

# ETHICS IN THE PUBLIC SECTOR – CLEARLY IMPORTANT, BUT ...<sup>1</sup>

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## 1. WHAT DOES 'ETHICS' ACTUALLY MEAN?

I want to talk today about the usefulness of a focus on ethics in the public sector from an 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.

Some commentators have argued for a very broad interpretation of ethics.<sup>2</sup> The problem with a broad definition is that it can encompass a range of matters that have little to do with moral principles, including standards of performance, effectiveness, efficiency, competence, avoidance of waste, and so on. However, in my view ethics is about moral principles and moral character, about whether decisions and actions are right or wrong, about 'morally reflective' decision-making. This narrower interpretation is in line with the derivation of the word 'ethics' from the Greek 'ethos', which means 'moral character'.

Given it is such an important concept, it is remarkable that we still do not have any general agreement as to just what 'ethics' means in practice, or a good understanding of how we can imbed high ethical standards into the public sector. In this regard, while I am sure we would all agree that it is important to embed high ethical standards into the public sector, I argue that a focus on 'ethics' 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 fostering an appropriate level of public trust in government. Further, even where a decision or action was ethical, it does not necessarily follow that it was the best one.

## 2. WHY ARE ETHICAL STANDARDS IN THE PUBLIC SECTOR IMPORTANT?

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 – it is a crucial issue for both governments and the people they govern. The degree to which the public is prepared to trust government is strongly influenced by perceptions as to the general ethical standards of that government. The public's perception as to whether or not a government is 'ethical' is therefore central to whether that government is seen as acceptable.

While ethical (as in 'moral') issues have a direct impact on public trust in government, such issues are just one of a range of factors that can impact on that level of trust, for example performance and service issues, as well as perceptions of general competence and judgement. The range of factors that directly impact on levels of public trust in government include:

- integrity issues – ensuring legality and honesty in decision-making by public officers (ie, ethical issues)
- fairness issues – acting fairly, reasonably and consistently
- *transparency* issues – providing more and better information to the public by improving the government's attitude to openness and transparency
- *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)

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1 Based on part of a paper delivered to the Ethical Leadership and Governance in the Public Sector Forum, Canberra, June 2010, which was in turn based on a paper delivered to the Ethical Excellence Conference in Sydney, February 2009, with the same title.

2 It is argued by some 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.

- *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)
- *performance* issues – ensuring competent, efficient and effective action by public officials.

The various factors listed above 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.

### **3. MUST ETHICAL CONDUCT BE INTENTIONAL?**

#### **Is a specific intent required for conduct to be ethical?**

If ‘ethics’ is about the application of moral principles, about morally reflective decision-making, presumably conduct should only be considered to be ‘ethical’ where the person concerned was aware at the time that the conduct was morally good, right or proper. In other words where the person’s conduct was intentional (ie based on specific intent – a consideration of the ethical issues that arose in a particular situation and a conscious decision to act ethically).

#### **What if there is no relevant mental element?**

If we were to be successful in embedding high ethical standards in the public sector, that by itself would not be enough to ensure appropriate standards of conduct by individual public officials and the government generally.

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 indeed some of which may even be ethically ‘challenged’.

Embedding high ethical standards into the public sector is very important because it sets out the benchmark of conduct to be achieved by the public sector and provides guidance to those who want to meet those standards. However, embedding high ethical standards by itself will not be enough because it would not address situations where there is no relevant mental element, for example:

A: If a person acts out of a proper sense of duty but is innocently mistaken in his or her judgement as to what is the morally right course of action, would they still have acted ethically (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)?

B: Could a person’s conduct be reasonably 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) not because of any assessment that this was the right and proper thing to do.

C: Could it be argued that a person's conduct was unethical because the person 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 was no mental element – no intention to act ethically – the conduct might be reasonable, appropriate or good practice, but this was 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.

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

- *moral negligence* (a reckless 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 are not recognised or are disregarded, as opposed to where questions of morality do arise and the conduct is intentionally unethical, improper, etc.

Further confusion can be caused by the fact that in some quarters 'unethical' is equated 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'<sup>3</sup> (eg, intentionally denying a person procedural fairness because the person is perceived to be a nuisance, clearly guilty, etc; being influenced by irrelevant considerations, for example by letting one's strongly held personal religious beliefs inappropriately influence the exercise of discretionary powers; misleading the public by selectively disclosing information, without lying; etc).

Whether conduct is in fact ethical or unethical in my view 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 the question as to whether conduct is ethical will essentially be a very personal matter between the individual and his or her conscience.

To achieve appropriate standards of conduct in the public sector so as to maximise public trust in government, it is necessary to address the range of motivations or causes of the conduct by public officials that could impact on such outcomes and levels of trust.

In my view, the range of such motivations or causes could be summarised as being:

- 1) *intentional ethical conduct* (which could result in either appropriate or inappropriate outcomes)
- 2) *unintentional unethical conduct* (arising out of thoughtlessness, misunderstanding, or moral failings)
- 3) *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), or
- 4) *intentional unethical conduct* (either based on 'actual' or 'constructive' knowledge that the conduct was wrong, eg, 'immoral').

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<sup>3</sup> In terms of the normal use of the word rather than any technical definition given in corruption legislation.

From an implementation and enforcement perspective, it may be more useful to focus on outcomes rather than causes – whether conduct was appropriate no matter what the cause or motivation. Alternatively, where issues about cause or motive are important, maybe the focus should be 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. A third option might be to focus on the conduct and whether it was criminal, illegal, corrupt or otherwise inappropriate.

#### **4. WHAT FACTORS INFLUENCE THE LIKELIHOOD OF ETHICAL CONDUCT?**

I think it is a truism that the conduct of individuals is often more influenced by ‘situation’ than ‘character’. I think we would all have seen examples where people have acted ethically/honestly in some contexts or situations but not in others. This cannot be 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 people 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. Their intentional unethical conduct may not always be highly premeditated, but could be the result of spur of the moment reaction to events or opportunities.

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*”.<sup>4</sup> While there may well be 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.

The various factors that can influence the likelihood of ethical conduct 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.<sup>5</sup>

#### **5. WHAT NEEDS TO BE DONE TO ENCOURAGE AND EMBED ETHICAL CONDUCT INTO THE PUBLIC SECTOR?**

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 and approaches to encourage or enforce good conduct. To be effective, these need to 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 they should include:

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<sup>4</sup> 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.

<sup>5</sup> Set out in Annexure A is a more detailed list of various factors that can influence the likelihood of ethical conduct.

- 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 strategies* – eg, removal of opportunities 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. In this context it would also be useful to address incentives, such as requirements or targets in SES contracts of employment.
- 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.<sup>6</sup>

The not uncommon approach of government and agencies is to focus most effort and attention on setting standards and expectations. However, given the range of motivations and causes I referred to earlier, 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 and may also serve to reduce opportunities for people to rationalise that they are not doing anything wrong. This approach is unlikely to address unintentional unethical conduct, and definitely will not address intentionally unethical conduct (whether due to moral failings, or due to pressure brought to bear by group dynamics or the culture of the organisation).

From a practical enforcement perspective, promoting ethical conduct through such means as codes of conduct and statements of values will have limited effect unless such approaches are part of a comprehensive package of measures covering the setting of standards and expectations, as well as prevention, enforcement and deterrence.

It is therefore important to employ the full range of mechanisms, strategies and approaches outlined above so as to maximise appropriate standards of conduct. For example:

- for intentional ethical conduct, the most effective mechanisms to encourage or enforce good conduct would be standard setting or expectation setting
- for unintentional ethical conduct, the most effective mechanisms would be standard setting, expectation setting and prevention strategies
- for ethically neutral conduct, the most effective mechanisms would be standard setting, expectation setting, prevention strategies and deterrent mechanisms, and
- for intentional unethical conduct, the most effective mechanisms would be standard setting (a pre-requisite for the following strategy and mechanisms to be effective), prevention strategies, enforcement mechanisms and deterrent mechanisms (expectation setting would have little or no impact).

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<sup>6</sup> These mechanisms, strategies and approaches are set out in more detail in Annexure B to this paper.

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

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

However, these mechanisms, strategies and approaches will be ineffective without the 5<sup>th</sup> and most important requirement – commitment. By this I am referring to commitment by government and commitment by the management of individual agencies. Without proper commitment, there will be no legislated ethical requirements or jurisdiction wide codes of conduct, no comprehensive ethics training, there will be piecemeal and half hearted enforcement of agency codes of conduct, no effective whistleblowing legislation, gaps in the effective implementation of enforcement mechanisms and failures to consistently and effectively empower and resource deterrence mechanisms.

The essential elements of the required level of commitment include, but are not limited to:

- an awareness of the importance of the issue
- the allocation of sufficient resources and priority to addressing the issue
- the implementation of effective governance mechanisms, and
- the establishment of an appropriate ethical culture in the public sector as a whole, as well as in each individual workplace.

## **6. WHAT MECHANISMS, STRATEGIES AND APPROACHES ARE IN PLACE IN NSW TO HELP FOSTER GOOD CONDUCT IN THE PUBLIC SECTOR?**

In NSW, various mechanisms, strategies and approaches have been put in place by successive governments to foster good conduct in the NSW public sector and to help keep government accountable.

While none has all the bases fully covered, compared to all other Australian jurisdictions NSW in particular falls down in a number of areas, particularly in relation to standard setting:

1. Legislated statements of values and standards of behaviour - The following PowerPoint slides (copies from the table attached to my paper at Annexure C) compare 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! Thankfully, the NSW government has notified its intention to address this issue in the near future.
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. 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. The NSW government is committed to the introduction of a Statement of Values and Principles which it intends to enshrine in legislation, bringing NSW into line with all other Australian jurisdictions.
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?<sup>7</sup> 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. Again, thankfully, the NSW government is currently in the process of establishing a Public Service Commission.

In relation to expectation setting, 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. 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.

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<sup>7</sup> 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.

## 7. 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 (either generally or in particular circumstances), or at least would prefer not to act unethically, it will do little to address conduct that is morally negligent, blind or reckless, and will have no impact when people are prepared to place their personal interests above the public interest.

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.

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. Happily, it appears that each of these initiatives are or will soon be in place in NSW. For example, the government is establishing a Public Service Commission and is committed to the introduction of a statement of Values and Principles for the NSW public sector, and to a new Bill to incorporate ethics and public sector values into legislation.

## 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).

## 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, transparency and openness in decision making, 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 in all 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 and to create an ethical workplace culture [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 Australian jurisdictions]
- 2.5 Ethics training - [see above]

## 3. Prevention strategies:

- 3.1 Whistleblowing legislation - [in all Australian jurisdictions to one extent or another; currently under review in many]
- 3.2 Disclosure of interests obligations - obligations to disclose pecuniary and other interests that could be in or lead to 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]
- 3.3 Gifts and benefits registers - [reasonably common in NSW agencies]
- 3.4 Fraud control plans - [common in NSW agencies]
- 3.5 Use of IT and communication devices policies - [common in NSW agencies]
- 3.6 Accounting standards - [in all Australian jurisdictions]
- 3.7 Records management legislation - requiring the making and retention of proper records [in all Australian jurisdictions]
- 3.8 Records management policies - [common across all Australian jurisdictions]
- 3.9 Merit based selection - to avoid nepotism, favouritism, etc [almost universal application in all Australian jurisdictions]
- 3.10 Criminal records checks - [common pre-requisites across all Australian jurisdictions for selection to a position in the public sector]
- 3.11 Supervision - particularly important in high risk areas
- 3.12 Ethics training - [see above]

#### 4. Enforcement mechanisms:

- 4.1 Whistleblowing legislation - [see above]
- 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 capacity across agencies depending on their size and their exposure to and history of illegal/unethical/ inappropriate behaviour]
- 4.8 FOI (or equivalent) - [in all Australian jurisdictions]
- 4.9 Records management legislation - [see above]
- 4.10 Records management policies - [see above]
- 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 [common across Australian jurisdictions]
- 5.5 Disciplinary action - [rare in practice]
- 5.6 Prosecution - [very rare in practice]

### AUSTRALIAN COMPARISONS OF ETHICS AND RELATED OBLIGATIONS FOR PUBLIC OFFICIALS

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Statements of values/ principles:</b>									
• accountability:	s.6	s.10(1)	-	cl.2(c)?	-	s.4(f)	s.7(1)(d)	ss.7(1)(d), 3(b)(iii)	-
-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)	s.25(1)(b), PS Act	s.4(a),(e)	-	S7(1)(a)(i)	s.7(a)
• responsiveness to:									
-requirements of gov't	s.6(b)(i)	-	-	-	s.3(1)(a)(i), 25(1)(a), 98(1)(d), PS Act	s.5(2)	-	S7(1)(a)(i)	s.7(b)
-needs of public	s.6(b)(ii)	-	-	-	s.25(1)(a)	-	-	S7(1)(a)(ii)	-
• fairness and integrity	ss.6(d), 7(b)	s.10(1)(g)	-	cl.4(a),(e)	ss.4(2), 9, PSE Act	ss.4(b), 5(6)	-	ss.7(1)(b), 3(f)	s.9(a), (b)
								ss 7(1)(c)(ii), 7(1)(e)(i) ss.3(d), 8(1)(b)	
• efficiency and effectiveness	ss.6(e), 7(d)	s.10(1)(g)	-	cl.4(c)	s.3(1)(b), PS Act	s.4(a)	-	s.3(b)(ii)	s.7(e), (f)
• impartiality	-	s.10(1)(a)	-	cl.2(b), 4(a)	s.25(1)(b), PS Act	-	s.7(1)(a),(f)	s.7(1)(c)	-
• highest ethical standards	-	s.10(1)(d)	-	-	-	s.5(6)	s.7(1)(a)	s.3(f)	-
• respect for law and system of	-	-	-	-	ss.4(2),7,	-	-	-	-

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
government					PSE Act				
<b>Standard of behaviour:</b>									
• integrity/probity	s.9(c)	s.13(1)	-	cl.4(a)	s.9 PSE Act, s.26(g), PS Act	-	ss.7(1)(a), 9(1),(14)	s 7(1)(b)	-
• honesty	-	s.13(1)	-	-	s.(8)(1)(a), PSE Act	s.5(6)	ss.7(1)(e), 9(1)	s7(1)(b)(i)	-
• respect for persons/without harassment	s.9(f)	s.13(3)	-	s.49(g)	s.8, PSE Act	s.5(6),5(5)	s.9(3)	s7(1)(e)(ii)	-
<b>Standard of decision-making:</b>									
• fairness/equity	ss.6(d), 7(b)	s.10(1)(g)	-	cl.4(e)	-	-	s.7(1)(f)	s7(1)(c)(i)	-
• impartiality	s.9(b)	s.10(1)(a),(g)	-	ccl.2(b),4(a)	S 26(g), PS Act, s.7(1)(b), PSE Act	-	s.7(1)(a),(f)	s7(1)(c)(i)	-
<b>Standard of advice:</b>									
• honest/with integrity	-	ss.10(1)(f), 13(1)	-	cl.4(b)	Ss 25(1)(b), PS Act	S 5(6)	ss.7(1)(e), 9(1)	s7(1)(b)(i)	-
• frank	-	s.10(1)(f)	-	-	-	-	s.7(1)(e)	s7(1)(a)(i)	-
• objective/impartial	-	-	-	cl.2(b)	Ss 25(1)(b) 26(e) PS Act	-	s.9(10)	s7(1)(a)(i)	-
• accurate/not false of misleading	-	ss.13(9), 10(1)(f)	-	s.49(m)	-	s.5(2)	ss.7(1)(e), 9(10)	-	-
• comprehensive	-	s.10(1)(f)	-	-	-	s.5(2)	s.7(1)(e)	-	-

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<ul style="list-style-type: none"> <li>timely</li> </ul>	-	s.10(1)(f)	-	-	-	s.5(2)	s.7(1)(e)	s7(1)(a)(i)	-
<b>Standard of performance:</b>									
<ul style="list-style-type: none"> <li>care/skill/diligence</li> </ul>	s.9(a)	s.13(2)	-	cl.4(a)	s.10, PSE Act	s.4(e)	s.9(2)	-	-
<ul style="list-style-type: none"> <li>professionalism</li> </ul>	-	s.10(1)(a)	-	cl.4(a)	-	-	s.7(1)(a)	s.3(g)	-
<ul style="list-style-type: none"> <li>effectiveness</li> </ul>	s.6(e)	s.10(1)(g)	-	-	-	s.5(4)	-	s.3(b)(ii)	s.7(e),(f)
<ul style="list-style-type: none"> <li>economy and efficiency</li> </ul>	s.6(e)	-	-	cl.4(c)	s.11, PSE Act, 25(1)(a), PS Act	s.5(4)	-	s.3(b)(ii)	s.7(e),(f)
<ul style="list-style-type: none"> <li>without excessive formality</li> </ul>	-	-	-	cl.2(d)	-	-	-	-	s.7(c)
<ul style="list-style-type: none"> <li>with minimum delay</li> </ul>	-	-	-	cl.2(d)	-	-	-	-	s.7(c)
<b>Standard of service:</b>									
<ul style="list-style-type: none"> <li>service quality</li> </ul>	ss.6(a), 7(a)	-	-	cl.2(a)	ss.26(a), 25(1)(a), PS Act	s.4(e),5(1), 5(4)	-	s.7(1)(ii)	s.7(a)
<ul style="list-style-type: none"> <li>courtesy/sensitivity</li> </ul>	s.9(d)	ss.10(1)(g), 13(3)	-	cl.4(e)	-	s.5(6)	-	-	s.9(c)
<ul style="list-style-type: none"> <li>responsiveness to needs</li> </ul>	s.6(b)	-	-	-	s.8(2), PSE Act, s.25(1)(a), 3(1)(a)(i) PS Act	s.5(1)	-	s.7(1)(a)(ii)	-
<ul style="list-style-type: none"> <li>assistance to understand entitlements</li> </ul>	s.9(e)	-	-	-	-	-	-	-	-

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Obligation to comply/uphold:</b>					S 7(1)(a) PSE Act s.26(h) PS Act				
• the law	s.9(h)	s.13(4)	-	-		s.5(7)	s.9(4)	-	s.9(a)
• lawful and reasonable directions	s.9(i)	s.13(5)	-	s.49(c)	-	-	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	ss.9(15),10	s.63	ss.9(a), 21(1)(b)
• standards of conduct:									
-CEO	s.9(h)	ss.12, 14	-	ss.16, 23, cl.2	ss.25, PS Act	s.37, 38	s.8	ss.8,13	ss.9,30,32
-SES	s.9(h)	ss.14, 35 (2)(c)	-	s.16, cl.2	s.25, PS Act	s.5	s.9 (15)	ss.8	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.5	s.9(15)	ss.8	ss.9, 21(1)(b)
• recordkeeping standards	-	-	-	-	ss.98(h) PS Act	-	-	-	s.7(h)
<b>Obligation to report:</b>									
• conflict of interests	s.9(j)	s.13(7)	-	cl.4(b)	-	S 15(2)	s.9(8)	3.6 (MCOC)	-
• 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	-	-	s.7(1)(b)(iii)	-
• waste	-	-	-	-	-	-	-	-	-
<b>Use and disclosure of information:</b>									

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<ul style="list-style-type: none"> <li>confidentiality/ non-disclosure</li> </ul>	s.9(m)	s.13(6), cl.2.1	-	-	-	S 5(6)	s.9(7)	3.4, 6.3, 6.2 (MCOG)	-
<ul style="list-style-type: none"> <li>not to obtain improper advantage</li> </ul>	s.9(l)	s.13(10)	-	-	-	-	s.9(11)	3.3 (MCOG)	-
<ul style="list-style-type: none"> <li>not make improper use of</li> </ul>	-	s.13(10)	-	-	-	-	s.9(11)	3.4 (MCOG)	s.9(b)?
<b>Use of property/resources:</b>									
<ul style="list-style-type: none"> <li>use efficiently &amp; responsibly</li> </ul>	-	s.13(8)	-	cl.4(c)	s.25(1)(e), PS Act	s5(4)	-	5.3(MCOG)	-s.7(f)
<ul style="list-style-type: none"> <li>avoidance of extravagance or waste</li> </ul>	s.9(p)	-	-	cl.4(c)	s.11 PSE Act	-	-	-	-
<ul style="list-style-type: none"> <li>not to obtain improper advantage</li> </ul>	-	-	-	cl.4(d)	-	-	s.9(11)	-	-
<ul style="list-style-type: none"> <li>not make improper use of/ use in a proper manner</li> </ul>	s.9(o)	s.13(8)	-	-	ss.9(2)(a), 11, PSE Act	-	s.9(9), (11)	5.3 (MCOG)	s.9(b)
<b>Use of position/powers:</b>									
<ul style="list-style-type: none"> <li>not to obtain improper advantage</li> </ul>	s.9(k)	s.13(10)	-	cl.4(d)	s.9(2)(a), PSE Act	-	s.9(11)	3.2 (MCOG)	-

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