



Australian Government

**APSREFORM**



# APS Reform agenda Stage 2 integrity reforms

Issues paper

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# Introduction

The Australian Public Service Reform agenda is built on 4 priority areas or ‘pillars’:

1. An APS that embodies integrity in everything it does.
2. An APS that puts people and business at the centre of policy and services.
3. An APS that is a model employer.
4. An APS that has the capability to do its job well.

These pillars are underpinned by 8 program outcomes to help guide the direction of reform decisions and enable measurement of progress and impact over time.

The first stage of APS Reform included key integrity measures such as:

- Establishing a strong, independent National Anti-Corruption Commission to investigate serious or systemic corruption.
- Amending the Commonwealth Fraud Control Framework under the *Public Governance Performance and Accountability Act 2013* to require agencies to take all reasonable measures to manage corruption as well as fraud. This commenced on 1 July 2024.
- Strengthening protections for public sector whistleblowers. Stage 1 reforms commenced on 1 July 2023, and stage 2 reforms are under consideration, following a public consultation process.
- Ensuring appointments to key independent institutions are transparent and merit-based.
- Strengthening the integrity and ethical conduct of suppliers to the Commonwealth, including establishing a Supplier Code of Conduct.
- Legislating a user-focused, efficient, accessible, independent and fair Administrative Review Tribunal. This will commence on 14 October 2024.
- Supporting Australia’s commitment to the Open Government Partnership through Australia’s Third National Action Plan 2023–25 (submitted in December 2023).

Further information is available in the [2023 APS Reform annual progress report](#).

In June 2024 the *Public Service Amendment Act 2024* received Royal Assent, locking in a number of key APS reforms to enable a pro-integrity culture in the APS. They include adding [stewardship](#) as an APS Value and making it clear in the *Public Service Act 1999* that Ministers cannot direct Agency Heads on employment matters.

Integrity continues to be a strong focus of APS Reform, with the Minister for the Public Service signalling ‘bolstering integrity’ as a key theme in the second stage of APS Reform in her 2023 [Annual Statement on APS Reform](#).

Further information on all stage 2 APS Reform initiatives, including those covered in this paper, is available on the [APS Reform website](#).

# Purpose and scope of this paper

The Government recognises the importance of incorporating community views into the design and development of reforms, particularly where they seek to increase public trust and confidence in government institutions. The initiatives in this paper are those on which the public is well-placed to comment, and where community views can play a key role in scoping and design work.

This paper is part of a consultation process seeking views on the APS Reform stage 2 integrity initiatives below. The Australian Public Service Commission is seeking your input to identify how these proposed initiatives might be implemented and to raise any potential challenges.

Proposed APS Reform stage 2 integrity initiatives:

- Introduce own motion powers and expanded inquiry powers for the APS Commissioner to initiate reviews and investigate alleged Code of Conduct breaches by current and former APS employees and Agency Heads.
- Extend the APS Values to other government entities, statutory and non-statutory offices covered by the PGPA Act.
- Implement a balanced approach to managing post-employment conflicts of interest for Agency Heads, Senior Executive Service and designated APS positions.
- Develop an APS Integrity Data Dashboard that maps pressures and assesses integrity maturity levels by building on existing indicators and metrics.
- Strengthen transparency of agency customer feedback.

## How to have your say

The APSC invites written submissions on this issues paper. Submissions will assist with scoping and identifying options for implementing these reforms.

In preparing your feedback, please focus your views on initiatives outlined in this issues paper.

We invite you to consider the variety of mechanisms through which reforms can be embedded across the APS.

Policy documents, guidance, standardised templates or other resources can be useful tools to support a pro-integrity culture and assist agencies to implement change in a way that accounts for their unique and specific circumstances. A number of these types of resources are available on the [APSC website](#).

The public consultation is open for 5 weeks, with **responses due by 11pm AEDT on 6 November 2024**. Responses are to be submitted online through the [APS Reform website](#) or emailed to [APSreformpolicy@apsc.gov.au](mailto:APSreformpolicy@apsc.gov.au).

In support of a transparent process, we will publish as many responses as possible after the consultation process. Please indicate if you don't want your submission to be published, or want it to be published anonymously.

Any personal information received through the consultation process will be treated in accordance with the *Privacy Act 1988*. For more information on how the APSC collects, stores and uses personal information, please refer to the [APSC Privacy Policy](#).

Visit the [APS Reform website](#) to find out more.

If you have any questions or require assistance, please email [APSreformpolicy@apsc.gov.au](mailto:APSreformpolicy@apsc.gov.au).

## Stage 2 APS Reform integrity initiatives

All APS employees, from new starters to senior executives, need to understand how to act with integrity in their roles. Individual behaviour and decision-making should also be supported by systems and structures that enable integrity.

Recent steps to reinforce accountability and responsibility in the APS include the [Royal Commission into the Robodebt Scheme](#) and the [Government Response](#), as well as the [APS Integrity Taskforce Final Report and Action Plan](#) to strengthen pro-integrity systems and culture in the APS.

The initiatives in stage 2 of APS Reform aim to provide further clarity and consistency in the processes which maintain APS integrity. They complement work following the Robodebt Royal Commission and the Integrity Action Plan to create a comprehensive and robust approach to bolstering integrity as a core value in the APS.

The initiatives also build on growing recognition across the APS of the connection between integrity and culture. This is driven in part by training and support for senior APS executives to foster pro-integrity cultures through the APS Academy's SES Integrity Masterclass. The APSC has also developed a series of [fact sheets, guidance and resources on integrity](#), available through the [APSC website](#). The APSC will continue its role in fostering and enabling a pro-integrity culture across the APS, including through delivering on the APS Reform agenda and APS Academy.

Please consider each reform initiative below and provide views on any relevant issues. We have included key questions for consultation as a guide, however you do not need to address these. We welcome your feedback on any relevant matters.

# **Own motion powers and expanded inquiry powers for the APS Commissioner to initiate reviews and investigate alleged Code of Conduct breaches by current and former APS employees and Agency Heads**

In the 2023 Annual Statement on APS Reform, the Minister for the Public Service committed to reform that would provide for new own motion powers for the APS Commissioner to initiate reviews and investigations into Code of Conduct breaches by current and former Agency Heads, including Secretaries, and APS employees. The Minister also undertook to explore sanctions following breaches of the Code of Conduct by Agency Heads.

The Government has already taken action to ensure accountability of former senior public service leaders, through the *Public Service Amendment Act (No.2) 2024*. The Act received Royal Assent on 26 August 2024 and came into effect the following day. It amended the *Public Service Act 1999* to clarify the APS Commissioner has the power to inquire into and determine whether current and former Agency Heads (including Secretaries) have breached the APS Code of Conduct.

Building on these recent changes to the Public Service Act, this paper seeks your views on issues associated with:

- potential consequences for current and former Agency Heads and former APS employees found to have breached the Code of Conduct
- providing the APS Commissioner with a discretionary power to initiate reviews and investigations into alleged Code of Conduct breaches by current and former APS employees
- developing an APS Code of Conduct database.

Underpinning these potential changes is consideration of expanding the functions of the APS Commissioner in section 41(1)(b) of the Public Service Act beyond 'upholding high standards of integrity' to 'building and sustaining APS integrity'.

## **Potential consequences for current and former Agency Heads and former APS employees found to have breached the Code of Conduct**

The question of consequences for a former Agency Head and former APS employee found to have breached the Code of Conduct requires careful consideration. The following are example key factors that may be taken into account when providing your views or addressing the guiding questions:

- The Public Service Amendment Act (No. 2) does not amend the sanctions provisions in the Public Service Act. Current and former Agency Heads and current and former APS employees found to have breached the Code of Conduct are required to disclose this if they seek to re-join the APS or seek consulting work with the APS.
- The imposition of sanctions under the Public Service Act typically occurs in the context of an employment relationship. However, where a substantiated breach is found in relation to a former Agency Head or former APS employee, an employment relationship is not present. Please note,

consideration of penalties, which must be determined by a court, is beyond the scope of this paper.

- The Royal Commission into the Robodebt Scheme recommended (23.7) the Public Service Act be amended to allow for a 'disciplinary declaration' to be made against former APS employees and former Agency Heads found to have breached the Code of Conduct. For example, by recording a statement of action that would have been taken had the person's employment not ended.

### Own motion powers for the APS Commissioner to inquire into alleged Code of Conduct breaches by current and former APS employees

This paper seeks your views on limitations and safeguards that should accompany any expansion of the APS Commissioner's own motion inquiry powers into current and former APS employees.

Agency Heads are the accountable authority for APS employees and are generally the appropriate person to inquire into and determine any potential breach of the Code of Conduct. Section 41B of the Public Service Act preserves this default jurisdiction by limiting the ability of the APS Commissioner to conduct an inquiry, unless the Agency Head or Prime Minister have made a request.

There are circumstances where the APS Commissioner may wish to initiate an inquiry or review independent of a referral from an Agency Head or Prime Minister. For example, an own motion inquiry might be desirable to examine matters, such as complaints or incidents, that raise systemic issues. This may include issues affecting many people, not only the person or people who made a complaint or were directly affected by an incident.

Expanding the APS Commissioner's own motion powers requires careful consideration of the overlapping jurisdictions of Agency Heads and the APS Commissioner. The APS Commissioner's own motion powers must be subject to appropriate safeguards to enable integrity around initiation and referral processes.

Exercising own motion powers to inquire into current or former APS employees would need to remain discretionary. They would need to avoid wasting resources or adversely affecting individuals by investigating allegations that are vexatious, frivolous or lacking in substance or detail. They would not displace more appropriate extant inquiry mechanisms. The initiative would also provide the APS Commissioner with flexibility to delegate these powers appropriately.

### Developing an APS Code of Conduct database

These reforms would be supported by improved agency reporting requirements to facilitate collation in a centralised database. This would help enhance the effectiveness with which any information on Code of Conduct matters could be used in recruitment, engagement and other APS staff movements.

Importantly, all Commonwealth agencies are bound by the Australian Privacy Principles which establish standards for the collection and handling of personal information, as defined in the Privacy Act. The Administrative Functions Disposal Authority Express Version 2 is also applied in this area. Close assessment of privacy impacts would be undertaken, including a privacy threshold assessment and if indicated, a privacy impact assessment.



Policy, training and guidance could be developed to support the appropriate use of the Code of Conduct database by APS entities and could ensure staff with access to the information are aware of their obligations.

*Key questions for consultation:*

- Should reforms include new powers to make a disciplinary declaration against former APS employees and former Agency Heads?
  - Who should hold these powers?
- What range of sanctions may be appropriate for Agency Heads found to have breached the Code of Conduct?
- Who should have the power to impose sanctions on Agency Heads found to have breached the Code of Conduct?
- Should expanded own motion powers to inquire into and determine whether a current or former APS employee has breached the Code of Conduct apply retrospectively?
- What safeguards should complement own motion inquiries into current and former APS employees?
- What should guide or govern the APS Commissioner in deciding whether to initiate an own motion inquiry into the conduct of current or former APS employees?
- What thresholds should apply to initiate an own motion inquiry into a current or former APS employee?
- What matters should be considered in developing the Code of Conduct database?
  - Should this type of database replace any information on Code of Conduct matters currently recorded within agencies or should it operate alongside entity-specific arrangements?
  - What measures could mitigate risks associated with the misuse of information or potential privacy breaches?

## **Extension of the APS Values to other government entities, statutory and non-statutory offices covered by the PGPA Act**

This initiative considers extending the APS Values—impartial, committed to service, accountable, respectful, ethical, and the new Value of Stewardship—to other entities covered by the PGPA Act. This would include statutory and non-statutory office holders. Options for appropriate and proportionate consequences for not complying with the APS Values will also be explored.

The initiative does not seek to supersede any existing values, codes of conduct or statutory duties already established within entities. The extension would be subject to the objects of the entity's establishing legislation.

The initiative seeks to understand the challenges associated with navigating 2 sets of values, some of which are currently evident even within the APS. That is, where departments have their own values operating alongside the APS Values. Where appropriate, consideration could also be given to managing breaches within entities, with reporting arrangements to the APSC.

Appropriate exclusions or qualifications would need to be identified to avoid the risk of interfering with the an entity's capacity to properly discharge its responsibilities, or the independent functions, operations or responsibilities of any primary body. For example, the Governor of the Reserve Bank of Australia and relevant national intelligence agencies.

### *Key questions for consultation:*

- How should the APS Values align with, complement or otherwise interact with the existing values of a PGPA Act entity?
- Are there any PGPA Act entities that should be excluded, either in whole or in part, from the requirement to observe the APS Values?
- Can you think of any additional ideas to implement this initiative?

## Balanced approach to managing post-employment conflicts of interest for Agency Heads, SES and designated APS positions

There are senior and specialist roles in the APS, including Agency Heads, SES and designated positions, that handle highly sensitive Commonwealth information in the course of their duties. When those individuals leave the APS and move into non-government roles, including the private sector, they may be at risk of engaging in activities that could bring them into actual, potential or perceived conflict with continuing public interest duties and obligations.

There are a range of common law and statutory duties, including civil and criminal penalty provisions (e.g. the *Criminal Code Act 1995*) to ensure employees keep information obtained in the course of Commonwealth employment confidential beyond separation.

There are also existing guidelines to manage potential conflicts of interest and probity when employees are moving out of the APS including:

- the Lobbying Code of Conduct, which specifies that Agency Heads and SES must not for a period of 12 months after they cease APS employment, engage in lobbying activities relating to any matter they had dealings with in the last 12 months of their employment
- the APSC guidelines, which mitigate conflicts of interest at an agency-level of Agency Heads and APS staff, arising from their intention to leave the APS as a result of an offer of employment.

The APSC is exploring how these existing measures could be supplemented. For example, through additional requirements for agencies and separating employees, supported by enhanced policy and guidance materials to ensure the approaches to identifying risk and managing post-employment conflicts of interest are balanced and applied more consistently across the APS to uphold integrity. Any new measures would be designed to establish clear and reasonable expectations for managing the employee separation process, and the conduct of any high-risk activities in agencies, following separation of individuals where they or their new employer may engage with government.

This initiative would complement a range of work already in place or underway across the APS and with respect of conduct standards of external entities engaging with government. This will ensure all public servants and suppliers to government are aware of their obligations in relation to avoiding or declaring and managing conflicts of interest.

### *Key questions for consultation:*

- How should high-risk roles be identified and assessed to be within scope of this change?
- How can we design this initiative to ensure the ability of the APS to attract a highly qualified workforce is not negatively affected?
- Does your agency currently use any post-employment restraints (such as ‘non-compete clauses’) that restrict the activities or future employment of any staff?

- If so, how prevalent is the use of these restraints, does this vary across different job roles (for example, are they more common among IT staff) and what is the rationale for using them given alternative protections (such as the Lobbying Code of Conduct)?
- Can you think of any additional legislative or non-legislative solutions for this initiative?
- Should there be a certain timeframe after leaving the APS during which agency heads, SES and other designated APS positions are restricted from engaging in consulting work, similar to the requirement in the Lobbying Code of Conduct?
- Should this restriction apply to other types of work as well? If so, what types?

## APS Integrity Data Dashboard

This initiative looks to develop an ‘alerting system’ that maps integrity pressures and assesses maturity levels by building on existing indicators and metrics as they apply to the APS. This will help support and inform future policy work on APS integrity being driven across the service, and be a key enabler of a pro-integrity culture.

The initiative would be informed by work underway in many APS departments and agencies, such as integrity maturity self-assessments in line with the Commonwealth Integrity Maturity Framework. It will involve careful consultation, collaboration and analysis to avoid duplicating existing work. It would also complement the Organisation for Economic Co-operation and Development’s work on internationally agreed integrity indicators, to assess elements of the Government’s integrity system and understand existing pressures.

The work would support timely action by Agency Heads to reduce risks as a detection and accountability tool. This initiative will be complemented by drawing on OECD guidance on integrity data, developing new or supplementary guidance where necessary, and developing options for agency reporting to better represent integrity data.

### *Key consultation questions*

- Are there any specific matters that should be considered in implementing this initiative?
- What are the key challenges?
- What should be included in any guidance developed on integrity data?
- How could agency reporting best represent integrity data?
  - Should this information be made publicly available (e.g. in annual reports)?

## Strengthening transparency of agency customer feedback

The Robodebt Royal Commission report highlighted the need to engage with customer feedback to seek streamlined insights on the experiences of people accessing income support.<sup>1</sup>

The Public Service Amendment Act locks in changes to the Public Service Act, including a requirement for agencies to publish annual APS Employee Census results and action plans. This initiative builds on the Government's commitment to transparency. It examines how to strengthen transparency of existing data collection through considering whether more customer feedback information could be published. Opportunities for currently published information to be made more accessible will also be examined. The initiative aims to make it easier for external audiences to access this information, driving greater accountability and improved agency response to customer feedback.

### Proposed scope and working definitions

The initiative is targeting feasible whole-of-APS policy options that are meaningful, achievable and measurable. While the broad intent of this initiative is clear, implementation will require a clear scope and a principles-based approach that recognises the importance of agency context. Agency customer feedback mechanisms vary both within and across agencies based on the services delivered, population groups served, legislative remit, maturity of data systems and other factors. For this reason, we are not seeking to create a one-size-fits-all solution, but rather an approach that allows agencies to tailor implementation to their context.

Proposed working definitions for customer feedback and Australian public services have been developed to assist with scoping.

- **Customer feedback.** Agency-solicited feedback collected directly from users of agency services about their satisfaction, trust and/or experience (or similar) with the agency's services. Examples include customer feedback surveys, feedback collected during projects aimed at reviewing service delivery, and customer feedback forms on agency websites. Feedback from advocacy groups may also be included if it is relevant to the service. At this stage, the initiative does not intend to capture customer feedback from businesses or in relation to services offered to businesses.
- **Australian public services.** Also known as Commonwealth, Federal or National public services, these can include anything from providing access to information online through to providing direct assistance, such as financial help.
  - Some examples of how Australians engage with Australian public services include:
    - applying for an apprenticeship with Australian Apprenticeships
    - applying for an income support payment with Centrelink
    - lodging a tax return with the Australian Taxation Office

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<sup>1</sup> Robodebt Royal Commission Recommendation 12.2

- applying for a passport from the Department of Foreign Affairs and Trade
  - applying for a Medicare rebate with Medicare
  - undertaking or updating a registration (such as organ donation) with Services Australia.
- Australian public services do not include services provided by state, territory and local government, such as:
- state emergency services (e.g. state police, fire and ambulance)
  - state transport services (e.g. provision of transport cards)
  - state government services (e.g. services labelled Services NSW and Service Victoria)
  - local council services (e.g. bin collection, recycling, rates and residential development approvals).

This initiative will comply with existing privacy legislation and principles.

### Current state

A significant step towards greater transparency was made in 2022, when the Australian Government committed to releasing detailed annual reports for the [Survey of Trust in Australian public services](#). This provides high-level and whole-of-APS insights on Australians' experience with public services. There is an opportunity to extend this strengthened transparency to more specific agency activities.

Most APS agencies with public-facing service delivery functions are collecting customer feedback and providing some related information through publicly available Annual Performance Statements that form part of agency annual reports. Annual reports contain a large amount of broader agency performance and governance information, with content underpinned by requirements set out in the PGPA Act and subordinate legislation and policy guidance. The complexity of annual report content and format may create barriers to transparency and reporting, which may affect:

- public awareness that agency customer feedback information is published
- user ability to locate agency customer feedback information within the report, noting the use of different terminologies
- the amount of customer feedback information that can be included within annual reports, including the number of metrics and the underlying methodological elements
- the opportunity for agencies to communicate how the information is being used
- ease to readily consider whole-of-APS or cross-agency performance, potentially reducing opportunities for collaboration or opportunities to identify emerging or ongoing issues that may require further attention.

A growing number of APS agencies are reporting and publishing customer feedback information beyond annual reports, providing greater transparency, accessibility and depth of information. Approaches vary across these agencies with some forming part of publicly-available regular ministerial reporting, and others using their website to publish customer feedback reports together with the corresponding method.

### *Key consultation questions*

- Are the proposed working definitions for customer feedback and services adequate?
  - If not, what adjustments are needed?
  - Is there anything else that should be considered when scoping this initiative?
- Who would be the primary users of strengthened transparency of customer feedback information?
  - For what purposes do you think they would be using this information?
- What sorts of information about customer feedback would you like to see captured? For example, high-level insights, methodological elements, action plans or trends (as they become available).
- If the initiative were to proceed to implementation, where could this information be made public to strengthen transparency?
  - Are agency annual reports the best option, given their strong link to agency performance?
  - Should individual agencies house the information on their websites?
  - Would a centralised site capturing all relevant agencies be most appropriate?
  - Is a combination of the above options required to strengthen transparency of customer feedback?
- What do you think will be the biggest opportunities, challenges and risks from strengthened transparency?
- Is there any else that we should consider?