**Submission for the Review into the APS**

**Ethics and the public service**

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Difficult and complex global issues, such as global warming, the forced movement of people, inequality and security, concern all people. Governmental responses must be ethical[[1]](#footnote-1) and sustainable if the world is to meet such challenges properly. There is also diminishing trust in government in Australia and many other democracies,[[2]](#footnote-2) and lack of belief in democracy as a system of government, particularly among young people,[[3]](#footnote-3) which are emerging and serious threats. Perceptions that the work of the public service may be constrained less by ethical and policy considerations and more by the expediencies of politicians’ short-term survival undermines trust in government, and diminishes the capability of the public service to this century’s challenges, maintain high standards of professionalism and fulfil its stewardship role in Australian public life.

This submission argues that the integrity measures of the *Public Service Act 1999* have ethical import, and looks at some of the reasons why they have not been invoked on these grounds. It argues that a high performing and trusted public service is an ethical public service and the APS now and in the future, more than ever, needs its ethical capacity clarified and strengthened, through a mandated framework and process for assessing the ethics of an action or policy.

The Australian Public Service (APS) Values (Section 10 of the *Public Service* Act) include commitment to service, ethical behaviour, respect for all people, accountability and impartiality. The Code of Conduct (Section 13) sets out more specific constraints on individual public servants’ behaviour. Public servants must behave honestly and with integrity, obey Australian laws, avoid conflicts of interest, use Commonwealth resources properly, uphold the good reputation of Australia, the APS and their own agency, not use inside information improperly, comply with lawful and reasonable directions, and treat everyone courteously.[[4]](#footnote-4)

In particular, the Code of Conduct states ‘an APS employee must behave honestly and with integrity in connection with APS employment’. It also requires APS employees ‘at all times’ to behave in a way that upholds the APS Values, which, in turn, under the heading ‘Ethical’, demand that the APS ‘acts with integrity in all that it does’. *Integrity* is not defined in the Act, but the Macquarie Dictionary defines it as ‘soundness of moral principle and character; uprightness; honesty’. It would appear, therefore that *integrity* as used in the APS Values and Code of Conduct includes the meaning of *ethical*. Furthermore, from the wording of the Act there appears to be, therefore, no situation or role in which a public servant is exempt from the requirement to behave ethically, whether advising the government or implementing its policies, programs or operations.

While no-one wants a public service that thwarts the implementation of democratically determined policy, equally, Australians should be re-assured that it can legally resist immoral actions. After all, history demonstrates that for all the good they do and the noble in their ranks, public services, without sufficient constraints, even under democratically elected governments, can be involved in genocide, torture, murder, stealing children away from their parents, and turning a blind eye to abuses that should have been stopped. All Australians should be proud of Australia’s *Public Service Act* and comforted by its ethical content; all public servants should be reassured that ethics is a part of the professionalism expected of them and their colleagues and aware of the responsibility it places on their shoulders.

Before considering why public service policies, processes and actions are never actually challenged by the public service—or the public—on ethical grounds under the Act, let me anticipate a criticism that my interpretation of the words *ethical* and *integrity*, in the context, are simply too broad, and out of step with what is meant in the Act and general expectations about the public service. Perhaps *integrity* here should be read in the narrow sense of a public servant not acting in their own interests, being honest and transparent, and doing what the elected government asks of them, with *ethical* having a similarly constricted meaning.

In support of this view, it could be noted that the early documents from which the revised *Public Service Act* eventually emerged in 1999, did reflect a narrow meaning of *integrity*. For example, two key documents were the 1993 *Building a better public service* publication and the 1994 *Report of the Public Service Act review group* (the ‘McLeod report’). They listed among key public service values ‘the highest standards of probity, integrity and conduct’, defined as:

* acting in accordance with the letter and spirit of the law
* dealing equitably, honestly and responsively with the public
* avoiding real or apparent conflicts of interest.

This does indeed represent a quite specific and bounded interpretation of *integrity*, without the broader ethical implications.

However, by 1997, the overview document of the proposed new Act, *The Public Service Act 1997: accountability in a devolved management framework*, described a public service with ‘high ethical standards’,[[5]](#footnote-5) the ‘highest ethical standards of integrity and honesty’,[[6]](#footnote-6) and behaving ‘honestly and with integrity’,[[7]](#footnote-7) without restricting the interpretation of *integrity* as previously. The publication of this document followed a thorough nationwide consultation and receipt of nearly 250 written submissions. The shift to a broader view of public servants’ ethical obligations was presumably consistent with these consultations and deliberate.

The Act itself, passed eventually in 1999, adopts almost the same language, and neither the wording of the Act nor the explanatory memorandum or governmental second reading speeches offer any indication that *integrity* and *ethical* should be read without the ethical connotations of the plain English meaning. Advice from the Australian Public Service Commission, too, confirms that the wordsshould be given their plain English meaning, which encompasses an ethical interpretation.

Of course, there is another plain English use of *integrity* that is not about ethics but, rather, about being part of a well-functioning whole.[[8]](#footnote-8) However, I do not think that the Code of Conduct’s use of *integrity* only relates to this meaning. If individual public servants need to play their part in an integrated Australian Public Service whose values include being ethical in all it does, I cannot see how it could be coherent that they could behave unethically in any way, including by overseeing something that is unethical.

It could also be argued that I am giving the Values and the Code of Conduct inappropriate legal import. It could be said that these instruments set out *aspirations only* for public servants’ behaviour, rather than stipulating legal constraints. The headings of these sections of the *Public Service Act*—‘Code of conduct’ and ‘Values’—and the fact that penalties for their contravention are not set out in the Act support this view.

I disagree with the claim that the headings ‘Values’ and ‘Code of Conduct’ negate the legal character of the elements that follow beneath them in the Act. If they were to be regarded as merely aspirational, the Act could have included words to that effect, and be peppered with words like ‘should’ rather than ‘must’ and ‘is’.

It is perhaps easy to think that a word like ‘integrity’ could be aspirational because it is often applied to character, which is difficult to define objectively. But the Code of Conduct’s exhortations to ‘comply with any lawful and reasonable direction’, ‘take reasonable steps to avoid any conflict of interest’, ‘use Commonwealth resources in a proper manner’, and ‘not improperly use inside information or the employee’s duties, status, power or authority to gain, or seek to gain, a benefit or advantage [… or …] cause, or seek to cause, detriment to […] any other person’ are clearly more than aspirational. Even if they are also hard to stipulate objectively, they seem intended to carry legal weight. If they do, then surely so might the requirement to ‘behave with integrity’.

There appears to be some internal tension in the Code of Conduct’s requirements to ‘comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction’ and the need to assess the morality of the direction. It could be said that this undermines the argument that the Code of Conduct should be seen as law. However, this tension would seem to be resolved if, legally, being directed to act unethically were not actually ‘lawful and reasonable’. And the fact that the sort of directions with which a public servant must comply are qualified (they must be lawful and reasonable) implies that they may on occasion *not* be complied with. Furthermore, there are tensions between various laws, such as those that protect lives and those that protect property. This does not mean that one such law must therefore not be seen to carry weight but, rather, that different legal obligations need to be balanced and, in the end, this balance may need to be adjudicated by a court. The possibility of tension between various elements of the Code of Conduct does not necessarily invalidate its interpretation as law.

Penalties for contravening the Code of Conduct are not indicated directly in the legislation. However, under Section 15(3) of the *Public Service Act*,[[9]](#footnote-9) agency heads are responsible for putting in place processes of investigation of alleged breaches of the Code of Conduct and determining the appropriate sanctions. Public servants have been sacked for breaches of the APS Values and Code of Conduct, and they will readily vouch for their legal import at the end of the day, albeit mediated by agency heads. So, while the APS Values and Code of Conduct may indeed not be seen in the same way as criminal law for example, they are directions about what is expected of public servants and carry legal weight. I have argued that this includes their ethical content.

For this submission, the issue is not so much about a reading of the current Act, but about whether ethical scrutiny of the executive’s directions is indeed appropriate for the public service of the future. I believe it is—in order to meet the looming challenges of this century, maintain the professionalism, quality and overall integrity of the public service, and to help maintain and build public trust in the public service.

However, there is a view that all aspects of proposed policies—including their morality—are properly decided, not by public servants, but separately and accountably by the legislature. According to this view, the public service should execute the will of the legislature and not scrutinise it in any way.

It should be noted that the public service—including through the functions of auditors-general, ombudsman’s offices, information and privacy commissioners, and freedom of information and whistle-blowing measures—plays an important part in the overall ‘integrity system’ that can and should check the executive’s power in implementing policy and delivering services.[[10]](#footnote-10) Similarly, the stewardship role of the public service extends beyond taking a policy view longer than the electoral or media cycle to maintaining consistently high ethical standards, possibly in the face of immediate political pressures, regardless of the soundness of the democratic process that configured the legislature and its personalities. There is always the danger that rogue politics (arguably an emerging phenomenon in previously stable democracies) may not only result in immoral governmental actions, but cause long-term damage to Australia. In this context, it is appropriate for the public service to exercise some moral authority through a mandated ethical framework. Put another way, in what circumstances would unethical actions by a public servant be acceptable?

There has been a spate of recent revelations of unethical behaviour in previously respected institutions like churches, finance companies, the armed forces, and the medical and care sector. The public service has also been caught out as the lengthening catalogue of governmental apologies attests. This points to the need to reinforce ethical standards across Australian society. No-one should go to work wondering about the morality of what they are expected to do there.

Many public servants are among those who are concerned about the morality of their job. They deserve a process that assuages such doubts and allows the government to defend the ethical basis for its decisions to their employees and to the general public. As well as responding to the government’s duty as an employer, this would also provide much-needed ethical leadership for other institutions and Australian society as a whole. It would also help counteract falling trust in government.

There are more pragmatic reasons for an ethical public service. A public servant turning up for work in an ‘ethics-limited zone’ might be less easily held even to some narrowly defined form of integrity, such as one applying ‘except where directed’ or ‘in everything except policy implementation’. The scope of morality is never simply contained; it is by nature universal, and it does not make sense to ask someone to act morally here, but not there. A slippery slope would lead to the undermining of integrity elsewhere, such as in resisting corruption and being honest. Asking public servants to turn an ethical ‘blind eye’ here or there would also damage morale, professionalism and pride in work more generally, and diminish the quality of those new recruits the public service attracts to its ranks to implement good government and guard the national interest. Allowing ethically conflicted public servants a way out simply by swapping their jobs with someone else with less moral compunction belies the universality of morality, and would equally erode public servants’—and the general publics’—confidence in the integrity of the public service.

So, in summation, yes, of course public servants must serve the executive and not, normally, exercise any political veto. But surely we would also expect them to be able to behave ethically, in ‘all they do’—and the *Public Service Act* appears, rightly, to make this clear.

I have argued that the *Public Service Act* provides significant ethical constraints on the public service. Perhaps, then, it is the difficulty of applying these constraints in practice that explains why they have not been invoked to date, especially where there are many public policy and operational issues whose morality attracts significant public debate.

Firstly, it is likely, because of a lack of precedents, that most public servants simply do not consider the morality of their work or regard it as being their place to raise concerns. I have argued that they have an obligation to, and, perhaps with sufficient exemplars and encouragement from public service leadership, it would become a more normal consideration. But certainly ethics is not currently a common point of policy discussion or seen to be relevant in delivering a program or running a public service operation. In fact, I think that many public servants feel that, just as they should be impartial politically in their work, they should also be agnostic ethically. Sadly, I think this is a growing sentiment.

Secondly, there is not much guidance for public servants should they be interested in determining their broader ethical obligations, especially where the circumstances are complex. The Australian Public Service Commission’s advice on matters related to the APS Values and Code of Conduct is to use its ‘REFLECT’ decision-making model:

* Recognise a potential issue or problem. Do you have a gut feeling that something is risky or not right?
* Find relevant information, including about circumstances, legislation and policies, rights and responsibilities of stakeholders, and precedents.
* ‘Linger’ at the ‘fork in the road’, consulting supervisors, colleagues and support services, and analysing and reflecting.
* Evaluate the options, identifying the risks, discarding unrealistic options. Be prepared to explain the reasons for your decision.
* Come to a decision, act on it and make a record if necessary.
* Take time to reflect, learn from your decision.[[11]](#footnote-11)

This is very general guidance, applicable to a wide range of issues. It might often be useful, but it is clearly not enough to help a non-expert navigate difficult ethical issues.

Most public servants have access to employee support services and agency staff with a brief relating to Code of Conduct issues. This may be helpful. For example, such services may be able to help in the application of various ethical theories seek to provide a clear way forward in moral reasoning—where some of the subjectivity can be removed from analysis and some ‘moral distance’ attained. For example, utilitarian approaches may help in zero-sum deliberations such as about public acquisition of private land for the greater public good; on the other hand, rights-based ethics may be useful where matters of natural justice are concerned. But such deliberation will require considerable expertise, especially in complex cases, where there may be tensions between doing one’s ethical duty and conforming to other Values or Code of Conduct imperatives and real dilemmas.

In his book, *The ethics primer for public administrators in government and non-profit organisations*, James Svara suggests balancing out several approaches, considering: the obligations of public servants as trustees or stewards; virtues such as openness, honesty, and benevolence; principles such as respect for the worth and dignity of people and social justice; and the public good.[[12]](#footnote-12) This will often be difficult. I suspect that the support services available within agencies, or even in the Australian Public Service Commission, do not have sufficient expertise or experience to walk public servants through such deliberations in a manner that is consistent, decisive and ethically robust. Add to this the diversity of public views on what the government should or should not do in contested policy spaces, and on morality in general, and you have an environment in which neither the morality of a public servant’s actions nor the ethical framework for resolving their doubts may be clear to them.

Thirdly, after making an ethical assessment, comes the issue of acting on it. Public servants have an obligation to report any behaviour that contravenes the Public Service Values and Code of Conduct—wherever they see it and whether it involves them personally or not. But it is not clear exactly how such reporting should be done. The advice from the Australian Public Service Commission is to report any Values or Code of Conduct issues using one’s judgement. If in doubt, employees ‘should discuss the matter with their manager or someone in authority in their agency’.[[13]](#footnote-13) Many public servants would be worried about signalling any ethical concerns up chains of command to the very people who help determine their career prospects and who may themselves be in the ethical firing line. You can imagine that senior executives would have rather negative responses to a more junior public servant claiming the moral high ground on an issue of established—and, in particular, democratically mandated—government policy or process. Nor would an area responsible for Code of Conduct matters, used to dealing with more straightforward concerns about individuals’ corrupt or illegal activities, want to champion a cause that challenges the highest levels of the public service or government ministers in the field of morality. Such a challenge would most likely be seen, first and foremost, as insubordination or political partiality.

Nor does the *Public Interest Disclosure Act* *2013* always provide the means by which a public servant can action their ethical concerns. While it offers protection to whistle-blowers from reprisal action, this applies only to public officials who disclose suspected illegal conduct, corruption, maladministration, abuses of public trust, deception relating to scientific research, wastage of public money, unreasonable danger to health or safety, danger to the environment or abuse of position or conduct that may be grounds for disciplinary action. Unethical behaviour, as such, is not covered.

Of course, a brave and confident public servant could flatly refuse to follow a direction that they believe is immoral on Code of Conduct grounds. That would trigger an examination of the application of the ethics elements of the Values and Code of Conduct in their defence. But the risks for the public servant would be very high—a hearing might not only find that they erred in their moral judgement, but it would likely damage their career, regardless.

It appears therefore that, in practice, there are many factors that may be thwarting the exercise of the full ethical potential of the *Public Service Act*. It raises the question of whether and how it could actually work.

Rather than, as present, individual agency heads being ultimately responsible for the processes relating to alleged breaches of the Code of Conduct, it would be better if they were set down under legislation or by the Australian Public Service Commission (APSC). This would enhance transparency and broad understanding of the processes across the APS. Leaving the processes and ramifications to individual agency heads risks weaker as well as inconsistent standards. Furthermore, it places the ethical burden contingently and disproportionately—some would say unfairly—on individual agency heads when, instead, it should be recognised and shared as a core, standard, institutional APS responsibility, overseen by the APSC (for example), with all public servants both sharing responsibility and being supported.

Furthermore, the contingency of agency heads separately spelling out integrity and related processes for their domains risks undermining the moral authority of the Values and Code of Conduct. Morality does not originate in any person or position—in our post-enlightenment world, its authority comes from ethical reasoning and discussion.[[14]](#footnote-14) It is important that ethical constraints be grounded in such processes, but none is evident in the legislation (nor in the current agency heads’ directions I surveyed). I cannot see why such high order processes for making ethical judgements should differ between agencies. Just the reverse: differences would undermine their authority.

The danger is that, absent a robust, credible and universal framework for ethics determinations in the APS, individual public servants may take it upon themselves to assert moral agency in their work. You could imagine that someone, committed to a particular religious view, for example, might perceive that an ethical vacuum entitled them to pursue their particular beliefs about right and wrong through their work. For example, there is a view that the UK Civil Service is opposed to Brexit and that individual civil servants legitimate (or, at least, excuse) their resistance to parliament’s will on this matter on moral grounds. Whatever the degree to which this is indeed occurring, the ongoing debate itself is undermining trust in the impartiality of UK’s civil service.[[15]](#footnote-15) Similarly, recent legal cases and breaches of confidentiality (in the areas of immigration and foreign policy, for example) provide evidence that some Australian public servants object to government policy or practices on moral grounds. It is important that a set, mandated process be in place to resolve their (and the public’s) concerns and delegitimate the moral high ground that allows public servants to subvert government policy.

Assume therefore that, in the public service of the future, there would be an independent and transparent process for determining if a policy, action or process is, indeed, unethical. I imagine that, where a public servant has initial doubts, they would take them to a designated Code of Conduct area of their agencies or to the Australian Public Service Commission for investigation. They would probably have the option of alerting their manager or not, enlisting other employee assistance support mechanisms, and having anonymity, should they wish, while their concern is investigated. It could be that other people are directly involved and they should be informed that an investigation is under way.

It would be important that, subject to natural justice considerations about particular public servants involved, there is as much transparency as possible about the issues, the deliberations and the results. A robust process may need to draw on policy, subject matter and ethics experts. The process would also benefit from detailed guidelines on ethical deliberations, and how to resolve the possible tensions between the different requirements of the APS Values and Code of Conduct.

Determining the morality of a policy or action is not always easy—and it may not always be possible to be certain. However, there are ethical theories and frameworks applicable to the public service, as discussed above, that could provide a broadly accepted means to come to a determination, if not about whether a policy or action is *ethical*, then at least whether it is *unethical.* There could well be residual contestation. This parallels application of the law, and should not mean that there can be no authoritative finding. Given the complexities of ethical argument, perhaps the outcome of a process to determine the ethical import of a policy or action may even sometimes need to be left open. However, should it be judged, ultimately through the courts, that a policy or action is indeed *unethical*, then the relevant ministerial directions to the agency or its standard practices would need to be discarded or revisited, as being unlawful.

The general public ought also to be able to raise moral concerns. They could be channelled into the same or similar processes, with direct approaches to and responses from agencies or the APSC in much the same way that Freedom of Information provisions work. Alternatively, they could be dealt with directly by courts.

Agencies should protect staff complainants from any retribution including, where appropriate, through guarding their anonymity. At the end of the day, as with any matter falling under the Values or Code of Conduct provisions of the *Public Service Act*, there would of course be options to escalate contested decisions to appropriate law courts.

The ethical capability of the public service rests not only on compliance with the law but also in its culture. Agency heads will always bear the ultimate responsibility for the broader culture of their agency, and for ensuring that it supports ethical policy development and advice, program implementation and operations. They, and their Senior Executive Services, need to lead by example, and be prepared to stand up to their ministers against unethical policies or practices. Public perceptions about the dependence of senior APS jobs on the government of the day, the interaction between the public service and ministers’ offices and the nature of politics and the media today all militate towards some public scepticism about the ethical capacity of the APS and its ability to take such a stand effectively. This is all the more reason for a re-affirmation through the Review of the importance of robust integrity provisions and consideration of improvements.

A mandated process to deal with ethical concerns about the functioning of the public service would of itself be beneficial in limiting ethical slippage down a slippery slope to where ‘anything goes’. It could be calibrated at a level high enough so that it was not vulnerable to being used vexatiously or ideologically. At the end of the day, it would need also to be underwritten by legislation. Like other elements of Australia’s integrity system, this would remind politicians and senior public servants that they risk eventually being brought to book should they seek to exploit the ethical grey-zones that arise wherever power meets secrecy.

In an era of contestable facts, failing trust in government, and looming issues that are, properly, everyone’s business, the integrity provisions of Australia’s *Public Service Act* are a precious national resource. I believe they have a place in Australia’s civic life that has never been more important.

This submission has canvassed some of the reasons that the ethical content of the Act has not been tested in cases where there is moral doubt about government actions. The question is whether the *Public Service Act*’s integrity provisions are window dressing, or really alive and able to guide and support Australia’s public servants to discharge fully their ethical responsibilities and protect them and the wider public from any doubt about the ethical value of their work. Most relevantly for the Review, this submission contends that the time is ripe for these provisions to be clarified and strengthened going into the future. This will support our public service, where appropriate, not simply to enact the will of the democratically elected government, but have the backing of a law that clearly and strongly supports it to stand up as a steward of Australia’s democratic values and maintain a public service of the highest standard.

I am hopeful that the integrity provisions of the *Public Service Act* will be endorsed by the review. Clarifying and strengthening their ethical content and articulating a mandated, practical framework in support will not be easy, but it is vital for Australia’s Public Service. For, without effective legislation and strong leadership that empowers those aware of the inner workings of government to guard its integrity properly, surfacing and helping to resolve moral issues, receiving valued guidance on their roles, and building trust in our public service, we will not be ready for 2030.

### Appendix—extracts from the *Public Service Act 1999*.

### *PUBLIC SERVICE ACT 1999 - SECT 10*

***APS Values***

*Committed to service*

*(1)  The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.*

*Ethical*

*(2)  The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

*Respectful*

*(3)  The APS respects all people, including their rights and their heritage.*

*Accountable*

*(4)  The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.*

*Impartial*

*(5)  The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.*

### *PUBLIC SERVICE ACT 1999 - SECT 13*

***The APS Code of Conduct***

*(1)  An APS employee must behave honestly and with integrity in connection with APS employment.*

*(2)  An APS employee must act with care and diligence in connection with APS employment.*

*(3)  An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.*

*(4)  An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose,****Australian law****means:*

*(a)  any Act (including this Act), or any instrument made under an Act; or*

*(b)  any law of a State or Territory, including any instrument made under such a law.*

*(5)  An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.*

*(6)  An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.*

*(7)  An APS employee must:*

*(a)  take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and*

*(b)  disclose details of any material personal interest of the employee in connection with the employee's APS employment.*

*(8)  An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*

*(9)  An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.*

*(10)  An APS employee must not improperly use inside information or the employee's duties, status, power or authority:*

*(a)  to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or*

*(b)  to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.*

*(11)  An APS employee must at all times behave in a way that upholds:*

*(a)  the APS Values and APS Employment Principles; and*

*(b)  the integrity and good reputation of the employee's Agency and the APS.*

*(12)  An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.*

*(13)  An APS employee must comply with any other conduct requirement that is prescribed by the regulations.*

### *PUBLIC SERVICE ACT 1999 - SECT 15*

***Breaches of the Code of Conduct***

 *(3) An Agency Head must establish written procedures in accordance with this section for determining:*

 *(a) whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct (including by engaging in conduct referred to in subsection (2A)); and*

 *(b) the sanction (if any) that is to be imposed under subsection (1) on an APS employee in the Agency who is found to have breached the Code of Conduct (including by engaging in conduct referred to in subsection (2A)).*

1. In this submission I distinguish between the use of the terms *moral* and *ethical*, with the former describing something that is held to be right (or not wrong) and the latter describing a system for coming to a judgement about something’s morality. [↑](#footnote-ref-1)
2. The Scanlon Foundation’s annual *Mapping social cohesion* survey reports, for example, track the Australian public’s trust in government over the past decade, showing the proportion of people believing that ‘the government in Canberra can be trusted to do the right thing for the Australian people’ always or most of the time fell to a low of just 26 per cent in 2012, from which it has not significantly improved (p 36­37, <https://www.monash.edu/__data/assets/pdf_file/0009/1189188/mapping-social-cohesion-national-report-2017.pdf>). [↑](#footnote-ref-2)
3. The 2017 Lowy Institute Poll, for example, found that only 52 per cent of younger Australians aged 18–29 years (and 60 per cent overall) agree that ‘democracy is the preferable form of government’ (<https://www.lowyinstitute.org/the-interpreter/are-we-losing-faith-democracy>). [↑](#footnote-ref-3)
4. Sections 10 and 13 of the *Public Service Act 1999* are in the Appendix of this submission. [↑](#footnote-ref-4)
5. Public Service and Merit Protection Commission, and the Department of Workplace Relations, 1997, *The Public Service Act 1997: accountability in a devolved management framework*, p4 [↑](#footnote-ref-5)
6. Ibid, under ‘APS Values’, p11 [↑](#footnote-ref-6)
7. Ibid, under ‘Code of Conduct’, p14 [↑](#footnote-ref-7)
8. The Macquarie Dictionary defines this meaning of *integrity* as being ‘the state of being whole, entire, or undiminished’. See Robin Creyke, 2012, ‘An integrity branch’, Australian Institute of Administrative Law Forum 16; (2012) 70 AIAL Forum 33, [www.austlii.edu.au/au/journals/AIAdminLawF/2012/16.pdf](http://www.austlii.edu.au/au/journals/AIAdminLawF/2012/16.pdf) for a discussion of *integrity* interpreted in this way. [↑](#footnote-ref-8)
9. See the Appendix to this submission. [↑](#footnote-ref-9)
10. Robin Creyke, 2012, op. cit. [↑](#footnote-ref-10)
11. Australian Public Service Commission, 2009, *Enhancing ethical awareness in the APS*, [www.apsc.gov.au/\_\_data/assets/word\_doc/0013/47200/reflect.doc](http://www.apsc.gov.au/__data/assets/word_doc/0013/47200/reflect.doc) [↑](#footnote-ref-11)
12. James Svara, 2015, *The ethics primer for public administrators in government and non-profit organisations* [↑](#footnote-ref-12)
13. [www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/reporting-suspected-misconduct](http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/reporting-suspected-misconduct) [↑](#footnote-ref-13)
14. Immanuel Kant is perhaps the most famous proponent of ‘practical reason’ as providing a compelling and objective basis for morality. Philosophers like John Rawls have proposed more communitarian approaches. Of course, many religions propose God or their sacred texts as the source of morality. The inadequacy of such authority is evident, especially in secular democracies, and predates the enlightenment’s questioning of religious authority—Plato’s *Euthyphro* for example. [↑](#footnote-ref-14)
15. See <https://www.theguardian.com/politics/2018/feb/03/brexit-civil-service-1930s-germany> and <http://blogs.lse.ac.uk/brexit/2018/02/02/brexit-ultras-are-undermining-the-integrity-of-the-civil-service-the-consequences-could-be-grave/> for example. [↑](#footnote-ref-15)