

***GUIDELINES ON OFFICIAL CONDUCT OF
COMMONWEALTH PUBLIC SERVANTS***

Public Service Commission

Canberra 1995

FOREWORD

It is important for public servants to be aware of their rights and responsibilities both externally in dealing with clients, the public, ministers and the Parliament and within the Australian Public Service in dealing with other public servants.

All public servants work in a highly interactive environment, and have responsibilities for the way they conduct their relationships with their colleagues and others. Public servants, especially those with responsibility for policy development, work closely with government ministers and their staff. Some have quite frequent dealings with parliamentarians, for example, as witnesses before parliamentary committees. Many public servants work directly with the public, dealing with clients on a day-to-day basis, and many others are directly involved in the delivery of programs.

The Management Advisory Board recognises that most members of the public service know what good conduct is. It also recognises that it is not possible to legislate for integrity. The Board considers that these revised *Guidelines* represent key reference material which can contribute to a uniform, high standard of conduct and behaviour in the public service. A high standard of conduct is central to the concept of an effective contemporary public service. It helps to maintain public confidence in the public service, and can contribute to better quality service to the Australian public.

These *Guidelines* do not have the answer to every problem of ethics or conduct that may arise at work. They provide a set of principles which will point to an answer in many cases, and detailed discussion of a wide range of issues. Beyond this, and particularly in relation to ethical problems, there is much to be gained from discussing such problems with peers and with experienced and respected colleagues.

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Chairman
Management Advisory Board

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OVERVIEW ———

THE GUIDELINES AND THEIR CONTEXT

An enduring feature of Commonwealth administration has been the existence of a significant core Public Service, which has as a base the traditional public service values of upholding high standards of probity, integrity and conduct, efficiency, and loyalty to governments while providing frank and fearless advice. Whilst the nature and focus of the Australian Public Service (APS) has changed markedly over the years and will continue to do so, these traditional values continue to play an integral role.

In recent years, the APS has demonstrated its contribution to the community, not only in terms of upholding high standards of probity, integrity and conduct, but increasingly in terms of the outcomes it achieves, the quality of the advice it offers to government and the services it provides on behalf of the Commonwealth.

In July 1993, the Management Advisory Board (MAB) released an important paper on future directions, *Building a Better Public Service*. In that paper, the Board set out the key public service values which define the APS's dominant characteristics and the nature of employment in the Service. These values are set out on page 2. The Board's clear view is that an ethos built upon these values is essential to meet the challenges of the future.

The key public service values are an important expression of general principles. The Australian Constitution provides the context, as does legislation enacted by the Commonwealth Parliament. However, it is not possible to legislate exhaustively to cover all conduct or all possible circumstances. Nor does that seem desirable in a climate of continuous improvement where processes can and should change for the better in the light of experience, to the benefit of the community. Creativity and innovation are highly regarded in the APS, as is the increasing focus on best practice in policy formulation and program implementation. This includes fulfilling our obligations, as public servants, to be responsive to governments and to account for results and the associated processes.

The values articulated by MAB provide a fundamental guide to public service behaviour. There are, however, areas where more specific propositions operate. Successive governments have legislated in some areas concerning official conduct in the APS, and much of the material in these *Guidelines* is based on this legislation. This legislation includes provisions of the *Public Service Act 1922*, the Public Service Regulations and the *Crimes Act 1914*. Two of the key Public Service Regulations setting out standards of official conduct are reproduced on page 4.

KEY PUBLIC SERVICE VALUES

Responsiveness to governments:

- serving loyally and impartially ministers and the Government; and
- providing frank, honest and comprehensive advice.

A close focus on results:

- pursuing efficiency and effectiveness at all levels; and
- delivering services to clients conscientiously and courteously

Merit as the basis for staffing:

- ensuring equality of opportunity; and
- providing fair and reasonable rewards as an incentive to high performance.

The highest standards of probity, integrity and conduct

- acting in accordance with the letter and spirit of the law;
- dealing equitably, honestly and responsively with the public; and
- avoiding real or apparent conflicts of interest.

Strong commitment to accountability:

- contributing fully to the accountability of the agency to the Government, of the Government to the Parliament and of the Parliament to the people;
- fully supporting the administrative and legal measures established to enhance accountability; and
- recognising that those delegating responsibility for performance do not lose responsibility and may be called to account

Continuous improvement through teams and individuals;

- striving for creativity and innovation; and
- making individual and team performance count.

The key public service value of maintaining the highest standards of probity, integrity and conduct provides the principal focus of the *Guidelines on Official Conduct of Commonwealth Public Servants*. Accordingly, there is a strong focus in these *Guidelines* on acting in accordance with the law; dealing equitably, honestly and responsively with the public; and avoiding real or apparent conflict of interests. The *Guidelines* also provide coverage of most of the other key public service values, notably responsiveness to governments, a focus on results, merit in staffing and accountability.

Where material in these *Guidelines* is based on legislation, the legislative provision is referred to explicitly in the text. Public Service Regulations expressly require public servants to comply with all acts and regulations that apply to them in performing their duties. The Public Service Regulations also require public servants to have regard to any applicable official guidelines.

Public servants should be aware that failing to follow the law or to carry out accountability obligations are serious matters. In such cases, charges may be laid under the Public Service disciplinary provisions and sanctions imposed.

The *Guidelines* are structured around the professional relationships that are a central part of work in the public service: relationships with the government, the Parliament, the public and public service colleagues. The *Guidelines* also cover some important aspects of individual behaviour. Here the focus is not so much on the kinds of relationships mentioned above, but on need for individual public servants to be aware of the sensitivities which can arise because of inappropriate or questionable behaviour.

The current APS environment allows for a significant degree of managerial discretion and public servants are more frequently expected to make ethical judgments which have implications for themselves and for the reputation of their department or the APS as a whole. It is, therefore, essential that public servants are aware of the material covered by these *Guidelines*. Where no specific guidelines exist, the key public service values should underpin the actions of public servants.

A strong public service culture, based on these values, will engender confidence that decisions will be made in the public interest, with a focus on probity and results. When used together, these *Guidelines* and the key public service values provide comprehensive guidance to public servants on matters of official conduct.

KEY PUBLIC SERVICE REGULATIONS

Duties of officers

8A An officer shall:

- (a) perform with skill, care, diligence and impartiality the duties of his or her office, or any other office whose duties he or she is directed to perform, to the best of his or her ability;
- (b) comply with any enactments, regulations, determinations, awards or departmental instructions applicable to the performance of his or her duties;
- (c) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (d) have regard to any official guidelines or recommendations applicable to the performance of his or her duties;
- (e) in the course of his or her duties treat members of the public and other officers with courtesy and sensitivity to their rights, duties and aspirations;
- (f) provide reasonable assistance to members of the public in their dealings with the Service and help them understand their entitlements and requirements with which they are obliged to comply;
- (g) avoid waste, or extravagance in the use, of public resources;
- (h) not take, or seek to take, improper advantage, in the interests, pecuniary or otherwise, of the officer, any other person or any group, of any official information acquired, or any document to which he or she has access, as a consequence of his or her employment; and
- (i) at all times behave in a manner that maintains or enhances the reputation of the Service.

Conflict of interests

8B. An officer who has an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties shall, as soon as possible after the relevant facts have come to the officer's notice:

- (a) disclose that interest to his or her supervisor; and
 - (b) take whatever action is required to avoid that conflict.
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**PART I
SERVING THE
GOVERNMENT**

**This part covers the relationship between the Public Service,
the Government and the Parliament.**

CHAPTER 1

THE PARLIAMENT, THE GOVERNMENT AND THE PUBLIC SERVICE

This chapter deals with the relationship between the public service, the government and the Parliament. It covers:

- **responsiveness and impartiality**
- **accountability**
- **handling disagreements and criticisms**
- **public servants and the Government during the pre-election period**
- **working with staff of ministers and members and senators**

Central to a proper understanding of the conduct required of public servants is a sound appreciation of the respective roles of the Parliament, the Executive Government and the public service. Also of relevance are the courts and the various offices established by the Parliament, such as the Auditor-General and the Ombudsman, that operate as checks and balances within the system. Parliamentarians, ministers and public servants operate under the law within a democratic political system in which there is ultimate accountability through elections to the Australian people.

Responsiveness and impartiality

The public service exists to provide advice to, and give effect to the policies of, the government of the day elected by the Australian people. Elected governments, whatever their political make-up, are entitled to expect loyalty and dedication from the public service. This professional commitment is owed to the government of the day, not to the political party or parties to which the members of the government belong. This distinction is generally well understood by politicians and public servants.

Governments increasingly have to make their decisions and implement their programs in an environment of rapid social, economic and political change, to which they need continually to respond and adapt in order to achieve their policy objectives.

To assist government in this, the public service itself needs to be able to act quickly and effectively, both in implementing policies and programs, and in providing advice to government in the process of policy development.

The main responsibilities of a public servant to the government are:

- to carry out decisions and implement programs promptly, conscientiously and effectively; and
- to provide advice which: represents the facts accurately; is impartial and maintains a high standard of professional integrity; is sensitive to the intent and direction of government policy; and is as comprehensive as practicable in setting out the advantages and disadvantages of the main options available and their consequences.

In both policy development and program implementation, public servants need to exercise judgment as to which facts are most relevant, which policy options are most applicable and which considerations in delegated decision-making are most important. In exercising judgment, merit should be the basis of considering choices to be made or put forward for consideration. Public servants should ensure that ministers are aware of the values which underlie the policy advice they have given, for example, by underlining the possible differential impact of policy options on different groups.

Particularly with policy development, it will often be necessary to concentrate on what is realistically achievable within a restricted time-frame. Exhaustive canvassing of all possible options, or proposing courses of action which, while theoretically feasible, are unrealistic in the context of the overall policy framework, is unlikely to be helpful or sufficiently responsive to government's real needs.

This concept of responsiveness implies willingness and capacity to perform effectively and efficiently in whatever circumstances exist. The ability to understand and interpret the priorities of the government of the day and what it is trying to achieve, while drawing attention to any unforeseen implications, is an essential quality. It enables the public service to adapt as necessary to new policy agendas and provide effective support when governments change. The alternative risks inadvertently giving too much emphasis to the advisers' personal values and preferences.

The need to maintain the ability of the public service to serve whatever government is elected has long been recognised by successive governments. It is reflected, for example, in the fact that government has been distanced from staffing of all but the top public service positions by specific legislation. Since Federation, despite occasional criticisms from both sides of politics, the public service has earned a high reputation for its preparedness to serve the government of the day with professional integrity. To maintain that reputation, it is incumbent on all public servants to be sensitive to the distinction between service to the government and political activity of a partisan kind, especially when elections are being held.

Public servants frequently receive requests to provide services to ministers which do not relate solely to ministers' portfolio responsibilities within the government, but are also relevant to one or more of their other roles, such as being members of political parties or of the Parliament. The provision of possible answers to parliamentary questions is an example. This is both inevitable and acceptable and compliance with such requests is within the conventions relating to the role of public servants.

Sometimes a public servant will be concerned about a request from a minister on the ground that the request appears to be based wholly or excessively on party political interests. It is not possible to define exhaustively those cases where the public servant would have justifiable concerns. An example might be a request to use departmental facilities for the production of overtly party political material for publication.

Where public servants have doubts about the correctness of a request for material or facilities they should raise the matter with a senior officer of the department. It may in turn be necessary for the senior officer to discuss the matter with the minister or the minister's office.

General guidance on providing information to individual members of Parliament is to be found in *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters—November 1989*. (These are reproduced as an appendix to *Accountability in the Commonwealth Public Sector* (MAB-MIAC Publication No 11, June 1993).

Accountability

Accountability is fundamental to good governance. The Australian people regard a high level of accountability as one of the essential elements of efficient, impartial and ethical administration. Public acceptance of government and the roles of public servants depends on trust and confidence. This trust is founded on the practice of government and administration accounting for its actions.

A description of accountability in the Australian system of government is to be found in *Accountability in the Commonwealth Public Sector*.

A brief summary of the main points is set out below:

- adherence to the rule of law is of paramount importance;
- governments, formed by the party or parties able to maintain the confidence of the House of Representatives, account to the Australian people at elections;
- ministers are responsible first for the overall administration of their portfolios both in terms of policy and management, and secondly, for carriage in the Parliament of their accountability obligations to that institution;

- public servants are employed by the Commonwealth to enable the government of the day to give effect to its policies. Most public servants are engaged in ongoing administration of existing policy but public servants also provide advice to ministers on changes to policy and assist them in fulfilling their parliamentary obligations, for example, by briefing them for parliamentary debate and preparing answers to parliamentary questions and letters from members and senators;
- although public servants are employed by the Executive Government and are not subject to direction in their day-to-day work by the legislature, the responsibility of the Parliament to scrutinise the activities of the government and to examine the expenditure of public monies means that public servants are required to give information directly to the Parliament, and in particular its committees. This role has become more important as governmental activity has increased:
 - the role includes providing information about policy on behalf of ministers but does not extend to justifying or defending policy judgments or options;
 - public servants are required to explain and justify management and administrative decisions where it is not possible or necessary for ministers to deal with matters personally and where policy judgments are not involved; and
 - public servants appearing before parliamentary committees should read the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters—November 1989*.
- Public servants are similarly required to be frank, open and cooperative with the various offices and bodies established under legislation (or the Constitution in the case of the High Court) such as the Auditor-General, the Administrative Appeals Tribunal and the Ombudsman, whose responsibilities require them to review governmental activities from their particular standpoints;
- Public servants are frequently required to exercise statutory powers, often as delegates of ministers or other office-holders. The accountability requirements will vary according to the nature of the power, but when exercising statutory powers public servants must understand the specific requirements of the legislation, any requirements of procedural fairness, and the relative degrees of responsiveness to, and independence from, the views of others, including ministers and supervisors, that may be required; and
- public servants provide services on behalf of the government to all manner of client groups and individuals in a great variety of circumstances and in so doing:
 - they must adhere to the law and to the policies of the government rather than pursue their own concept of the public interest;

- they are accountable to the government for the quality of their dealings with the members of the public with whom they deal; and
- they are required to deal equitably, justly and responsively with all individuals and groups.

Handling disagreements and criticisms

A sound appreciation of the respective roles of Parliament, the government and public servants by all concerned, together with a spirit of cooperation and good communication will minimise the likelihood of misunderstandings and difficulties arising. Nonetheless, there may be situations where public servants, in a full understanding of their responsibilities, face serious disagreements and disputes because of the position they are obliged to take as public servants.

Disputes between ministers and Parliament are nearly always subject to resolution through the political process.

Disagreements between ministers and public servants and any public criticism by ministers of their departments are in most cases addressed and resolved through discussion of the issues and consultation among ministers including, if necessary, the Prime Minister and with senior officials such as the Secretary to the Department of the Prime Minister and Cabinet. Where the disagreement does not involve the secretary of a department directly, intervention by the secretary may be needed to achieve a resolution. In those cases where a secretary is in disagreement with his or her ministers, the secretary might reasonably be expected to act as follows.

Matters where following a minister's instructions appears to conflict with the exercise of impartial professional judgment or affect the efficient administration of the department

If a secretary believes that a direction by a minister in relation to public presentation of facts or analyses could involve a compromise of professional standards or where the secretary disagrees with a ministerial instruction affecting the efficient administration of the department or with any ministerial criticism of the department, he or she should:

- set out points of disagreement clearly in writing to the minister and seek explicit written instructions;
- seek to discuss any criticisms with the minister; and accept and follow the minister's written instructions; or
- in the light of the minister's response, if still seriously concerned and after any appropriate consultations with colleagues, for example, with the Secretary to the Department of the Prime Minister and Cabinet or the Public Service Commissioner, seek

to have his or her views and the views of the minister brought before the Prime Minister. Pressing matters to this point would only be done after careful deliberation.

Matters where following a minister's instructions may involve a breach of the law

If a secretary believes that a proposed action or decision, authorised in writing by a minister, may be illegal, he or she should:

- if satisfied that there is justification for doing so, raise the matter with the minister orally or in writing, suggesting means by which the minister's objective might otherwise be achieved; and
- in the light of the minister's response, if still seriously concerned and after appropriate consultations, for example with the Secretary to the Department of the Prime Minister and Cabinet, the Secretary to the Attorney-General's Department or the Public Service Commissioner (on matters relating to the Public Service Act 1922), seek to have his or her views and the views of the minister brought before the Prime Minister. Where an instruction is known to be illegal, for example, a direction clearly inconsistent with a statute, the secretary must decline to follow the instruction.

Public servants and the Government during the pre-election period

Public servants have a duty to serve the government of the day, professionally and impartially. Successive governments have recognised that around the time of elections, there is a particular need for the public service not to be vulnerable to suggestions of lack of political impartiality.

Public servants need to be aware of the conventions relating to the caretaker period, the arrangements for pre-election consultation with the Opposition and to know how to handle requests by ministers which are believed to be partisan.

The conventions of the caretaker period

By convention, after the House of Representatives is dissolved, the Government assumes a 'caretaker' role. The main purpose of the caretaker arrangements is to enable governments to avoid the controversy that would inevitably accompany decisions taken immediately before an election of a kind which would limit the options available for an incoming government. In the main, their effect is to defer the taking of decisions which are likely to have continuing effect and where some delay can be accommodated. Whether or not a particular decision should be taken during the caretaker period is ultimately a matter for

considered judgment by a minister consulting with colleagues and the Prime Minister if the matter so requires. The Department of the Prime Minister and Cabinet provides advice drawing on basic principles and precedents.

Departments should not take any action that might cause a minister to breach the caretaker conventions. Public servants should not take any action or make any comments which might imply that a particular party would be successful at the coming election. (Chapter 6, Participating in Political Activities, deals with the issue of political participation by public servants in their private capacity.)

Apart from these constraints, the general rule is that the business of government as it involves ordinary matters of administration continues during caretaker periods. Public servants should continue to supply information and advice to ministers on the day-to-day business of government. Factual material, even where it might be drawn upon for inclusion in speeches for use during an election campaign, would normally be provided if requested by a minister. If a public servant receives a request to provide what might be seen as inappropriate support during a caretaker period, this should be drawn to the attention of a senior officer.

Pre-election consultation with the Opposition

There are guidelines on pre-election consultation between public servants and the non-government party or parties. The guidelines apply to pre-election, not just to caretaker, periods. The pre-election period begins three months before the expiry of the House of Representatives or from the date that the House of Representatives election is announced, whichever is earlier; the caretaker period begins from the date the House of Representatives is dissolved. The House expires three years after its first meeting, but is usually dissolved sooner.

The Guidelines for Pre-election Consultation with the Opposition which were re-issued by the Department of the Prime Minister and Cabinet in 1993 are set out below:

- The pre-election period is to date from three months prior to the expiry of the House of Representatives or the date of announcement of the House of Representatives election, whichever date comes first. It does not apply in respect of Senate elections only.
- Under the special arrangement, shadow ministers may be given approval to have discussions with appropriate officials of government departments. Party leaders may have other members of Parliament or their staff members present. A departmental secretary may have other officials present.
- The procedure will be initiated by the relevant Opposition spokesperson making a request of the minister concerned who is to notify the Prime Minister of the request and whether it has been agreed.
- The discussions will be at the initiative of the non-government parties, not officials. Officials will inform their ministers when the discussions are taking place.

- Officials will not be authorised to discuss government policies or to give opinions on matters of a party political nature. The subject matter of the discussions would relate to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementation of policies proposed by the non-government parties. If the Opposition representative raised matters which, in the judgment of the officials, sought information on government policies or sought expressions of opinion on alternative policies, the officials would suggest that the matter be raised with the minister.
- The detailed substance of the discussions will be confidential but the ministers will be entitled to seek from officials general information on whether the discussions kept within the agreed purposes.

Working with staff of ministers and members and senators

Much of the communication between ministers and public servants takes place through the staff of the minister's office. Public servants and ministerial staff should adopt a professional and commonsense approach towards achieving sound working relationships with each other.

Staff of ministers, including ministerial consultants, and staff of members and senators are employed under the *Members of Parliament (Staff) Act 1984* administered by the Department of Administrative Services.

A public servant may apply for and be employed in a position on a minister's staff. For the period that the public servant is employed by a minister, his or her duties, responsibilities and loyalties are to that person only. However, working on a minister's staff should not be viewed as an indication of a person's political bias but as a potentially valuable career opportunity. Similar considerations apply where public servants are employed on the staff of individual members and senators, including Opposition office-holders and shadow ministers.

Departmental Liaison Officers in ministers' offices are public servants, not employees under the *Members of Parliament (Staff) Act*. Their general working arrangements should be agreed between ministers and their departmental secretaries. Particular care may be needed if they remain in ministers' offices during election campaigns to handle ongoing liaison work. Their duties do not extend to assisting in ways which could lead to allegations that public servants are being used for party political purposes.

Ministers are able to engage a limited number of consultants for work on nominated projects or reviews either directly for the minister or on duties agreed between the minister, and the secretary of the department and under the secretary's supervision and direction. In the latter case, the minister, the secretary and the consultant should ensure there is a common understanding of the role the consultant is to have.

Staff and consultants returning to the public service

Staff employed under the Members of Parliament (Staff) Act who wish to return to work in the Australian Public Service (APS) have access to a Re-integration Assessment Committee, established by the Merit Protection and Review Agency which decides the actual level, and salary point, at which the officer may return to the Service. These staff retain the right to apply for positions within the Service during their employment with a member without having to take up any position they win on merit. This enables officers to establish the minimum level for re-integration into the Service on completion of their employment under that Act.

On returning to the Service an officer who was employed by a minister should be treated in a positive and professional manner by other public servants.

PART II SERVING THE PUBLIC

This part covers the obligations that public servants have in relation to members of the public. Issues covered include responsiveness to the public, making fair and equitable decisions which affect members of the public and explaining the reasons for those decisions.

CHAPTER 2

BEING RESPONSIVE TO THE PUBLIC

This chapter deals with the need for public servants to understand their obligations to members of the public. It emphasises the importance of responsiveness and service by focusing on:

- **being professional, courteous and helpful**
- **ensuring equity of access to programs**
- **improving the quality of service**

An overriding principle for public servants is the need to act according to the law. Being responsive does not mean that public servants can ignore the letter or the intention of the laws they administer or provide a benefit which is not provided for or which is denied by the legislation. A more detailed discussion of these issues is found in Chapter 3, Making Fair and Equitable Decisions.

Being professional, courteous and helpful

Public Service Regulation 8A (reproduced at page 4) outlines the conduct required of public servants in their relations with members of the public. In particular, public servants are required to:

- act professionally;
- be courteous and sensitive; and
- be helpful.

The public service takes pride in its ability to serve the public efficiently and effectively. Public servants are expected and are required to work with skill, care, diligence and impartiality (Regulation 8A(a)) and the public is entitled to expect public servants to display these characteristics when they are dealing with them.

Public servants are required to deal with members of the public (and their colleagues) with courtesy and sensitivity to their rights, duties and aspirations (Regulation 8A(e)). Further, they are required to provide reasonable assistance to members of the public in their dealings with the public service, and to help them to understand their entitlements and their obligations (Regulation 8A(f)).

In doing their work, public servants are expected to exercise a duty of care—that is, to exercise reasonable care—in giving information or advice. This principle applies equally, if not more, strongly in the case of written information or advice.

This need to exercise duty of care was put beyond doubt by the High Court in 1981 when it ruled, in the case of *L. Shaddock and Associates v The Council of the City of Parramatta*, that government instrumentalities may be liable in damages for the economic loss sustained by persons who act on advice negligently given by officials of those instrumentalities.

When information and advice are sought and provided, public servants should bear in mind the following:

- the public service has a duty to exercise reasonable skill and diligence to ensure that information and advice provided by public servants, upon which the recipients are likely to rely, are accurate;
- the need to be sensitive to the use an inquirer may make of information or advice sought;
- the need to exercise due care in informing and advising inquirers. The standard of care required will be related to the nature of the inquiry and the possible consequences that may arise from the provision of incorrect information or advice;
- when there are doubts about the reliability of the information, or the authority of the public servant to provide advice, these should be made known to the inquirer;
- where information or advice is being given on a matter that has not been finalised, the interim or conditional nature of the information or advice should be made clear;
- in some circumstances, it may be possible to indicate that, while all care is taken in providing the information or advice, no responsibility is accepted for any loss incurred as a result; and
- in some circumstances, it may be relevant to suggest to inquirers that they should seek independent advice from appropriately qualified persons.

These requirements to treat members of the public with courtesy and sensitivity, and to provide reasonable assistance and exercise reasonable care in providing information and advice, apply whether the dealings are face to face, over the telephone or in writing. As a matter of principle, and as a matter of law, public servants are required to treat members of the public equitably regardless of race, religion, sex, ethnic or national origin, physical characteristics or disability. Obviously, however, there will be occasions when members of the public with special needs may require additional assistance and this should be handled sensitively. It is the responsibility of staff to make themselves familiar with any departmental instruction on dealing with the public.

Where jobs involve regular contact with the public, departments should provide training to help staff do their job. It is also important that departments provide suitable facilities for public contact. Members of the public can get confused, angry and even threatening. It is important for staff to know how to comfortably and calmly deal with such situations while being understanding and helpful. Most problems can be resolved, but staff should not take unnecessary risks. If in doubt, a public servant should call a supervisor or more experienced officer. Public servants are entitled to withdraw from a situation which they regard as threatening.

There are no statutory or service-wide requirements concerning dress and appearance while at work, although in some employment categories people may be required to wear uniforms or safety clothing. As a general guide, dress and appearance of public servants should be in accordance with standards appropriate to their duties. Some departments prescribe standards of dress for their staff, particularly if they have contact with the public. Where standards are prescribed, they must be followed.

Ensuring equity of access to programs

The Commonwealth's Social Justice and Access and Equity strategies seek to remove any barriers of language, culture, race, sex, disability, religion or location, which may impede the delivery of government services to the Australian public. There are four main components of the strategies and these place obligations on public servants in developing, administering and evaluating government programs, so that all Australians should have:

- an equitable opportunity to participate in the economic, social, cultural and political life of the nation;
- access to an equitable share of the resources which government manages on behalf of the community;
- the opportunity to participate in and influence the design and operation of government policies, programs and services; and
- the right, within the law, to enjoy their own culture, to practise their own religion, and to use their own language while respecting the corresponding rights of others.

Improving the quality of service

A major theme of the public service reforms of the 1980s was to improve the quality of service to the public. The Management Advisory Board has encouraged departments to develop a greater client focus and a more sophisticated approach to measuring service quality. The public service has a responsibility to ensure that it provides high standards of client services which are user friendly and relevant to client needs.

Program evaluations provide one way of obtaining the views of clients about which programs are providing a quality service and how they can be improved. In addition, programs are evaluated in terms of relevance and cost effectiveness. Performance information systems are a means of recording the outputs and outcomes of government programs. Other valuable avenues through which programs are assessed and the views of clients gauged include audits carried out by the Australian National Audit Office, matters raised with the Ombudsman and the Human Rights and Equal Opportunity Commission, inquiry by parliamentary committees and through correspondence. All of these are valuable ways of finding out what people think of the work of the public service and should be used positively.

Continuous improvement of work performance, with an emphasis on the quality, skills and training of public servants, is another means of improving the quality of service to the public. All staff should actively seek out ways to bring about improvements.

CHAPTER 3— MAKING FAIR AND EQUITABLE DECISIONS

This chapter deals with the approach public servants should take in making decisions affecting members of the public. It covers the following:

- **acting according to the law**
- **establishing the facts**
- **properly exercising powers**
- **being prompt**
- **being fair**
- **administering programs equitably**
- **avoiding malice**
- **explaining the reasons for decisions**

Public servants make decisions that affect members of the public and their colleagues. This chapter provides advice on making fair and equitable decisions at work.

The government and the community place high value on fairness and equity and for this reason an administrative law framework has been developed to ensure that individuals and groups within the community receive fair and equitable treatment.

This framework, which applies across all sectors of employment, includes the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the role of the Human Rights and Equal Opportunity Commission, a number of international conventions and case law.

In addition, much of the work of the public service is subject to the *Freedom of Information Act 1982*, the *Privacy Act 1988*, the *Administrative Appeals Tribunal Act 1975*, the *Administrative Decisions (Judicial Review) Act 1977*, parts of the *Public Service Act 1922*, and the roles of the Ombudsman and the Merit Protection and Review Agency.

There are two distinguishing features about work in the public sector — accountability to the government and responsiveness to the community. The work of public servants must be

fair and equitable and it must also appear to be fair and equitable. Decisions should be made on the basis of the merits of the issue under consideration.

Acting according to the law

Acting according to the law is of primary importance in making fair and equitable decisions. Public servants need to know and understand any laws they administer. They must ensure that they take administrative actions and make decisions consistent with the legislation governing their work. It is incumbent on all managers and supervisors to inform their staff of any legislation for which they are responsible, and to provide appropriate training in administering this legislation. Staff should be particularly careful in using statutory powers. Some factors to consider are:

- does the legislation authorise the decision?
- is there a delegation and jurisdiction to make the decision?; and
- does the decision comply with procedures which are required by law?

If the intended action or decision does not satisfy these tests it may be invalid. This will be particularly important if someone is aggrieved by the decision and seeks to have the decision reviewed. This could occur before the Administrative Appeals Tribunal or the Federal Court or specialist review bodies within individual portfolios.

Establishing the facts

Public servants are expected to take all reasonable steps to ensure that the information on which they base decisions or actions is factually correct. The need to exercise a duty of care in giving information and advice is discussed in more detail in Chapter 2, Being Responsive to the Public.

In some work there will be a legal requirement that certain conditions be met before a particular decision can be made. In these circumstances staff should ensure that there is sufficient evidence to indicate that the condition has been met and that the evidence is correct. It should be noted that the Information Privacy Principles, detailed in the Privacy Act, require that the collection of personal information be fair and lawful, and that information be kept accurate and up-to-date. The Freedom of Information Act allows a person to seek amendment of personal information which is incorrect, out of date or misleading.

Properly exercising powers

Public servants often make decisions using delegated powers provided under legislation. Public servants are expected to use discretionary powers for the purpose for which they are intended and to make these decisions on the basis of merit. There is a number of improper uses of discretionary powers, identified in the Administrative Decisions (Judicial Review) Act, which should be avoided.

In particular, public servants should not:

- take account of an irrelevant consideration in exercising a power;
- fail to take account of a relevant consideration in exercising a power;
- exercise a power for purposes other than that for which it was conferred;
- exercise a discretionary power in bad faith;
- exercise a discretionary power at the direction of another person;
- exercise a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
- exercise a power in a way that would be regarded as unreasonable by most people;
- exercise a power in such a way that the result is uncertain; or
- exercise a power in a way that constitutes abuse of the power.

Being prompt

The government and the community expect prompt and high quality service from public servants and it is important that the work of public servants contributes to maintaining these high standards.

Public servants often take decisions or actions based on legislation and dealing with complex material. In these circumstances it is particularly important that they act promptly and with due care.

Various pieces of legislation provide powers for investigating delays in the decisions of public servants. The Administrative Decisions (Judicial Review) Act offers redress to people affected by delays in making decisions or the failure to make decisions. The Ombudsman Act 1976 provides for the investigation of delays by public servants in making decisions which affect members of the public.

Being fair

As a general principle, public servants should be consistent in their treatment of members of the public and they should not act in a way which is unreasonable or discriminatory. Decisions should be made on their merits.

Procedural fairness (that is, natural justice), assists staff to take reasonable, just and fair actions and decisions. The application of the rules of natural justice will vary depending on the circumstances of the particular case or the way in which the particular statutory power is framed.

In making a decision, a public servant should consider:

- whether the relevant legislation under which the decision is made excludes a requirement to accord natural justice. It should be noted that such blanket exclusions are very rare; and
- if there is no such exclusion, whether the legislation specifies or modifies the way in which the rules of natural justice should be applied in reaching the decision. If the legislation makes no reference to natural justice, common law usually requires that natural justice be accorded in making significant administrative decisions.

In their fullest application, the rules of natural justice require that public servants should:

- inform people against whom an adverse decision may be made, as fully as possible of any allegations against them;
- provide people with an opportunity to put their case, whether at an oral hearing or otherwise, wherever possible;
- hear all parties to a matter and consider all arguments, where a decision has to be made between competing interests;
- ensure that no person judges their own case or a case in which they have a direct interest; and
- act fairly and without bias in making decisions.

The application of fairness in decision making rests on consideration of the terms 'unreasonable' and 'discriminatory'. What is considered unreasonable will depend on the circumstances of a particular case and, to some extent, on community notions of reasonableness. In effect, what action or decision would a reasonable person have judged fair in the circumstances.

The United Nations International Covenant on Civil and Political Rights, which has been ratified by the government, identifies a number of factors that are susceptible to discrimination including race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status. This Covenant is in line with community

expectations of fair treatment from the public service. It is also government policy to discourage discrimination on the grounds of sexual preference, age or disability.

Administering programs equitably

The proper functioning of government depends on public servants exercising discretion both in the management of programs and in deciding individual cases. These decisions may affect the rights and entitlements of people in the community or other public servants.

Often an individual public servant may be the only person fully aware of the wide range of minor factors which are relevant to a judgment about the local management of a program or a decision about an individual case. In these circumstances judgment must be exercised.

Some advice on making decisions is provided in Chapter 4, Working Professionally. However, the primary responsibilities are to act in accordance with:

- the law;
- the policies of the government of the day;
- the duty to avoid wasting public funds; and
- the obligations of equity to the community.

In making choices, there will be occasions where responsibilities are unclear or where they conflict with one another. In this context, public servants should ensure that, within the scope of the relevant law, equity is both a goal and a commitment in making judgments. It will be helpful to recognise that there are two elements to equitable decisions:

- procedural equity—dealing with similar cases in the same way; and
- equity of substance—seeking to achieve similar outcomes for people who receive assistance from particular government programs.

Equity is a particularly sensitive issue because equal administrative treatment of all members of the community may lead to very unequal results. This occurs because people start at different positions and have different needs. For example, a person with a non-English speaking background may need a greater level of advice to effectively establish a claim to benefits offered by a particular government program. Equity strives to achieve equality of outcomes rather than equality in the level of service or advice provided.

Avoiding malice

Public servants have a duty to avoid malice in the decisions they make.

On occasions, public servants may be required to make a report on another person and they may feel concerned as to whether they may be liable in an action for defamation. Under the common law, unless their report was made maliciously or was communicated more widely than was necessary, an action for defamation would generally not succeed.

Accordingly, reports on others should be written openly and honestly and without malice. They should only be disclosed on a 'need-to-know' basis.

In addition to the common law, s.89A of the Public Service Act provides some protection from liability in defamation in respect of reports made on or in connection with work performed, or proposed to be performed, by an officer or employee, or conduct of an officer or employee. This protection is qualified by reference to good faith and non-excessive disclosure.

Explaining the reasons for decisions

The general responsibility to be fair and equitable in making decisions is complemented by a specific duty which requires public servants to be reasonable and to consider only the merits of the case in making decisions.

This responsibility and duty are supported by the Administrative Decisions Judicial Review) Act which enables a person, who is aggrieved by a decision, to request a written statement explaining the basis and reasons for the decision. In addition, s.25D of the *Acts Interpretation Act 1901* provides that where written reasons are required by an Act, the instrument giving the reasons must set out the findings on material questions of fact and refer to evidence or other material on which those findings were based.

This means that a written record of decisions should be kept. The facts and evidence should be systematically recorded, objectively evaluated and should lead reasonably to the decision.

PART III
EFFICIENCY, EFFECTIVENESS,
PROFESSIONALISM AND
INTEGRITY

This part covers the standards of behaviour and conduct which individual public servants are expected to adopt. Issues covered include acting professionally, following legal requirements, publicly commenting on political and social issues, participating in political and industrial activities, dealing with personal information, managing official information, using official facilities and avoiding improper use of official powers.

CHAPTER 4 - WORKING PROFESSIONALLY

This chapter covers much of the subject matter of Public Service Regulation 8A, which requires the following conduct of public servants:

- **acting professionally**
- **following legal requirements and directions**
- **avoiding waste and extravagance and caring for Commonwealth property**
- **not taking improper advantage of official information**
- **managing grievances**
- **maintaining and enhancing the reputation of the Service**

This chapter focuses on some of the specific duties and inherent obligations of public servants. A number of these obligations are based in law, in particular, the *Public Service Act 1922* and the Public Service Regulations, especially Regulation 8A. The full text of that regulation is produced at page 4.

Departments should advise their staff of the conduct expected of them as public servants.

This may be done, for example, through induction training for people new to the department and should be reinforced at regular intervals.

Acting professionally

The public service takes pride in its ability to act with integrity and to serve the government and the community efficiently and effectively.

Public servants are expected and (under Regulation 8A(a)) are required to work with:

- skill;
- care;
- diligence; and
- impartiality.

Where public servants work as part of a team or without close supervision, they are jointly responsible for working diligently and with care to achieve their work unit's goals and for maintaining high standards of service and integrity.

There may be times when individual public servants feel that they are unable to work effectively for physical or emotional reasons. When this happens to staff they should talk to their supervisor. In some cases it may be appropriate to seek trained external assistance. Their department may also be able to help by providing different work or approving leave.

It is important that supervisors know they are expected to provide counselling where they feel that any of their staff are not working effectively. It is equally important that supervisors also provide positive feedback for good work or extra effort.

Following legal requirements and directions

Acting according to law

This requirement is fundamentally important for public servants. It is explicitly set out in the regulations, which require public servants to comply with Acts, regulations, determinations, awards and departmental instructions which apply to the performance of their duties (Regulation 8A(b)).

In addition, the Public Service Act provides that a failure to comply with the Act or its regulations or determinations is misconduct (s. 56(f)).

However, a public servant who is given a direction or instruction to take some action which is clearly unlawful must decline to follow it. In such a situation, the public servant should request written confirmation of the direction or instruction. If this does not resolve the matter, and the direction or instruction remains, the public servant must decline to comply with it, and should raise the issue with senior management.

Following directions

The structure and management practices of the public service are largely based on relationships in which people are given directions concerning the duties they are to perform.

As with other employment sectors, the requirement to follow directions originates from the common law of employment. This requires that employees comply with the lawful directions of employers regarding matters of employment.

In the public service, this relationship is also formally established by the Public Service Regulations which require staff to comply with lawful and reasonable directions (Regulation 8A(c)) and to have regard to official guidelines (Regulation 8A(d)).

Section 56 of the Public Service Act provides that:

... an officer shall be taken to have failed to fulfil his duty as an officer if ...

(a) he wilfully disobeys, or wilfully disregards, a direction given by a person having authority to give the direction, being a direction with which it is his duty as an officer to comply.

Where public servants have doubts about the legality of a particular direction, or whether there is a duty to comply with it, they should raise their concern with their supervisor, or, if necessary, with a more senior manager.

Public servants are entitled to question specific directions if they believe a direction is unreasonable. They are also entitled to question the way in which duties are to be performed, particularly if they believe there are more effective or efficient ways of doing their work.

Discussion about the way work is done is healthy. It encourages people to seek to improve the way they work and is clearly in keeping with the key public service value of continuous improvement. Usually disagreements about work will be resolved informally in the workplace. However, it is important for public servants to be aware that they will not always agree with the decisions made by their supervisor or departmental management. The supervisor is responsible for the work of the unit and will have been given authority to make decisions.

Occasionally, there will be situations where, for reasons of conscience, public servants may feel they cannot obey a particular direction or comply with the provisions of a particular law relating to their work. For example, people with certain religious beliefs may be unable to work on religious holidays or perform overtime on Saturdays or Sundays. In such circumstances, public servants should discuss the matter with their supervisor with a view to being relieved of the duties to which they object. This may result in the rearrangement of their duties or it may necessitate a transfer to another area of the department or the public service.

Public servants should not be forced to perform duties to which they have shown a genuine and conscientious objection. Ultimately, however, if a supervisor's direction is legal and no reasons of conscience prevent a public servant from carrying it out, the direction must be followed.

Avoiding waste and extravagance and caring for Commonwealth property

Public servants should be scrupulous in their use of Commonwealth information, money, property, goods or services. Under the Public Service Regulations, public servants are required to avoid waste or extravagance in the use of public resources (Regulation 8A(g)).

There are also benefits to the community as a whole if public servants strive to achieve value for money. By so doing they can at the same time achieve effectiveness with efficiency in keeping with the key public service value of a close focus on results. Finance Regulation 44A requires a person exercising the power to approve a proposal, among other things, to make effective and efficient use of public monies. Similarly, Finance Regulation 44B permits a person to enter into a commitment requiring the payment of public monies only if, among other things, the person is satisfied that the expenditure represents 'value for money'.

As well as avoiding waste and extravagance, public servants have a responsibility to care for and maintain Commonwealth property. This responsibility, covered by the Finance Regulations and supported by the *Crimes Act 1914* and the *Archives Act 1983*, is important in maintaining standards of service to the public and a healthy workplace for staff.

The Crimes Act provides specific penalties for stealing, damaging or destroying Commonwealth property and for deliberately falsifying books, records and returns. These activities are covered by ss. 29, 71, 72 and 74 respectively. The Archives Act provides a penalty for destroying, damaging or disposing of Commonwealth records without authority.

Public servants should ensure that official records and papers are kept in good condition as they are crucial to the work of government. The Archives Act and departmental procedures provide advice on the appropriate processes for disposing of official records and papers. The *Freedom of Information Act 1982* and the *Privacy Act 1988* are also relevant to the handling and keeping of records.

Not taking improper advantage of official information

Public servants must not take improper advantage of official information acquired in the course of their work (Regulation 8A(h)).

Public servants should also be careful that they do not make decisions in their private lives on the basis of information that they have access to at work, either deliberately or otherwise. Where they feel there may be a conflict between their private interests and information that they have access to at work, they should discuss the issue with their supervisor.

Some of these issues are dealt with in more detail in chapters 9 and 12.

Managing grievances

There may occasionally be circumstances where a public servant does not agree with his or her supervisor and wishes to pursue the disagreement formally. This can be done using the mechanisms set out in Public Service Regulations 75 to 84. Information on grievance processes can be obtained from the public servant's own department or the Merit Protection and Review Agency (MPRA). In the first instance, grievances are considered within the department. In cases where the aggrieved officer is not satisfied with the department's decision, or where there is an undue delay in determining the grievance, they may request the intervention of the MPRA.

The grievance mechanism provides an opportunity for public servants to seek a review of specific directions given by their supervisor, but in the interim they must carry out those directions. Ultimately, the directions may be varied or withdrawn.

Maintaining and enhancing the reputation of the Service

The way public servants behave, both on and off the job, can affect the reputation of the public service. Public servants are required at all times to behave in a manner that maintains or enhances the reputation of the public service (Regulation 8A(i)). Amongst other things, this means that public servants should be careful to conduct themselves in their private lives in ways that do not adversely affect the reputation of the Service.

CHAPTER 5 - PUBLIC COMMENT ON POLITICAL AND SOCIAL ISSUES

This chapter covers the following areas:

- **what is meant by ‘public comment’?**
- **contributing to public debate**
- **restrictions on making public comment**
- **some situations in which public comment is not proper**
- **volunteering information in a private capacity to parliamentary committees of inquiry and Royal Commissions**
- **public comment by former public servants**

This chapter does not attempt to define precisely what the proper course of action is in all situations where a public servant might wish to make public comment on the government’s policies or administration. Rather, it sets out a general approach to help public servants to decide on the proper course of action in various circumstances. Usually, the decision will be a matter for commonsense and judgment.

What is meant by ‘public comment’?

In this chapter, the term ‘public comment’ is used broadly, and includes comment made on political or social issues by way of public speaking engagements, radio or television interviews, letters to the press or books or notices, or in other circumstances where it is reasonably foreseeable that the comment will flow to the community at large.

Contributing to public debate

Public servants have a right, as members of the community, to make public comment. Reasoned public discussion on the factual and technical background to policies and

administration can lead to better community understanding of the objectives and processes of government.

Some public servants, as part of their normal duties, provide comment to the media and the public, explaining departmental activities and, in some circumstances, defending departments against criticism of probity and competence.

It is worth noting that the government's *Guidelines for Official Witnesses before Parliamentary Committees and Related Matters - November 1989* impose a positive duty upon officials (especially senior executives) to participate in public discussion of issues on which they have expertise, to assist the processes of policy making by government. These Guidelines highlight the tension between comment made by public servants in a personal rather than official capacity and emphasise that senior public servants should give careful consideration to the impact, by virtue of their position, of any comments they make.

Further, Secretaries and other very senior public servants need to consider carefully whether it is realistic for them to claim to appear in a personal, rather than official capacity, especially if they are likely to be asked to comment on matters which fall within their area of official responsibility.

Restrictions on making public comment

There is, and there should be, little restriction on the majority of public servants making public comment. However, because of the nature of public service employment and the working relationship with the elected government, there are some circumstances in which it is not appropriate for public servants to make public comment. There may be circumstances where a public servant making such comment could amount to taking improper advantage of official information and involve a breach of Public Service Regulation 8A(h), or give rise to a conflict of interests (Regulation 8B).

Making public comment may involve disclosing official information. There is a large number of specific legislative provisions, such as those contained in the *Social Security Act 1991* and the *Taxation Administration Act 1953*, which prohibit the disclosure of official information. Section 70 of the *Crimes Act 1914* provides that where there is a duty not to disclose official information, unauthorised disclosure of that information is a criminal offence. The Public Service Regulations generally prohibit the unauthorised disclosure of official information (Regulation 35). Breaches of the regulations or other legislation may lead to disciplinary action under the Act.

Some situations in which public comment is not proper

There are some situations which might render public comment improper:

- . where a public servant, and particularly a senior public servant, is making public comment in a private capacity, but has not made this fact clear to the audience, who may be under the impression that the public servant is speaking on behalf of a department or the government;
- . where a public servant is directly involved in advising on, directing the implementation of, or administering government policy, and the public comment could be seen as compromising his or her ability to continue to do so in an unbiased manner;
- . where public comment, though it has little or no connection with a public servant's normal duties, is so harsh or extreme in its criticism of the government or its policies that it indicates that the public servant concerned is incapable of professionally, efficiently or impartially performing his or her official duties;
- . where public comment amounting to strong criticism of departmental administration could cause serious disruption in the workplace. As noted elsewhere, public servants have a responsibility to contribute to harmonious working relationships. In keeping with this responsibility, public servants should attempt to resolve complaints about departmental administration internally. This may be done either by informal discussion with a supervisor, by using the grievance mechanisms, or by seeking advice or assistance from the union; and
- . where public comments amount to gratuitous personal attacks.

Volunteering information in a private capacity to parliamentary committees of inquiry and Royal Commissions

The appearance of a public servant as an official witness before a Royal Commission is discussed in the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters - November 1989*.

Occasionally, in the capacity of a private citizen, a public servant may make a submission to, or appear as a witness before, a parliamentary committee of inquiry or a Royal Commission. Departments should not deter a public servant from making such a submission or appearing in a private capacity.

A public servant giving evidence in a private capacity should make his or her status clear to the inquiry, and clarify that he or she is not speaking on behalf of the government or any department. When making a submission in a private capacity, a public servant should not transmit that submission on paper bearing official letterhead.

A public servant making a submission or giving evidence in a private capacity should be aware of the legislative restrictions on the disclosure and use of official information. Such

restrictions may provide grounds for a witness before a parliamentary committee not to volunteer certain information or to ask to be excused from providing certain information.

Public comment by former public servants

The Crimes Act prohibits unauthorised disclosure by former Commonwealth officers of information which was protected at the time they ceased to be employed by the Commonwealth (s. 70(2)).

A former public servant considering making public comment should be mindful of this provision, and of any relevant legislation or undertakings prohibiting the disclosure of information.

CHAPTER 6 - PARTICIPATING IN POLITICAL ACTIVITIES

This chapter covers the following issues:

- **wearing or displaying political material**
- **political campaigning and fund raising**
- **standing for Parliament**
- **standing for election to Aboriginal and Torres Strait Islander Commission Regional Councils or to the Torres Strait Regional Authority**
- **participating in local government activities**
- **participating in other political interest groups**

Generally speaking, every adult person in Australia has a right and an obligation to participate in our democratic political processes. Political participation by public servants as part of their normal involvement in community affairs is quite acceptable. Public servants are free to become members of, or hold office in, any political party. Under the *Public Service Act 1922* it is against the law to discriminate against a person on the ground of political affiliation in making appointments, transfers or promotions to the Service (s. 33).

There are, however, some cautions in this area. The first is that it is possible that being a member of some political groups could affect a public servant's security assessment, depending on individual circumstances. The second is that the possibility of a conflict of interests may arise.

Public servants often have their own views about policy issues, whether or not they are members of political parties. Unless there is evidence to the contrary, it is expected and accepted that they will be able to separate those views from the performance of their official duties. This is an important part of professionalism as a public servant.

However, where a public servant is involved in publicly promoting party or other views on certain issues, and where his or her duties are directly concerned with advising on or directing the implementation or administration of government policy on those issues, then there is potential for conflict of interests. Conflict of interests is discussed in more detail in Chapter 12, Financial or Other Private Interests.

Wearing or displaying political material

Wearing political material while on duty or displaying political material in the office is a matter of judgment. Public servants should bear in mind that they are expected to contribute to harmonious working relationships, treating their colleagues with courtesy and sensitivity. While it is important for a reasonable tolerance to be exercised towards the expression of differing political opinions, public servants should be aware that displaying political material could disrupt those harmonious working relationships.

If a public servant's duties involve direct public contact, it may not be appropriate to wear or display political material at work. Doing this may give the impression that the department endorses the political material. In some circumstances, it may create doubts in the minds of some clients as to whether their queries or applications will be handled in a politically neutral way. Such displays may also unfairly impose on the department's clients, who will often have no choice about coming into the departmental office.

Political campaigning and fund raising

Some people in the Service choose to play a role in campaigning for candidates for political office. The roles they play may range from handing out how-to-vote cards on election day to other activities with a higher profile.

If a public servant is playing a significant part in a political campaign, there is potential for a conflict of interests between issues which are raised as part of that campaign and his or her official duties. The conflict should be discussed with a supervisor. Chapter 5, Public Comment on Political and Social Issues is relevant here. Ways of resolving such conflicts might include taking leave, rearranging existing duties, transfer to other duties or voluntary unattachment.

If they are involved in campaigning activities, public servants should be careful to make it clear that they are not carrying out these activities in their official capacity, for example, by not wearing an official uniform. Public servants should ensure that they do not use official facilities for any of their political activities. Chapter 10, Using Official Facilities, provides advice on this matter.

Leave without pay, recreation leave or long service leave may be available to public servants who are assisting with an election campaign. Campaign leave, which is provided for under Public Service Determination 10 of 1983, may also be available.

Standing for Parliament

Section 44 of the Australian Constitution provides that any person who holds any office of profit under the Crown:

... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

A majority of the High Court in *Sykes v Australian Electoral Commission* held that this section was breached when Mr Cleary failed to resign from the Victorian Public Service (from which he had been granted leave of absence) before nominating for a seat in the House of Representatives in the Australian Parliament. The consequence of his failure to resign was that his election was absolutely void.

It would appear from this decision that a person who does not resign from the public service before nominating for election to the Federal Parliament would be in breach of the Constitution. This means that such a person would be incapable of being chosen for or sitting in the Senate or the House of Representatives.

Public servants who are in doubt about this issue are advised to seek their own legal advice.

Public servants who are intending to stand for election to a State Parliament, the Northern Territory Legislative Assembly or the ACT Legislative Assembly are advised to seek legal advice as to whether there are any legislative provisions that may make it necessary to resign from the public service.

In any case, if a public servant resigns from the public service in order to contest a Federal or State parliamentary election, but fails to be elected, he or she may have a right to be re-appointed, or re-employed in the Service. Under the Public Service Act, this right exists provided the resignation occurred no more than six months before the date on which nominations closed, and provided the application was made within two months of the declaration of the result of the election (ss. 47C and 82B).

Standing for election to Aboriginal and Torres Strait Islander Commission Regional Councils or to the Torres Strait Regional Authority

Generally, public servants of Aboriginal or Torres Strait Islander descent are eligible to stand for election to an Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Council or to the Torres Strait Regional Authority (TSRA).

However, staff of ATSIC or TSRA are ineligible to stand for, or be elected to, these bodies under the provisions of the *Aboriginal and Torres Strait Islander Commission Act 1989* and they must resign if they wish to nominate for election. Those staff who stand but are not

elected have re-appointment or re-employment rights under ss. 47C or 82B of the Public Service Act similar to those outlined above for staff who resign to contest a Federal or State parliamentary election.

Staff from departments other than ATSIC or TSRA who are elected to these bodies are required to seek approval for outside employment and to avail of leave without pay to attend meetings or carry out business of the Regional Council or TSRA.

Participating in local government activities

Aside from the matters dealt with below, there is nothing to prevent public servants from holding office in local government organisations. There is no need to resign in order to stand for election to a local government body. The provisions relating to the use of leave to participate in local government matters are contained in Public Service Determination 10 of 1983.

If a public servant holds office in, or is employed by, a local government body then the rules on outside employment which are set out in s. 91 of the Public Service Act, will come into play. This issue is discussed further in Chapter 15, Outside Employment While Working in the Public Service.

Public servants should also bear in mind that the guidelines on commenting on political and social issues (Chapter 5) may become relevant to them if they are working in local government, and that the potential for conflict of interests between local government duties and official duties may arise.

Participating in other political interest groups

Public servants are free to become involved in issues of a non-party political nature. However, contentious issues often involve strong commitments, and such involvement may cause problems similar to those resulting from party political activities. These activities are discussed above, under the heading Political campaigning and fund raising.

CHAPTER 7 - PARTICIPATING IN INDUSTRIAL ACTIVITIES

This chapter summarises the various forms of authorised participation in industrial activities by public servants and covers:

- **union membership**
- **Service-wide industrial forums**
- **departmental industrial democracy arrangements**
- **handling industrial action**
- **APS dispute avoidance and settlement procedures**
- **right to strike**

Union membership

Public servants have the right to be involved in public life like other members of the community, including participating in trade unions. They are encouraged to join the union which represents them. It is the right of each public servant to choose whether to participate in union activities.

There are specific provisions to allow public servants to take:

- leave without pay to hold a full-time union office;
- leave with pay to participate in arbitration proceedings; and
- paid leave to attend approved union training courses and seminars.

Union officials also have certain rights to enter public service workplaces.

Service-wide industrial forums

The public service recognises the value of effective processes for consultation between unions and management. There are several Service-wide peak level representative consultative arrangements, notably the Joint Council established under the *Public Service Act 1922* and its various subcommittees, and the Joint APS Training Council (JAPSTC).

The Joint Council is an umbrella forum in which management and unions consider issues of general interest to the public service. Issues are referred to the Council by the Secretary of the Department of Industrial Relations.

Joint Council has a number of subcommittees which undertake more detailed work on particular issues on behalf of the Council.

The JAPSTC is a body with management and union representatives and representation from the education sector. It advises on Service-wide skill requirements, recognition of skills and training to support award restructuring.

Departmental industrial democracy arrangements

Consistent with legislation fostering industrial democracy, arrangements have also been made to establish departmental consultative councils. These councils undertake work on a variety of issues, including occupational health and safety, information technology and equal employment opportunity. Public servants are encouraged to be active in these forums. Departments may also provide facilities to encourage these activities. The issue of industrial democracy covered in more detail in Chapter 17, *Working With Others*.

The facilities package, which has been negotiated with the unions on an agency basis and forms part of each department's Industrial Democracy Plan, provides details on such matters as the use of departmental facilities for union meetings. (Chapter 10, *Using Official Facilities*, also refers to unions using departments' facilities).

Handling industrial action

The APS is subject to the same industrial processes as the broader community under the amended provisions of the *Industrial Relations Act 1988*. Bans and limitations imposed in the workplace can be addressed through informal and formal processes.

Under the provisions of the *Public Service Act*, various awards and certified agreements, departments are required to consult with unions on a range of matters.

If industrial action is pursued, informal processes normally include discussions with unions on a 'without prejudice' basis in an attempt to resolve the issues and to cease industrial action without resorting to the more formal processes.

In the case of unresolved disputes involving industrial action such as bans or stop work, the appropriate course of action may be to seek timely assistance from the Australian Industrial Relations Commission to resolve the issues.

In departments, industrial relations managers provide assistance with many issues which arise in the workplace. Agency Liaison Managers within the Australian Public Service Division of the Department of Industrial Relations have ongoing responsibilities for particular departments.

APS dispute avoidance and settlement procedures

All public servants in the APS are covered by clause 13 of the APS 'Framework Agreement' (*Improving Productivity, Jobs and Pay in the Australian Public Service*, December 1992), which contains dispute avoidance and settlement procedures to be followed.

Public servants should familiarise themselves with these procedures. While a matter is being dealt with under these procedures, work practices should be continued as normal (unless there is a genuine safety issue involved). This conventionally means the maintenance of status quo, that is, management should not proceed with the changes which are under contention, and, equally, the union should not impose any industrial action while the steps are being followed.

Right to strike

Section 66 of the Public Service Act which provided for the dismissal of public servants who take strike action, has been repealed. The Industrial Relations Act provides for the right to strike, and for lock out provisions in certain circumstances.

In cases of stop work, which is an unauthorised absence, there are provisions for the forfeiture of salary for absences in excess of 30 minutes in any pay period.

CHAPTER 8 - PRIVACY OF PERSONAL INFORMATION

This chapter provides guidance on managing personal information in Federal government administration, in particular:

- collecting personal information**
- storing and securing personal information**
- gaining access to personal records**
- ensuring accuracy of records**
- using personal information and disclosing it to third parties**
- breaches of privacy**

This chapter is about managing official records containing personal information, focusing on the general requirements of the *Privacy Act 1988*. Guidance on managing official records which do not contain personal information may be found in Chapter 9, Managing Official Information.

The chapter is based on the Information Privacy Principles (IPPs) contained in s. 14 of the Privacy Act. The IPPs impose obligations in respect of most activities of Commonwealth ‘agencies’ (defined in s. 6(1) of the Privacy Act to include, amongst others, most departments and statutory authorities). Obviously, however, it is the duty of the public servants employed by those agencies to ensure, in the performance of their day-to-day functions, compliance with the obligations imposed by the Privacy Act.

Broadly, the Privacy Act prohibits the disclosure of personal information relating to individuals, subject to a limited number of exemptions (discussed below). Personal information is collected for a particular purpose and its use is generally restricted to that purpose. For example, information collected by the Department of Social Security or the Commonwealth Employment Service about their clients cannot be passed to Medicare or the Department of Immigration and Ethnic Affairs unless one of the exemptions contained in the Privacy Act is established.

In addition to the IPPs, the Privacy Act contains further provisions which regulate the use of, and disclosure by, amongst others, Commonwealth agencies of tax file number information and, in conjunction with the *Data-matching Program (Assistance and Tax) Act 1990*, the implementation by Commonwealth departments and authorities of certain data-

matching programs. Certain aspects of the complaint mechanisms in the Privacy Act also apply in relation to complaints about improper uses or disclosures by Commonwealth ministers, departments, authorities and other bodies of old criminal conviction information (see Part VIIC of the *Crimes Act 1914*).

The other principal Act which deals with personal information is the *Freedom of Information Act 1982*. This Act creates a general right of access to documents in the possession of agencies. Under the Act, subject to its procedural and review mechanisms, any person may legitimately apply for their own or others' details and, in certain circumstances, may obtain access even to personal information about other persons. Such disclosure of personal information under the Freedom of Information Act is broadly consistent with the Privacy Act, as that disclosure will usually fit within the exception contained in IPP 11(1) (d) of the Privacy Act. While the Privacy Act is thus no general bar to disclosure of personal information under the Freedom of Information Act, this is a sufficiently complex area that further advice should be sought as needed.

For the purposes of the Freedom of Information and Privacy Acts, personal information essentially means any information about an identified or identifiable individual. Where the individual is named or otherwise explicitly identified, the determination that information is 'personal' is a straightforward one. What should be noted, however, is that the same information may in some cases be 'about' two or more individuals, and that this information would be jointly 'personal' in relation to each of these persons. More difficult is the determination of when an individual is 'identifiable', in the sense of their identity being ascertainable from certain details presented in a certain context. The extent of the inquiries and analysis needed to connect those details with that individual (that is, the test to be satisfied to qualify the information involved as identifiably 'personal') is not settled and requires further consideration.

In addition to the Privacy and Freedom of Information Acts, the legislative and regulatory framework relating to personal information includes Public Service Regulations 8A(h) and 35, the Crimes Act and the *Archives Act 1983*. While sanctions exist for breaches of some of this legislation, it should be noted that such sanctions will generally not apply to good faith disclosure of personal information under the Freedom of Information Act, given the immunities provisions in that Act. Further, the sanctions in the Archives Act principally concern the destruction of Commonwealth records and only incidentally protect personal details.

The public service records substantial amounts of information on individual members of the community including personnel information on public servants themselves (such personnel information may also qualify as personal information under the Freedom of Information and Privacy Acts). These records are important in providing a quality service to members of the community and the effective administration of government programs.

Some of this information is confidential and highly sensitive. Embarrassment, disadvantage or physical harm to individuals could result if the information became available to unauthorised people. However, such considerations while relevant, would not necessarily preclude access being obtained by application under the Freedom of Information Act, and concerns in respect of 'unauthorised' access as such do not arise in connection with such an application.

There have been several inquiries which have commented on the management of official records containing personal information in the public service. These inquiries found many examples of circumstances where public servants disclosed personal information in circumstances which they thought were appropriate, but which in fact contravened the requirements of the Privacy Act, or the secrecy provisions in other Commonwealth legislation.

As noted above, however, the situation is rather different in relation to potential disclosure of personal information under the Freedom of Information Act, which contains the immunity provisions referred to above, and as to which disclosure the Privacy Act and secrecy provisions are not general prohibitions.

Collecting personal information

There are several principles which set out requirements on the purpose and manner of collecting personal information.

Personal information is only to be collected by an agency for inclusion in a record or publication if:

- . the information is collected for a lawful purpose which relates to the work of the agency; and
- . collection of the information is necessary for or directly related to that purpose.

Personal information is only to be collected by lawful and fair means. Collectors of personal information must also ensure that the information collected is current and complete, and that the collection of that information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Where personal information is collected, the individuals concerned should be informed of:

- the purpose of collecting the information;

- any legal requirement to collect the information; and
- any person or body to which the information will be usually disclosed.

Storing and securing personal information

The Privacy Act places an obligation on agencies, as record keepers, to ensure that:

- records are secured against loss; against unauthorised access, use, modification or disclosure; and against misuse; and
- if it is necessary to give records to a third party, reasonable action is taken to prevent unauthorised use or disclosure.

For those officers working from home, the *APS Home Based Work Interim Award 1994* specifies the security arrangements required in relation to personal and official information, which include building security, family access and security containers.

The Privacy Act also requires that agencies keep records of the personal information they hold. These records should enable the public to identify the nature and the purpose of the information held by agencies and the steps to be taken to obtain access to information.

Departments are also required to report annually to the Privacy Commissioner on the personal information they hold. This report must also be available for inspection by members of the public.

Gaining access to personal records

Individuals are entitled to have access to records which contain personal information relating to them unless the record keeper is required or authorised to refuse access under Commonwealth law. Under the Freedom of Information Act, individuals will usually be able to obtain access to personal information concerning themselves. Key exemptions from disclosure under the Act do not apply when an individual seeks such personal details. As noted above, the Freedom of Information Act may also, in some circumstances, facilitate access by an applicant to personal information about other persons.

Personal information may also be made available through other legislation (e.g. *Commonwealth Employees' Rehabilitation and Compensation Act 1988*) or under departmental guidelines. Not all information is automatically available to the public. Departments are legally authorised or required to refuse access to some records containing personal information (noting the different result which may obtain if a Freedom of Information request is made for the information).

Where information is available to an individual, the individual may authorise their union or another person to have access to personal information about them. Authorised union officers may also obtain access to certain kinds of personal information under provisions included in industrial legislation.

Ensuring accuracy of records

Under the Privacy Act, agencies must take such steps, by way of correction, deletion or addition, as are reasonable in the circumstances to ensure that personal information contained in a record is accurate, up-to-date, complete, not misleading and relevant to the purpose for which it was collected or is to be used, or to any purpose directly related to such a purpose. Where an agency is not willing, in response to a request from the individual concerned, to amend a record containing personal information about that individual, it must, if the individual so requests, take reasonable steps to attach to the record a statement, provided by the individual, of the amendment sought.

Part V of the Freedom of Information Act provides a separate right for an individual to apply for amendment or annotation of her or his personal information. While the terminology and structure of Part V bears some similarity to that found in the Privacy Act, Part V of the Freedom of Information Act contains review rights not found in the Privacy Act and is often the preferred means by which amendment or annotation is sought. However, it should be noted that Part V does not have a continuous application to agencies, being activated only when a specific Freedom of Information request for amendment or annotation is made.

Agencies must not use the personal information recorded unless reasonable steps have been taken to ensure that the information is accurate, current and complete.

Using personal information and disclosing it to third parties

It is a fundamental principle of the Privacy Act that personal information may only be used for the purposes for which it was collected. However, there are some exceptions to this principle:

- if the individual concerned consents to the information being used for another purpose;
- if the record keeper believes on reasonable grounds that the use of the information for another purpose is necessary to lessen or prevent a serious and imminent threat to the life or health of the individual concerned or another person;
- if the use for another purpose is required or authorised by law;
- if the other purpose for which the information is used is directly related to the purpose for which the information was obtained; or
- if the use for another purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue. In this case, the record should note the use for another purpose.

The Privacy Act also requires that personal information shall not be disclosed to a person or organisation, other than the individual concerned, unless:

- the individual concerned is reasonably likely to be aware that this type of information is usually passed to that person or organisation;
- the individual concerned consents to the disclosure;
- the record keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person; or
- the disclosure is required or authorised by law (this is the exception which is found in IPP 11(1)(d) and which, as noted above, generally makes Freedom of Information disclosures of personal information to third parties consistent with the Privacy Act);
- the disclosure is reasonably necessary for the enforcement of the criminal law or a law imposing a pecuniary penalty or for the protection of public revenue. In this case, the record should note the disclosure.

Other people or organisations may only use personal information for the purpose for which it was disclosed to them. However, where personal information has been obtained under the Freedom of Information Act, there are no specific prohibitions (or protections) which apply to the subsequent use of the information by the successful applicant. In these circumstances, the use of the information by that applicant is at her or his own peril, and may give rise to actions under the general law, for example, in defamation.

Breaches of privacy

Individuals, including public servants themselves, who believe that there has been an interference with their privacy by virtue of the actions of Commonwealth agencies may complain to the Privacy Commissioner. The Privacy Commissioner has broad powers to obtain information and documents, to examine witnesses and to compel attendance at compulsory conferences. Once he or she has investigated a matter, the Privacy Commissioner may determine that there has been an interference with the privacy of an individual and may make various declarations, including that the individual concerned should be paid compensation. There is provision in the Act for the enforcement of the Privacy Commissioner's determinations, including by order of the Federal Court of Australia.

CHAPTER 9 - MANAGING OFFICIAL INFORMATION

This chapter provides guidance on managing official information, covering:

- **disclosing information**
- **secure information**
- **using intrusive powers**
- **monitoring and surveillance**
- **access by the public to official information**

This chapter relates to managing official records which do not contain personal information. Guidance on managing official records containing personal information can be found in Chapter 8, Privacy of Personal Information.

Public servants work with and have access to a wide variety of official information. It is important that public servants understand that they have access to this information in their official capacity and that they should manage this information to provide effective service to the public.

There is a legislative and regulatory framework which governs the use of official information by public servants and access to official information by members of the public. This framework includes Public Service Regulations, the *Crimes Act 1914*, the *Freedom of Information Act 1982* and the *Archives Act 1983*. The framework imposes some restrictions on the use of and access to official information.

This framework is particularly important because many of the records held by departments are classified as confidential. This is because the records contain information about the development of government policy, the commercial activities of organisations or national security.

Disclosing information

The fundamental rule on the use of official information is that public servants must not disclose any official information to any person unless they are acting:

- . in the course of their official duty; or
- . with the express authority of the Secretary of the department; or
- . for other lawful purposes, for example, under the requirements of the Freedom of Information Act.

This restriction on the use of official information derives from Public Service Regulation 35.

This restriction is not intended to inhibit the proper flow of information. Indeed, public servants who have developed a particular expertise through their official duties have a responsibility to provide information and to contribute to public debate and discussion. This responsibility assumes that the public servant has obtained clearance to comment and that the information is not already publicly available.

The requirement to obtain clearance is intended to avoid leaks. Among other things, leaks can damage the economy, result in serious inequities between groups and individuals, and discourage individuals or organisations from providing the government with confidential information.

It is also important that public servants do not misuse information gained in their official capacity. Examples of misuse include speculation in shares on the basis of confidential information; and taking advantage of another person on the basis of information held about the person in official records.

These circumstances are covered by Regulation 8A(h) which requires public servants not to take improper advantage of official information acquired in the course of employment. As well as amounting to misconduct, unauthorised disclosure of official information may also be a crime (s. 70 Crimes Act). There are also offence provisions regarding the disclosure of particular information with respect to the work some public servants undertake, for example, those whose work relates to income tax and social security matters.

Secure information

Most departments hold information which is confidential and has a security classification. Departments will usually store this information in a secure area. Staff who work in these areas have special responsibilities to protect the national interest. Accordingly, the selection of people to work in these areas may involve the additional consideration of the person's suitability to work with classified material.

This may involve a security assessment undertaken by the Australian Security Intelligence Organization. The extent and nature of the security check will vary according to the position concerned. Candidates for appointment, promotion or transfer will be advised in advance of the need for a security assessment. Further advice on issues relating to the protection of official information and assets may be found in the *Protective Security Manual*.

For officers working from home, the *APS Home Based Work Interim Award 1994* specifies the security arrangements which apply to classified materials.

Using intrusive powers

Some departments have legal powers of entry, search and seizure, or powers to compel people to produce documents or attend as witnesses.

Using these powers, however necessary, is an intrusion on the privacy and civil liberties of members of the public. Public servants who use these powers must take the utmost care to ensure that they are not using them unnecessarily or arbitrarily. They should be particularly careful to minimise the intrusion or embarrassment caused.

Special care should also be taken to ensure fairness in the use of the information obtained.

Monitoring and surveillance

Some departments have systems which monitor the use of departmental equipment and facilities, such as telephones and computers. It is important that this type of surveillance takes account of the privacy of public servants, and the maintenance of good staff relations.

In framing internal monitoring policies departments, and the public servants concerned, should bear in mind that:

- in monitoring telephone usage, conversations should not be monitored and lists of numbers called should be accorded the same protection as other personal information; and
- personal mail forwarded to departments should not be opened and, if opened inadvertently, it should not be read.

Covert surveillance devices, and the uses to which they are put must be sanctioned by law. It should be noted that the Privacy Commissioner has issued *Guidelines on Covert Optical Surveillance in Commonwealth Administration*.

Access by the public to official information

Members of the public have rights to have access to some types of official information. These rights are provided for in legislation, particularly the Freedom of Information Act and the Archives Act.

The Freedom of Information Act, which provides a right of access to official information for members of the public, requires departments to:

- publish information about their operations and powers;
- publish information about the manuals and documents they use in making decisions or recommendations which affect members of the public; and
- provide access to documents they possess unless they are exempt or excepted under the Act. These include documents which would unreasonably adversely affect business affairs, personal privacy and national security.

There are many circumstances where it is a sensible and normal part of daily business for public servants to disclose information and documents held by their departments. Some departments have identified categories of documents which they make available to the public through less formal means than the Freedom of Information Act.

CHAPTER 10 - USING OFFICIAL FACILITIES

This chapter provides broad advice on the proper use of official facilities, including:

- **property**
- **motor vehicles**
- **equipment and consumable resources**

The Commonwealth owns or leases office space and equipment worth hundreds of millions of dollars. In effect, this is the property of the Australian people, and they expect that these facilities should be kept in good order and be used for official purposes.

Secretaries of departments are responsible for the use that is made of official facilities and may have issued policies on the use of these facilities. Public servants should be familiar with these.

Departmental permission should be sought for any non-official use of official facilities and these facilities should not be used for private gain.

The fundamental principle underlying such policies is that Commonwealth property is to be used for official purposes and is to be managed efficiently and effectively.

Property

Public servants may occasionally use Commonwealth property for activities which are not strictly official but deserve support, for example, departmental social club activities.

Departments are also likely to provide access to official facilities for some union activities, such as meetings, as a means of encouraging membership, supporting industrial democracy processes and as part of the workplace bargaining arrangements. These arrangements are briefly referred to in Chapter 7, Participating in Industrial Activities.

Departments may also make meeting rooms and the like available for use by professional associations, whose work is relevant to the department, as a means of encouraging membership of these organisations by departmental staff. Membership of these organisations contributes to the development of public servants.

Motor vehicles

Most departments have a number of Commonwealth vehicles available for general use by the department and for allocation to individual Senior Executive Service (SES) officers and the Secretary. Apart from vehicles allocated to individual SES officers and the Secretary, Commonwealth vehicles are available for official use only. Separate arrangements are in place for private plated vehicles allocated to individual SES officers and to Secretaries as part of their conditions of service. The use of these vehicles for private commercial purposes is not permitted.

Equipment and consumable resources

Most public servants have access to computers and other technology at work. This equipment is provided for official use only. However, departments may permit minor use of this equipment for private purposes, for example, the preparation of job applications.

Departments may provide access to some equipment, on a short term basis, where staff undertake official work at home. For example, staff may be permitted to borrow personal computers overnight and on the weekend. Public servants should only use this equipment for official purposes and should take care to ensure that it (and any official information contained in the equipment) is secure. Local agreements for implementing home based work arrangements under the *APS Home Based Work Interim Award 1994* include details of Commonwealth assets and supplies to be used at the home based site, including maintenance arrangements.

Departments use a variety of computer software. Software should only be copied if authorised and only for official purposes. Similarly, private software should not be used on departmental systems.

Departments may permit occasional and minor use of some equipment for private purposes, for example, occasional local telephone calls. However, public servants participating in political campaigns, or, fund raising and canvassing, must not make use of official facilities when campaigning. Reference is made to this issue in Chapter 6, Participating in Political Activities.

CHAPTER 11 - AVOIDING IMPROPER USE OF OFFICIAL POWERS

This chapter deals with:

- **taking improper advantage of an official position**
- **improperly attempting to influence other public servants**

Public servants have a general responsibility to make administrative decisions on their merits. This responsibility is discussed in detail in Chapter 3, Making Fair and Equitable Decisions. Having the power to make those decisions puts public servants in a position of trust in relation to their clients, and, for those staff who are supervisors, in relation to their colleagues.

Taking improper advantage of an official position

The Public Service Regulations make it clear that people working in the public service must not use their official position in order to influence a person to enter a financial arrangement or some other arrangement with them, or with anyone else (Regulation 39(1)). This type of arrangement could occur between two public servants or between a public servant and a member of the public.

Examples of this kind of behaviour are a public servant:

- pressuring a more junior staff member into lending money or buying goods; or
- seeking a discount on a product from a person or company that deals with them in their official capacity.

Improperly attempting to influence other public servants

The regulations make it clear that public servants must not influence, or try to influence their colleagues by making gifts to them, or by entering into financial arrangements or other arrangements with them (Regulation 39(2)).

Examples of such behaviour are:

- giving a gift or lending money to a public servant on the understanding that they will make a favourable decision about another person; and
- involving a colleague in a financial arrangement beyond their means, so as to be able to exert pressure on them.

There is nothing wrong with a loan, or the passing of gifts between public servants in the way of ordinary behaviour between friends, provided that it is not connected with official duties and there is no question of influence on official duties.

PART IV
CONFLICT OF INTERESTS

This part deals with the areas where potential or real conflicts of interests may arise. Issues covered include financial or other private interests, registration of interests, acceptance of gifts and other benefits, outside employment while working in the public service and acceptance of business appointments.

CHAPTER 12

FINANCIAL OR OTHER PRIVATE INTERESTS

This chapter deals with avoiding financial and other conflict of interests. It covers the following points:

- **legislative basis**
- **conflict of interests**
- **financial interests**
- **personal and other interests**

Public confidence in the integrity of the public service is vital to the proper operation of government. Where the community perceives a conflict of interests, that confidence is jeopardised. Public servants need to be aware that there may be areas of their private interest, both financial and personal, which could conflict with their official duties.

Legislative basis

Regulation 8B of the Public Service Regulations places the onus on each public servant to:

- be alert to any actual or potential conflict of interests, financial or otherwise;
- disclose to their supervisor situations where their private interests may conflict with their official duties; and
- take steps to avoid the conflict.

It is important to recognise that this regulation covers financial and personal interests of not only the public servant involved, but also the interests of immediate family members, to the extent that these are known. Failure to follow this regulation may constitute misconduct and could lead to disciplinary action under the *Public Service Act 1922*.

The approach taken in the public service for managing such situations was established by the code of conduct proposed by the *Report of the Committee of Inquiry Concerning Public*

Duty and Private Interest (the Bowen Report). The Bowen code was endorsed by the then Government for its application to ministers of state and their staff, members of the Defence Forces, public servants and statutory office-holders. The code consists of ten principles designed to promote the avoidance of conflict of interests, financial or otherwise, and provides a basis for their resolution where necessary. The Bowen code is included at the end of this chapter.

Conflict of interests

Departments should have issued guidelines for managing conflict of interests situations. These guidelines would usually cover:

- the public servant's responsibility—which is to advise his or her supervisor of the actual or potential conflict of interests; and
- the supervisor's responsibility—which is to decide whether:
 - there is, or could be, a conflict of interests;
 - to authorise the person to continue his or her duties;
 - to request that the person divest his or her interest; or
 - to rearrange the person's duties or to transfer the person to an equivalent position with duties involving no such actual or potential conflict of interests.

While public servants are required to declare potential conflict of interests, departmental management may also, as a legitimate part of the selection process, ask applicants about potential conflict of interests. Applicants may be advised of the need to abandon or divest an interest to avoid any conflict if their application is successful.

It is ultimately a matter for the secretary to decide what action is appropriate in situations involving conflict of interests. Secretaries need to declare to their minister any personal involvement in a situation where there is actual or potential conflict of interests.

Financial interests

Financial interests may cover such things as directorships, shareholdings, real estate or trusts which have the potential to conflict with official duties. Examples of this type of conflict are where:

- a public servant holds shares in a private company and his or her duties require decisions on contracts with or concessions for that company; or

- a public servant is responsible for making recommendations on information technology acquisitions in a department and is offered a position with one of the major computer suppliers to the department.

Personal and other interests

Personal and other interests may include such things as those involving personal relationships such as sporting, social or cultural activities as well as family, sexual or other relationships. Examples of where personal or other interests may conflict with official duties are where:

- a public servant repeatedly generates work which involves travel interstate because it provides him or her with an opportunity to visit friends; or
- a supervisor is in a position to approve higher duties for his or her spouse or to employ a friend.

In carrying out their duties public servants should not allow themselves to be improperly influenced by family or personal relationships. Situations may arise where a decision has to be made and that decision would directly affect a person who has a relationship with the decision-maker. In these cases a public servant should declare the conflict and should refer the matter to their supervisor who should be asked to make the decision on its merits. This is important. It should be seen that decisions taken by public servants are professionally beyond reproach. Similarly, when public servants in their private lives use knowledge gained as a result of their work (for example, in assisting someone to appeal against a decision), they should be mindful of the potential conflict of interests.

**Code of conduct proposed by the Report of the Committee of Inquiry
Concerning Public Duty and Private Interest (the Bowen Report) —
Principles for the avoidance and resolution of conflicts of interest**

1. An officeholder should perform the duties of his office impartially, uninfluenced by fear or favour.
2. An officeholder should be frank and honest in official dealings with colleagues.
3. An officeholder should avoid situations in which his private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty.

4. When an officeholder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with his public duty, or improperly to influence his conduct in the discharge of his responsibilities in respect of some matter with which he is concerned, he should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the officeholder should disclose the further information.

5. When the interests of members of his immediate family are involved, the officeholder should disclose those interests, to the extent that they are known to him.

6. When an officeholder (other than a Member of Parliament) possesses an interest which conflicts or might reasonably be thought to conflict with the duties of his office and such interest is not prescribed as a qualification for that office, he should forthwith divest himself of that interest, secure his removal from the duties in question, or obtain the authorisation of his superior or colleagues to continue to discharge the duties.

7. An officeholder should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself or for any other person.

8. An officeholder should not:

(a) solicit or accept from any person any remuneration or benefit for the discharge of the duties of his office over and above the official remuneration;

(b) solicit or accept any benefit, advantage or promise of future advantage, whether for himself, his immediate family or any business concern or trust with which he is associated from persons who are in, or seek to be in, any contractual or special relationship with government;

(c) except as may be permitted under the rules applicable to his office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of his office

9. An officeholder should be scrupulous in his use of public property and services, and should not permit their misuse by other persons.

10. An officeholder should not allow the pursuit of his private interest to interfere with the proper discharge of his public duties.

CHAPTER 13 - REGISTRATION OF INTERESTS

This chapter deals with the need to declare private interests which may give rise to conflict of interests. It covers the following matters:

- **who needs to provide a statement of interests?**
- **what is a statement of interests?**
- **relationship with conflict of interests procedures**
- **departmental procedures**
- **access to statements**

In 1983, the Government decided that ministers, ministerial staff, senior public servants including those working in statutory authorities, and statutory officeholders would be required to provide a written statement of their private interests. Departmental secretaries are responsible for implementing this government decision in respect of their department.

Who needs to provide a statement of interests?

Public servants in the Senior Executive Service (SES) and above, as well as those acting in SES positions for more than three months are required to provide written statements of their own private interests and those of their immediate family (spouse, including de facto spouse, and dependent children), to the extent to which they are known. There is no requirement to specify monetary values of private interests. The SES officer should incorporate into the statement, an acknowledgement that family members to whom the personal information relates have been advised of the collection and possible disclosure.

What is a statement of interests?

A statement of interests is a written statement of a person's private interests, covering those of that person's immediate family to the extent that they are aware of these interests. The purpose of the statement is to put on the record interests which could give rise to a conflict, or the appearance of a conflict with official duties.

The practice of requiring such statements is seen to contribute to maintaining the good reputation of the public service.

Departments will usually have pro forma statements prepared for staff to register their interests. The information will usually cover the following matters:

- real estate;
- shareholdings;
- trusts or nominee companies;
- directorships in companies;
- partnerships;
- other investments;
- other assets;
- other substantial sources of income;
- gifts, sponsored travel and hospitality; and
- liabilities.

Relationship with conflict of interests procedures

The requirement to provide a statement of interests is a supplement to the provisions relating to conflict of interests, which is discussed in Chapter 12, Financial or Other Private Interests. In situations where a secretary's statement discloses a conflict of interests, the relevant minister and the secretary should take measures to resolve the conflict. Where a public servant's statement discloses a conflict of interests, then the secretary should take measures, usually after discussion with the public servant, to resolve the conflict.

Public Service Regulation 8B places an obligation on public servants to disclose and avoid conflict of interests whereas the requirement to provide a statement of interests places an obligation on public servants to disclose their private interests.

Departmental procedures

Departments should have issued guidelines to staff on the requirement to provide written statements of their private interests and the information to be included in the statements. The usual procedure is that the secretary provides a statement to the minister, and statements by

other staff are provided to the secretary. Secretaries are responsible for ensuring both the security of the statements and the protection of the privacy of the person submitting the statement. Public servants should update their statements annually and notify significant alterations as they occur.

Access to statements

Departmental procedures would usually cover situations where a request has been received for a person's statement. It is usual practice for statements to be made available to ministers upon request and for the staff member to be informed of the request. In cases where there is a request for access to a statement from the Parliament or a parliamentary committee, a court or a tribunal, or by a person making an application under the *Freedom of Information Act 1982*, the request should be dealt with according to the law. In these cases, it is usually appropriate to seek advice from the Attorney-General's Department.

CHAPTER 14 - ACCEPTANCE OF GIFTS AND OTHER BENEFITS

This chapter covers the following issues:

- **taking advantage of an official position to obtain a benefit**
- **when gifts or other benefits can be accepted**
- **gifts or benefits associated with overseas visits**
- **bribery and solicitation**
- **hospitality**
- **frequent flyer schemes**
- **principles governing sponsored travel**
- **sponsorship by an inter-governmental or international official agency, humanitarian or non-profit or broad-based industry group**
- **sponsorship by private firms or groups**
- **private travel**

The public service has a reputation for integrity and professionalism which is, in part, based on the community belief that a person employed by the Commonwealth must not be influenced by bribes or benefits. The acceptance of any benefit, in circumstances within the definition of a bribe, could be both a breach of the regulations and an offence under the *Crimes Act 1914*.

Public servants at some time in their career may be offered a gift or other benefit as a result of their official position. There will be circumstances where the receipt of a gift or benefit could compromise, or appear to compromise, the integrity of the public service.

Taking advantage of an official position to obtain a benefit

The Public Service Regulations provide that public servants must not take advantage, or seek to take advantage, of their official position in order to obtain a benefit either for themselves or for someone else (Regulation 37(1)). Benefits may include:

- offers of gifts;
- sponsored travel;
- benefits under frequent flyer schemes;
- airline lottery type prizes;
- substantial hospitality;
- accommodation and hire car discounts; and
- entertainment.

The number of schemes available that offer a gift or benefit are many and varied and public servants must be careful to avoid participating in any aspects of such schemes.

When gifts or other benefits can be accepted

Gifts or other benefits can only be accepted with the express written approval of the secretary (Public Service Regulation 37(2)). The Regulations, however, provide that the secretary may specify the conditions under which gifts or benefits may be accepted without seeking specific written approval (Regulation 37(3)). These conditions are set out in departmental directions.

Departmental directions on accepting gifts or other benefits must be consistent with any guidelines issued by the Public Service Commissioner. Some of the issues which would have been considered in issuing departmental directions on the acceptance of gifts or other benefits would include:

- whether accepting the gift or other benefit would give rise to, or would give the appearance of, a conflict of interests;
- the nature of the department's general functions;
- the type of relationship the department has with the person, company or other body offering the benefit, for example:
- whether the person, company, or body is in a contractual relationship with the Commonwealth;

- whether there is a discretionary relationship between the public servant and the person, company, or body receiving Commonwealth assistance;
- whether the person's, company's or body's primary purpose is to lobby ministers, members of Parliament or departments; and
- whether the department is in a regulatory relationship with the person, company, or body;
- the possible adverse consequences to the Commonwealth's interests which may flow from the non-acceptance of a benefit;
- whether the benefit is being accepted as part of a formal exchange of benefits between official representatives of the Commonwealth and an overseas government;
- the likelihood of further or repeated contact with potential providers;
- whether different approaches should be taken to groups of staff in a department, according to their classification level, the nature of their work and possible contact with potential providers; and
- the type of benefit, which, in the context of the department's functions, can properly be seen as minor or token in nature.

It is difficult to provide guidance on the acceptance of gifts and other benefits simply by setting a dollar limit on their value. Some of the specific difficulties encountered in applying such limits are:

- dollar amounts tend to discourage consideration of the circumstances of the gift;
- there is considerable scope for dispute over the monetary value of gifts;
- monetary limits do not adequately deal with the problem of small gifts being presented regularly;
- inexpensive gifts carrying the name or logo of a sponsor can in some circumstances give the appearance of a conflict of interest, e.g. an officer from a purchasing area wearing clothing bearing the logo of a particular supplier; and
- universal monetary limits do not take account of the differing impact which a particular gift can have on staff members at different levels.

There are also some areas of the public service where secretaries may prefer to adopt the approach that no gifts or benefits are to be accepted without their written approval. This may particularly be the case in departments which have largely commercial relationships with their clients.

Whatever the department's policy is for the acceptance of gifts or benefits, the departmental directions should make it clear that the policy also applies to the family of the person involved where there is a clear link with the person's official duties.

Departmental directions are only a guide to assist in deciding whether or not to accept a gift or benefit. Public servants should use careful judgment in making the decision. Public servants in any doubt as to whether or not to accept the gift or benefit, for example, due to the possibility of conflict of interests, should discuss the matter with their supervisor.

If the department has not issued a direction on the acceptance of gifts or other benefits, then the basic principle is that public servants must seek the express written permission of their secretary, before accepting a gift or benefit of any kind.

Gifts or benefits associated with overseas visits

The circumstances surrounding gifts or benefits being offered during overseas visits or by foreign dignitaries can be sensitive. The *Guidelines for the Receipt of Official Gifts* (PSC Circular 1991/07 of 22 July 1991) cover the circumstances in which a secretary may allow a benefit or gift to be accepted in respect of overseas visits, or visits to Australia by overseas dignitaries. The main points of the circular are summarised below:

- gifts received when overseas in the course of official duty are to be declared to Australian Customs if the gift falls outside the normal duty free passenger concession;
- gifts received overseas or within Australia must be declared to the secretary of the recipient's department within 30 days of receiving the gift where the value of the gift is believed to exceed the stated limits or where there is likely to be some particular sensitivity associated with the gift. Public servants may keep the gift if its value does not exceed \$500 for a gift received from an official (government) source, or \$100 from a private or industry source;
- gifts in excess of the above stated limits may be kept by the public servant who received the gift if he or she elects to pay the difference between the stated valuation limit and the value of the gift; and
- where the value of the gift exceeds the stated valuation limits and the public servant who received the gift chooses not to pay the difference the gift is to be surrendered to the secretary of the department for disposal.

It should be noted that unless a secretary has made a direction under Regulation 37(4) in these terms, acceptance of any of these gifts will still require written approval of the secretary, on a case-by-case basis, as provided by Regulation 37(2).

Bribery and solicitation

All public servants should be aware that accepting any benefit, in circumstances within the definition of a bribe, could be both a breach of the regulations and an offence under the Crimes Act.

Bribery may be distinguished from solicitation by the fact that, in the case of bribery, the 'gift' is given with the intention of influencing a public servant to take or not to take a specific action. Section 73 of the Crimes Act states that it is an offence for a person to offer, or attempt to offer, a Commonwealth officer a bribe, and it is an offence for a Commonwealth officer to take a bribe. Solicitation of gifts occurs where a public servant seeks a gift from another person with the intention of ensuring that he or she takes or does not take a specific action. In this case, it is an offence only for the public servant involved and not the person from whom the gift is being sought.

Hospitality

Funds are available to be used by agencies for official hospitality purposes to further the conduct of public business. Expenditure on official hospitality must be publicly defensible.

The primary purpose of the event must be work related.

Under Finance Direction 13A, departmental secretaries are responsible for issuing directions to control expenditure on hospitality. Some examples of official hospitality costs may include:

- 'working meals', where a meeting has been scheduled over a normal meal break and there are cost advantages in continuing the meeting;
- hospitality to overseas visitors where the agency has an interest in, or some obligation towards, facilitating the visit; or
- hospitality to representatives of the press and other media on those occasions when media attendance would be of benefit to the agency or the Commonwealth.

Public servants operating in commercial environments are more frequently being exposed to offers of hospitality from sources outside the public service. Generally speaking, such offers have the potential to give rise to a conflict of interests. They should be treated in the same way as other gifts or benefits and may be specifically addressed in departmental guidelines on gifts or benefits.

Frequent flyer schemes

Public servants may be required to travel on official business on behalf of their department and as part of their official travel they may be invited to join a frequent flyer scheme which offers benefits such as free travel, consumer goods or holidays. Public servants should be aware that it is government policy that they are not to obtain a personal benefit from frequent flyer points accrued while travelling on official business.

Redeeming points accrued as a result of official travel in order to gain a personal benefit breaches Public Service Regulations (Regulation 8B and Regulation 37(1)) and could lead to disciplinary action under the *Public Service Act 1922*.

Departments may arrange for points accrued from travel for official purposes to be redeemed for further official travel or other official uses.

When travelling on official business public servants must not enter competitions, or lottery-style promotions on offer by airline companies.

Where public servants are travelling for private purposes there is of course no restriction on participating in any of these schemes, as long as it is clear that there is no link with the travel undertaken for official purposes.

Principles governing sponsored travel

As a general rule, the Commonwealth pays for public servants to travel for their official duties. Situations may arise, however, where a body external to the public service offers to pay for travel for a public servant. In such cases of sponsored travel, a public servant is being offered a benefit and it should be treated in the same way as gifts and other benefits described earlier in this chapter.

Public servants should be aware of the following principles regarding sponsored travel:

- the Commonwealth should meet the expenses associated with work undertaken on its behalf by its staff;
- public servants and their departments should avoid conflict of interests or the appearance of such conflict; and
- private organisations which cannot afford to sponsor travel for public servants should not be placed at a disadvantage against those who can.

It should be noted that travel by public servants in the performance of work for other organisations or bodies, is not considered to be sponsored travel in situations where:

- the staff member is to provide a specific service for that body and cost recovery is appropriate; or
- the staff member has been seconded or lent to the other body.

As a general rule, departments will not accept offers from non-official sources to sponsor travel by their staff. Sponsored travel includes cases where transport, accommodation or living expenses are paid for or provided other than from official funds or the public servant's own resources.

Sponsorship by an inter-governmental or international official agency, humanitarian or non-profit or broad-based industry group

Sponsorship by an inter-governmental or international official agency, another government, an educational institution, a non-profit organisation, a recognised humanitarian organisation or broad-based industry group may be acceptable.

There are some recognised instances where travel opportunities are offered on a general rather than a particular basis, such as industry familiarisation tours, or where a body such as the World Health Organisation sponsors participants in a seminar. In such cases, the source of the funding should be reputable, bipartisan and without political overtones, and no conflict of interests or perceived conflict of interests should be created as a result of accepting the offer.

Sponsorship by private firms or groups

Sponsorship by private firms or groups, especially by individual commercial firms, is unlikely to be regarded as acceptable. Acceptance of such sponsored travel may lead to the perception that the department or the public servant is sponsoring the company concerned.

There may be exceptions where a department considers the travel to be in the government's interest and where practical alternative means of travel at official expense are not available. In such cases, the department may offer to contribute to the cost of this travel.

On some occasions, use by public servants of travel facilities made available by a commercial interest in relation to the inauguration of travel services or opening ceremonies at new commercial or industrial undertakings may fall into this category.

An offer of sponsored travel should be referred to the secretary, who will generally select an appropriate member of staff if the travel is justified. The important criterion to be borne in mind is that the department, or the public service as a whole, should be seen to gain the benefit of the opportunity, rather than the individual undertaking the travel. This is essential to avoid giving rise to perceptions of conflict of interest.

There may be cases where travel is required in the course of conducting investigations or research funded from a non-Commonwealth source. The appropriateness of such travel would need to be considered in the context of the acceptability and perceptions of the broader funding arrangements.

Acceptance of incidental travel, meals, entertainment and other hospitality in the course of official travel at Commonwealth expense is a matter for the judgment of the public servant concerned, having regard to Public Service Regulation 37 and the guidelines in Chapter 12, Financial or Other Private Interests and the need to avoid a conflict of interests. Offers of discounted accommodation which are available to public servants generally, rather than to individuals, may be acceptable, unless there is the possibility of a conflict of interests arising.

Public servants who receive direct offers of sponsored travel must bear in mind the rules relating to conflict of interests (Regulation 8B) and acceptance of gifts (Regulation 37(2)), as well as the issue of improper use of official position (Regulation 39). Direct offers of sponsored travel should be referred to the secretary for consideration.

Sponsored travel which would not be acceptable under the guidelines is not made acceptable by being undertaken during a period of leave.

Private travel

Travel arising from bona fide prizes (but not arising out of official travel) or scholarships awarded to a person in a private capacity, or under existing approved programs such as overseas exchanges, study awards and traineeships, is not considered sponsored travel for the purposes of these guidelines.

CHAPTER 15

OUTSIDE EMPLOYMENT WHILE WORKING IN THE PUBLIC SERVICE

This chapter provides guidelines for public servants who are seeking to undertake outside employment. It covers the following:

- **general principles**
- **conflict of interests issues**
- **applying for permission to engage in outside employment**
- **changes in circumstances**
- **use of paid and unpaid leave**
- **unpaid voluntary work**

Public servants are able to perform work outside the public service, provided this does not conflict or interfere with the performance of their official duties. Under the *Public Service Act 1922*, public servants must first obtain permission from their secretary if they wish to engage in outside employment (s. 91). Outside employment includes paid work, such as tutoring or driving a taxi running a business, and other remunerative activity such as holding a directorship or working as a tax agent. Unpaid voluntary work is also included.

General principles

As a general proposition, public servants should not seek to engage in outside employment if that employment:

- would place them in a conflict with their official duties, or would lead to the perception that they have placed themselves in conflict with their official duties; or
- is likely to affect their efficiency in the performance of their official duties.

Outside employment is to be performed wholly in the public servant's private time.

In considering applications for permission to engage in outside employment, departments will look to strike a proper balance between the interests of the Commonwealth as an employer and the rights of public servants to lead their private lives free of unnecessary restrictions. It should be noted that public servants may not accept outside payment for activities which would be regarded as part of their normal duties.

Conflict of interests issues

In considering whether a conflict of interests may exist, or appear to exist, particularly in relation to directorships, public servants should consider whether:

- the company is in, or is in the process of entering into, a contractual relationship with the Commonwealth or its authorities;
- the company is in receipt of Commonwealth Government assistance;
- the company's primary purpose is to lobby ministers, members of Parliament, government departments and authorities on matters related to the public servant's official duties[
- the public servant's department or agency is in a regulatory relationship with the company; and
- granting approval could give a rival business, including a government business enterprise, reasonable grounds for perceiving a conflict of interest to exist.

Applying for permission to engage in outside employment

When applying for permission to engage in outside employment, public servants should provide the following information:

- details of the proposed outside employment including the proposed hours of employment;
- together with the applicant's opinion as to whether the outside employment:
- will adversely affect his or her efficiency and effectiveness in the performance of official duties;
 - is likely to cause any conflicts or difficulties in relation to departmental requirements for overtime, 'on call' situations, rostered shifts, etc.;
 - is relevant to confidential, proprietary or particular information to which the applicant has access by virtue of his or her employment with the Commonwealth Government; and

- might reasonably be seen by the public or another company as involving a conflict of interests.

Changes in circumstances

The secretary may decide to grant approval conditional upon satisfactory performance of official duties.

Where the department considers that a conflict of interests has arisen subsequently or performance of official duties is being adversely affected, for example, as a result of the public servant's fatigue or limited availability, the approval may be withdrawn. These matters would normally be discussed with the public servant concerned, before any action was taken to withdraw approval.

Public servants should inform their department of any material change in the nature or circumstances of the outside employment for which approval has been given, or of any changes in their official duties which could bring them into conflict with their outside employment.

Public servants should not take action on the basis that permission to engage in outside employment will be granted. The Act requires public servants to obtain permission before engaging in outside employment—not afterwards.

Use of paid and unpaid leave

A public servant who wishes to undertake outside employment while on long service leave or leave without pay should state this in his or her application for leave, as well as seeking approval for outside employment by setting out the information outlined above. Public servants who intend to engage in outside employment while on recreation leave must gain approval to do so.

Unpaid voluntary work

As noted above, the requirement to obtain the approval of the secretary of the department extends to employment which is unpaid. As a general rule, however, management will not interfere with staff involving themselves in outside activities of a voluntary and unpaid nature unless there is a clear conflict of interests. Where a conflict of interests arises between these activities and official duties, public servants have, in any event, an obligation to raise this with their supervisor.

CHAPTER 16

ACCEPTANCE OF BUSINESS APPOINTMENTS

This chapter covers the following areas:

- **legal restrictions after leaving Commonwealth employment**
- **general principles relating to acceptance of business appointments**
- **identifying conflict of interests**
- **procedure where a public servant is offered a business appointment**

The guidelines in this chapter apply to all public servants, but are likely to be of most relevance to secretaries and members of the Senior Executive Service.

These guidelines should be followed where a public servant intends to take up a business appointment after he or she resigns or retires from the Commonwealth, where seeking that appointment could give rise to a conflict of interests. The guidelines are aimed at protecting the integrity of the public service, and the reputation of the losing department, the public servant, and the new employer, by identifying and removing conflict between a public servant's interests and the proper performance of his or her duties in the period before he or she leaves Commonwealth employment.

Departments should bring these guidelines to the attention of public servants intending to resign or retire.

Legal restrictions after leaving Commonwealth employment

There is no provision in the *Public Service Act 1922*, the regulations, or any other legislation which restricts the type of employment that may be undertaken by a former officer after he or she retires or resigns from the public service. However, there are restrictions on the disclosure of official information after leaving Commonwealth employment. Before a public servant resigns or retires, he or she should be made familiar with the provisions of s. 70(2) of the *Crimes Act 1914*:

A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him), any fact or document which came to his knowledge, or into his possession, by virtue of having been a Commonwealth officer, and which, at the time when he ceased to be a Commonwealth officer, it was his duty not to disclose, shall be guilty of an offence.

The penalty for a breach of s. 70(2) is imprisonment for two years.

In common law there is a general rule that a person is not to be restrained from using skill, knowledge or experience gained in the course of employment. However, an exception to this general rule is the doctrine of breach of confidence which protects information of a confidential nature imparted to an officer in circumstances where an obligation of confidence is imposed.

Under common law, any work performed by an employee for an employer is the property of the employer. Because the Commonwealth is the employer of public servants, any work performed by the officer for the Commonwealth is, and remains, the intellectual property of the Commonwealth.

In addition to the possibility of sanctions being imposed where a former public servant breaches the law in this area, he or she, particularly if a former senior officer, should be aware of the possibility that the new employment could attract potentially embarrassing media, or parliamentary scrutiny.

General principles relating to acceptance of business appointments

As a general principle, mobility between the public and private sectors should not be unduly restricted. However, it is important that all reasonable steps are taken, when a business appointment is being contemplated, to avoid conflict of interests which may arise while the public servant is still employed by the Commonwealth.

Identifying conflict of interests

Where a public servant is intending to take up a business appointment after resigning or retiring, conflict of interests are most likely to arise where his or her work involves:

- Commonwealth purchasing functions;
- the preliminary stages of procurement—identification and definition of a requirement—especially when the capability of suppliers is closely connected with a specification;

- anticipated, or actual, contractual relationships between the Commonwealth and the proposed employer;
- the exercise of discretion in conferring some advantage on the proposed employer, e.g. a licence or concession, including a bounty, subsidy or tariff;
- knowledge of confidential procedures and criteria used within a department which could allow anticipation or manipulation of departmental decisions; or
- knowledge of government intentions which could confer direct pecuniary advantage on those able to participate.

Similarly, an appointment with a business or a body falling into any of the following categories could raise immediate issues of conflict of interests:

- those in, or anticipating, contractual relationships with the Commonwealth;
- those in which the Commonwealth is a shareholder;
- those in receipt of Commonwealth loans, guarantees or other forms of capital assistance;
- those with which the public servant's department is otherwise in a special or close working relationship, for instance in regard to regulation, policy formulation or decision making; or
- those whose primary purpose is to lobby ministers, members of Parliament, or departments.

Procedure where a public servant is offered a business appointment

Where a public servant whose duties fall into any of the categories outlined above has been offered a business appointment, or where a public servant has been made an offer of employment by a business or body falling into one of the categories outlined immediately above, the public servant should notify the secretary in writing. This notification should outline any relationship between the public servant's official duties and the proposed appointment, and should describe any possible conflict of interests perceived by the public servant.

The secretary, having regard to:

- the importance and sensitivity of the position held by the public servant;
- the nature of the business appointment and its relationship to the public servant's work;

- the relationship of the proposed employer and the Commonwealth, e.g. if the proposed employer is a regular supplier of services or equipment to the Commonwealth or could benefit from knowledge of government policy intentions; and
- the period during which information gained or contacts made would continue to be of value to the public servant and his or her new employer

should discuss with the public servant the steps that are to be taken to avoid any immediate conflict of interests—such as re-allocating the public servant’s duties among other officers, arranging a temporary transfer of the public servant to a different work area, or taking leave before resigning or retiring—and, in the event of any perceived difficulty in the relationship of the new employer with the old, what action should be taken to resolve that difficulty. For example, it may be appropriate to negotiate an agreement under which the former public servant is, for a specified period, not to be involved in dealings with their former department.

A secretary contemplating or offered a business appointment should follow the same procedures, notifying the Secretary of the Department of the Prime Minister and Cabinet of his or her intentions.

A statutory officer contemplating or offered a business appointment, whether during or at the end of the period of appointment, should follow similar procedures, notifying the portfolio secretary of his or her intentions. In instances where the business appointment is related to the officer’s statutory responsibilities it may be desirable for the person concerned, on taking up such a position, not to be involved, for a specified period, in dealings with the statutory authority or in advising on issues dealt with by that statutory authority.

PART V
WORKING IN THE SERVICE

This part deals with the standards of conduct expected of public servants when working with their colleagues. Issues covered include human rights, equal employment opportunity, workplace and sexual harassment, occupational health and safety, smoking and misuse of alcohol and other drugs.

CHAPTER 17 - WORKING WITH OTHERS

This chapter focuses on the obligations of departmental management and individual public servants in relation to:

- **human rights**
- **merit in staff selection**
- **equal employment opportunity (EEO)**
- **workplace and sexual harassment**
- **industrial democracy (ID)**
- **occupational health and safety (OH&S)**

Australian society values the diverse backgrounds of its people and strongly believes in the rights of individuals. Concern for the rights of individuals also applies in the workplace. There is a framework of legislation, awards and agreements which promotes fairness, well-being and safety at work.

This framework places obligations on managers and staff in seeking to achieve productive, effective and harmonious workplaces.

The guidance in this chapter is based on Australia-wide workplace requirements and those that are specific to the APS. Much of the material that is specific to the Service is consistent with arrangements in other industries.

Human rights

Australia was one of the first supporters of the United Nations General Assembly's adoption of the Universal Declaration of Human Rights.

The Human Rights Commission (later replaced by the Human Rights and Equal Opportunity Commission) was established following Australian ratification of the International Covenant on Civil and Political Rights, to ensure Australia's compliance with its international obligations.

The Human Rights and Equal Opportunity Commission (HREOC) administers the *Human Rights and Equal Opportunity Commission Act 1986*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Privacy Act 1988*. These Acts prohibit unlawful discrimination and harassment in employment and most areas of public life.

Complaints of unlawful discrimination may be investigated and settled by the HREOC. Attempts are made to conciliate complaints, but where agreement between the parties cannot be reached, complaints may be referred to public hearings.

The *Public Service Act 1922* specifically prohibits discrimination in appointments, transfers and promotions on a wide range of grounds. These are set out below.

Merit in staff selection

The Public Service Act requires that people be appointed to the Service and promoted within the Service on the basis of merit competition. Appointments are required to be made on the basis of an assessment of the relative suitability of the applicants for appointment (s. 33(1)). Similarly, secretaries are required to select the most efficient person who has applied for a particular promotion (s. 50A(1)).

The Public Service Act also requires that decisions relating to appointments, transfers and promotions be made without:

- discrimination on the ground of political affiliation, race, colour, ethnic origin, social origin, religion, sex, sexual preference, marital status, pregnancy, age or physical or mental disability;
- discrimination that is unlawful under the Racial Discrimination Act, the Sex Discrimination Act or the Disability Discrimination Act; or
- any other unjustified discrimination (s. 33(3)).

Public servants will have failed to fulfil their duty if they engage in patronage, favouritism or discrimination (s. 56(ea)). This can result in disciplinary action.

Equal employment opportunity (EEO)

The public service recognises the value of the benefits to be gained from a diverse work force, and a legislative and policy framework has been developed to support EEO. This framework is complemented by the *Equal Employment Opportunity: A Strategic Plan for the Australian Public Service for the 1990s* produced by the Public Service Commission (PSC).

The Public Service Act identifies four groups which are covered by EEO programs as:

- people of Aboriginal or Torres Strait Islands origin;
- people of non-English speaking background;
- people who are physically or mentally disabled; and
- women.

The objectives of the EEO Strategic Plan are:

- to eliminate unjustified discrimination against members of EEO groups in relation to all employment matters;
- to enable members of EEO groups to compete for promotion and transfer and pursue careers as effectively as other staff; and
- to increase or maintain the representation of EEO groups across all levels and structures of the APS on the basis of open competition on merit.

Inherent in the Plan, the legislation and policy are obligations for departmental management and staff to eliminate unjustified discrimination in employment. Potential areas of discrimination include:

- selection for appointment, promotion, transfer and temporary transfer;
- performance appraisal and performance pay;
- training and staff development; and
- terms and conditions of service.

Section 22B of the Public Service Act requires secretaries of departments to develop Equal Employment Opportunity Programs in consultation with relevant staff organisations and such other persons as the secretary considers appropriate. These programs are to be reviewed from time to time. The Act also requires staff who exercise powers in relation to employment matters to have regard to the department's EEO program (s. 22B(5)).

Workplace and sexual harassment

Harassment in the workplace covers a range of unsolicited behaviour which causes distress and is a form of employment discrimination. Harassment takes two major forms:

- workplace harassment; and
- sexual harassment.

Workplace harassment consists of offensive, abusive, belittling or threatening behaviour directed at an individual public servant or group of public servants because of some real or perceived attribute. It may relate to a person's political affiliation, political opinion, union activity, race, colour, ethnic origin, social origin, religion, sex, sexual preference, marital status, pregnancy, age, physical or mental disability, professionalism, integrity or conduct.

Sexual harassment is any unwanted, unreciprocated and unsolicited sexual advance or other conduct of a sexual nature. It can include offensive comments or jokes, teasing, continual invitations to go out, stares and leers, offensive posters or signs, physical contact or sexual assault. Sexual harassment can happen to anyone, but it is most often experienced by women.

Public servants must not harass fellow public servants or members of the public. There may occasionally be circumstances where a person's behaviour unintentionally causes distress. In these circumstances the behaviour which causes distress should usually be avoided.

However, there are circumstances in which the work of supervisors may cause distress, for example, providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance more generally. In these circumstances it is unreasonable to expect that the process will always be free of stress. Supervisors should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff.

Service-wide guidelines on *Eliminating Sexual Harassment* and *Eliminating Workplace Harassment* are administered by the PSC. These guidelines provide advice on the prevention and management of harassment in the workplace. In essence, they provide for resolution of harassment cases in the workplace or within the department, but ultimately cases of harassment may progress to HREOC.

Industrial democracy (ID)

The APS recognises the value of effective consultation between staff, represented by their unions, and departmental management at both Service-wide and departmental levels. The Service-wide consultative mechanisms are discussed in Chapter 7, Participating in Industrial Activities.

Industrial democracy encompasses both formal consultation with unions (representative ID) and management practices within the workplace (workplace ID).

Section 22C of the Public Service Act requires secretaries of departments to develop Industrial Democracy Plans in consultation with relevant staff organisations and such other persons as the secretary considers appropriate.

There is a range of formal consultative arrangements in place in departments. Usually these take the form of a committee structure, with a national consultative council and a number of specific subcommittees.

Topics for discussion within these consultative forums will often include:

- equal employment opportunity;
- staff training and development;
- personnel policies and practices;
- technological change;
- financial resource planning;
- service delivery;
- work design and organisation;
- physical working conditions and accommodation; and
- occupational health and safety issues.

Staff are represented, usually through their unions, in these forums. Departments usually provide facilities to encourage these activities.

In less formal settings, departments encourage participative management practices in the workplace. These practices provide opportunities for staff to contribute to and comment on decisions and policies which are likely to affect them.

Occupational health and safety (OH&S)

There are two pieces of legislation which cover occupational health and safety arrangements in the public service. They are:

- the *Occupational Health and Safety (Commonwealth Employment) Act 1991*; and
- the *Safety Rehabilitation and Compensation Act 1988*.

The first of these Acts is primarily concerned with managing OH&S issues in the workplace. It has a preventative focus. The second Act provides for the rehabilitation and compensation of staff who are injured in the course of their work. Both Acts are administered on a day-to-day basis by the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (Comcare Australia).

The Occupational Health and Safety (Commonwealth Employment) Act places legal obligations on departmental management and staff. For example, departments are required to:

- take all reasonable steps to protect the health, safety and welfare of staff by providing and maintaining a work environment that is safe and risk free;
- develop a local policy in consultation with unions;
- ensure staff are familiar with emergency procedures;
- monitor the health and safety of staff; and
- establish a local health and safety committee.

An example of the steps taken by departmental management to protect the health, safety and welfare of staff is the provision of counselling services, such as the Employee Assistance Program. This program provides staff and their families with access to professional counselling.

Management is assisted with these responsibilities by health and safety committees, whose role includes encouraging cooperation between staff and management. The Act also sets out the powers of health and safety representatives, which include investigating complaints by employees and issuing provisional improvement notices, which may specify actions to be taken within specified periods to rectify particular problems.

The Act also imposes obligations on managers and individual public servants. While at work staff are expected to take all reasonable and practicable steps to:

- use equipment in accordance with instructions issued by departmental management;
- not risk the health and safety of other people in the workplace; and
- cooperate with all people who have obligations under the Occupational Health and Safety (Commonwealth Employment) Act.

The *APS Home Based Work Interim Award 1994* provides detailed guidance on the occupational health and safety issues which should be considered when approving applications for home based work. The Award sets out the responsibilities of both employers and employees in relation to occupational health and safety.

All states and territories have occupational health and safety legislation. This legislation does not apply to Commonwealth staff, but it does apply to non-Commonwealth staff working on Commonwealth premises.

CHAPTER 18

SMOKING, ALCOHOL AND OTHER DRUGS MISUSE

This chapter covers the following issues:

- **alcohol and other drugs misuse**
- **smoking**

Illness resulting from smoking, alcohol and other drugs misuse is one of the major contributors to health problems in Australia. Public servants must take care not to put themselves in a position where they are not able, because of alcohol or other drugs misuse, to carry out their duties effectively. They must also ensure that the health and safety of their colleagues is not endangered by such misuse.

Alcohol and other drugs misuse

Studies conducted in Australia suggest that the misuse of alcohol and other drugs contributes significantly to accidents, injuries and inefficiency in the workplace. A recent study of working days lost to smoking and drinking estimates that the total burden of recreational drugs in Australia is \$16 billion.

Responsibility of public servants

The Public Service Regulations require public servants to perform their duties with skill, care, diligence and impartiality (Regulation 8A(a)). Disciplinary action can be taken where a public servant's conduct can be shown to affect adversely:

- the performance of their duties; or
- the reputation of the Service (Regulation 8A(i)).

This means that public servants should avoid any activity that is likely to have a detrimental effect on their work performance or that of their colleagues. Accordingly, public servants should not be under the influence of alcohol or other drugs while they are at work.

In cases where a public servant has sought assistance for an alcohol or drug misuse problem it is important that all information provided is treated as confidential. All discussions on work performance or alcohol and other drug misuse should be conducted in private. This is consistent with the approach to managing performance problems generally.

Departmental policy

Departments will usually have developed policies to address the problem of misuse of alcohol and other drugs. These policies are generally concerned with the health problems associated with the misuse of alcohol and other drugs and tend to focus on prevention and rehabilitation.

Counselling resources

Departments generally provide some counselling assistance to public servants who are experiencing work related or personal difficulties. In the case of alcohol and drugs misuse there may be people within the department who have special counselling skills who may assist with these problems. Alternatively departments may provide access to external professional counselling services such as the Employee Assistance Program. These programs are usually available to public servants and their families.

Smoking

Over recent years research has shown the ill effects that smoking and passive smoking have on people's health. Since 1988 it has been government policy that people working in the APS will work in a smoke free environment. This means that public servants and people visiting APS premises may not smoke in the workplace.

Departments will usually have a policy on smoking which sets out the responsibilities of public servants to ensure that work performance is maintained at a high standard and that there is no significant disruption to work caused by public servants leaving the office to smoke.

To further encourage the health of public servants some departments provide support to participate in quit smoking programs.

PART VI
WHISTLEBLOWING AND
FRAUD

This part covers the situation in relation to whistleblowing and deals with fraud within the Public Service and how to handle it.

CHAPTER 19 - WHISTLEBLOWING

This chapter deals with the following issues:

- **reporting matters internally**
- **external review**
- **reporting matters to the public or to another department**
- **protective provisions**

There is at present no scheme of legislation in the Commonwealth which explicitly provides for public servants to report fraud, waste and mismanagement and provides protection from victimisation for public servants who do this.

The issue of whistleblowing has been examined by a number of parliamentary and government reports in recent years, including the Review of Commonwealth Criminal Law (the Gibbs Committee), the Review of the Office of the Ombudsman undertaken by the Senate Standing Committee on Finance and Public Administration, the House of Representatives Standing Committee on Banking, Finance and Public Administration (the Elliott Committee) Inquiry into Fraud on the Commonwealth and the Senate Select Committee on Public Interest Whistleblowing, which handed down its report on 31 August 1994.

The Government's position on these matters is under review.

In the absence of a scheme of legislation, the matter is broadly covered by a number of separate legislative provisions.

Reporting matters internally

There is a positive obligation on public servants who are in supervisory positions to report to the secretary of their department all breaches of the regulations which come to their knowledge (Public Service Regulation 30). Further, public servants are, generally speaking, entitled to report any information obtained in office to their secretary, provided they do not owe a duty of secrecy to a third party that would prevent such reporting and provided there is no specific legislation prohibiting disclosure.

External review

A public servant may also complain to the Commonwealth Ombudsman where he or she believes that a department has acted wrongly in its decision-making. The Ombudsman has wide-ranging powers to obtain information and documents in the investigation of such complaints.

The provisions of the *Ombudsman Act 1976* (s. 37) provide a complainant with protection from civil actions if they complain in good faith.

Reporting matters to the public or to another department

Under the Public Service Regulations, a public servant may disclose official information to the public or to another department only where:

- it is in the course of the public servant's official duty to do so; or
- the secretary has expressly authorised that disclosure (Regulation 35).

Under the *Crimes Act 1914* (s. 70), breach of Regulation 35 is a criminal offence. Former public servants are also prevented from making such disclosures.

Protective provisions

The Public Service Regulations provide a general mechanism enabling public servants to lodge grievances about a wide range of departmental actions which affect their own employment. Under this mechanism, grievances are dealt with first within the department. If the public servant remains aggrieved after the department has made its decision on the grievance, he or she may then take the grievance to the Merit Protection and Review Agency (MPRA).

It is also open to a public servant to take a grievance directly to the MPRA: where the public servant believes that he or she is being subjected to harassment for having applied to have other departmental action investigated; or where the seriousness or sensitivity of the matter means that it is not appropriate for the department to investigate its own action.

Whether a matter is originally or ultimately taken to the MPRA, the MPRA is required to attempt to resolve the grievance by:

- counselling the parties concerned;

- conciliating between the parties concerned;
- making a finding of fact;
- making a report to the department concerned.

The MPRA may also report to the Prime Minister and to the Parliament on a matter if it believes that a department has not taken adequate or appropriate action in response to a report.

CHAPTER 20— FRAUD

This chapter deals with the following issues:

- **what is fraud?**
- **preventing fraud**
- **reporting, investigating and prosecuting fraud**
- **career protection**
- **rights of individuals**
- **fraud and the disciplinary process**

What is fraud?

Fraud against the Commonwealth is defined in the Commonwealth's fraud policy as:

Inducing a course of action by deceit or other dishonest conduct, involving acts or omissions or the making of false statements, orally or in writing, with the object of obtaining money or other benefit from, or of evading liability to, the Commonwealth.

This definition includes monetary gain and any benefit that could be gained from the government, including intangibles, such as 'rights' of entry to the country, documentation conferring identity, and information.

Fraud against the Commonwealth is a very serious offence and can result in penalties under the *Crimes Act 1914* and the *Proceeds of Crime Act 1987*. Public servants who commit fraud may also face misconduct charges under the *Public Service Act 1922* and face loss of superannuation entitlements under the *Crimes (Superannuation Benefits) Act 1989*. Public servants should also be aware that the *Audit Act 1901* contains penalties for the misuse of public monies.

Best Practice for Fraud Control, which is published by the Attorney-General's Department, is a major reference on the subject of fraud control.

The definition of fraud raises two issues. First, there is the aspect of obtaining a benefit or avoiding an obligation. Examples include:

- illegally obtaining money;
- getting early payments or advances;
- using equipment for private purposes;
- avoiding fees or taxes;
- obtaining approvals under false pretences; or
- avoiding contractual obligations.

Secondly, there is the deceit used to gain a benefit or advantage. Examples include:

- providing false or incomplete information;
- falsifying records; or
- avoiding proper procedures.

The use of deceit to gain a benefit must be intentional and not accidental. There must be a deliberate attempt to deceive through false statements or omissions.

Fraud is committed by people inside and outside departments. Public servants who commit fraud do so for their own benefit, or for the benefit of colleagues or outsiders. In the case of fraud by members of the public, public servants are often unaware that they are being manipulated and unaware of the consequences of their actions.

Preventing fraud

Workplaces in which there is a focus on ethical behaviour and good practices experience less fraud than workplaces which lack this focus. Secretaries of departments are responsible for minimising opportunities for fraud to occur, by ensuring that programs have inbuilt safeguards and that staff are informed that fraudulent behaviour will not be tolerated.

Departments are required to widely disseminate the government's fraud control policy within the department, and to put in place their own fraud control plan. These plans are to include procedures for implementing the government's requirements in relation to fraud prevention, its detection, investigation and prosecution, recovery and civil rights and privacy processes. Public servants should acquaint themselves with these plans.

Departments are responsible for ensuring that:

- all staff are aware of their responsibilities in relation to preventing, detecting, reporting and investigating fraud against Commonwealth programs;
- in relation to incidents of fraud that occur, all staff are made aware of their rights and duties as public servants; and
- ethical standards within each department are developed and promoted.

Reporting, investigating and prosecuting fraud

In addition to their fraud prevention activities, Commonwealth departments are responsible for:

- detecting and reporting of criminal offences committed, or suspected of being committed, against the department; and
- investigating routine instances of fraud against departmental programs, regardless of whether the investigation results in the application of an administrative remedy, or referral of the matter for prosecution. Other matters may also be investigated as agreed with the Australian Federal Police.

It is government policy that Commonwealth departments must carry out their own investigations of minor incidents of fraud in the first instance.

Suspected fraud should normally be reported to senior management, though in some situations it may be appropriate for public servants to go directly to the department's internal auditors or fraud investigators. It is important to limit the reporting of suspected fraud to the people who are responsible for dealing with it.

Public servants who report fraud should be aware of their obligations in relation to the disclosure of official information. This subject is dealt with in more detail in Chapter 9, Managing Official Information and Chapter 19, Whistleblowing. Public servants who report fraud are usually motivated by a desire to avoid waste or extravagance, and it is entirely inappropriate for them to be treated by colleagues with anything other than the usual courtesy and respect.

Sometimes people (public servants and outsiders) may want to keep their identity secret when they come forward with information. Departments will, as far as possible, maintain confidentiality so as to protect these people from reprisals or victimisation in their local area.

The government's policy on the prosecution of criminal offences is set out in the *Prosecution Policy of the Commonwealth*, which was published by the Commonwealth Director of Public Prosecutions in March 1992. Public servants should acquaint themselves with the requirements of this policy.

As recovery action is perceived as a necessary and effective deterrent, the government is committed to using all avenues available to it to recover money or property lost through fraudulent activity. Departments are expected to vigorously pursue recovery of such losses.

Career protection

The government is committed to protecting the careers of public servants who report possible fraud, provided they are not involved in the fraud.

The Public Service Act and the *Merit Protection (Australian Government Employees) Act 1984* provide avenues to protect public servants who report fraud in the event that career protection becomes necessary. The grievance process under the Public Service Regulations enables public servants to submit to management, and, in certain circumstances to the Merit Protection and Review Agency, complaints about the way they are being treated.

Rights of individuals

A public servant suspected of fraud is considered to be innocent until proven guilty. Such a person has a right to not have their affairs disclosed to and discussed by people who are not concerned with the matter.

Public servants who are suspected of committing fraud should not be informed of this unless this action is authorised by the case investigators.

Public servants should not promote or tolerate idle gossip. Public servants from locations or areas where fraud has occurred may be required to give evidence, either formally or informally. If evidence is given which is based on opinions formed as a result of gossip rather than on fact, then an investigation could be misdirected and people could be treated unfairly.

Public servants working in an area in which fraud is suspected may need to be interviewed by the department's fraud investigators or the police. Public servants as citizens have a common law duty to assist the police in their enquiries.

Public servants who believe that the answers they give to questions asked during a fraud investigation may implicate them in the fraud have a right not to answer those questions.

Where a public servant is being interviewed, and the investigators or police come to a belief that he or she may be implicated in the fraud, they are required to inform that person of this right not to answer.

Fraud and the disciplinary process

As well as being subject to prosecution under the Crimes Act, public servants who commit fraud may be subject to action under the disciplinary provisions of the Public Service Act, including suspension, either with or without pay, once the circumstances of the fraud come to official notice.

Disciplinary action under the Public Service Act will generally not be finalised until the investigation is complete, and then only after advice from departmental investigators or management. The reason is that the imposition of disciplinary action under the Public Service Act may prevent laying of charges under the Crimes Act. However, the converse is not the case. The laying of charges does not prevent the taking of disciplinary action under the Public Service Act subsequently.

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