on the part of another employee will depend on the circumstances. More serious misconduct should normally be reported and dealt with in a more serious and more formal way. In some cases, especially those involving relatively minor matters, it may be most appropriate to raise the matter directly with the employee concerned in the first instance. This will be a matter of judgement. If in doubt employees should discuss the matter with their manager or someone in authority in their agency. See [Section 9: Reporting suspected misconduct](#) for further information.
- 8.5.2. Where an employee becomes aware of serious criminal misconduct by another Australian who is not an APS employee, the employee should report the matter to the Head of Mission who will, in turn, consider the most appropriate course of action. This may include reporting the matter to local law enforcement authorities or the Australian Federal Police.
- 8.5.3. Suspicions of foreign bribery should be reported to the Head of Mission and the Australian Federal Police in all cases. Further information about foreign bribery is available from the Attorney-General's Department [website](#).

### Agency policies and procedures

Agencies may wish to require employees travelling overseas on official business, including those on long-term postings, to provide an undertaking that they will comply with certain behavioural standards, such as those set out in the DFAT [Code of Conduct for Overseas Service](#).

## Section 9: Reporting suspected misconduct



### 9.1 Summary

- 9.1.1 Most public servants meet the standards set out in the Australian Public Service (APS) Values, Employment Principles and Code of Conduct (the Code). Sometimes, however, APS employees do not act in a way that is consistent with expectations.
- 9.1.2 Managers and supervisors are often best placed to observe any indicators of behaviour inconsistent with the Code. They are also key to setting an ethical tone in their teams and building the trust that is necessary for employees to report their suspicions or concerns.
- 9.1.3 APS employees discharge their duties most effectively where the environment in which they operate has clear and robust internal accountability arrangements and a strong culture of personal and organisational integrity.
- 9.1.4 APS employees have a responsibility to report misconduct, and not to turn a blind eye to unacceptable behaviour. How they should report misconduct will depend on the circumstances. More serious misconduct should normally be reported and dealt with in a more serious and more formal way. In some cases, especially those involving relatively minor matters, it may be most appropriate to raise the matter directly with the employee concerned in the first instance. This will be a matter of judgement. If in doubt employees should discuss the matter with their manager or someone in authority in their agency.

### 9.2 Obligation to report

- 9.2.1 Clause 1.3(f) of the [Australian Public Service Commissioner's Directions 2013](#) (the Directions) require all APS employees, having regard to their duties and responsibilities, to report and address misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way. Failure to report suspected misconduct may itself warrant consideration as a potential breach of the Code.
- 9.2.2 Employees may also have reporting obligations under their agency's fraud control guidelines and other agency instructions. An agency's arrangements under the [Work Health and Safety Act 2011](#) may require employees to report safety issues or hazards including workplace bullying.

## 9.3 Making a report

- 9.3.1 Usually, an employee who observes something they believe may amount to misconduct, including criminal behaviour, should report it within the agency. The agency may need to report an incident of criminal behaviour to the appropriate law enforcement body. There may be circumstances where, even after the employee has reported an incident of criminal behaviour to their agency, that employee has an obligation to report the incident to the appropriate law enforcement agency. If in doubt about whether to report the matter, for example to the relevant police authority, employees may contact that authority, seek further advice from their agency or seek advice from the Australian Public Service Commission's [Ethics Advisory Service](#).
- 9.3.2 In most cases it will be appropriate for an employee to bring suspected misconduct to the attention of their line manager in the first instance. If the line manager is involved in the matter, the report can be made to another senior employee or to nominated points of contact—these arrangements are generally set out in agency policies and procedures for reporting misconduct.
- 9.3.3 A report made to a supervisor, authorised officer<sup>21</sup> or agency head may also be a disclosure under the *Public Interest Disclosure Act 2013* (PID Act). The PID Act recognises the concern some employees may have that they will be victimised or discriminated against for reporting suspected misconduct. It provides legislative protection for disclosers and sets out agencies' responsibilities in this regard. Further information about the PID Act is available on the Commonwealth Ombudsman's [website](#).
- 9.3.4 When making a report an employee must ensure they uphold the APS Values, the Code, and all privacy and non-disclosure law—see also [Section 4: Managing information](#). An employee should avoid discussing the matter after lodging the report other than where it is necessary for the report to be considered or investigated.
- 9.3.5 A report of suspected misconduct may contain allegations that are misconceived, without substance, or vexatious. Where there are concerns about the way, or the circumstances, in which a particular employee has reported misconduct, the report may in itself constitute a breach of the Code.
- 9.3.6 Employees who report suspected misconduct outside the PID Act are legally protected from discrimination or victimisation. Retaliatory action taken against someone who in good faith has reported suspected misconduct could be a potential breach of a number of elements of the Code, including the requirements to:
- a. behave with integrity in connection with employment
  - b. comply with all applicable Australian laws
  - c. treat everyone with respect, courtesy and without harassment.
- 9.3.7 In general, these protections also extend to witnesses in misconduct cases.

- 9.3.8 It is often necessary to reveal the identity of the complainant or a witness in order to provide the person under investigation with the information they need to respond fully to the allegations. Even if the agency considers it is not necessary to reveal identities of complainants and witnesses during the course of its own investigation, the identities may be revealed on review by the Merit Protection Commissioner, the Fair Work Commission, in related criminal proceedings, or in the context of a legal challenge to the decision.

#### **Misconduct affecting an employee personally**

- 9.3.9 It is open to an employee to apply to their agency head, and in some circumstances to the Merit Protection Commissioner, for a review under section 33 of the *Public Service Act 1999* (PS Act) of an action relating to their employment. Under the PS Act, an action includes a failure to act. An employee may apply for a review of a failure to act on a report of misconduct they have made into alleged behaviour that affects them personally. Time limits apply to the making of applications. Further information is available from the Merit Protection Commissioner's [website](#).

### **9.4 Reporting suspected misconduct by an employee in another agency**

- 9.4.1 An employee may witness suspected misconduct by an employee in another APS agency. In such cases, reports may be made to the agency head of the person suspected of misconduct who will then decide whether to investigate the matter.
- 9.4.2 The report may also be able to be made as a public interest disclosure under the PID Act. The [Commonwealth Ombudsman](#) can provide information about how to make a disclosure in these circumstances.

### **9.5 Reporting integrity risks and suspected misconduct that relates to an employee's engagement**

- 9.5.1 Prospective employees must disclose any information about them that may indicate a heightened integrity risk, including prior misconduct. See [Section 3: Relationships in the workplace](#) for more information about honesty in recruitment.
- 9.5.2 An employee who becomes aware that another APS employee has behaved dishonestly or failed to act with integrity in connection with their engagement should report this as suspected misconduct. Section 15(2A) of the PS Act allows action to be taken in relation to APS employees who have, before engagement, provided false or misleading information, or otherwise failed to act with honesty or integrity in connection with their employment.

## 9.6 Reporting suspected misconduct by a former employee

- 9.6.1 Agencies may decide to continue, or initiate, an investigation into suspected misconduct of a former employee. A finding of breach of the Code may be made after an employee has separated from the APS. In deciding whether to pursue a matter, agency heads may consider factors such as the availability of evidence; the scope for giving the former employee an opportunity to comment on the case against them; the costs associated with any investigation; and the risks of damage to the reputation of the agency or APS if the matter is not investigated.
- 9.6.2 A report of suspected misconduct by a former employee may also attract the responsibilities and protections of the PID Act.

## 9.7 What will happen to a report of suspected misconduct?

- 9.7.1 How a matter will be investigated will depend on the circumstances. The procedures made under section 15(3) of the PS Act by individual agencies relating to handling misconduct are generally available on agency websites. Information about the investigation process can be found in the Australian Public Service Commission's guidance on [Handling Misconduct](#).

### Agency policies and procedures

- i. Agencies are encouraged to provide and promote mechanisms for reporting suspected misconduct.
- ii. Agencies may have more than one way for their employees to report suspected misconduct because of the complexity of their operations or to manage particular types of suspected misconduct. Employees may be more comfortable reporting concerns if they can do so relatively informally and have the option of discussing their concerns with the person to whom they are reporting.

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<sup>1</sup> In some statutory authorities, relevant legislation requires considerable independence from Ministers, and accountability direct to the Parliament.

<sup>2</sup> Agency or program legislation may specifically constrain ministerial direction.

<sup>3</sup> Section 57 of the *Public Service Act 1999* sets out the roles and responsibilities of Secretaries of Departments providing, among other things, that they are the principal official policy adviser to the 'Agency Minister' and responsible for assisting Ministers to fulfil their accountability obligations to the Parliament to provide factual information about the operation and administration of the department.

<sup>4</sup> The *Australian Public Service Commissioner's Directions 2013* (clause 7.4(2)) provide for a mandatory grant of leave without pay to work under the MOP(S) Act and for a right of return to the agency at the employee's classification level immediately before the leave was granted, or if the classification no longer exists, at an equivalent classification determined by the agency head.

<sup>5</sup> Parliament of Australia, *Parliamentary Privilege Resolution*, section 1, paragraph 16, 25 February 1988.

<sup>6</sup> See, for example, Organisation for Economic Cooperation and Development, *Government at a glance 2013*, p. 20.

<sup>7</sup> See *Green v Daniels* (1997) 51 ALJR 463.

<sup>8</sup> See the Administrative Review Council's *Best practice guide 1: Decision making—Lawfulness* (2007) and other guides in this series.

<sup>9</sup> Commonwealth Ombudsman, 2014. *Complaint management by government agencies: An investigation into the management of complaints by Commonwealth and ACT Government*, p. 9.

<sup>10</sup> Commonwealth Ombudsman, 2009. *Better practice guide to managing unreasonable complainant conduct*, p. 1.

<sup>11</sup> Clause 1.4 of the Directions clearly sets out what it means to be respectful. 'Courtesy' is given its ordinary meaning: 'excellence of manners or behaviour; politeness' (Macquarie Concise Dictionary).

<sup>12</sup> *Bennett v President, Human Rights and Equal Opportunity Commission* (2003) 134 FCR 334.

<sup>13</sup> *Curr v Australian Taxation Office*, PR953053, 8 November 2004.

<sup>14</sup> See generally *Curr v Australian Taxation Office*, PR953053, 8 November 2004.

<sup>15</sup> Certain actions are not reviewable, and these are listed in Schedule 1 to the *Public Service Regulations 1999*.

<sup>16</sup> See *Resource Management Guide No. 203: General Duties of Officials*, paragraph 49, for further information.

<sup>17</sup> Adapted from *Victorian Public Service, Managing Conflicts of Interest: A guide to policy development and implementation*, October 2014, p. 5.

<sup>18</sup> For Australian Capital Territory elections, see for example sections 103 and 104 of the *Electoral Act 1992*.

<sup>19</sup> Section 8 of the PGPA Act defines 'proper' as 'efficient, effective, economical and ethical'.

<sup>20</sup> Department of Finance, *Resource Management Guide No. 203: General Duties of Officials* explains the PGPA Act duties and their connection with the PS Act. The interaction of these parallel requirements is also explained in Appendix 4 of the Australian Public Service Commission's guidance on *Handling Misconduct*. More information about the PGPA Act is available on the Department of Finance's [website](#).

<sup>21</sup> An authorised officer appointed under the *Public Interest Disclosure Act 2013*.