# Submission to the *Independent Review of the Australian Public Service*

Issue:

The APS are part of the rule of law in this country and should be as honest as possible. Unfortunately, sometimes when there is a concern the minister or manager may be upset or disagree etc our honesty can dwindle a bit. This is a very human failing but could change. The APS are already honest but they could be even more honest.

Any relationship between adults is enhanced by honesty even when, and especially when, being honest is going to anger or upset the other person in the relationship.[[1]](#footnote-1) This is already reflected in the use of the word ‘honesty’ in the *Public Service Act 1999* (PS Act) sections 10 (values) and 13 (code of conduct).

There are few if any instances of APS lying along the lines of ‘black is white’ or ‘x is y’. However, APS are seldom asked for advice on such simple issues, so the rarity of flat-out lies proves nothing. Instead, APS are generally asked to advise on complex issues. In advising on complex issues, the amount of discretion and ‘art’ in briefing leaves a huge amount of room to mislead without ever saying x is y or black is white. This is demonstrated in the following example.

Example:

You are an oncologist about to advise your patient who has just been diagnosed with breast cancer. A mastectomy (amputation) offers an 80% chance of survival; chemotherapy offers a 30% chance of survival (without a mastectomy); while doing nothing offers a 5% chance of survival (without a mastectomy). Also imagine that the patient is a former newsreader who has already called you in tears about how their appearance is ‘who they are’ and is desperate to avoid a mastectomy. In such a situation the oncologist can use doctor’s honesty or lawyer’s honesty to give the following advice.[[2]](#footnote-2)

*Doctor’s honesty*

‘I know you don’t want an amputation but that is the best thing to do here. You will lose your breast but you will have the best chance of living. If you do anything other than a mastectomy you are more likely to die. If you go for chemotherapy you do keep open the possibility of survival and keeping your breast but you triple the chance of death.

The only reason you should go for chemo instead of a mastectomy is if the prospect of losing your breast is worth a 70% chance of death. It is ultimately your choice and I can do the chemo for you if you want but first, I need to be sure you understand that the mastectomy is by far the best option.’

*Lawyer’s honesty*

‘There are a range of options with various advantages and disadvantages. It is open to you to choose the option that suits you.’

Although this is a fictitious example, it shows the different constructions of the word honesty. This distinction in these definitions is exportable to the APS context. Lawyer’s honesty misleads the manager or minister because there is clearly one answer that stands out that has not been said. While the lawyer’s truth does not contain any explicit lies, it omits the single most useful fact, that one particular option is the best. It is advice tailored to protecting the advisor, not advising the advised.

Doctor’s honesty is the default and we APS always start wanting to do that. However, that often fades when we think it might upset the manager or minister. Many APS consider that provided they have not been explicitly dishonest then they have been honest. By which definition lawyer’s honesty is fine. It appeals because it allows the APS to take as few risks as possible in jeopardizing their relationship with their supervisor - in the short term. In the long term it is as much of a false friend as lying everywhere else in life.

In our role as an advisor the test of our success is whether we gave the best advice, not whether we gave something other than the worst. There needs to be greater clarity about what honesty means. We should model ourselves on doctors, tell it straight and if the patient does not like it that’s a shame, but irrelevant to the advice. We should stop worrying about getting the minister and managers to like us at every single moment.

APS are humans and prone to human failings. We should structure the PS Act around an acceptance that we do face temptation. Honesty does not always come easily under pressure. We should make the PS Act a little clearer about honesty as a very simple and clear reminder of what we’re here for. This will play to the better parts of ourselves.

Suggestion 1:

The following amendments should be made

Section 10(5) of the *Public Service Act 1999*

‘The APS is apolitical and provides the Government with advice that is ***the most***frank, ***the most***honest, timely and based on the best available evidence.’

Section 13(1) of the PS Act

‘An APS employee must behave ***as***honestly ***as possible***and with ***as much***integrity ***as possible*** in connection with APS employment. ***An APS employee may never mislead their minister or manager***.’

Section 13(9) of the PS Act

‘An APS employee must not provide false or misleading information ***and must provide the most accurate information*** in response to a request for information that is made for official purposes in connection with the employee's APS employment.’

Section 15

Not sure exactly how to draft it but lying to a minister or manager should be criminalized. Still ok for ministers or managers to lie down the chain as is always going to be necessary from time to time in running a large organization. Exemption for national security, competition etc. Importantly, there should be a clear statement about standing, so it is clear that the section can actually be enforced.

Suggestion 2:

Management should spend more time offering staff practical reflections, anecdotes and guidance on exactly what section 10(5) of the PS Act means.

Suggestion 3:

Should you disagree and think honesty is over-rated, remove it from the PS Act.

1. A great exposition of what a false friend lying is, and the great rewards of honesty, is in the essay *Lying* by Sam Harris, 2011. [↑](#footnote-ref-1)
2. No offence to lawyers. They are humans, responding to incentives. Lawyers are in a hostile environment and the consequences of errant advice are much lower while the rewards of dishonesty are greater, compared to doctors. Their environment brings out different aspects of their personality as it would all of us. [↑](#footnote-ref-2)