

Ethics in the public sector – clearly important but ...

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1. Introduction

My paper considers the usefulness of a focus on ethics in the public sector from an operational enforcement perspective. It looks at some limitations on the usefulness of a narrow focus on 'ethics' in public administration and how effective such a focus is in helping to meet the expectations of the community and achieve the objectives of government. While I am sure we would all agree that it is important to maximise ethical conduct in the public sector, I argue that a focus on ethics and ethical conduct alone is in practice far too narrow or limited to be effective in achieving such key objectives as ensuring fair and appropriate outcomes in the public interest and in fostering public trust in government. From an enforcement perspective, promoting ethical conduct through such means as codes of conduct and statements of values will not be effective unless these approaches are part of a comprehensive package of measures covering the setting of standards and expectations, as well as prevention, enforcement and deterrence.

The paper looks at what mechanisms/strategies/approaches would be required to effectively encourage ethical conduct in the public sector as part of a holistic approach to foster good judgement and good governance. As a case study, the paper looks at how well NSW addresses these issues.

2. What is ethical conduct?

One of the difficulties with ethical conduct is settling on a clear definition. In the absence of any precise definition, I think ethics is about whether decisions and actions were right or wrong/good or bad from the perspective of expected norms of behaviour or accepted moral principles – what is considered to be 'moral' behaviour within a culture or society.

Some commentators have argued for a very broad interpretation of ethics.¹ The problem with this broad definition is that it encompasses a range of matters that have little to do with moral principles, including standards of conduct, standards of performance, effectiveness, efficiency, competence, avoidance of waste, and so on.

An alternative definition of ethics focuses on the application of moral principles where issues of motivation and intention are crucial. Under this narrower interpretation, 'ethical' behaviour would not be directed specifically at such things as the avoidance of waste and the promotion of efficiency and effectiveness, competence, etc, although these could well be by-products of 'ethical' behaviour.

3. Does ethical conduct involve a mental element?

From an operational or enforcement perspective, one of the problems that can flow from too narrow a focus on ethics is that people do what is seen to be the 'right' thing for a range of reasons, some of which may have nothing at all to do with ethical considerations and some of which may even be ethically 'challenged'.

Given my view that ethics is about the application of moral principles, presumably conduct should only be considered to be 'ethical' where there was knowledge that the conduct was morally good, right or proper. In other words where the person's conduct was based on a mental element – a consideration of the ethical issues that arose in a particular situation and a conscious decision to act ethically.

¹ That public sector ethics can be categorised as including: *democratic ethics* – that public officials are responsible, responsive and accountable; *managerial ethics* – that public officials are efficient and effective; and *social ethics* – that public officials uphold principles of justice, fairness, equity, individual rights, etc.

Problems arise in a range of circumstances. For example, would a person's conduct be unethical if it was well motivated, but the action or decision is seen to be inappropriate or wrong because of the way the person reconciled conflicting public duties (eg, where there is a conflict between one or more of the obligations on public officials to serve the Parliament and government, serve the public interest, serve their agency and serve the public as customers)? In other words, if a person acts out of a proper sense of duty but is mistaken in his or her judgement as to what is the morally right course of action, can it reasonably be said that they acted 'unethically'?

Could a person's conduct reasonably be described as 'ethical' merely because the person's conduct was 'not unethical' or was 'ethically neutral'? For example in the following circumstances:

- *automatic behaviour* – the person's actions were based on innate, automatic or routine behaviour
- *unthinking behaviour* – the person followed the rules or standard practice, without giving ethical issues any conscious thought
- *lack of opportunity* – the person had no opportunity to act otherwise
- *likelihood of detection* – the person only acted ethically to avoid being caught, ie, out of self-interest.

Alternatively, can it be argued that a person's conduct was ethical or unethical merely because the person unintentionally or innocently failed to perceive or identify an ethical issue, for example due to:

- *ignorance* – a failure to perceive or be aware of an ethical issue which was reasonable in the circumstances, eg, due to lack of information
- *complexity* – a failure to identify an ethical issue which was reasonable in the circumstances, eg, in a complex situation involving a significant 'grey area'.

If there is no mental element – no intention to act ethically – the conduct might be reasonable, appropriate, good practice or otherwise 'right', but this is not due to the application of moral or ethical principles. Alternatively the conduct might be seen as being unreasonable, inappropriate, incompetent or otherwise wrong, but not due to 'ethical' failings.

What if there is only 'constructive knowledge' – where the unethical conduct is unintentional but arising out of moral failings involving such things (to borrow from Professor Stephen Cohen) as:

- *moral negligence* (a failure to consider whether there was an ethical issue)
- *moral blindness* (a failure to see an obvious ethical issue, such as a conflict of interests) or
- *moral recklessness* (a rationalisation that there is no ethical issue to consider)?

In other words, where questions of morality do not arise or are disregarded, as opposed to 'immoral' - in this context referring to conduct that is intentionally unethical, improper, 'evil', etc.

Further confusion can be caused by the fact that some people seem to equate 'unethical' with 'corrupt', 'illegal' or 'criminal'. Conduct could be criminal or a breach of the law, but still be based on a person's firm belief that they are acting ethically (eg civil disobedience), or conduct could be unethical without being 'corrupt'² (eg intentionally denying a person procedural fairness; being influenced by irrelevant considerations, for example by letting one's personal religious beliefs inappropriately influence the exercise of discretionary powers; misleading the public by selectively disclosing information, without lying; etc).

As I have said, in my view whether conduct is in fact ethical or unethical depends on cause - the motive or intention of the individual concerned. Looked at this way, while in some matters it may be easy to conclusively determine that someone's motive was unethical, in many cases whether conduct is ethical is essentially a very personal matter between the individual and his or her conscience.

² In terms of the normal use of the word rather than any technical definition given in corruption legislation.

To be effective in achieving the objectives of fair and reasonable outcomes and maximising public trust in government, 'ethics' need to be considered as just one of a range of motivations or causes of the conduct by public officials that could impact on such outcomes and levels of trust. As discussed, the various categories of conduct could be summarised as being:

- 1) *intentional ethical conduct* (which could result in either appropriate or inappropriate outcomes)
- 2) *ethically neutral conduct* (eg, routine or automatic behaviour, lack of opportunity, risk avoidance, a reasonable failure to perceive or identify an ethical issue due to ignorance or complexity, etc)
- 3) *unintentional (ie unconscious) unethical conduct* (arising out of moral failings, eg 'amoral'), or
- 4) *intentional (ie conscious) unethical conduct* (either based on 'actual' or 'constructive' knowledge that the conduct was wrong, eg, 'immoral').

What all this means in practice is that focussing merely on setting standards and expectations (eg. on codes of conduct, statements of values, etc) will primarily only impact on those who wish to act ethically and those who don't wish to get into trouble.

In these circumstances, from an implementation and enforcement perspective it would be more useful to:

- focus on outcomes rather than causes – whether conduct was appropriate no matter what the cause or motivation, or
- where issues about cause or motive are important, maybe focus on:
- questions of 'judgement' rather than 'ethics' - judgement has a broader application as it would extend beyond questions of moral or ethical principle to encompass such things as the soundness of decision-making and standards of performance/service; or
- whether the conduct was criminal, illegal, corrupt or inappropriate (as opposed to unethical).

4. What are different perspectives on the importance of public sector ethics?

The relevance or importance of ethics in the public sector can be looked at from a number of perspectives, for example:

- *personal* – from the perspective of the individual, ethical behaviour can be seen as good in itself – the 'right and proper' thing to do
- *community* – from the perspective of the general public, ethical behaviour results in fair outcomes that are in the public interest
- *government* – from the perspective of government, ethical behaviour has a direct impact on the level of public trust in government (an instrumental view of ethics – ie, seeing ethics as an instrument for the attainment of something else).
- *enforcement* – from the perspective of those charged with ensuring appropriate behaviour by public officials (eg employers and watchdog/integrity agencies), ethical conduct is in the public interest.

5. Why is public sector ethics of particular importance to government

In representative democracies governments are said to govern by consent – by the consent of the governed. This means that a reasonable level of public trust is of fundamental importance to the proper functioning of a representative government.

Public trust in government is influenced by a number of factors, for example whether the government and its officials are seen to be:

- acting in accordance with the law
- honest and trustworthy
- acting in the public interest and not in their personal interests
- acting fairly, reasonably, consistently and reliably
- exercising good judgement
- properly accountable to the public, including being transparent/open
- reasonably responsive to the needs of the community
- competent in the business of government, including spending public money wisely, effectively and efficiently.

While ethical (as in 'moral') issues are fundamental to ensuring public trust in government, as can be seen from the above list such issues are just one of a range of factors that can impact on the level of public trust in government, for example as performance issues, judgement issues, service issues, etc. Furthermore, none of these factors will be effective in achieving that objective in isolation.

Measures designed to improve levels of trust in the government of the day need to address:

- *integrity* issues – ensuring legality and honesty in decision-making by public officers (ie, ethical issues)
- *performance* issues – ensuring efficient and effective action by public officials
- *transparency* issues – providing more and better information to the public by improving the government's attitude to openness and transparency
- *accountability* issues – improving the government's approach/attitude towards accountability generally, including increasing the actual and perceived level of accountability of government (perceived cover-ups, the misuse of secrecy and the rigid control clearly exercised by modern governments over the disclosure of information about the operations of government, increase the public's distrust in government)
- *trustworthiness* issues – improving the information available to people to enable them to better predict how the government is likely to react in any given circumstance (as part of a program to increase the public's perception that government will act/react appropriately).

While ethical issues are important, there are therefore a range of other factors that also directly impact on levels of public trust in government. The various factors will not be effective if looked at or addressed in isolation, as there are significant interrelationships/interactions between them. In the achievement of good governance and trust in government ethical conduct is just one factor in a range of interdependent factors that should be addressed on an integrated and holistic basis .

6. How relevant is a focus on ethics to watchdog/integrity agencies?

Referring back to the perspectives listed earlier, integrity agencies such as the Ombudsman, ICAC, PIC and the Auditor General would commonly see ethics from both the community and government perspectives as well as from their own perspective in terms of detection of inappropriate behaviour.

While these bodies are commonly referred to as 'integrity' agencies, and 'integrity' is often seen as being an alternative term for 'ethics', it would be a mistake to see the role of integrity agencies as being primarily concerned with ethics. While ethical issues are important to their work, collectively the focus of their role is much broader, ie, to:

- hold the government, its agencies and officials to account
- bring to light illegality, corruption, dishonesty, maladministration, incompetence, waste and inefficiency (as relevant to their jurisdictions)
- recommend ways to address such problems where they are identified, and to prevent such problems from reoccurring.

7. What factors influence the likelihood of ethical conduct?

Another reason why it is inappropriate to adopt a too narrow a focus on fostering 'ethical' conduct is that conduct of an individual is often more influenced by situation than character. Interestingly, social-psychological researchers have found that people often incorrectly suppose that what other people do is best explained by their character rather than their circumstances – that what somebody does reflects their character. This is referred to variously as "*attribution theory*", "*correspondence bias*" (ie, the correspondence between conduct and character), or "*Fundamental Attribution Error*".³ While I am sure there are some people in this world whose moral compass always points north, whose conduct is invariably ethical, for most people ethical behaviour is not an absolute.

People may act ethically/honestly in some contexts or situations but not in others. This is not explained by character flaws, but by how people respond to certain events, situations, opportunities, pressures, etc. For example, somebody may be honest and ethical at work, and cheat on their partner, or vice versa. Some people may be ethical in business, but understate their income for tax purposes. Some may be generally honest in their dealings with their employer, but overstate the hours they work or slow down their pace of work to increase opportunities for overtime. Many people are conscientious about being good law abiding citizens, other than when they are behind the wheel. So people may consciously act ethically in some situations, and consciously or unconsciously act unethically in others. Set out in [Annexure A](#) is a list of various factors that can influence the likelihood of ethical conduct. These can be summarised as:

- *personal values* – influenced by family, education, religion, etc
- *personal traits* – the character of the person concerned
- *supports* – including rules, standards, expectations and the like
- *deterrents* – which in this context would include the steps that have been taken to prevent and deter unethical conduct and to enforce ethical conduct
- *opportunities* – in this context weak or absent systems of prevention and accountability

³ Eg, Lee Ross "The Intuitive Psychologist and His Shortcomings: Distortions in the Attribution Process", in Leonard Berkowitz, ed, *Advances in Experimental Social Psychology*, vol.10 (New York: Academic Press, 1977); Daniel Gilbert and Patrick Malone, "The Correspondence Bias", *Psychological Bulletin* 117.

8. What mechanisms/strategies/approaches could be introduced to encourage ethical conduct?

As part of a comprehensive approach to foster good judgement and good governance, governments, agencies and senior public officials need to introduce various mechanisms/structures/approaches to encourage or enforce good conduct. To be effective, these mechanisms/structures/approaches must be both proactive and reactive, and comprehensively address both culture and behaviour, guidance and enforcement and means and ends (process and outcomes). In my view these mechanisms/strategies/approaches should include:

- 1) *standard setting* – eg, offence provisions, legal obligations, legislated statements of values, jurisdiction wide codes of conduct, agency codes of conduct, ethics training, etc
- 2) *expectation setting* – eg, establishing and maintaining an organisational culture that articulates the norms and values of the organisation and the standards of behaviour expected of staff
- 3) *prevention procedures and practices* – eg, removal of opportunities, eg, through fraud prevention measures, disclosure of interests registers, gifts and benefits registers, merit based selection, records management legislation, internal and external audit, proper supervision, ethics training, etc
- 4) *enforcement mechanisms* – eg, whistleblowing legislation, internal disclosure policies, complaint policies, obligations to report corruption to the ICAC, investigation capacity, FOI, records management legislation and policies, merit reviews of administrative decisions, etc
- 5) *deterrence mechanisms* – eg, watchdog bodies, internal and external audit, disciplinary action, prosecutions, etc.

These mechanisms/strategies/approaches are set out in more detail in [Annexure B](#) to this paper.

The not uncommon approach of government and agencies of focussing most effort and attention on setting standards and expectations will have little or no impact on intentional unethical conduct, and limited impact on unintentional unethical conduct. It is therefore important to employ the full range of mechanisms/strategies/approaches outlined above so as to maximise appropriate standards of conduct.

Category of conduct	Most effective mechanisms to encourage or enforce good conduct
1) Intentional ethical conduct	Standard setting Expectation setting
2) Ethically neutral conduct	Standard setting Expectation setting Prevention procedures and practices Deterrence mechanisms
3) Unintentional unethical conduct	Standard setting Expectation setting Prevention procedures and practices Enforcement mechanisms Deterrence mechanisms
4) Intentional unethical conduct	Enforcement mechanisms Deterrence mechanisms

If the aim is to ensure appropriate standards of conduct in the public sector, each of these mechanisms/strategies/approaches will need to be put in place as a comprehensive package.

9. What mechanisms/strategies/approaches are in place in nsw to help foster good conduct in the public sector

In NSW, the mechanisms/strategies/approaches that have been put in place by successive governments to foster good conduct (and to help keep government accountable) in the NSW public sector can be summarised as:

- establishment of integrity agencies such as the Ombudsman, ICAC, PIC and the Audit Office
- legal obligations on CEOs and Ministers to report suspected corrupt conduct to the ICAC
- publication of a model code of conduct to guide state government agencies in the development of agency specific codes of conduct
- instructions to state government agencies to prepare and adopt codes of conduct
- legal obligations on the Houses of Parliament and local councils (but not state government agencies) to adopt codes of conduct
- obligations on MPs and senior council staff (but not the staff of state government agencies) to disclose various interests
- legal obligations on agencies to publish their codes of conduct in an annual report, and any changes to the code in subsequent reports
- offence provisions in the *Crimes Act* relating to bribery/secret commissions, etc
- offence provisions in various legislation relating to unauthorised disclosure of information.

While no Australian jurisdiction has all the bases fully covered, NSW falls down in a number of areas, particularly in relation to standard setting:

1. *Legislated statements of values and standards of behaviour* - The attached table at [Annexure C](#) compares the various Australian jurisdictions in terms of the legislated ethics and related obligations for their public officials. If you look down the almost completely empty NSW column you will see that from an ethics perspective NSW is somewhat of a legislative desert!
2. *Jurisdiction wide code of conduct* – In NSW there isn't one. Every other Australian jurisdiction has one, but not NSW. All we have is a 'model' code to provide some guidance to agencies in the development of their own codes. However, there are non-agency based codes of conduct for certain parts of or groups in the public sector, for example there is a code of conduct for local government, a code of conduct for the Senior Executive Service, a code of conduct for MPs.

There have been at least two attempts that I am aware of to develop a public sector wide code of conduct in NSW, but despite a lot of time and effort being put into the development of such a code by representatives of the Ombudsman, ICAC, Audit Office and Premier's Department, neither were successful:

- the first was to be part of a package which included a short-lived web site and even a catchy slogan, "*The State of Integrity*"! This attempt ended up going nowhere due to a lack of central agency commitment.
- the second attempt came to grief for several reasons:
 - there was dispute about whether there should be a sector wide code or two separate (and different!) codes – one for the SES and another for all other state public servants.
 - there was a dispute about the relative importance of Parliament and about whether the code should emphasise the central place of Parliament in our system of government; and

- its fate was finally sealed when the staff of the Premiers' Department who were working on the development of the code lost their jobs in a restructure of the Department!

3. *Responsible agency* - I think one of the reasons why NSW falls down in these fundamental areas is because, unlike all other Australian jurisdictions, there is no central agency statutorily charged with establishing and promoting appropriate standards of conduct by public officials. In other Australian jurisdictions there are independent, or at least largely independent, bodies or officials with such a role?⁴ Merely having an Ombudsman and a corruption body is not enough. They perform quite different enforcement and deterrence functions – not the standard setting function of the bodies listed above.

In relation to expectation setting, a further area where I have seen that many NSW agencies fall down is in relation to agency statements of values. While I am aware that a number of agencies have statements of values, from what I have seen these are little more than a list tucked away in some policy or guarantee of service, or on a poster on the wall. From what I have seen the development of these statements of values were seen in most cases as a project that had been completed, not part of an ongoing process. They are not built into agency cultures and therefore serve little or no good purpose in practice.

And as for leadership creating a culture in the public sector as a whole and in each agency, given what has come out of recent enquiries in NSW into State Rail, the Ambulance Service, among others, it appears to be somewhat patchy!

10. Conclusions

While public sector ethics is a nice concept, it has limited relevance to the management of the conduct of public officials to maximise fair and appropriate outcomes in the public interest and public trust in government:

- there is no general agreement as to the meaning of 'ethics' – what it encompasses
- 'ethics' involves a mental element and is therefore a very personal and subjective issue, and in practice most people see actual standards of behaviour as more important than what may have motivated that behaviour (other than when things go wrong)
- the application of ethical principles to any complex set of circumstances may well result in a range of possible outcomes, often with no clearly 'right' answer
- many people can be quite selective in the application of ethical principles to various aspects of their lives and work
- from a practical enforcement perspective it may be more appropriate or useful to focus on outcomes rather than causes, on whether conduct was criminal, illegal or corrupt as opposed to 'ethical', and to talk about questions of 'judgement' rather than 'ethics'.
- in practice, attempts to improve the standards of conduct and decision-making by public officials need to focus on the full range of potential conduct, not just on trying to encourage public officials to act ethically.

On this last point, while a focus on fostering ethical conduct through setting standards and outlining expectations will assist public officials who wish to act ethically, or at least would prefer not to act unethically, it will do little to address the conduct of those who are morally negligent, blind or reckless, and will have no impact on those who are prepared to place their personal interests above the public interest.

⁴ Such as the Public Sector Standards Commission and the Public Sector Commission in WA, the Public Service Commission and the Ethics Commissioner in Queensland, the Office of the Commissioner for Public Employment in the NT, the State Services Authority in Victoria, the Commissioner for Public Employment in SA, the Office of the State Service Commissioner in Tasmania and the Australian Public Service Commission in the Commonwealth.

To address the problems that can be caused by such people, a comprehensive approach is required that puts in place adequately resourced mechanisms focusing on:

- standard setting
- expectation setting
- prevention procedures and practices
- enforcement mechanisms, and
- deterrence mechanisms.

From what I can see, if I were to go out on a limb and try to rank Australian jurisdictions in terms of the comprehensiveness of their approach to ensuring appropriate conduct by public officials, I would hazard that Queensland probably comes closest while NSW appears to me to be the furthest away.

It is well past time for the government of NSW to comprehensively review the systems and structures in place in this State to ensure appropriate conduct by public officials.

To provide a proper foundation for the promotion of appropriate conduct, in my view this would need to include:

- a legislated statement of values and the standards of behaviour expected of all public officials;
- a code of conduct covering the NSW public sector as a whole;
- the setting up of an independent agency with statutory responsibility, and the necessary resources, to establish and promote appropriate standards of conduct by public officials.

These are not novel or radical ideas, and their implementation would bring NSW into line with all other State, Territory and Commonwealth Governments in Australia.

ANNEXURE A

What influences the likelihood of ethical conduct?

The main influences on the likelihood of people acting ethically would include:

- 1) *personal values*, eg influenced by such things as family , education , religion, ethnicity, etc
- 2) *personal traits*, eg:
 - strength of character, including a willingness to take responsibility for actions
 - pressure from personal circumstances (eg, a person may be more likely to engage in unethical practices if this will benefit the person personally or if engaging in ethical practices will cost the person personally)
- 3) *supports*, eg:
 - rules (such as codes of conduct, agency policies and procedures, and legislated standards of behaviour)
 - guidance as to acceptable behaviour (such as in codes of conduct, codes of ethics, legislated statements of values, guidelines, training, advice, etc)
 - cultural norms (eg, the culture of an organisation or of the wider society).
- 4) *deterrents*, eg:
 - rules (eg, codes of conduct and legislated standards of behaviour)
 - prevention (eg, reduction of opportunities for inappropriate behaviour)
 - strong systems of accountability (eg internal and external audits)
 - detection of non-compliance (eg, supervision, audits, whistleblowing, watchdog bodies etc)
 - penalties for non-compliance/breach.
- 5) *opportunities* (ie situation/circumstances), eg:
 - weak or absent systems of accountability
 - organisational culture that does not judge certain conduct as being unethical (eg, nepotism or use of organisational resources for personal use).
- 6) *pressures*, eg:
 - organisational pressure (eg, by management or colleagues)
 - political pressure (eg by Ministers or their staff)
 - personal circumstances (eg, financial pressures).

ANNEXURE B

What are the mechanisms/strategies/approaches that encourage ethical conduct?

Mechanisms, strategies and approaches that encourage ethical behaviour would include:

1. Standard setting:

- 1.1 Offence provisions – eg, unauthorised disclosure of information; bribery/secret commissions, etc [in all Australian jurisdictions]
- 1.2 Legal obligations – avoidance of bias; obligations of fidelity; disclosure of interests, protection of privacy, etc [common law or statutory requirements common across Australian jurisdictions]
- 1.3 Legislated statements of values and standards of behaviour – a legislative framework setting out overarching principles and standards of behaviour, covering such issues as legality, impartiality, integrity, avoidance of conflicts of interests, acting in good faith, transparency, frankness and candour, use of public resources, etc. Legislated statements of values are the foundation for jurisdiction wide agency codes of conduct and agency statements of values. [common in almost all OECD and Australian jurisdictions, other than NSW]
- 1.4 Jurisdiction wide codes of conduct – setting out minimum standards of conduct – focusing on the public sector as a whole [jurisdiction wide codes in all Australian jurisdictions, other than NSW]
- 1.5 Agency codes of conduct – setting out minimum standards of conduct – focusing on the particular characteristics of the agency and its environment [common in all Australian jurisdictions, - recent ICAC/CMC research indicates that 96% of NSW agencies and 92% of Queensland agencies have a code of conduct]
- 1.6 Ethics training – while some argue that 'ethics' can not be taught, this does not mean that people cannot be given training as to expected standards of behaviour, and given tools to assist ethical decision-making [ad hoc in most Australian jurisdictions]
- 1.7 Responsible Agency – a central agency statutorily charged with promoting and being responsible for appropriate standards of conduct by public officials [in all Australian jurisdictions, other than NSW].

2. Expectation setting:

- 2.1 Agency statements of values – an articulation of the norms and values of the organisation, often set out in a code of conduct, corporate plan/business plan, statement of corporate purpose or guarantee of service [implementation often involves little more than lip service to a set of values that are not built into an agency's culture, policies, procedures, job descriptions, induction training, decision-making, etc]
- 2.2 Leadership ('tone at the top') –
 - members of the government of the day demonstrating/modelling appropriate values and ethical behaviour [variable across Australian jurisdictions!].
 - senior management of agencies demonstrating/modelling a commitment to the organisation's values, and to ethical behaviour generally [variable across Australian jurisdictions]
- 2.3 Duty statements/contracts of employment – setting out expected standards of conduct [duty statements and/or contracts of employment are almost universal for employment in the public sector]
- 2.4 Oaths of office – a requirement to hold certain positions in some jurisdictions
- 2.5 Ethics training – see above

3. Prevention procedures and practices:

- 3.1 Disclosure of interests – obligations to disclose pecuniary and other interests that could be in or lead to a conflict [disclosure of interests is a requirement in some sections of the NSW public sector such as for MPs, Councillors and senior council staff, but not for CEOs or the SES in state government agencies]
- 3.2 Gifts and benefits registers – [reasonably common in NSW agencies]
- 3.3 Fraud control plans – [common in NSW agencies]
- 3.4 Use of IT and communication devices policies – [common in NSW agencies]
- 3.5 Accounting standards – [in all Australian jurisdictions]
- 3.6 Records management legislation – requiring the making and retention of proper records [in all Australian jurisdictions]
- Records management policies – [common across all Australian jurisdictions]
- 3.8 Merit based selection – to avoid nepotism, favouritism, etc [almost universal application in all Australian jurisdictions]
- 3.9 Criminal records checks – [common pre-requisite for selection to a position in the public sector]
- 3.10 Supervision – particularly important in high risk areas
- 3.11 Ethics training – see above

4. Enforcement mechanisms:

- 4.1 Whistleblowing legislation – [in all Australian jurisdictions to one extent or another; currently under review in many]
- 4.2 Internal disclosure policies – to facilitate internal disclosures (whistleblowing) by staff [in most NSW agencies]
- 4.3 Complaint handling policies – agency policies for the receipt, handling, investigation, etc of complaints [in most NSW agencies]
- 4.4 Reporting of corrupt conduct – the obligation on CEOs and Ministers to report suspected corrupt conduct to the ICAC [s.11, ICAC Act in NSW]
- 4.5 Internal audit – [common across all Australian jurisdictions]
- 4.6 External audit – [universal application across all Australian jurisdictions]
- 4.7 Agency investigative capacity – the capacity of agencies to investigate complaints/disclosures [variable across agencies depending on their size and their exposure to and history of illegal/unethical/ inappropriate behaviour]
- 4.8 FOI – [in all Australian jurisdictions]
- 4.9 Records management legislation – see above
- 4.10 Records management policies – see above 2
- 4.11 Merit review of administrative decisions – [common in Australian jurisdictions, but only for certain administrative decisions in NSW]

5. Deterrence mechanisms

- 5.1 Watchdog/integrity bodies – Ombudsman [in all Australian jurisdictions]
 - Corruption Commissions [5 so far across Australian jurisdictions]
 - Integrity/Ethics/Standards Commissioners [in some Australian jurisdictions, eg, Queensland the WA]
 - Auditors General [in all Australian jurisdictions]
- 5.2 Internal audit – [common across Australian jurisdictions]
- 5.3 External audit – [universal application across all Australian jurisdictions]
- 5.4 Penalties – the penalties that can be imposed for non-compliance/breach of acceptable ethical standards/standards of behaviour, eg warnings, directions, demotions, fines, dismissal, gaol, etc.
- 5.5 Disciplinary action – [rare in practice]
- 5.6 Prosecution – [very rare in practice].

ANNEXURE C

Australian comparisons of ethics and related obligations for public officials

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
Statements of values/ principles:									
• accountability:				cl.2(c)?					
s.6	s.6	s.10(1)	–		–	s.4(1)(d), 6(b)	s.7(1)(d)	s.8(1)(c)	–
– to government	s.6(c)	s.10(1)(e)	–	–	–	–	s.7(1)(d)	–	–
– to Parliament	–	s.10(1)(e)	–	–	–	–	s.7(1)(d)	–	–
– to public	–	s.10(1)(e)	–	–	–	–	s.7(1)(d)	–	–
• service to the public	ss.6(a), 7(a)	s.10(1)(g)?	–	cl.2(a)	ss.23(b), 25, PS Act	s.4(1)(a),(e)	–	ss.3(b), 8(1)(d)	s.7(a)
• responsiveness to:									
– requirements of gov't	s.6(b)(i)	–	–	–	s.23(a), PS Act	–	–	–	s.7(b)
– needs of public	s.6(b)(ii)	–	–	–	s.23(a), PS Act	–	–	–	–
• fairness and integrity	ss.6(d), 7(b)	s.10(1)(g)	–	cl.4(a),(e)	ss.4(2), 9, PSE Act	–	–	ss.3(d), 8(1)(b)	s.9(a), (b)
• efficiency and effectiveness	ss.6(e), 7(d)	s.10(1)(g)	–	cl.4(c)	s.23(a), PS Act	s.4(1)(a)	–	s.3(c)	s.7(e), (f)
• impartiality	–	s.10(1)(a)	–	cl.2(b), 4(a)	s.23(d), PS Act	–	s.7(1)(a),(f)	s.8(1)(a)	–
• highest ethical standards	–	s.10(1)(d)	–	–	–	–	s.7(1)(a)	s.3(d)	–
• respect for law and system of government	–	–	–	–	ss.4(2),7, PSE Act	–	–	–	–

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
Standard of behaviour:									
• integrity/probity	s.9(c)	s.13(1)	–	cl.4(a)	s.9 PSE Act, s.25(f), PS Act	–	ss.7(1)(a), 9(1),(14)	s.8(1)(b)	–
• honesty	–	s.13(1)	–	–	–	ss.6E, 6K, 6P, 6T, 6Z, 6ZC	ss.7(1)(e), 9(1)	–	–
• respect for persons/without harassment	s.9(f)	s.13(3)	–	s.49(g)	s.8, PSE Act	s.6(a)	s.9(3)	–	–
Standard of decision-making:									
• fairness/equity	ss.6(d), 7(b)	s.10(1)(g)	–	cl.4(e)	–	–	s.7(1)(f)	–	–
• impartiality	s.9(b)	s.10(1)(a),(g)	–	ccl.2(b),4(a)	ss.23(d), 25(f), PS Act, s.7(b), PSE Act	–	s.7(1)(a),(f)	s.8(1)(a)	–
Standard of advice:									
• honest/with integrity	–	ss.10(1)(f),13(1)	–	cl.4(b)	s.23(d), PS Act	ss.6E, 6K, 6P, 6T, 6Z, 6ZC	ss.7(1)(e), 9(1)	–	–
• frank	–	s.10(1)(f)	–	–	–	–	s.7(1)(e)	–	–
• objective/impartial	–	–	–	cl.2(b)	ss.23(d), 25(d), PS Act	–	s.9(10)	–	–
• accurate/not false or misleading	–	ss.13(9), 10(1)(f)	–	s.49(m)	–	–	ss.7(1)(e), 9(10)	–	–
• comprehensive	–	s.10(1)(f)	–	–	–	–	s.7(1)(e)	–	–
• timely	–	s.10(1)(f)	–	–	–	–	s.7(1)(e)	–	–

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
Standard of performance:									
• care/skill/diligence	s.9(a)	s.13(2)	–	cl.4(a)	s.10, PSE Act	s.6D(1)	s.9(2)	–	–
• professionalism	–	s.10(1)(a)	–	cl.4(a)	–	–	s.7(1)(a)	–	–
• effectiveness	s.6(e)	s.10(1)(g)	–	–	s.23(a), PS Act	s.4(1)(a)	–	–	s.7(e),(f)
• economy and efficiency	s.6(e)	–	–	cl.4(c)	s.11, PSE Act, ss.23(a),(h), 25(b), PS Act	s.4(1)(d), 6(b)	–	s.3(c)	s.7(e),(f)
• without excessive formality	–	–	–	cl.2(d)	s.23(f), PS Act	s.4(1)(b)	–	–	s.7(c)
• with minimum delay	–	–	–	cl.2(d)	s.23(f), PS Act	–	–	–	s.7(c)
Standard of service:									
• service quality	ss.6(a), 7(a)	–	–	cl.2(a)	ss.23(b), 25(a), PS Act	s.4(1)(a),(e)	–	s.3(b)	s.7(a)
• courtesy/sensitivity	s.9(d)	ss.10(1)(g), 13(3)	–	cl.4(e)	–	s.6(a)	–	–	s.9(c)
• responsiveness to needs	s.6(b)	–	–	–	s.8(2), PSE Act, s.23(a), PS Act	s.4(1)(a)	–	s.8(1)(d)	–
• assistance to understand entitlements	s.9(e)	–	–	–	–	–	–	–	–

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
Obligation to comply/uphold:									
• the law	s.9(h)	s.13(4)	–	–	s.7(1)(a), PSE Act s.25(g), PS Act	s.6(f)	s.9(4)	–	s.9(a)
• lawful and reasonable directions	s.9(i)	s.13(5)	–	s.49(c)	–	s.57(a)(ii)	s.9(6)	–	–
• code of conduct	ss.9(h), 251(2)(i)	s.14, cl.2.2	–	s.16(2)(c)	ss.18, PSE Act	s.6(ea)	ss.9(15),10	s.39(3)	ss.9(a), 21(1)(b)
• standards of conduct:									
– CEO	s.9(h)	ss.12, 14	–	ss.16, 23, cl.2	ss.25,51,52, PA Act	s.37	s.8	ss.8,13, 39(3)	ss.9,30,32
– SES	s.9(h)	ss.14, 35 (2)(c)	–	s.16, cl.2	s.25, PS Act	s.6	s.9 (15)	ss.8, 39(3)	s.9
– employees	s.9(h)	ss.13(11), 29(3)(g)	–	s.16, cl.2	s.10(b), PSE Act, s.25, PS Act	s.6	s.9(15)	ss.8, 39(3)	ss.9, 21(1)(b)
• recordkeeping standards	–	–	–	–	ss.23(i), 51(1)(g) PS Act	–	–	–	s.7(h)
Obligation to report:									
• conflict of interests	s.9(j)	s.13(7)	–	cl.4(b)	–	ss.6H,6Q,6W, 6ZA,6ZD, cl.5(1)	s.9(8)	–	–
• corruption/fraud	s.9(q)(i)	–	s.11, ICAC Act	–	s.9(2)(c), PSE Act	–	–	–	–
• maladministration	s.9(q)(ii)	–	–	–	s.9(2)(c), PSE Act	–	–	–	–
• waste	–	–	–	–	–	–	–	–	–

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
Use and disclosure of information:									
<ul style="list-style-type: none"> confidentiality/ non-disclosure 	s.9(m)	s.13(6), cl.2.1	–	–	–	ss.6(c),57(g), cl.15(1)	s.9(7)	–	–
<ul style="list-style-type: none"> not to obtain improper advantage 	s.9(l)	s.13(10)	–	–	–	–	s.9(11)	–	–
<ul style="list-style-type: none"> not make improper use of 	–	–	–	–	–	s.6(c)	s.9(11)	–	s.9(b)?
Use of property/resources:									
<ul style="list-style-type: none"> use efficiently & responsibly 	–	s.13(8)	–	cl.4(c)	s.25(b), PS Act	ss.4(d),6(b)	–	–	s.7(f)
<ul style="list-style-type: none"> avoidance of extravagance or waste 	s.9(p)	–	–	cl.4(c)	s.11	–	–	–	–
<ul style="list-style-type: none"> not to obtain improper advantage 	–	–	–	cl.4(d)	–	–	s.9(11)	–	–
<ul style="list-style-type: none"> not make improper use of/ use in a proper manner 	s.9(o)	s.13(8)	–	–	ss.9(2)(a), 11, PSE Act s.23(h), PS Act	s.57(e)	s.9(9), (11)	–	s.9(b)
Use of position/powers:									
<ul style="list-style-type: none"> not to obtain improper advantage 	s.9(k)	s.13(10)	–	cl.4(d)	s.9(2)(a), PSE Act	–	s.9(11)	–	–

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