



Australian Government
Australian Public Service Commission

Australian Public Service Commissioner

Ms Sophie Dunstone
Committee Secretary
Select Committee on a National Integrity Commission
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: integritycommission.sen@aph.gov.au

Dear Ms Dunstone

Questions on Notice

I refer to my appearance before the Senate Select Committee on a National Integrity Commission on 5 July 2017.

At the hearing, the Australian Public Service Commission took a number of questions on notice. Responses to those questions are attached for the information of the Committee.

Yours sincerely


John Lloyd PSM

19 July 2017

Senate Select Committee on a National Integrity Commission

**Adequacy of the Australian government's framework
for addressing corruption and misconduct**

**Public Hearing
5 July 2017**

Responses to Questions on Notice

Misuse or over reach of powers by State integrity bodies

1. In my submission, I noted that the experience of the New South Wales Independent Commission Against Corruption (ICAC) and counterpart bodies in other states is not reassuring. I said that 'a number have encountered difficulties related to the misuse and over reach of their powers'.
2. I undertook to provide the Committee with further examples. Examples of misuse or over reach of powers by other agencies include:
 - a. The Western Australian Corruption and Crime Commission in 2013. The Parliamentary Inspector of the Corruption and Crime Commission investigated 23 allegations of serious and systemic misconduct levelled against the Commission. The investigation exposed a 'disturbing culture of entitlement and unaccountability' with criminal elements.
 - b. The New South Wales Police Integrity Commission (PIC). Notably, the PIC was criticised for denying procedural fairness in Operation Alford, and abuse of process in Operation Ischia.
 - c. The Queensland Crime and Misconduct Commission (CMC). In 2013 the CMC published secret information from the previous Fitzgerald Commission on its website. The documents were not due for release until 2055 and were on the website for some time.

The Queensland Government had instituted a review of the CMC in 2012. The review was conducted by former High Court Judge, the Hon Ian Callinan AC, and Professor Nicholas Aroney. The review was asked to examine the release of the secret documents. The Review made 17 recommendations to improve the focus and operation of the CMC.

- d. The Queensland Crime and Misconduct Commission. In 2013 Mr Mick Keelty, former Australian Federal Police Commissioner, reviewed the CMC. He said the CMC was obsessed with independence and observed it was in danger of becoming corrupt itself.
- e. Office of Police Integrity (Victoria). In 2010 a case taken by the Office against a Victoria Police employee collapsed. The Victorian Supreme Court ruled that the Director of the Office did not properly legally empower Judge Wilcox to conduct hearings and to take legal oaths.
- f. West Australian Crime and Corruption Commission. An Acting Commissioner in 2005 visited a friend in hospital. The friend was a target of a Commission inquiry. The Acting Commissioner tipped off the friend that his phone was probably bugged. As a result the Acting Commissioner resigned her position and was charged with corruption and attempting to pervert the course of justice.

The role of the Australian Public Service Commission concerning the actions of Mr Godwin Grech in June 2009

3. A review of the records held by the Australian Public Service Commission indicates that at the time the then Commissioner, Ms Lynelle Briggs, released a media statement clarifying the responsibilities of Australian Public Service (APS) employees when dealing with members of the Opposition. A copy of that statement is at **Attachment A**.
4. The records do not indicate that Ms Briggs or the Commission had any further material involvement in the matter at the time.
5. In July 2009 the Australian Public Service Commission released Circular 2009/4 – *Disclosure of Official Information* setting out the responsibilities of APS employees in relation to the disclosure of official information, particularly when dealing with non-Government members of the Parliament - **Attachment B**.
6. The *Public Service Act 1999*, as it applied at the time, required Code of Conduct inquiries to be instigated by the relevant agency head, in this case the Secretary of the Department of the Treasury. There was also some uncertainty about whether that Act allowed misconduct inquiries to continue in the event that the relevant employee resigned from the APS.
7. In 2013 the Commonwealth Parliament amended the Act in a number of ways, including:
 - a. section 15 of the Act was amended to make it clear that agencies could continue or initiate misconduct inquiries in relation to employees who had separated from the APS;
 - b. a new section, section 41B, was inserted. That section provides my office with authority to undertake inquiries into alleged breaches of the Code of Conduct by APS employees, or former employees, of any APS agency at the request of the Prime Minister or the agency head. This power provides a capacity for independent, arm's-length investigation of matters of significant public concern.

Reporting allegations of misconduct

8. The *Public Service Act 1999* sets out the requirements for the Australian Public Service Commissioner to report on the results of inquiries into alleged breaches of the Code of Conduct by agency heads.
9. Section 41A(2) of the Act requires the Commissioner to report to:
 - a. the Prime Minister, if the agency head is a Secretary; or
 - b. the Agency Minister, if the agency head is the head of an Executive Agency; or
 - c. the Presiding Officer or the Agency Minister, if the agency head is the head of a Statutory Agency.

Investigations into corrupt behaviour

10. The Committee has sought further information about the misconduct inquiries undertaken by APS agencies into allegedly corrupt behaviour across a five year period.

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11. Specifically, the Committee asked for information identifying:
 - a. the agencies in which those investigations occurred
 - b. the classification of the employees investigated, and
 - c. whether the cases involved procurement issues.
 12. The Commission can provide data on completed investigations for the years: 2013-2014, 2014-2015 and 2016-2016. Equivalent data was not collected in earlier years.
 13. During financial years 2013-2014, 2014-2015 and 2015-2016, agencies reported 117, 100 and 106 investigations into corrupt behaviour respectively.
 14. The Australian Public Service Commission does not hold data concerning the classification of the employees investigated.
 15. The data does not indicate that there is any strong tendency for the cases investigated to involve procurement matters.

2015-2016

16. Of the 106 inquiries finalised in 2015-2016:
 - a. 42 were investigated by the Department of Human Services. Of these cases, 21 related to programme payment fraud which was detected by compliance programmes. There were 19 fraudulent claims, including misuse of a Cabcharge voucher, fraudulent attendance records and fraudulent medical certificates. The Department investigated two cases of employee theft.
 - b. 28 were investigated by the Australian Taxation Office. Of these cases, 24 related to conflicts of interest. The remaining four cases concerned production of false medical certificates, misappropriation of social club monies, and falsifying official documentation regarding the use of a fleet car.
 - c. 17 were investigated by the Department of Defence. Of these cases, 12 related to attendance/flex time irregularities and the remaining five cases concerned misuse of resources and travel fraud.
 - d. The Department of Foreign Affairs and Trade and the Department of Social Services each investigated three cases. These cases involved production of false medical certificates, corporate credit card fraud, and one case of forgery and theft.
 - e. The Department of the Environment and the Department of Health each investigated two cases. These cases involved fraudulent medical certificates and nepotism in relation to financial entitlements.
17. The remaining nine cases were investigated in nine different agencies. The types of corruption investigated by these agencies included:
 - a. Accepting a bribe – this matter was referred to the Australian Commission for Law Enforcement Integrity
 - b. Unauthorised disclosure of information
 - c. Production of false qualifications
 - d. Fraudulent time sheets
 - e. Misappropriations of assets

2014-2015

18. Of the 100 inquiries finalised in 2014-2015:

- a. 60 were investigated by the Department of Human Services. Of these cases, 45 related to programme payment fraud, 9 related to fraudulent leave or attendance records, 3 related to fraudulent claims for workers' compensation, 2 related to theft and one related to a travel claim and a conflict of interest.
- b. 15 were investigated by the Department of Immigration and Border Protection. Of these cases, 2 related to abuse of office. These cases were referred to the Australian Federal Police and the Australian Commission for Law Enforcement Integrity. There were 2 cases each of failure to disclose a conflict of interest, fraudulent attendance records and a failure to disclose a personal relationship during recruitment. There was one case each of unauthorised access, and theft. There is no specific data for the remaining 5 cases.
- c. 8 cases were investigated by the Australian Taxation Office. The only data provided states the cases related to false medical certificates and conflict of interest.
- d. 4 were investigated by the Department of Agriculture and Water Resources. Of these cases, 2 related to theft and one case each related to inappropriate use of a departmental vehicle and misuse of IT system and position.

19. The remaining 13 cases were investigated in eight different agencies. The types of corruption investigated by these agencies included:

- a. Inappropriate use of social club monies
- b. Fraudulent medical certificates
- c. Inaccurate attendance records
- d. Unauthorised disclosure of information
- e. Failing to disclose a conflict of interest
- f. Misuse of agency credit card

2013-2014

20. Of the 117 inquiries finalised in 2013-2014:

- a. 66 were investigated by the Department of Human Services. Of these cases, 58 related to programme payment fraud, 4 related to fraudulent claims. The remaining 4 cases related to misappropriation of social club monies, misuse of Cabcharge vouchers, fraudulent medical certificate, and a compliance issue.
- b. 11 were investigated by the Australian Customs and Border Protection Service. Of these cases, 5 related a failure to disclose drug use, criminal associations and related court proceedings. There were 2 cases each related to affording family or friends priority and fraudulent attendance records. There was one case each related to unauthorised disclosure, and misappropriation of Customs controlled property.
- c. 16 were investigated by the Department of Immigration and Border Protection. Of these cases, 13 related to reports alleging ethical misconduct and 5 cases related to a misuse of position. There were 4 cases of inappropriate access to systems or information. The remaining cases related to accepting or offering a bribe, conflict of interest, fraudulent medical certificates and a report to another hotline.
- d. 7 were investigated by the Department of Defence. Of these cases, 6 related to falsifying medical certificates or misuse of Defence credit cards. There was one case of a conflict of interest during a tender process.

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- e. 4 were investigated by the Department of Agriculture and Water Resources. Of these cases, 2 related to improper receipt of gifts and 1 related to a fraudulent leave claim. The remaining case related to an employee who received an unspecified benefit.

21. The remaining 13 cases were investigated in nine different agencies. The types of corruption investigated by these agencies included:

- a. Use of position to gain a benefit
- b. Theft of a Commonwealth asset
- c. Fraudulent medical certificates
- d. Fraudulent Cabcharge vouchers
- e. Unlawful disclosure to government information
- f. Conflict of interest

Australian Public Service Commission
19 July 2017

Media release—Disclosure of information: rights and obligations of Australian Public Service employees

“It is extraordinary and quite wrong that comments are being made claiming that it is reasonable for public servants to give Government information to Opposition parties. This isn’t normal practice, nor it is usual practice, and it is not whistleblowing,” the Australian Public Service Commissioner, Ms Lynelle Briggs, said today.

“It is not commonplace for public servants to meet with Opposition parties to brief them before Senate Committee hearings, and it should never happen without the knowledge and consent of their Agency Head or Minister.”

“As public servants, we serve the Government, regardless of its political complexion. That is the simple constitutional reality. It is not part of our role as APS employees to serve the Opposition. By convention this means that public servants should have little contact with Opposition or other non-Government parties and requests for briefings are referred to the relevant Minister’s office. This is a key consideration in the way in which we manage official information.”

Ms Briggs explained that “the integrity of the Australian Public Service (APS) is fundamental to its good standing, its credibility and its legitimacy as an important national institution”.

“The APS is required by law to be apolitical, impartial and professional, and to be openly accountable for its actions. Public servants are also required by law to behave honestly and with integrity and to act with care and diligence in the course of their employment. They must comply with all Australian laws, not provide false or misleading information, and maintain appropriate confidentiality about their dealings with Ministers.”

Ms Briggs noted that these duties are set out in the Public Service Act which contains a strong ethical framework to guide the behaviour of APS employees in their working lives.

The APS Values impose a legally binding duty on all APS employees to serve the Government, to be responsive to its requirements and to be accountable for the way in which the public service helps it achieve its goals.

Explaining what this means in practical terms, Ms Briggs said:

“It means that, as public servants, we do not allow party politics to interfere with giving unbiased and objective advice to Government; it means we implement the decisions of Government irrespective of what our own views might be about them; it means we provide the same level of policy advice, implementation and professional support to every government, irrespective of the party in power.”

Ms Briggs said that public servants who leak information are often confused in the media with whistleblowers. “A leaker is not a whistleblower.”

The Act makes clear that a whistleblower is a public servant who believes that they have uncovered actions which breach the Code of Conduct and who reports them to an authorised person within the public service, which includes the Public Service Commissioner.

Whistleblowers maintain the integrity of the system by seeking to correct perceived wrongs through reporting to authorised authorities.

“Leaking involves the unlawful release of official information and is a breach of the Code of Conduct. Leaking, whatever the motive, destroys the trust between the Government and the public service and makes it harder to carry out our responsibilities. It undermines public confidence in the independence and non-partisan nature of the public service and is unacceptable practice for any public servant”, she said.

The Australian Public Service Commission clarified this issue last month in a circular to all Australian Public Service agencies (2009/4: Disclosure of official information).

Contact Officer:

Patrick Palmer

Media Liaison and Group Manager

Corporate

Tel: 026202 3524

Circular 2009/4 - Disclosure of official information

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This page is: archived

The purpose of this circular is to remind agencies of the responsibilities and rights of APS employees in relation to the disclosure of official information, particularly when dealing with non-Government members of the Parliament.

Dealing with Ministers and their advisers

2. When dealing with requests from Ministers, APS employees must be responsive to their requests for information and advice with material that is frank, honest, comprehensive, accurate and timely. Ministerial advisers are by convention standing in the place of the Minister, and the same standards of service should be provided to them.

Dealing with non-Government members of Parliament

3. APS employees, by virtue of the APS Values set out in section 10 of the *Public Service Act 1999* (the Act), have a duty and responsibility to serve the Government, to be responsive to its requirements and to be accountable for the way in which we help it achieve its goals.

4. The APS Values include being apolitical and impartial, but this does not mean that the APS gives equal treatment to all sides of politics. It is not the role of the APS to serve the Opposition, which by convention means that APS employees should have little contact with Opposition or other non-Government parties as part of their duties.

5. If a public servant receives a request from a non-Government MP for a briefing on a policy or programme, by convention (and subject to relevant agency policies) that request is forwarded to the Minister's office for advice on handling.

6. For any other information, MPs are treated the same as any individual or community group seeking information, that is:

- the request should be handled respectfully and courteously
- information may be disclosed providing it meets the requirements of Public Service Regulation 2.1 and other relevant Commonwealth legislation
- if there is any doubt about what can or cannot be released, then further guidance should be sought from someone in authority in the agency.

7. There are also specific conventions for briefing opposition parties before an election (see Guidance on caretaker conventions, published by the Department of the Prime Minister and Cabinet http://www.pmc.gov.au/guidelines/docs/caretaker_conventions.pdf)

Parliamentary inquiries

8. A public servant's obligations to Parliament flow from section 57(2) of the Act. A Secretary must assist the Minister in providing factual information to Parliament in relation to the operation and administration of the agency. This duty is consistent with the APS Values and Code of Conduct, under which APS employees have an obligation to behave honestly and with integrity, to be apolitical, impartial and professional and to be accountable for their actions, within the framework of Ministerial responsibility to the Parliament.

9. The Department of the Prime Minister and Cabinet publishes guidelines for official witnesses appearing before Parliamentary committees which can be found at http://www.pmc.gov.au/guidelines/docs/official_witnesses.pdf.

Participation in political activities

10. It is quite acceptable for public servants to participate in political activities, or be a member of a political party, as part of normal community affairs. However, engagement with parliamentary members, their staff or publicly promoting party or other views on certain issues may raise public perceptions of conflict of interest or partiality and needs to be considered carefully having regard to an employee's role and duties.

Whistleblowing compared with leaking

11. A leaker is not a whistleblower.

12. A whistleblower is an APS employee who reports a suspected breach of the Code of Conduct to an authorised person within the APS, which can include the Public Service Commissioner or the Merit Protection Commissioner (see section 16 of the Act). Whistleblowers maintain the integrity of the system by seeking to correct perceived wrongs through reporting to the proper authority.

13. Leaking, on the other hand, involves the unlawful release of official information and is a breach of the Code of Conduct. Leaking, whatever the motive, destroys the trust between Government and the public service and makes it harder to carry out our responsibilities. At its most serious, leaking information can damage Australia's national security or reputation and in extreme circumstances put the lives of Australian officials and others at risk.

Restrictions on the release of information

14. Detailed advice and guidance on the management of official information is contained in Chapter 3 of *APS Values and Code of Conduct in Practice: Guide to official conduct for APS*

employees and agency heads. This sets out the legislative and policy framework governing the disclosure of official information:

- The APS Values and Code of Conduct set out the standards of behaviour expected of employees generally.
- Public Service Regulation 2.1, which is part of the APS Code of Conduct, imposes 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). A detailed discussion of this regulation is available at Circular 2006/3.
- Section 70 of the *Crimes Act 1914* makes it an offence for an APS employee to publish or communicate any fact or document which comes to the employee's knowledge, or into the employee's possession, by virtue of being a Commonwealth officer, and which it is the employee's duty not to disclose.
- The release of official information is also covered in various ways by other Commonwealth legislation, including the *Privacy Act 1998*, the *Freedom of Information Act 1992* and the *Archives Act 1983*.
- Many agencies also have internal policies and directions governing the disclosure of official information that reflects their particular organisational and operational requirements relating to security and the protection of personal, client and commercial information.
- Finally, an employee has a duty of loyalty and fidelity under the common law.

Further information and advice

15. APS employees who have questions about the disclosure of official information in different circumstances and situations should in the first instance consult their agency's instructions and guidelines and, if necessary, take up the matter with their supervisors.

16. The Australian Public Service's Ethics Advisory Service can also provide advice to any APS employee on the legislative and policy framework governing the disclosure of official information and the issues that may need to be taken into account in deciding when it can or cannot be released. The Service can be contacted by phone on [02] 6202 3737 or by email at ethics@apsc.gov.au.

17. Other relevant information is at Attachment A.

Karin Fisher
Group Manager, Ethics
Australian Public Service Commission
July 2009

Attachment A

Other relevant information

APS Values and Code of Conduct in Practice: a guide to official conduct for APS employees and agency heads: Australian Public Service Commission, 2009

Australian Public Service Commission Circular 2006/3: Amendment to the Public Service Regulations 1999, Regulation 2.1 Disclosure of Information

Government Guidelines for Official Witnesses before Parliamentary Committee and Related Matters, Department of the Prime Minister and Cabinet, 1989
http://www.pmc.gov.au/guidelines/docs/official_witnesses.pdf

Guidance on caretaker conventions, Department of the Prime Minister and Cabinet, 2007
http://www.pmc.gov.au/guidelines/docs/caretaker_conventions.pdf

Supporting Ministers, Upholding the Values: a good practice guide, Australian Public Service Commission, 2006

Australian Public Service Commission Circular 2008/7: Code of Conduct for Ministerial Staff

Standards of Ministerial Ethics, Department of the Prime Minister and Cabinet
http://www.pmc.gov.au/guidelines/docs/ministerial_ethics.pdf

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