

National Public Sector Fraud and Corruption Congress

Delivering practical solutions to embed ethical behaviour in the public sector

Karin Fisher, Group Manager, Ethics
Australian Public Service Commission

Using a values based approach to develop a positive workplace culture

Introduction

Before I begin, I would like to acknowledge the Ngunnawal people and their ancestors as the traditional owners of the land on which we are meeting today.

I am very pleased to be participating in your conference and having the opportunity to share experiences with you and lessons learned, particularly because this conference is very timely. The Commission is currently leading significant reform across the Australian Public Service, reviewing our values, which goes to the heart of our integrity framework.

However, before I share with you the progress we've made with that work I thought it would be useful to take stock with how the Australian Public Service measures up in terms of Public perceptions of our integrity.

How does the APS measure up ethically?

Available data indicates that Australia performs well.

For example, according to the World Bank's Governance Matters rankings of 2009, Australia ranked in the 97th percentile for the Government Effectiveness indicator. This indicator measures the quality of public services, the capacity of the civil service and its independence from political pressure, and the quality of policy formulation. Only 3% of countries scored better. Australia ranked equally with Canada, and performed better than the UK (94), the United States (93) and New Zealand (95). Countries with higher rankings included Singapore (100), Denmark (100), Sweden (99), Switzerland (99), Finland (98) and Norway (98).

Transparency International's Corruption Perceptions Index

Transparency International's Corruption Perceptions Index 2010 ranked Australia equal eighth, with Switzerland, with a score of 8.7 This index ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians.

While the data from both these indices relate to Australian governments generally, that is, including State and Territory government, they are encouraging.

The results are consistent with employee and agency survey data collected for the purposes of the annual State of the Service Report¹.

Staff perceptions of standard of ethics and integrity in the Australian Public Service are consistently high.

¹ Australian Public Service Commission, 2010, *State of the Service Report 2009-10*, APS Commonwealth, Canberra.

In 2009-10:

83% of employees surveyed reported that their agency actively encourages ethical behaviour by all staff

70% of employees agreed that their agency operates with a high level of integrity

80% of employees agreed people in their workgroup treat each other with respect

78% of employees agreed their supervisor demonstrates honesty and integrity.

State of the Service Report 2009-10

Although there is considerable variation between agencies, the level of misconduct investigated in the public service continues to be low, with less than four in every 1,000 employees being found to have breached the Code of Conduct in 2009-10.

Moreover, while the number of employees found to have breached the Code is low, only a very small proportion of misconduct amounted to behaviour that would fall within a standard definition of corruption.

For example, in 2009-10 only 69 employees were investigated for making improper use of their position or status, only 54 employees were investigated for fraud and only 17 for theft. There is no evidence that corruption—in the commonly accepted use of the term—bribery and perverting the course of justice—is widespread in the APS.

On the contrary, the evidence is that misconduct in the APS is overwhelmingly characterised by acts of individual poor judgement.

Recently, some have called for the establishment of a federal anti corruption body, similar to those operating in New South Wales, Queensland, Western Australia and most recently Tasmania. The Victorian Government has also signalled its intention to establish an anti-corruption commission.

While these bodies are appropriate to address the risks facing State public services, the Public Service Commissioner's view is that given the robust integrity framework in place in the Australian Public Service, and the available evidence on perceptions of standards of conduct and actual numbers of misconduct cases, the establishment of a broad-ranging, federal anti-corruption body does not appear to justify the extra expenditure that would be involved. Having said that, we are not complacent about the threat of corruption, and the Commission will be active in monitoring perceptions of serious misconduct, as well as actual numbers of whistleblowing reports made and levels of misconduct investigations through this year's State of the Service Report.

Common and topical ethical challenges

My Group in the Commission is responsible for delivering the Ethics Advisory Service—and I will share with you more about the work of that Service later—and supporting the Merit Protection Commissioner with her casework.

The Merit Protection Commissioner is an independent statutory office holder responsible for administrative review of employment decisions. She is primarily concerned with establishing that agency decisions were fair and reasonable in all the circumstances. Among other decisions, the Merit Protection Commissioner can review determinations of a breach of the Code of Conduct and/or the sanction imposed.

Through the work of the Ethics Advisory Service, the Merit Protection Commissioner's casework and surveys conducted for the State of the Service Report among other things, the Commission is in a good position to spot emerging trends in ethical challenges faced by public servants.

Web 2.0

The new and emerging Web 2.0 platforms and tools, such as blogs, wikis and social networking platforms, provide new ways of engaging with the community.

As the Public Service Commissioner has said, they are more than a simple delivery vehicle. They have opened up significant new opportunities for consultation, debate and information exchange within agencies, between agencies, and with external parties in the community, including networks of experts working in related fields.

In July 2010 the Government made a Declaration of Open Government, which included encouragement to exploit the advantages of Web 2.0 technology.

While Web 2.0 technology can be a powerful research tool and consensus builder, its use raises issues for the public service and its role in supporting government.

This is because as public servants we are required by our Values to be apolitical, performing our functions in an impartial and professional manner. The extent to which we engage in, and how we engage in, debate where we contribute our personal views on the development of policy, may unless handled properly, call into question our ability to perform our duties impartially. The dilemma arises whatever the vehicle for expressing our views—whether we express them on a Government website in response to requests for contributions to a new policy, whether we do it through a professional journal online, or through a personal blog we have created ourselves or something else.

Generally, because of the influence they carry with stakeholders, and because they are more likely to advise on, or lead the implementation of, government policies and programs, senior executives need to be particularly careful in making public comment, including in social media. The speed and breadth of online communication means that we can never be certain where it might end up or who might read it.

One example my staff drew to my attention when preparing for today's presentation, was the story of the Buckingham Palace guardsman who lost his job on the day of the royal wedding after reportedly ranting about Kate Middleton on his Facebook page. The guardsman is also reportedly being investigated for racist comments left on his site as well.

Some of the interesting queries that have been raised with the Commission include the extent to which information available through social media to the public service as an employer is able to be used, for example, in recruitment. If a person writes something offensive on a public website, perhaps as a student, can that material be taken into account when that person applies for a job in the public service? Could it be the deciding factor in not getting that job?

The answer of course is not black and white and will depend on the facts, including the nature of the job on offer, what was actually said and when and, if the comment is relevant to the job, the employee's explanation for it.

Working with other sectors also provides interesting challenges.

The Government has stated that, if the public service is to function effectively in an increasingly globalised environment, then it cannot rely solely on its own ideas and resources. It has to build relationships with, and draw on the experience of, outside individuals, organisations and sectors. This means developing new relationships with a variety of groups outside the public service which can result in an increase in the scope and complexity of the ethical issues we face.

In May 2010 the Australian National Audit Office² released a report of a performance audit on the application of the Australian Public Service values and Code of Conduct to service providers. That is those in a formal contractual relationship with the Service.

² Australian National Audit Office, 2010, Application of the Core APS Values and Code of Conduct to Australian Government Service Providers, APS Commonwealth, Canberra.

The audit concluded that the greater role of non-government service providers in delivering services on behalf of governments has required agencies to address the inclusion of values statements and codes of conduct in their contractual requirements with service providers. This approach helps to align external service provision with community expectations in relation to the standard and manner of the delivery of public programs and services. It also helps to minimise the risks associated with outsourcing delivery to providers at arm's-length to government.

Lateral recruitment

We also have to deal with the fact that until quite recently the public service itself was increasingly opening up. While ongoing engagements fell by 22% in 2009-10 compared with the previous year, there were, nevertheless, over 10,000 people recruited from outside the APS on an ongoing basis during 2009-10.

The median age of these recruits was 31 years. Nearly 17 per cent of the recruitment was to senior and middle management positions, that is Executive Level 1 and above.

People with a variety of experiences and different employment cultures are joining the public service. Instead of learning the rules of conduct from scratch straight from university, or as they work their way up from the mailroom, they are likely to have embedded attitudes about workplace behaviour which may not be appropriate in a public service setting.

So we can no longer rely on what's known as 'long term workplace socialisation' to ensure that staff internalise the ethics of public service.

Bullying and harassment

Although it's not often considered an integrity issue, a persistent challenge for the public service continues to be the unacceptable level of bullying and harassment.

Data from the State of the Service Report shows that the proportion of employees reporting having been bullied or harassed during 2009-10 was 17 per cent. This is same as in 2008-09. Most employees who reported experiencing bullying and harassment described the incident as 'verbal abuse' such as offensive language, derogatory remarks, shouting or screaming. A high proportion described the incident as inappropriate or unfair application of work policies or rules, such as performance management.

More than half of employees reported being subject to bullying or harassment did not report the matter. The most common reasons for not doing so was that they believed no action would be taken, or they feared retribution, or did not want to be seen as a trouble maker.

Establishing the actual extent of bullying and harassment is complex, particularly given the discrepancy between the number of employees who report experiencing it and the relatively small number of suspected cases that are investigated by agencies each year. This is an area the Commission will continue to monitor.

Conflicts of interest

Given the closer relationship between the public and other sectors and given the reality of the financial interests of individuals, it is important to keep a focus on avoiding actual and perceived conflicts of interest.

Conflicts of interest go to the heart of decision-making. And credibility of decision-making is a key dimension of good governance.

<http://www.anao.gov.au/Publications/Audit-Reports/2009-2010/Application-of-the-Core-APS-Values-and-Codes-of-Conduct-to-Australian-Government-Service-Providers>

At an APEC anti-corruption conference I attended a year or so ago, Janos Bertok, who heads the integrity unit at the OECD, spoke about lessons learned by the OECD in its research on conflicts of interest.

These included:

first, that the issues that give rise to conflicts of interests are evolving: there is a need to keep up to date with developments in our environment and modernise principles and standards accordingly;

second, it is not possible to legislate to prohibit all forms of conflict of interest;

third, it is important to clarify responsibilities for identifying and resolving conflicts of interest;

fourth, organisations need to focus on prevention;

fifth, transparency of policies, processes and disclosures is vital;

sixth, there needs to be visible success of laws that are passed;

seventh, changing the culture needs constant effort; and

finally, as the slide says, most difficult is recognizing a conflict of interest in our own case.

The Australian Public Service Code of Conduct requires employees to disclose and take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their employment.

The Commission has released guidance to help both employees to uphold this element of the Code, and employers to implement policies to manage conflicts of interest. The guidance *In whose Interests?* is available on the Commission's website.

Freedom of Information reforms—information publication scheme

A final matter I would like to highlight is the opportunities, and what some might see as challenges, posed by the new information publication scheme which came into effect on 1 May.

As a result of major changes to the Freedom of Information Act, agencies which are subject to that Act, are required to publish a range of information on their websites as part of an Information Publication Scheme. As well as information about structure, functions, appointments, and annual reports and so on, an agency must also publish online information routinely released from FOI requests and routinely provided to Parliament.

The Scheme is intended to form the basis for a more open and transparent culture across government, with agencies encouraged to take a proactive approach to publishing the information they hold, and to consider what they should be publishing over and above what they are obliged to publish.

The increased transparency of decision making and actions will enhance public understanding of the way the Australian Public Service does its work, including the way its uses Commonwealth resources on behalf of the Government. If it is clear that our decisions and actions are guided by the Australian Public Service Values, then the public can have increased confidence that our actions reflect what it is that they expect of us.

Australian Public Service Integrity Framework

So what are those Values and why are we reviewing them?

The Australian Public Service Values are at the core of our integrity framework.

There are currently fifteen of them, accompanied by a Code of Conduct. The Values are designed to provide the philosophical underpinning for the public service; and articulate its culture and operating ethos.

Put simply, the Values describe the way the service should manage its relationships with all its stakeholders.

Values make clear what an organisation stands for. In an organisation as disparate as the APS, they can provide a set of unifying themes that recognise no matter how different agencies are, and the kinds of work in which staff are engaged, there are fundamental commonalities in the way we work that bind the service together.

The Australian Public Service Code of Conduct, on the other hand, describes the types of behaviour of individual public servants that are acceptable and unacceptable at work and outside of it. It is the basis for disciplinary action in the public service, the primary purpose of which is to sustain public confidence in the integrity of the Service.

The Values are the way we implement the ethical concept of serving the people.

Together with the Code of Conduct the Values were first legislated for the public service by regulation in 1998 and later in the Public Service Act itself, representing a significant change in the way the Service was managed.

What makes the Values and the Code important from an ethical perspective is that, because they are in legislation, they have legal as well as moral weight.

All employees, statutory office holders and agency heads are bound by the Values and the Code. Agency heads have an additional responsibility under the Act to promote the Values, and SES officers get a special mention too. They are required under the Act to promote the values and compliance with the Code, 'by personal example and other appropriate means'.

In other words there is a clear intention in the Act for agency heads and senior executives to take a role in bringing the Values to life.

The Public Service Act provides for sanctions for breaches of the Code of Conduct or failure to uphold the APS Values.

The Public Service Commissioner has issued binding directions about each of the Values which, among other things, outline their scope and application. An important part of any integrity framework is protection for whistleblowers and the Australian Public Service has a whistleblowing scheme.

APS employees are able to report breaches, or alleged breaches, of the Code of Conduct to persons authorised to receive them.

Section 16 of the Act provides that 'a person performing functions in or for an agency, must not victimise or discriminate against an APS employee because the APS employee has reported breaches (or alleged breaches) to an authorised person'.

While the current scheme is specific to the APS, the Government has announced its intention to legislate for a broad public interest disclosure scheme to apply across the Commonwealth public sector. Disclosures to the media will also be allowed in certain, defined circumstances.

The final major component of the public service integrity framework is the Financial Management and Accountability Act, or for some statutory authorities it is the equivalent *Commonwealth Authorities and Companies Act 1997*.

Section 44 of the FMA Act requires chief executives to manage the affairs of their agencies in a way that promotes the efficient, effective, economical and ethical use of resources.

The FMA Act also provides for the establishment of audit committees, fraud control plans, appropriate record-keeping, and the issue of fraud control and procurement guidelines among other things.

The Minister for Home Affairs released a couple of months ago new principles-based *Fraud Control Guidelines*. These have been followed and complemented by a *Best Practice Guide for Fraud Control in Australian Government Entities* published by the Australian National Audit Office which worked with the Attorney-General's Department on its development.

So that's the broad integrity framework governing the Australian Public Service.

It is not static, however.

The Australian Public Service Commission is leading reform across the public service, including in relation to the Values. And the last 12 months or so has been a particularly interesting time.

Ahead of the Game: Blueprint for the Reform of Australian Government Administration

In March 2010, the Advisory Group on the reform of Australian Government Administration released its report *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, otherwise known simply as the 'Blueprint'.

The Advisory Group, of which the Public Service Commissioner was a member, brought together public service, business and academic experts. The Group argued that four key components are necessary for a first-rate public service. It has to meet the needs of its citizens, provide strong leadership, have a highly capable workforce and operate efficiently at consistently high standards. As a result, specific reforms were recommended in each of these four key areas. The Government has accepted all of the Group's recommendations.

One recommendation called for the reinvigoration of strategic leadership and, as part of that, for the APS Values to be reformulated to create 'a smaller set of core values that are meaningful, memorable and effective in driving change'.

The Group saw this as essential for a public service that aspired to be the best in the world. The Blueprint recognised the power of effective and memorable values as a foundation for reform.

Revising the APS Values

Following the release of the Blueprint, the Australian Public Service Commission has been tasked with revising the APS Values to:

promote APS collegiality and unity

encourage excellence in public service

clarify expectations of public service behaviour to foster public trust, and

affirm the importance of including consideration of human rights issues in policy making.

In July 2010, the Commission released a discussion paper as the basis for a wide ranging consultation with employees, commonwealth agencies, industry and community groups, relevant unions, academics and others. The consultation included, in addition to more traditional methods, a very successful online discussion forum.

The discussion paper stimulated a good deal of debate and prompted valuable contributions.

Taking account of feedback received, a second discussion paper released a few months later proposed a set of five values, accompanied by a set of employment principles. The Code of Conduct was left largely unchanged. The second discussion paper alone resulted in well over 350 submissions, from almost 300 APS employees, some 59 commonwealth agencies and 14 other interested parties.

The values proposed covered the concepts of Commitment to Service; Accountable; Respectful; Ethical; and Apolitical.

The overwhelming feedback was that these proposed values were about right and, with some modification, a set along these lines has been developed for Government to consider further. Subject to Government approval and its priorities for legislation, we will be ready to introduce proposals for amendments to the Public Service Act to give effect to the new values later this calendar year.

Having developed a new set of Australian Public Service Values, the task of public service leaders will be to promote and manage the new values, and embed them into the ethos of the Australian Public Service workplace.

As public servants we need to own, understand and integrate the Values into the way we make decisions and do our everyday work. But we may need some help in doing that.

Embedding the new APS Values

Revising the Values is about cultural reform—it's about bringing the right set of attitudes and behaviours to the workplace to improve performance and outcomes.

The success of the new values in achieving this reform will depend heavily on how well and how consistently they are embedded throughout the Service. The Blueprint recognised this and called for the new values to be embedded in the work of the public service including through: a compulsory SES induction program to develop APS-wide values leadership; other core learning and development programs; and a new performance framework.

The Blueprint also suggested that Agency Capability Reviews could assess whether the Values had been integrated into agency culture and management practices.

The Commission has started work to develop strategies to embed the new values, including through these mechanisms.

As well, the Commission will be working closely with a reference group of eight agencies representative. This group will assist the Commission in the development of tools and frameworks for embedding values, which agencies can draw upon and adapt to their individual business needs. The consultative approach has proved very successful in the past.

A few years ago the Commission worked with a similar group of agencies to develop a model for embedding values which was based on an analysis of international and Australian literature and an extensive program of qualitative and quantitative research in the agencies themselves.

Embedding Values

Employees participating in that research told us what they thought was important to a sound integrity framework. They said:

Leaders must have the highest standards of integrity

Leadership is crucial to ensuring that the Values are taken seriously

SES and supervisors must set the right example

Unethical behaviour by leaders and managers would cause employees to lose confidence in the Values

The APS Values make sense

Values in corporate documents are useful—but not enough on their own to persuade staff to engage with them.

Those employees said they needed:

Modelling of the values by senior staff;

The Values to be made clearly relevant to their work; and

A workplace culture that supported employees who raised ethical issues.

Taking account of what those employees told us, and the findings of the literature, the Commission concluded that a successful embedding strategy requires:

a strategic and integrated approach;

leadership—which is critical to inspiring and motivating employees to engage with the expected values and behaviours; and

support for employees from their agencies to help them understand the values and develop skills to apply them to their day to day work.

APS Values framework

A model was developed which took account of these conclusions³. The model is based on the current 15 Values. But it is the three supporting elements at the base of the model—commitment, management and assurance—that were seen as key to the successful integration of values into an agency. In a best practice agency these three components may be summarised as follows:

Commitment is provided by guidance from leaders who have the highest standards of behaviour and model the Values. They make clear expected standards of behaviour and build trust with employees. The Values are integrated into strategic direction setting and induction activities. ‘How to live’ the values is promulgated through learning and development activities, especially leadership development.

Management is provided by ‘hardwiring’ the Values into all management policies and guidance which are consciously communicated and accessible to everyone who needs them. An agency’s policies and guidance re-inforce and are consistent with the words and actions of its leaders.

Assurance is provided by effectively and responsibly using control mechanisms, such as fraud control and risk management strategies, and investigations into suspected breaches of the Code of Conduct. Quality assurance mechanisms, such as staff and client surveys, are used to assess perceptions of adherence to the values and to improve agency practice.

The framework is specific to the APS but draws from and adapts international experience, particularly work undertaken by the OECD.

The model will be re-tested with our new reference group of agencies and revised as necessary to take account of subsequent experience and research.

Leadership

It is evident from this earlier work and a current literature survey being conducted by the Commission, that organisational culture and the extent to which required values are embedded into an organisation are heavily dependent on the quality of its leadership.

Donald Menzel, Professor of Public Administration at Illinois University has written extensively on ethics and he argues that effective leaders must demonstrate through their behaviours that they believe in what they say, and adhere to the same ethical standards that they expect of those that they lead⁴. He says this is as true for middle managers as it is for senior leaders. Failure to do so can reflect a lack of integrity for the whole organisation.

Our Victorian Government colleagues feel the same way. In its publication ‘an ethics framework’ the Victorian Public Sector Standards Commissioner notes that

The actions of organisational leaders will send out a more powerful message about acceptable behaviour than any published policies. The easiest way to destroy an ethical culture is through the unacceptable behaviour of organisational leaders⁵.

³ Australian Public Service Commission, 2003, *Embedding the APS Values*, APS Commonwealth, Canberra.

⁴ Menzel, Donald, C, 2007, *Ethics Management for Public Administrators: Building Organizations of Integrity*, ME Sharpe, US.

⁵ Victorian Public Standards Commission, 2005, *An Ethics Framework*, Victorian State Government, VIC.
[http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/EthicsFramework/\\$File/EthicsFramework.pdf](http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/EthicsFramework/$File/EthicsFramework.pdf)

How we most effectively engage the support of leaders, and develop tools and frameworks to support them in their task of embedding the new values, is something we in the Commission will be turning our minds to, in partnership with agencies, over the coming months.

Strategies to assist staff

One avenue available now to support all APS employees is the Ethics Advisory Service, launched in May 2009.

It is a telephone and email service available to all APS employees wishing to discuss, and seeking advice on, ethical issues that occur in the workplace. The service has a purpose built web page with a wide range of downloadable resources for use by managers or employees generally. These include guidance material, such as:

the Public Service Commissioner's guidelines on official conduct which is aimed assisting employees to understand the practical application of the Values and the Code in both common and unusual circumstances;

a guide for HR practitioners entitled Respect: promoting a culture free from harassment and bullying in the APS; and

a guide also for HR practitioners on reporting and managing suspected breaches of the Code of Conduct.

There is also information about relevant training programs on the Values and a resource kit for facilitators delivering such training.

One particularly popular resource is a series of short vodcasts which demonstrate real life workplace ethical dilemmas for discussion. The vodcasts are accompanied by reflection sheets and are aimed at managers and training areas wishing to have conversations in the workplace about these matters, in a safe, non-threatening way.

The Service reports to Parliament, through the annual State of the Service Report, on trends and emerging ethical issues.

Ethics Contact Officer network

The Service is supported by a network of agency ethics officers in some 100 agencies. The network assists with disseminating information on ethics, and is a forum for sharing best practice and experience. The network meets face to face three to four times a year.

Since the Ethics Advisory Service started work in May 2009, it has received over 2000 inquiries with call levels running at about 90 a month. A recent internal audit that included client feedback, found that the Service is proving to be very valuable.

The 'Reflect' model

One of the tools available from the Ethics Advisory Service is the 'Reflect' model. Some employees have found it helpful to have a framework, with a defined process, for reaching decisions about problems with an ethical dimension. While there are many ethical decision-making models around, the Commission, in consultation with agencies, has developed one specifically for the APS. In brief the model asks staff to stop:

REcognise a potential ethical issue

This is often the hardest part. Do you have a gut feeling that something may be wrong. Does the situation feel risky? Can you recognise competing tensions in doing what is right?

The next stage is to:

Find relevant information

by identifying the circumstances leading to the problem.

What policies or legislation might be relevant? Who is involved and what are their rights and responsibilities? Has a similar situation occurred in the past? If so, what happened?

Don't rush to a decision. **L**inger at the 'fork in the road' and discuss the situation with a respected colleague or someone in authority.

Evaluate the options. Identify the consequences and risks. Apply the 'sunlight' or 'sniff' test. How would this decision look if it became public.

Come to a decision and record it, if necessary

Finally, **T**ake time to reflect and review. How did it turn out for all concerned. What can be learned from the experience?

The model helps by enabling decisions that are defensible, consistent with roles and responsibilities, and despite competing tensions.

Conclusion

In conclusion, there is one central point I wish to make today.

As public servants we are special. The public service has a unique and vital role in our democracy. Meeting the demands of government, and the expectations of the public, while fulfilling all the requirements of the law, is a constant balancing act which is not always easy to sustain.

Having a clear set of Values and Code of Conduct in legislation is a good foundation for understanding our obligations, making the best decisions and delivering strong performance. I encourage you to use them consciously. They really are a practical guide to resolving problems.