



**Australian Government**  
**Department of Finance**

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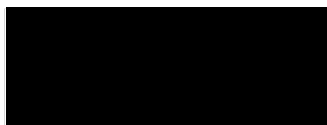
Mr David Brunoro  
Secretary  
Joint Committee of Public Accounts and Audit  
Parliament House  
CANBERRA ACT 2600

Dear Mr Brunoro

Please find attached a revised version of the guidance relating to the duties of officials. As discussed at our meeting on 19 March 2014, Attachment D12 – General duties of officials was submitted to the JCPAA Committee as part of the supplementary submission lodged on 18 March 2014. Following further consultation with the APSC and AGS, amendments have been made to the guidance and a revised version is attached for the Committee's consideration. Please disregard the original attachment provided.

Finance does not consider the information in this submission to be such that it needs to be kept confidential.

Yours sincerely



Thea Daniel  
Assistant Secretary  
Public Management Reform Agenda Taskforce  
Governance and Resource Management Group

20 March 2014



**Australian Government**  
**Department of Finance**



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# Resource Management Guide No. <XX>

## General duties of officials

[GUIDE NUMBER] | [MONTH YEAR] (ARIAL 11)

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# Resource Management Guide No. <XX>

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## General duties of officials

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### Audience

This guide is relevant to officials of Commonwealth entities, both corporate and non-corporate.

### Key points

- Sections 25 to 29 of the *Public Governance Performance and Accountability Act 2013* (PGPA Act) set out the general duties that apply to the officials of all Commonwealth entities particularly in their management and use of public resources.
- The duties imposed by section 13 of the *Public Service Act 1999* (PS Act), being the APS Code of Conduct, are broader in scope than the general duties that apply to officials and therefore adherence with the APS Code of Conduct will ordinarily meet the requirements of the duties under the PGPA Act.
- Sections 30 to 32 of the PGPA Act set out provisions on the termination of appointment of certain members of accountable authorities of Commonwealth entities who contravene the general duties and explain how the duties interact with other laws.

### Resources

[Related guidance](#)

[Factsheets](#)

[Contact information](#) <add details>

## Part 1 – Summary

1. Each Commonwealth entity has officials. They include employees, officers or members of an entity. These officials are employed under numerous employment frameworks, which include administrative personnel, uniformed service personnel, federal police, customs officers, park rangers, postal workers, camera operators or scientists. Some are chief executives, or members of boards; others are in administrative or support roles. All officials have a set of general duties that they must meet, as individuals, under the PGPA Act.
2. The PGPA Act includes requirements for the governance, reporting and accountability of Commonwealth entities, including corporate and non-corporate Commonwealth entities and Commonwealth companies, for their use and management of public resources. The PGPA Act supports the efficient, effective, economical and ethical use of public resources both at the entity level and throughout the Commonwealth generally.<sup>1</sup> Collectively, the PGPA Act, the rules and any instruments made under the PGPA Act, and any appropriation Acts are known as the finance law.<sup>2</sup>
3. The public resources used by a Commonwealth entity—most obviously the money and the property that it holds—are handled and managed by officials and subject to management by officials. The PGPA Act establishes some key principles about how public resources should be used, and requires that the chief executive or board of each Commonwealth entity (called the ‘accountable authority’ under section 12 of the PGPA Act) puts in place appropriate systems of internal control to ensure that public resources are managed and used properly (section 16).
4. Under section 16 of the PGPA Act, accountable authorities are required to implement measures directed at ensuring that the officials of the entity comply with the finance law. Officials who do not comply can be subject to sanctions, including termination of employment (for staff) or termination of appointment (for board members or office holders).<sup>3</sup>
5. This guidance covers the general duties of all officials under the PGPA Act. There are five general duties, which are set out in sections 25 to 29 of the PGPA Act. They are:
  - a duty of care and diligence
  - a duty to act in good faith and for a proper purpose
  - a duty in relation to use of position
  - a duty in relation to use of information
  - a duty to disclose interests.
6. This guide explains each of these five general duties and how they apply to officials. The information in this document may be supplemented with other guidance or requirements issued by an accountable authority in relation to its officials.

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<sup>1</sup> Four guiding principles underpin the design of the Act:

- Government should operate as a coherent whole.
- A uniform set of duties should apply to all resources handled by Commonwealth entities.
- Performance of the public sector is more than financial.
- Engaging with risk is a necessary step in improving performance.

<sup>2</sup> The finance law is defined by section 8 of the PGPA Act and includes measures to ensure that the Commonwealth Government is accountable for its use and management of public resources to the Parliament and people of Australia.

<sup>3</sup> Note 1 to section 16 and notes 1 and 2 to section 32 of the PGPA Act explain the sanctions that apply to officials in general and those employed under the *Public Service Act 1999* or the *Parliamentary Service Act 1999*. Section 30 deals with the termination of appointees of a corporate Commonwealth entity.

7. These general duties applying to officials in the PGPA Act provide a uniform set of expected behaviours that covers all officials in meeting high standards of governance, performance and accountability.
8. These duties are in addition to any other legal duties that an official may have under their employment framework or through an employment contract. For example, these duties are similar to elements of the APS and Parliamentary Service Codes of Conduct set out in section 13 of the PS Act and section 13 the *Parliamentary Service Act 1999*. The *Defence Force Discipline Act 1982* and the *Australian Federal Police Act 1979* also allow for duties, values or professional standards of employment to be set. These duties need to be upheld.
9. Around half of the officials subject to the PGPA Act are also subject to the PS Act. The table at Attachment A sets out the legislative requirements and the subtle differences between the duties in the PGPA Act and the Code of Conduct prescribed by section 13 of the PS Act.<sup>4</sup>
10. Accountable authorities may wish to refer to *Resource Management Guide No. XX: Duties of accountable authorities*, which provides guidance on the duties applicable to accountable authorities under sections 15 to 19 of the PGPA Act.

## Part 2 – Introduction

11. The Commonwealth Government is a diverse collection of departments of state, statutory agencies, business operations, companies, councils, research and broadcasting organisations, regulators, cultural institutions and other types of bodies. Some are corporate in nature, others are non-corporate in nature. Collectively, they are called 'Commonwealth entities'.
12. Under section 13 of the PGPA Act, each Commonwealth entity has officials. An official is defined as 'an individual who is in, or forms part of, the entity'. Such an individual can be an officer, employee or member of the entity, or a person or member of a class of persons prescribed by the rules made under the PGPA Act to be an official. An official is also an individual who is, or is a member of, the accountable authority of the entity. So the general duties in the PGPA Act apply to everyone in the entity. Some individuals, however, are not officials. These include Ministers, judges and, unless prescribed otherwise in the rules to the PGPA Act, consultants and independent contractors.
13. Sections 25 to 29 of the PGPA Act place general duties and obligations on officials of Commonwealth entities. These are legal duties that require all officials to exhibit a minimum standard of behaviour in exercising their powers or performing their functions. To meet the obligations imposed by the duties, officials need to comply with the PGPA Act and its subordinate legislation, such as rules and delegations. The rules set the general requirements to be applied in specific circumstances, like handling and spending relevant money.
14. Officials should also have regard to general guidance about the PGPA Act and rules issued by the Department of Finance and specific guidance issued by the entity in which they work.
15. The general duties that the PGPA Act places on officials are similar to the ones that apply to directors under the *Corporations Act 2001*, in that they promote high standards of governance, performance and accountability. The similarity of duties for the management of resources across the private and public sectors is aimed at helping *government to join up* with other sectors in delivering public programs and services.

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<sup>4</sup> See APS Values and Code of Conduct in Practice: a guide to official conduct for APS employees and agency heads  
<http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice>



## Part 3 – Duty of care and diligence

Section 25 of the PGPA Act states:

- (1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:
  - (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
  - (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.
- (2) The rules may prescribe circumstances in which the requirements of subsection (1) are taken to be met.

16. Section 25 of the PGPA Act requires all officials of Commonwealth entities to undertake their employment roles with the same degree of care and diligence that a reasonable person would exercise if they were an official of the entity. This requirement is similar to the requirement under the APS Code of Conduct that an APS employee 'act with care and diligence in connection with APS employment'<sup>5</sup>.
17. The Corporations Act applies a duty to directors of private sector corporations to 'exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise' (section 180(1)).
18. The reasonable person test in section 25 of the PGPA Act mirrors similar duties in common law and the Corporations Act. The applicable standard of care will depend on the particular circumstances and the role and responsibilities of the official involved. Accordingly, officials who behave reasonably in performing their roles, given the relevant circumstances, will comply with the PGPA Act.
19. For example, in the case of high-risk activities or decision-making processes such as engaging in significant business contracts with third parties, officials should exercise more caution to inform themselves of all the circumstances in order to make a reasonable decision.<sup>6</sup>
20. Section 25 of the PGPA Act requires an official to behave as a reasonable person would under the same or similar circumstances. Under the common-law reasonable person test, the key consideration is whether a person has taken reasonable steps, given the circumstances, to assess the consequences of their actions. Taking such steps requires the person to be appropriately informed, capable, aware of the law, and fair-minded.
21. In common law, a reasonable person will weigh all the following factors before acting:
  - the foreseeable risk of harm their actions create versus the utility of the actions
  - the extent of the risk so created
  - the likelihood that the risk will actually cause harm to others
  - any alternatives of lesser risk, and the costs of those alternatives.
22. For example, these factors would need to be taken into account in considering use of relevant money under the PGPA Act. The rule made under the PGPA Act for the commitment and expenditure of relevant money provides principles specific to the activity of committing or spending relevant money. To show that they have acted with care and diligence, officials

<sup>5</sup> There is also a similar provision in the Parliamentary Service Code of Conduct in the *Parliamentary Service Act 1999*.

<sup>6</sup> *ASIC v Lindberg* [2012] VSC 332.

spending relevant money will need to ensure that they have at least had due regard to guidance issued by the Department of Finance and their entity's internal procedures.

23. Likewise, the rule on banking of relevant money on receipt describes the general requirement for banking money promptly and when there might be exceptions to that requirement. Again, officials will need to ensure that they understand and have had due regard to guidance issued in relation to banking money to show that they have carried out their duties with care and diligence.

#### Case study

George is the lead manager of a high-value procurement process that involves his entity entering into a contract with a private sector company. While on the internet one night at home, George visits the blog of an environmental group that he often visits that details allegations of serious environmental breaches against the private sector company. The company has not been charged with any offence as yet, but the blog says that investigations are ongoing.

**Appropriate action:** Despite the nature and source of the information, George should investigate the allegations commensurate with the level of risk that this issue poses to his entity. George will also need to ensure that any particular course of action is not inconsistent with the Commonwealth Procurement Rules or pose unreasonable contractual risks to the entity. He should document his assessment, ensuring a clear audit trail, and communicate all relevant information to the accountable authority.

24. Examples of not exercising care and diligence could be:

- not taking reasonable steps to inform yourself about an issues significance before making a decision
- knowingly performing actions that are inconsistent with statutory obligations
- undertaking an unfamiliar task without checking legislative requirements, related guidance and the entity's operational guidelines.

## Part 4 – Duty to act in good faith and for a proper purpose

Section 26 of the PGPA Act states:

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties in good faith and for a proper purpose.

25. To 'act in good faith and for a proper purpose' means that officials must act in a sincere or honest way for a purpose that they are employed to do and empowered to undertake. In doing so, an official is required to manage or use public resources in a proper manner. Section 8 of the PGPA Act defines 'proper' as 'efficient, effective, economical and ethical'.

26. Whether an action has been taken for a proper purpose is based on whether a reasonable person would have chosen the same course of action in the same circumstances. This is commonly known as the 'reasonable person' test.<sup>7</sup> In practice, an official could think of their duty to act in good faith and for a proper purpose, under section 26 of the PGPA Act, by considering whether an informed person would deem an action to be appropriate. This means that on balance the official is performing an action consistent with the aims and operations of the entity that would reasonably not be expected to result in a detriment.

<sup>7</sup> *Chew v R* (1992) 10 ACLC 816 at 647.



27. In contract law, the implied covenant of good faith is a general presumption that the parties will deal with each other honestly and fairly, so as not to destroy the right of the other party or parties to receive the benefit of the contract.
28. A similar requirement to this duty is contained in PS Act which requires APS employees to 'behave honestly and with integrity in connection with APS employment' and to 'use Commonwealth resources in a proper manner'.

#### Case study

Sally is a newly appointed IT Asset manager in a Commonwealth entity, who has been approached by Lucy, one of her staff, to borrow a laptop projector to use for her daughter's slumber party over the weekend. Lucy advises Sally that the last IT Asset Manager regularly allowed staff to take the laptop projector home. She is also one of Sally's best employees and a very trustworthy person and has undertaken to cover costs in the event that the projector is damaged.

**Appropriate action:** Sally reviews the entity's guidelines on the use of entity assets, but it does not detail a policy on the personal use of assets by staff. However, the guidelines do require the proper use and management of all entity assets. On the balance Sally declines Lucy's request considering it to not be within the spirit of the proper use and management of the entity's asset, despite there being precedence. Sally also takes time to explain to Lucy reasons for refusing her request.

29. Examples of not acting in good faith and for a proper purpose could be:
- providing information to a person in a way that intentionally deceives or misleads them
  - undertaking an activity that is outside the powers and functions of the entity
  - purporting to have authority to approve something when you knowingly do not
  - withholding relevant information with the intent to influence the decision of a delegate.

## Part 5 – Duty in relation to position

Section 27 of the PGPA Act states:

An official of a Commonwealth entity must not improperly use his or her position to:

- (a) gain an advantage for himself or herself or any other person; or
- (b) cause detriment to the entity, the Commonwealth or any other person.

30. Officials must not improperly use the power conferred through their positions to gain an advantage for themselves or for another person, or cause detriment to the Commonwealth entity that employs them, to the Commonwealth more broadly or to any other person. An official contravenes this duty when engaging in conduct with the intention and purpose of obtaining an advantage or causing detriment, regardless of whether the benefit or detriment actually occurs.
31. Misusing a position can include using the entity's property or information or taking advantage of opportunities that arise by virtue of employment with the entity.<sup>8</sup> These are advantages that an outside person would not have access to.
32. The term 'position' includes a permanent or temporary work assignment, the powers or functions that have been delegated to an official, or the duties an official has been properly authorised to undertake on behalf of another official or the general status that is associated

<sup>8</sup> *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134.

with being an official. While important to all officials, this duty becomes increasingly relevant to officials who hold senior management positions.

33. The term 'advantage' has a wide meaning and includes both financial and non-financial advantages, such as providing favourable treatment to a person during a procurement tender or recruitment process. Like the term advantage, 'detriment' is given a wide interpretation. The concept of causing detriment to an entity, the Commonwealth or another person recognises that an official might misuse their position either positively or negatively.
34. Misuse of a position may also involve a breach of the duty of care and diligence and the duty to act in good faith and for a proper purpose.
35. The Corporations Act, under section 182, places a duty on directors and employees of a company to deter them from improperly using their positions to gain an advantage for themselves or someone else. They must also not cause detriment to the company.
36. Courts applying the duty under the Corporations Act have held that it is sufficient to show that an action or omission was taken for the purpose of gaining an advantage or damaging the entity in order to demonstrate that an official was not acting in good faith.<sup>9</sup> In the PGPA Act, the concept of detriment extends more broadly to the Commonwealth. Accordingly, officials should behave in a manner that is consistent with the interests of the Commonwealth more broadly.
37. A similar provision to this duty is contained in the PS Act which requires an employee not to 'make improper use of inside information, or the employee's duties, status, power or authority in order to gain, to seek to gain, a benefit or advantage for the employee or for any other person'.

#### Case study

Anna is the finance manager of a government entity that is about to tender to engage an accounting firm to assist with an internal audit. While in Melbourne she had a coffee meeting with Greg, a potential tender applicant, Anna insisted on paying for the coffees. While walking back to their cars after coffee, it starts to rain. Greg's car is not far away and Anna's car is 3 blocks down the road. Greg offers Anna his umbrella, which has his accounting firm branded on it and says that she may as well keep it as he has about 20 of them back at the office.

**Appropriate action:** While Anna would love to accept the umbrella and stay dry, she is concerned that by receiving and using the umbrella it might be perceived within her entity and externally that she has been favourably influenced by the tender applicant. There are a number of possible actions available to Anna, possible actions include:  
1) Anna accepts the loan of the umbrella, but returns it promptly through the post; or  
2) Anna considers the risks associated with accepting the gift and instead suggests that they walk to Greg's car and he gives her a lift to her car.

38. Examples of misuse of position could be:
  - an official using their official title to seek a discount that benefits them personally
  - on behalf of the entity, entering into a contract for the provision of goods or services with a family member or friend, without disclosing the potential material personal interest
  - using Commonwealth resources for personal purposes without explicit approval.

<sup>9</sup> *ASIC v Adler* (2002) 20 ALC 576.

## Part 6 – Duty in relation to information

Section 28 of the PGPA Act states:

A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information to:

- (a) gain an advantage for himself or herself or any other person; or
- (b) cause detriment to the Commonwealth entity, the Commonwealth or any other person.

39. An official must not improperly use information accessed, gained or made available by virtue of their employment or position with a Commonwealth entity to gain an advantage for themselves or for another person, or cause detriment to the Commonwealth entity that employs, or previously employed, them, to the Commonwealth more broadly or any other person.
40. An official contravenes this duty when they engage in conduct involving information gained through their employment with the express intention of obtaining an advantage or causing detriment, regardless of whether the benefit or detriment actually occurs. An official would also breach this duty if they gave information to a third party who was not entitled to have the information and who gained an advantage or caused detriment because they had the information.
41. Misuse of information may also involve a breach of the duty of care and diligence, the duty to act in good faith and for a proper purpose, and the duty in relation to the use of position.
42. The Corporations Act, under section 183, places a duty on directors and employees of a company who obtain information due to their employment by the company not to use the information in a way that causes detriment to the company. The aim of the section is to deter them from improperly using that information to gain an advantage for themselves or someone else.
43. The APS Code of Conduct also requires an 'APS employee to not make improper use of ... inside information in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person' and imposes a duty through *Public Service Regulation 2.1* not to disclose certain information without authority.<sup>10</sup>
44. There are secrecy provisions in other legislation applying to the work of particular agencies. For example, Sections 191, 200A and 193S of the *Aboriginal and Torres Strait Islander Act 2005* places secrecy requirements on certain officials. Relevant officials need to be aware of these statutory requirements and the obligations imposed on them.

<sup>10</sup> Regulation 2.1 of the Public Service Regulations, which is part of the APS Code of Conduct, places a duty on APS employees not to disclose certain information without authority (i.e. information communicated in confidence or where disclosure could be prejudicial to the effective working of government).

<sup>11</sup> Cassidy, J, *Corporations Law Text and Essential Cases*, p 28.

### Case study

Shaun works for a Commonwealth entity and meets John, at a friend's barbeque. John and Shaun start talking about what they do for a living. Shaun mentions that he is busy because he is working on the government's climate change policy. John tells Shaun that he runs a small renewable energy company that is keen to access the government's climate change funding. John asks Shaun if he knows if the government is going to have programs that will help companies like his.

**Appropriate Action:** Shaun advises John that he is unable give him any details because it is information that is confidential to Government and has not been publicly released. By doing this, Shaun recognises that revealing any information gained through his role working on the climate change policy may result in John gaining an advantage over others and therefore a benefit. However, consistent with the Minister's media release Shaun advises John that information on the government's program will be launched on the entity's website in the coming weeks.

45. Examples of misuse of information could be:

- leaking financial information to the media
- using protected financial data held by a government entity for personal financial gain
- providing information to a person or company that gives, or potentially gives, that person or company a competitive advantage in a procurement tender.

## Part 7 – Duty to disclose interests

Section 29 of the PGPA Act states:

- (1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.
- (2) The rules may do the following:
  - (a) prescribe circumstances in which subsection (1) does not apply;
  - (b) prescribe how and when an interest must be disclosed;
  - (c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).

46. Section 29 and the associated rule (which is at Attachment A) place an obligation on officials to report relevant material personal interests in relation to the affairs of the entity they work for. This could directly related their personal role, or, broader, in relation to the overall purpose of the entity.

47. The rule on the duty to disclose material personal interests requires the following:

### **For single-member accountable authorities**

- The official needs to report the interest in writing to the responsible Minister.

### **For officials that are members of multi-member accountable authorities**

- The official needs to report the interest to the other members of the accountable authority and ensure the interest is recorded in the minutes of the next meeting.
- If the matter in which the official has an interest is being considered as part of a meeting then the official must not be present unless the members (in the minutes to the meeting) or, where appropriate, the Minister (in writing) has approved for the relevant member to be present and any conditions regarding that approval.

**For officials that are not part of the accountable authority**

- The official needs to report the interest in writing in accordance with the requirements established by the accountable authority.
48. The overriding principle for a declaration of interest should be: if in doubt, declare the interest in accordance with the appropriate process. Taking this step should stand up to scrutiny if a query arises.
49. There is extensive case law under the Corporations Act about material personal interests involving directors. The key question is whether a director can bring an independent mind to bear on a matter, or whether the conflicting interest or duty is so significant as to divide their loyalties.
50. The Corporations Act, under section 191, requires directors of a company who have a material personal interest in a matter that relates to the company's affairs to disclose that material personal interest to other directors. The interpretation of the phrase 'the company's affairs' is broad. As a result, if there is any uncertainty around an issue relating to the affairs of the company then disclosure of the potential material personal interest is the safest behaviour.<sup>11</sup>
51. A similar provision to this duty is contained in the PS Act which requires an employee to 'disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.'

**Case study**

Juhan is on a panel that is assessing the procurement tenders for his entity's new cleaning contract. One of the tenders, John, is a parent of one of Juhan's son's classmates. Juhan does not socialise with John other than brief conversations at school events. Juhan is only one of several people on the panel and has limited ability to influence the panel's decision. Members of the panel do not know that an applicant is known to Juhan and there is little chance of them finding out.

**Appropriate action:** Consistent with the procedures issued by the entity's accountable authority, Juhan discloses the relationship in writing to the chief executive of his agency. Juhan offers to exclude himself from the discussion on the merits of John's tender application. This disclosure also mitigates the risk of perceived conflict of interest if Juhan develops a friendship with John in the future.

52. Material personal interests could arise, for example, when:
- a member of an accountable authority is also a director of an organisation that is seeking to provide services to the Commonwealth entity
  - an official is on an employment selection panel that is interviewing a friend or family member for a position with the Commonwealth entity
  - an official approving or recommending the approval of a grant is directly or indirectly involved with an organisation seeking the grant.

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<sup>11</sup> Cassidy, J, *Corporations Law Text and Essential Cases*, p 28.

## Part 8 – Termination of appointments for contravening general duties of officials

Section 30 of the PGPA Act section states:

- (1) A person (the appointer) may terminate the appointment of another person (the appointee) in relation to a corporate Commonwealth entity if:
  - (a) the appointer holds the position that is responsible for appointing the appointee; and
  - (b) the appointee is, or is a member of, the accountable authority of the entity; and
  - (c) the appointee contravenes Subdivision A in relation to the entity; and
  - (d) the termination is in accordance with any requirements prescribed by the rules.
- (2) The appointer terminates the appointment by giving the appointee a written notice signed by the appointer.
- (3) The notice must include a statement of reasons for the termination.
- (4) The appointer must cause a copy of the notice to be tabled before each House of the Parliament within 15 sitting days of that House after the day the appointer gives the notice to the appointee.
- (5) Without limiting paragraph (1)(d), the rules may prescribe positions in relation to which appointments must not be terminated under this section.
- (6) This section applies despite any provision in any enabling legislation for a corporate Commonwealth entity that provides for the termination of the appointment of a person in relation to the entity, but does not limit any such provision.

53. Section 30 of the PGPA Act provides for the termination of officials of Commonwealth entities who are members of an accountable authority if they breach the duties set out in sections 25 to 29. The person that has the power to appoint the official also has the power to terminate their employment for breaches of their general duties.

54. Secretaries of departments, heads of Executive Agencies and APS employees who are part of an accountable authority may only have their appointment or employment terminated in accordance with sections 59, 67 and 29 of the PS Act respectively.

## Part 9 – Interaction between the PGPA Act and other laws

Section 31 of the PGPA Act section states that sections 25 to 29 do not limit:

- (a) a law of the Commonwealth, or any principles or rules of the common law or equity relating to:
  - (i) the duty or liability of a person because of his or her position or employment in relation to a Commonwealth entity; or
  - (ii) conflicts of interest; and
- (b) any provision in any enabling legislation for a Commonwealth entity that restricts an official of the entity from:
  - (i) having a material personal interest in a matter; or
  - (ii) holding an office or possessing property;involving duties or interests that conflict with his or her duties or interests as an official.



55. Section 31 of the PGPA Act makes it clear that the general duties under sections 25 to 29 do not limit duties contained in other Commonwealth laws or any principles or rules of common law or equity. This provision ensures that duties contained in the PS Act, an entity's enabling legislation and employment contracts are not displaced by the PGPA Act duties.

#### **Part 14 – Officials under the Public Service Act or Parliamentary Service Act**

56. To avoid doubt finance law is an Australian law for the purposes of subsection 13(4) of *Public Service Act 1999* and subsection 13(4) of the *Parliamentary Service Act 1999*. This means that if the official contravenes the finance law, sanctions (such as termination of employment) may be imposed under section 15 of the relevant Act (i.e. the *Public Service Act 1999* or the *Parliamentary Service Act 1999*).

WORKING DRAFT 20 MARCH

## Attachment A

### **Complementary duties between the PGPA Act and the *Public Service Act 1999* (PS Act)**

A significant portion of officials have obligations under the PS Act. The PS Act has a broader scope when it comes to the duties, but the PGPA Act is more specified in law regarding standards of governance, performance and accountability across all Commonwealth entities. Given the breadth of the relevant legislative provisions of the PS Act, if officials meet the requirements of the PS Act they will as a result ordinarily meet their duties under the PGPA Act. There are however some specific requirements which are outlined in the table below.

In some cases a particular duty under the PGPA Act might to some extent be broader than its corresponding duty under the PS Act. For example the PGPA Act prohibits improper use of employee's position to cause detriment as well as gaining an advantage, whereas the corresponding PS Act duty focuses on improper use to gain an advantage. This does not, of course, mean that an APS employee who improperly used his or her position etc to cause detriment would not, by virtue of that conduct, be in breach of various other PS Act duties.

The Australian Public Service Commissioner has issued directions and associated guidance material about the responsibilities that apply to Australian public service employees and office holders under the PS Act, particularly the APS Values and Code of Conduct. For APS Employees, this guidance should be read in conjunction with the Australian Public Service Commissioner's guidance on the APS Code of Conduct.

<b>Duty</b>	<b>PGPA Act</b>	<b>PS Act*</b>	<b>Complementary duties</b>
Care and diligence	25	13(2)	<p>The PS Act requires an APS employee to act with care and diligence in connection with APS employment.</p> <p>The PGPA Act effectively extends this to all officials (who may or may not be APS employees) <b>and specifies the standard to be that which a reasonable person would exercise.</b></p>
Good faith and proper purpose	26	13(1) & 13(8)	<p>The PS Act requires an APS employee to behave honestly and with integrity and to use resources in a proper manner.</p> <p>The PGPA Act effectively extends this to all officials (who may or may not be APS employees).</p>
Use of position	27	13(10)(b)	<p>The PS Act prohibits an APS employee from making improper use of the employee's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.</p> <p>The PGPA Act effectively extends the</p>

			prohibition to all officials (who may or may not be APS employees) <b>and prohibits the official from using their position improperly to cause detriment to the entity, the Commonwealth or any other person.</b>
Use of information	28	13(10)(a)	<p>The PS Act prohibits an APS employee from making improper use of inside information in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person. It also requires APS employees not to disclose certain information without authority.<sup>12</sup></p> <p>The PGPA Act effectively extends the prohibition to all officials (who may or may not be APS employees) <b>and prohibits the official from improper use of information to cause detriment to the entity, the Commonwealth or any other person.</b></p>
Disclosure of interests	29	13(7)	<p>The PS Act requires an APS employee to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.</p> <p>The PGPA Act effectively extends this to all officials (who may or may not be APS employees) <b>and makes disclosure subject to a materiality test.</b></p>

<sup>12</sup> Public service Regulation 2.1, which is part of the APS Code of Conduct, imposes a duty on an APS employee not to disclose without authority, information communicated in confidence or where disclosure could be prejudicial to the effective working of government.