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# **Being a trusted and respected partner: the APS integrity framework**

**An ANZSOG research paper for the  
Australian Public Service Review Panel**

March 2019

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## ANZSOG Reference Panel

This paper was prepared with the advice of a reference panel comprising:

- Dr Elizabeth David-Barrett
- Professor Michael Macaulay
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Our thanks for the useful contributions made by the panel members, and to Dr Subho Banerjee of ANZSOG. The final opinions expressed herein belong to the authors.

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## ACRONYMS AND ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ABC	Australian Broadcasting Corporation
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
APSC	Australian Public Service Commission
ARC	Administrative Review Council
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CPSU	Community and Public Sector Union
FOI	Freedom of information
IBAC	Independent Broad-Based Anti-Corruption Commission (Vic.)
ICT	Information and communication technologies
JCPAA	Joint Committee of Public Accounts and Audit – Parliament of Australia
NISA	National Integrity System Assessment
NPM	New Public Management
NZ	New Zealand
OECD	Organisation for Economic Co-operation and Development
PGPA	<i>Public Governance, Performance and Accountability Act 2013 (Cth)</i>
PMC	Department of the Prime Minister and Cabinet
PSA	<i>Public Service Act 1999 (Cth)</i>
SOSR	State of the Service Report
UK	United Kingdom
US	United States



## EXECUTIVE SUMMARY

*This paper was commissioned by the Secretariat of the Independent Review of the Australian Public Service (APS) and follows an extensive literature review of leading and international sources, research and analysis of public integrity; consultation with academics and practitioners on our expert reference panel; as well as specific engagement with current and former officers of the APS to ensure an understanding of history, the current arrangements, its strengths and weaknesses in practice. Our task is to suggest reform directions for an integrity framework for the APS in 2030 and beyond.*

The APS can be a true, global leader and a trusted and respected partner by establishing a pro-integrity framework that specifically promotes ‘institutional integrity’. The core of such a framework is the promotion of four institutional qualities: purpose, legitimacy, fulfilling commitments, and robustness. Each of these qualities has been shown to drive trust in public institutions. While no public institution can control every determinant of trust because of external factors affecting the lens through which trustworthiness is perceived, if the APS is driven to be a trusted and respected partner beyond 2030, then it needs a framework that promotes institutional integrity.

The current APS Values and Code of Conduct duties reflect a framework already well-positioned to strive for institutional integrity. However, including a new value of ‘stewardship’ that applies to all public servants, not just their leaders, as well as ‘merit’ as a core value will consolidate this aim. The APS must ensure that there is not a gap between its stated values and practised reality. It must build upon its current embedding initiatives in a number of recommended ways, in a risk-driven strategy, complemented by a much more rigorous assessment regime. The APS must strike a new bargain in being responsive and apolitical, reasserting merit and tenure-based appointments, and its role in delivering policy advice. The APS must also recognise that one of its greatest integrity threats is policy and regulatory capture. Public perception of ‘elites’, powerful interests or the familiar few, having privileged influence over public policy and administration will strongly erode public trust in the APS, its credibility and legitimacy. The current legislative and institutional framework of the APS - and indeed the public sector as a whole - lacks visibility and coherence, overall leadership for proactive integrity measures, capacity when reacting to integrity risks, and integrated system-wide research and assessment. A single, comprehensive *Public Integrity Act* is proposed to address these concerns with broad coverage across the Commonwealth public sector beyond the APS to address current accountability gaps. An independent anti-corruption commission will offer constant and effective vigilance against corruption. A second, separate institution, substantially building upon the current APSC, is required to focus on proactive ‘pro-integrity’ activities.

Integrity issues are often perceived by organisations only as a risk-management issue. However, promoting institutional integrity is an opportunity for the APS in 2030 and beyond. It is an opportunity to assert global leadership, and reassert itself as a pillar and paradigm of trustworthiness in government. It is an opportunity to leapfrog other jurisdictions that focus only ‘anti-corruption,’ or individual ‘public-officer integrity.’ It is an opportunity to develop an institutional framework that does not set integrity in opposition to performance, capability and effectiveness, but integrates all those elements in one coherent, balanced vision of being a partner respected and trusted by all its stakeholders.

# INTRODUCTION

## 1 A pro-integrity framework for 2030

According to 2018 OECD research, the perception of government integrity is the strongest determinant of trust in government.<sup>1</sup> Trust matters because it is foundational to the 'legitimacy and sustainability of political systems' and is essential for 'social cohesion and well-being because it affects governments' ability to govern'.<sup>2</sup>

However, there is a continued pattern of decline in Australians' trust in government.<sup>3</sup> If the 2030 vision of the APS Review Panel is for a strong APS united in service, a global leader, trusted and respected by the public and its partners, then a comprehensive strategy for building integrity is needed.<sup>4</sup>

This paper proposes a pro-integrity framework that is distinguished by a full view of what public integrity means. This values-based and more complete conception of public 'institutional integrity' helps in understanding what drives trust and that it is more than avoiding corruption scandals. Analysis of any government scandal will find failings of integrity at its source – not necessarily corruption – but failures of integrity for want of due purpose, process, performance, or accountability.

In recommending the elements of a pro-integrity regime, we seek to operationalise an institutional-first meaning of public integrity across institutional culture and practices, legislative and institutional frameworks, and externalised strategy.

## INTEGRITY AND TRUST

The aim of the APS integrity regime is to promote the *integrity* of the APS. But how should the APS understand that aim? And why is it so important? In this first part, we put forward a definition of ‘integrity’ for the APS, and highlight its relationship with public trust.

### 2 Defining ‘integrity’

Broadly speaking, the idea of public sector integrity has moved through three phases. First, integrity was understood as merely compliance by individual public officers with a set of common, minimum standard, rules (*compliance integrity*). Secondly, during the mid-1990s integrity began to be understood as promoting a set of positive shared values.<sup>5</sup> Values did not replace the need for rules.<sup>6</sup> Rather, the addition of values gave individual public officers a way of interpreting, justifying and being held to account for the proper use of discretion within the bounds of those rules (*values integrity*).

As we look to an APS integrity regime in 2030, however, we recommend that the APS fully embrace the next evolution of public sector integrity: *institutional integrity*.

#### Institutional integrity

Institutional integrity is a collective virtue of the institution itself, achieved by the coordinated stewardship of its public officers. These officers do not merely comply with rules, and promote shared values, but take leadership and responsibility for ensuring that the combined effect of those actions is an institution that the public can see is overall consistent, coherent, legitimate, praiseworthy, virtuous and trustworthy. In other words, not merely the parts, but the whole can be described as ‘having integrity.’

An APS integrity regime that aims for institutional integrity seeks to bring into alignment its operational values, codes of conduct, culture, invigilation methods, enforcement mechanisms, and governance to deliver four key collective qualities:

1. **Purpose:** The APS must pursue clear, shared purposes to the best of its capacity.
2. **Legitimacy:** The APS must prioritise proper process, not only performance.
3. **Commitments:** The APS must keep its commitments in order to be trustworthy.
4. **Robustness:** The APS must invest in accountability mechanisms and incentives, strengthening its disposition to pursue its purposes, legitimately, and consistently and with its commitments.<sup>7</sup>

In sum, institutional integrity is no longer merely ‘this is the way we [each as individuals] do things round here,’ which may be interpreted as static, individualised and non-purposive. It is instead, ‘*this is what we are currently trying to achieve, together*’: a public sector ethics that is dynamic, collective and purposive.

### 3 Trust: the need for institutional integrity

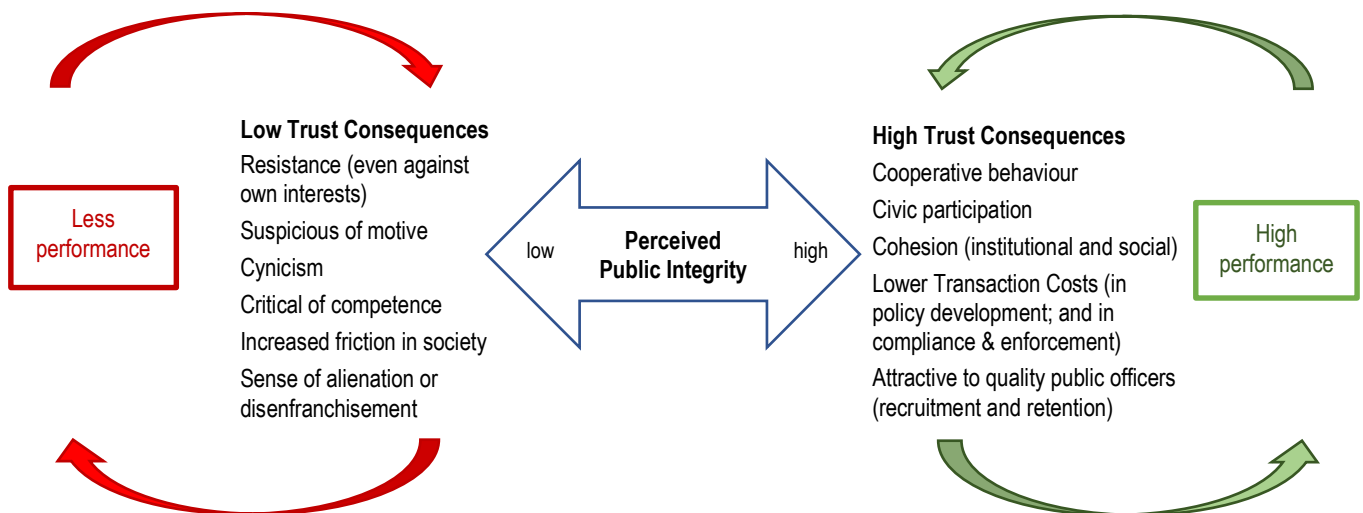
Why is institutional integrity so important for any public institution? Institutional integrity is valuable for its own sake. It reflects how an institution can best live up to its own legitimate values.<sup>8</sup> Institutional integrity can also be expected to have a similar empirical relationship with positive social outcomes like welfare, rule of law, effectiveness, as ‘quality of government’.<sup>9</sup> However, in pursuing a 2030 ambition of being ‘trusted and respected,’ institutional integrity is important because it is the key driver of public trust within the APS’ own control.

### 3.1 The impacts of public trust on public sector performance

Reasonable scepticism of government institutions is generally regarded as an element of a healthy democracy, but when 'mistrust is high and generalised, it is harmful'.<sup>10</sup>

There are 'social good' consequences for high functioning trust. This includes the higher-level performance that the public service can achieve, which promotes more trust.<sup>11</sup> However, a 'vicious cycle of distrust' can separate bureaucrats from citizens, increase friction in society, produce suspicion of government motives, and resistance to government, even when it is against the citizen's own interests.<sup>12</sup>

**Figure 1: Public integrity, performance and the trust consequences**



[Figure description in the Appendix](#)

### 3.2 The external lens on trustworthiness

Trust requires more than being trustworthy. Public trust levels are highly conceptualised and subject to exogenous influences, often beyond the current control of any particular public institution.

History matters. Grievous historical breaches of trust by government, gross failures of institutional historical consciousness, or repeated failures to include minorities in making public policy<sup>13</sup> filter perceptions of trustworthiness. More broadly, a reputation for untruths and half-truths ('fake news' and 'spin'), or gaming of transparency reforms through freedom of information or estimates committee responses,<sup>14</sup> or overused claims of commercial-in-confidence, also lead to public cynicism. One submission to the APS Review argued for a Citizen's Charter to protect the community's right for the public service to serve the public and not merely the government of the day which suggests a lack of trust in alignment of the public interest with the interests of the government of the day.<sup>15</sup>

The citizen's lens also sees the relative power and stakes involved. The greater the power differential, the more reason one has to distrust it. Research suggests that there is more than an intuitive correlation between levels of trust and income, with trust depending on the system's capacity to improve their wealth. There are also distorting or enabling influences in determining trustworthiness, such as analytical capabilities and experience, tone and language (e.g. the economic rationalist accents of 'economy' vs 'society', 'efficiency' over 'fair' and 'just'). Integrity failures of non-APS Commonwealth institutions such as key regulatory institutions can be just as damaging to public trust, even with the technical jurisdictional boundaries of the *Public Service Act 1999*.<sup>16</sup> Similarly, the

difficulties in distinguishing political and institutional trust colour the reputation and effectiveness of the APS. At the political level, for example, public trust is also determined by partisanship, national pride, and interest in politics.<sup>17</sup>

### 3.3 Integrity: the key driver of trust within APS control

However, while many exogenous factors affecting public trust lie outside of APS control, institutional integrity does not. Purpose, legitimacy, fulfilling commitments, and robustness of performance are key determinants of trust that it can effect.

#### Purpose: delivers performance

Pursuing clear shared purposes to the best of an institution's abilities drives institutional 'performance' understood as delivering on stated outcomes. It is widely acknowledged that performance, so understood, is a key determinant of public trust.<sup>18</sup> Thus, an emphasis on performance will always be important in addressing a trust deficit.<sup>19</sup>

However, while performance is important, the evidence indicates that trust in public institutions ultimately depends more on 'process' than performance, particularly for civil services.<sup>20</sup> This is not merely because people expect and value process from government, but also because they often lack the desire, access or capacity to judge government outcomes. As Hibbing and Thiess-Morse note, in their extensive analysis of American citizens' assessment of government, 'many people have vague policy preferences [but] crystal-clear process perceptions.'<sup>21</sup>

#### Legitimacy: the 'process values' driving trust

The term 'process' captures a range of overlapping legitimacy values that relate to public trust. Research has independently linked each of the following values to the level of public trust:

- a) Trust is driven by the assurance that the government will enforce and implement law against all citizens. No one wants to be the 'sucker' following a law if they cannot be confident the government will not enforce it against others.<sup>22</sup>
- b) Trust is driven by 'impartiality', understood as independence, neutrality and the absence of bias when exercising discretion.<sup>23</sup>
- c) Trust is driven by clear standardisation, consistency and merit-based decisions.<sup>24</sup>
- d) Trust is driven by citizen participation. This involves citizens in policy process and facilitates an understanding of the give and take of compromise.<sup>25</sup>
- e) Trust is associated with perceptions of procedural fairness.<sup>26</sup>
- f) People will be more inclined to trust public actors, if they perceive those public actors to trust them.<sup>27</sup>

#### Commitments: Being a Trusted Partner

Public institutions need to be trusted not only by the general public but also by their employees and those they partner with every day when running government: contractors, business, civil society, and other governments and organisations. In this context, trust is determined less by the general features of performance and policy, and more by whether they can be relied upon to fulfil the specific commitments they have with each actor.<sup>28</sup>

#### Robustness: Accountability Mechanisms

The key feature of robustness is accountability mechanisms. However, such mechanisms do not always improve trust. This is because sometimes they reveal just how untrustworthy an institution might be. Accountability mechanisms can also be misused or counter-productive.<sup>29</sup> However, accountability mechanisms are a necessary feature for trust in government over the long run. Their effective vigilance incentivises public institutions to live up to both performance, process values and commitments, and validates (dis)trust perceptions.

## ELEMENTS OF A RECOMMENDED INTEGRITY REGIME

Given the meaning of institutional integrity and its importance as the key elements driving trust within an institution's own control, how might the APS integrity regime be improved for 2030?

In this second part, we make recommendations in four areas: first, the APS Values and Duties; secondly, embedding values through culture and practice; thirdly, the supporting legislative and institutional framework; and finally, in advancing an internal understanding of external factors.

### 4 APS Values and Duties

#### 4.1 APS Values

The current APS Values reflect an APS already well advanced, and aiming towards institutional integrity.<sup>30</sup> The APS Values apply explicitly to the APS as an institution rather than to individuals, and they also drive forward the four key qualities of institutional integrity.

For example, in the current APS Values, **purpose** is advanced by 'leadership,' being 'innovative,' 'professional,' and 'efficient'; **legitimacy** is advanced by being 'objective,' 'impartial,' 'apolitical' and 'evidence-based';<sup>31</sup> the keeping of **commitments** is advanced by 'trustworthiness,' 'professionalism,' and 'collaboration' that ensures commitments given by a part of the APS are internally consistent across the institution; and **robustness** is advanced by openness and accountability.

**Proposal:** Building on these strong foundations, we suggest that the following (bolded) amendments to the APS Values will consolidate the pursuit of institutional integrity.

*Committed to service* (1) The APS **demonstrates leadership**, is professional, objective, innovative and efficient, and works collaboratively to **achieve the purposes set by Government to serve the Australian Community**.

Leadership is currently classified under Value (2) 'Ethical' when it is more appropriately seen as an approach to service. Furthermore, we recommend stressing the purposive nature of APS activity. This incorporates a value that is already central to the PGPA, but missing from the current APS Values.<sup>32</sup> It should also be stressed that it is the government of the day that sets those purposes, and thus interprets what would be the 'best results for the Australian community.' This confirms that it is not for the APS to unilaterally determine what is in the best interests of the Australian people.<sup>33</sup>

*Trustworthy* (2) The APS **keeps its commitments, is honest and reliable**.

Value (2) is currently labelled 'Ethical' instead of 'Trustworthy,' and includes 'integrity' as a component. However, the APS Values as a whole define what is 'ethical' for the APS, and these values are part of what secures the overall 'integrity' of the APS. Instead, we recommend stressing the crucial value of being trustworthy.<sup>34</sup>

*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 **appoints officers based on merit**, is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Leaving Values (3) and (4) as they are, we do recommend returning 'merit' to the APS Values in Value (5). 'Merit' is currently treated only as an employment principle, suggesting that its significance only lies in securing fairness between employees. However, the merit principle is a core component of overall APS institutional integrity for two reasons. First, the primary purpose of the merit principle historically was not fairness, but to preclude the institutionally corrupting practices of nepotism, patronage, and other instrumental uses of office, and to ensure that the institution makes best use of its talent. As such, the operation of the merit principle in public institutions has been shown to drive public trust in their integrity.<sup>35</sup> Secondly, research demonstrates that perceptions of unfairness amongst employees from a failure to apply the merit principle leads to greater integrity violations by those employees.<sup>36</sup>

**Stewardship (6) The APS is supported by the stewardship of its employees, who are collectively responsible for its integrity.**

Most importantly, we recommend the incorporation of a new value of 'stewardship' (or 'trusteeship').<sup>37</sup> The ANAO long heralded stewardship as an important value of public sector governance. However, it was generally cast only as a responsibility of senior leaders.<sup>38</sup> We recommend that it now be cast as a more distributed and institutional value (although as with promoting all such values, leaders must play an outsized role). Such a distributed value draws attention to the responsibility that all public officials have for the integrity of the institution that is entrusted to them.<sup>39</sup> No bright line can be drawn between any individual public officer's integrity and the rest of her institution, as 'the standard you walk past, is the standard you accept.'<sup>40</sup> Every individual integrity failure, is a collective failure since the social norms of the group were insufficient to restrain, motivate, incentivise, select, and/or invigilate the individual. However, it also recognises that far from being the greatest risk to promoting institutional integrity, public officers are also its greatest asset, and should be deployed as such.<sup>41</sup> The stewardship value also needs to be supported by the institution, through adequate systems for employee feedback, reporting misconduct by others, and whistleblowing.<sup>42</sup>

Finally, in order to consolidate the full APS embrace of institutional integrity we recommend that the APS adopt a formal definition of integrity, such as that provided above,<sup>43</sup> either in the preamble to its values or at least within its explanatory materials. There is currently no clear definition of 'integrity' within APS materials, and such a definition would facilitate in practice the interpretation and balancing of the operational APS Values.

## 4.2 PSA and PGPA Duties

The current PSA Code of Conduct and PGPA General Duties are already well geared towards institutional integrity. Naturally since most are 'minimum standards,' they are orientated towards promoting **legitimacy** (PSA sub-ss14(3)-(10), (13)), PGPA ss26). However, they also reflect responsibility for collective **purposiveness** (PGPA ss(15), (17), (26)), keeping **commitments** (PSA sub-s 13(1), (2), (1)) and **robustness** (PGPA ss(16), (19), (29)).

Our primary recommendations<sup>44</sup> are that two new Code of Conduct duties are included as sub-sections within s13 of the PSA to crystallise institutional integrity: first, to emphasise collective responsibility for delivering on commitments; and secondly, to emphasise the implications of stewardship:

- (X) An APS employee must work collaboratively to ensure that the APS can be relied upon to fulfil its commitments.
- (Y) An APS employee must either act, if it is within the proper scope of their own responsibilities to address evidence of breaches of the APS Code of Conduct and risks to APS integrity, or report them to an appropriate officer who can.



## 5 Culture and practice of public integrity

### 5.1 Embedding Culture

The hardest challenge for any institution is to embed the aim of its integrity regime amongst its employees to ensure it is understood, valued and practised.

The gap between stated integrity values and real-life practice is a recurring problem across both public and private sectors.<sup>45</sup> High-level 'institutional integrity'-like governance ambitions often trickle down into a minimalist, compliance based, 'tick-the-box' mentality on the shop floor, where actual norms diverge from stated values that are not taken seriously.<sup>46</sup>

Given this challenge, the current APS approach to embedding integrity, in comparison with other jurisdictions, is sophisticated and advanced, with some evidence of results. However, there is room for improvement across three areas: assessing performance, specific instruments, and risk-driven strategy.

#### 5.1.1 Assessing performance

##### **An annual comprehensive integrity review to integrate external assessment**

###### *Current situation*

The APSC publishes the *State of the Service Report (SOSR)* every year. In the SOSR, integrity and APS Values have had varying degrees of prominence, and twice over the past decade were absent entirely.<sup>47</sup> While the integrity section of the SOSR depends almost exclusively on limited (yet valuable) data from the employee census and agency survey, these surveys need to be situated within a broader assessment report.

###### *Proposal*

The APSC should produce an annual standalone integrity review, ensuring public confidence that integrity is always a priority.

This proposed annual integrity review should address everything from best practice case studies to policy-specific evaluation, integrity testing, audits, analysis of administrative reviews,<sup>48</sup> and the new Citizen's Survey. A standalone integrity review would address recent and high-profile problems, and assure the public about what is being done to remedy them. Further, this review would be greatly enhanced by engaging with external partners for research, and incorporating consultation.<sup>49</sup> Such a review would reflect a much more independent assessment of the current state of the APS integrity regime. No doubt, it would also provide a much more accurate reflection of the good, behind-the-scenes work already being done by agencies and the APSC.

##### **Stress testing survey data**

###### *Current situation*

Census and survey data used in the existing SOSR is mostly restricted to perceptions ('Does your supervisor act in accordance with the APS Values in his or her everyday work?'), agency self-evaluated policy implementation measures ('The agency's strategic plan and operational/business plans reflect the APS Values'), and some activity measures ('Number of employees investigated for a suspected breach of the APS Code of Conduct').

###### *Proposal*

Stress-testing is vital to confirm there is not an implementation gap between principles and practice, obscured by current reliance upon self-reporting and perceptions data.



Testing integrity outcomes is both notoriously difficult and resource-intensive.<sup>50</sup> However, we recommend that the APS test the quality of its survey data *via* limited, targeted, outcome assessment, which is then cross-checked with APS survey results. For example, the APS might reprise the 2008-09 testing of actual employee knowledge of the APS Values, and check it against self-reported knowledge.<sup>51</sup> Deployment of a sophisticated qualitative, integrity-measurement model like the Corporate Ethics Virtue Model<sup>52</sup> could be checked against self-reported perceptions of peer APS Value compliance.<sup>53</sup>

## Setting performance targets

### *Current situation*

Even against the current, limited survey-focused assessment, performance targets are absent (at least publicly). As such, it is unclear what the APS considers 'good' or 'sufficient' performance in a range of areas. For example, for a number of years the SOSR has reported relatively lower-levels of trust in SES Leadership and lower perceptions that they practise APS values when compared to supervisors and peers. Does the APS consider this a problem? Is addressing it a priority? What would be a sufficient level? Similarly, while over 90% of employees report that their supervisor acts in accordance APS Values 'Always/Often,' is 'often' really good enough to be treated in the same category as 'always'? Why? Finally, is 4.6% of APS employees witnessing corruption an acceptable result, or not?<sup>54</sup>

### *Proposal*

A broader annual assessment of the APS integrity regime should be set against clear, well-reasoned performance targets.

Performance targets would help the APS prioritise areas for action and hold the effectiveness of such action to account. They would also demonstrate clear internal thinking about what actually does constitute 'good' performance. Nobody expects perfect, but high standards must be defined.

## 5.1.2 Policy instruments

### Ethical leadership

#### *Current situation*

While ethical leadership is the most effective instrument for embedding integrity, poor leadership is one of its greatest threats.<sup>55</sup> 'Ethical leadership' is defined as manifesting integrity through personal decision-making processes and behaviour (being 'the moral person'), and promoting such decision-making processes and behaviour in others through role modelling, reinforcement, communication about integrity, and empowerment (being 'the moral manager').<sup>56</sup> Ethical leadership reduces unethical behaviour in followers,<sup>57</sup> raises their moral awareness and judgement, and 'fosters dedication, optimism, initiative, extra effort, altruism, better work attitudes and willingness of followers to help others with work-related problems.'<sup>58</sup>

Current practices demonstrate that ethical leadership is valued by the APS.<sup>59</sup> Integrity is a criterion in SES recruitment, and is overseen by the Commissioner. Optional leadership development programs in the APS tend to involve some ethical dimension. Over 80% of agencies report incorporating 'modelling APS Values' as part of leader performance assessment. While noting general data concerns above, the current census does provide evidence of good levels of 'ethical leadership' across the APS, as reported by subordinates.<sup>60</sup>

### *Proposal*

Given the proven and critical importance of ethical leadership we recommend further investment, and propose the following steps:

1. Ethical leadership should be a focus of any comprehensive integrity regime assessment. This ensures that current confidence in the level of ethical leadership is not unwarranted.
2. The APSC should take the lead on developing and embedding best practices on assessing, recruiting and promoting ethical leaders within agencies.
3. Mandatory, standalone training on integrity is necessary for those aspiring to senior leadership, especially for agency leaders for whom there is currently no specific training. Many of the most difficult integrity issues come to a head at the very top of agencies, and a special course developed in conjunction with and, perhaps, run by past agency leadership might achieve a compelling combination of principles, practice, and role-modelling. This could be combined with a mentoring programme.

## **Ethics education, training, awareness, and discourse**

### *Current situation*

Ethics are currently devolved to agencies, and it is hard to discern the depth and quality of such activities from public data. The SOSR indicates that over 15% of APS employees do not have training about APS Values in their on-boarding, nor other learning and development activities. Further, it is likely that many other agencies are simply flagging the APS Values in advertisements or induction as sufficient. Commendably, in 2006 the then Department of Immigration and Citizenship established the *Immigration Dilemmas: Ethics, APS Values and Leadership* (IDEAL) program. However, it is not clear if it continues, was evaluated, or spawned any similar programs amongst other agencies.

The APSC does provide optional, general training on ethics and integrity (although it is not advertised on its website). This training focuses on teaching knowledge of the APS Values and responsibilities, rather than more participatory and discursive dilemma training. Unfortunately, there is little evidence that such training or 'light touch' awareness efforts have any effect on integrity performance.<sup>61</sup>

### *Proposal*

Ethics education, training and awareness must be extended and mandatory, and a condition for leadership progression.<sup>62</sup>

Ethics education, training and awareness must be context-sensitive, discursive, and most importantly conducted with teams. As group norms often determine individual behaviour, ideally, each employee would have a number of touchpoints on a well-planned and coordinated career-length program. For example, all integrity agencies (such as the APSC, Ombudsman, Auditor-General) could coordinate an initial induction for all new employees. The APSC could then help each agency develop and deliver a tailor made, proximal and salient, program for their own employees, such as IDEAL. The APSC could then specialise in training for ethical leadership as discussed above, as well as overall monitoring and evaluation. Alternatively, the APSC could consider partnering with an education institution to establish a more formal qualification, akin to the 'judicial colleges' in some jurisdictions.<sup>63</sup>

Finally, everyday discussion about ethics, values and integrity between employees is a sign of a healthy institution.<sup>64</sup> It would be useful to assess whether values arise in current APS discourse, and perhaps seed such discussion through the Ethics Officer Network (see below), in APS leadership, and more public-facing APSC ethics events.

## Ethics officers

### *Current situation*

An important part of the current integrity regime is the Ethics Contact Officer Network. Each agency is invited to nominate an officer, who then serves as a point of contact between the agency and the APSC, takes responsibility for dispersing best practice, and feeds emerging issues back to the APSC. It meets as a network, bi-annually.

### *Proposal*

At a minimum, we recommend the APS build upon the Ethics Contact Officer Network by making the appointment of such officers mandatory for all agencies, and providing formal training. However, the APS should also consider expanding the role of ethics officers to be akin to ‘integrity officers’ within the Dutch system.<sup>65</sup>

In the Dutch system, integrity officers sit within agencies with similar responsibilities to the Australian ethics officers. However, they also have strategic responsibility for embedding and monitoring integrity within that agency. They plan the agency’s integrity management system, coordinate its activities, and advise line management. They also report each year on performance, feeding back into the general pool of knowledge. They are seen as pivotal to the success of the Dutch system. As the APS currently devolves so much integrity management, implementation and self-assessment to agencies, it would be appropriate to have similarly empowered ‘integrity officers’ accountable for each agency’s strategy. They could either be an evolution of the current ethics officers, or a set of outposted and trained APSC officers. Such integrity officers, however, must have a level of seniority sufficient to fulfil their responsibilities.

## Integrity advice and reporting

### *Current situation*

There are multiple lines of advice and reporting within the APS. There are services for whistleblowing (described below), but also for harassment, ethical advice, employment issues, complaint, counselling, and so on. There are good reasons for the division of labour, and the centralisation and devolution of different services. However, for any employee, let alone other actors engaging with the APS, such complexity is liable to be confusing – particularly when their own issues might not fit neatly in any one box.

It is also common, in public agencies, that peer-reporting of integrity failures is much lower than measured peer-awareness of such failures.<sup>66</sup> This was a point of concern for the APSC over a decade ago, although it appears to have lost prominence.<sup>67</sup> The phenomenon suggests a failure to fulfil mandatory reporting responsibilities, and a general failure of distributed stewardship.

### *Proposal*

The APS creates a central portal for advice and reporting on integrity-related issues. This means actors who have any issues can go to one place and are appropriately directed to the right line of support.

The central portal should also catalyse greater behind-the-scenes coordination, integration and information sharing across such services. This will make it easier to analyse trends, and assess the system’s performance. In particular, work should be done to understand what drives contact with such services, and particularly reporting.

This data can help justify creative policy responses. For example, one major factor leading to under-reporting is that potential peer reporters are concerned about the punitive consequences for the peer violator.<sup>68</sup> If this is also borne out by its own data, the APS could consider a principle by which peer reporting is actually taken as a mitigating factor in determining any future sanction for the violator. In this way, peer reporting improves the outcome for the violator compared to being discovered by other means, validates the importance of stewardship, and prioritises promoting institutional integrity over individualised sanctions.<sup>69</sup>

## Whistleblowing

### *Proposal*

Current Australian whistleblowing arrangements rank high internationally.<sup>70</sup> However, challenges remain, and we propose the following:

1. Whistleblower protections should be extended to cover wrongdoing by members of parliament, ministerial staff or the judiciary, like most State jurisdictions.
2. A 'one-stop shop', or gateway central agency to support whistleblowers should be established.<sup>71</sup> This could also substitute for the Australian Federal Police and/or the courts as the first place to report reprisal.<sup>72</sup>
3. Public sector whistleblowing protections should be extended to cover private sector actors in contracting out arrangements.<sup>73</sup>

The key risk for the APS is complacency in its whistleblowing arrangements. In translating the theoretical intentions of the legislation into practical norms for the APS, the next steps should include ongoing evaluation of implementation;<sup>74</sup> assessment against international leading practices and principles;<sup>75</sup> and then further development of the legislative and policy framework<sup>76</sup> (including due examination of proposals and changes that limit scope and effect).<sup>77</sup>

## Incorporating Behavioural Science

### *Proposal*

The APS needs to not only incorporate the insights of modern behavioural science but develop processes to constantly innovate in response to emerging research.

Modern behavioural science offers a wealth of discrete insights about how to address bias, moral balancing, reference points, temptation and self-control, commitments, moral reminders, and so on.<sup>78</sup> The APSC should engage with such research, develop salient reform proposals, and assist departments with implementation. It should also consider trialling creative strategies that use space, storytelling and symbolism.<sup>79</sup>

### 5.1.3 Risk-driven strategy

Integrity 'violations' track a variety of indicators: high levels of sickness absence, austerity, low pay, downsizing, and low levels of diversity. Agencies or teams that are geographically isolated from the centre are more-likely to develop unhealthy sub-cultures. Integrity violations also track agencies pushing greater entrepreneurship.<sup>80</sup>

### **Proposal**

The APS should complement the wide scope, general measures described above, with more targeted and intensive measures to respond to such risks, or markers of risk.

This requires first leveraging its own data to build its own tools for risk assessment. For example, the APS may investigate whether the spike in employees investigated for breach of APS conduct in 2016 correlated with particular conditions. Secondly, the APSC should help agencies deploy such risk tools, in accordance with the PGPA, and support their responses.

## 5.2 Specific Integrity Issues

### 5.2.1 Balancing responsive and apolitical advice

Central to the APS Values framework is the legislated obligation for the APS to be 'apolitical' and provide 'advice that is frank, honest, timely and based on the best available evidence'.<sup>81</sup> This APS Value is described as being

'impartial' by the APS Commissioner and as requiring the APS to understand the 'needs of the Government' in providing full, fearless and frank advice which 'takes account of the context in which policy needs to be implemented' and the 'broader policy directions set by Government'.<sup>82</sup>

Additionally, in being 'committed to service',<sup>83</sup> the APS is required to be 'responsive to Ministers'.<sup>84</sup> Although a specific APS Value of 'responsiveness' in the 1999 legislation was removed in favour of the current formulation in 2013, the practical (or perceived) tension remains between apolitical or impartial service and being responsive to Ministers.

While the APS Value to be apolitical directly concerns the institutional integrity of the APS, these legislative amendments seeking the right provision for responsiveness were also addressing a 21<sup>st</sup> century need for public servants to be 'more creative and imaginative in developing solutions to problems' for which a more demanding public wants to hold governments to account.<sup>85</sup>

### Values under pressure

The Westminster tradition expects a non-partisan APS that provides independent advice, but which is subordinate to its ministers and subject to their lawful direction. Loyalty is owed to the legitimacy of the elected mandate and the elected decision-makers. The Westminster doctrine of ministerial responsibility holds ministers as the elected officials accountable to the parliament, and through the parliament, to the people.

The New Public Management reforms in the late 20<sup>th</sup> century focused public services on business-like performance outcomes responsive to the needs of the customer, relevantly ministers. The demand for this responsiveness was heightened by the political pressures of a 24/7 news and social media environment, and arguably has accelerated since with the disruption of 'short-termism' in government. Across the comparable traditions and experiences of Canada, UK, New Zealand and Australia, a 'New Political Governance'<sup>86</sup> was described in the last decade, where the enthusiasm for responsiveness is said to lead to a politicised public service.

Even a perceived politicised public service strikes at the heart of APS legitimacy. Legitimacy is one of the qualities key to institutional integrity and drives public trust.<sup>87</sup>

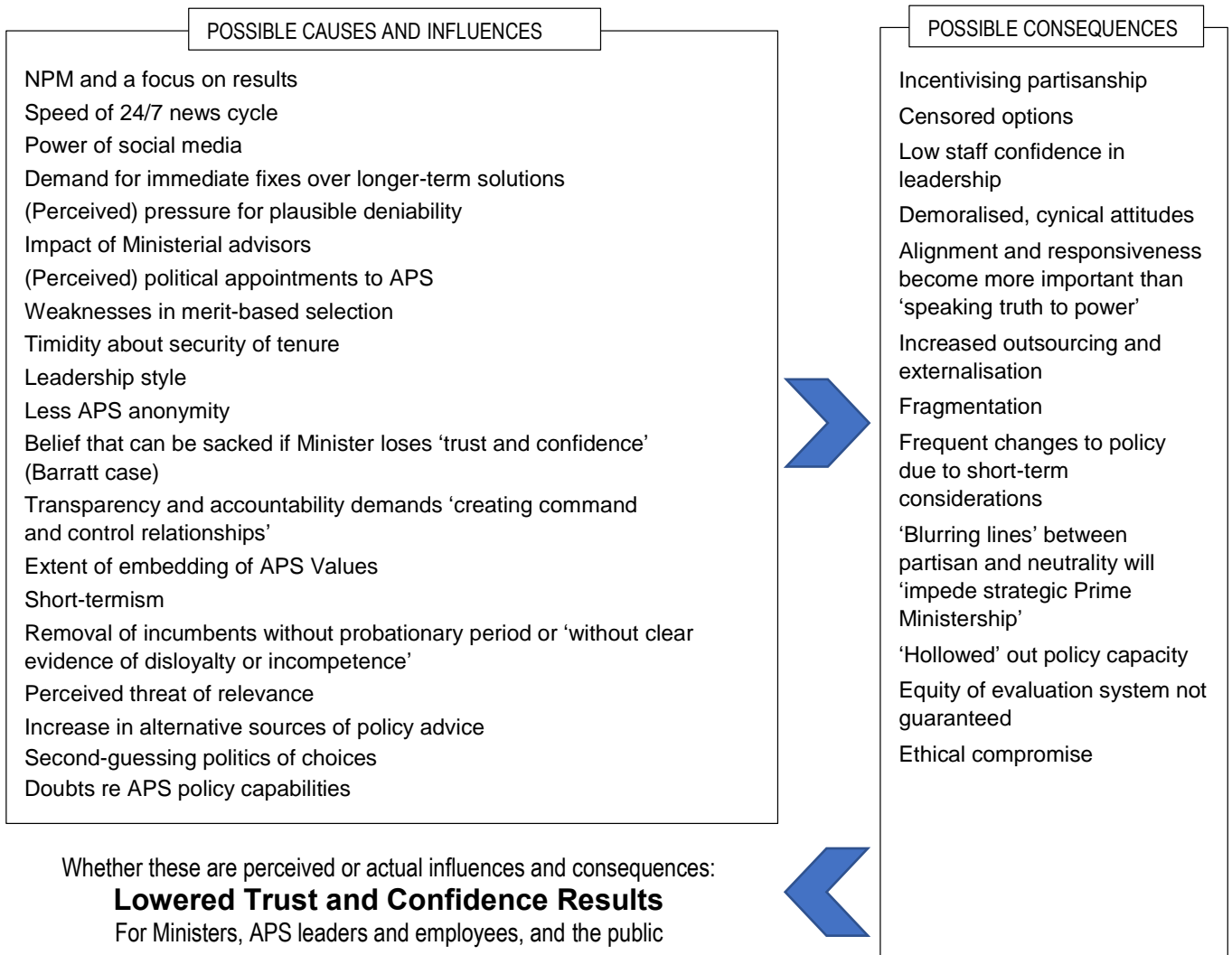
A new understanding beyond the Westminster model needs to be brokered.

The resilience of the Westminster tradition in Australia in safeguarding the APS Value of impartiality has been the subject of much debate. Some former secretaries have claimed no difficulty in giving full and frank advice (although courage is needed when due process necessarily gives no alternative options).<sup>88</sup> Others have reported that the line between independence and responsiveness has been crossed by public servants, and that at times public servants have felt under pressure to tailor advice to further government's political interests.<sup>89</sup>

The Community and Public Sector Union (CPSU) submitted to the APS Review that three-quarters of members they surveyed believed that the APS 'did not have a culture and practice of delivering frank and fearless advice to government' and further, that labour hire workers were less inclined to speak up.<sup>90</sup> An anonymous submission to the APS Review cited ministerial office pressures to present policy advice in a particular way.<sup>91</sup> Mainstream media variously has described APS leaders as 'flunkeys', 'lackies', 'stooges', 'struck dumb' and 'neutered'.<sup>92</sup>

**Figure 2** summarises the possible causes and influences that put strain on public integrity for the APS, as well as their possible impacts. Understanding the sources of these pressure points will contextualise and assist future reform.

**Figure 2: Possible impediments for an impartial and responsive APS - and possible consequences**



[Figure description in the Appendix](#)

In practice, impartiality and responsiveness are not necessarily well-bounded. The key is how to weigh and resolve competing considerations to achieve balance for an apolitical and responsive service so that, for example, political awareness does not become partisan tactical advice, or impartiality does not mask 'bureaucratic myopia' or resistance to change.

We endorse explicit peer intervention and support through the Secretaries Board model to share in an understanding of the qualities of institutional integrity, calibrate ethical and values-based choices – particularly as they relate to being apolitical and responsive – and discuss strategies to embed APS Values and clarity of roles. In building stewardship capability, we recommend that the APS introduce professional development specifically for undertaking the roles as secretaries, as well as the essential qualities and distinctions required for leadership and integrity in the public sector compared with other sectors.

### Tenure and merit-based appointments

Ministers are entitled to expect their secretaries to be good performers who are responsive to government needs. This competency is required by the legislation. However, the legislation does not protect secretaries from capricious or arbitrary dismissal which risks incentivising partisanship or timidity.

Merit-based appointments are integral for institutional integrity.<sup>93</sup> Also for frank and honest advice, recent research in Canada suggests that the more public servants believe that merit recruitment is high, the less they fear reprisal for expressing a dissenting opinion to their superiors.<sup>94</sup>

We recommend that merit-based recruitment and selection of APS leaders include the following measures to discern quality and apolitical candidature selection:

- A prescribed waiting period after any employment in ministerial office<sup>95</sup> (federal or state) to improve public perceptions and confidence in apolitical candidates.
- The appropriate involvement of external stakeholders (such as business and community) in the selection process, without conflict of interest compromise. This would offer both an independent perspective and a check on how 'in touch' the candidate is beyond the walls of the APS.<sup>96</sup>
- Recruitment and selection processes should explicitly involve discussions and considerations on integrity and the APS Values. Such threshold consideration in the selection process would also assist in setting and managing expectations of APS leadership.<sup>97</sup>
- A greater role for the APS Commissioner with more transparency and accountability for the selection decision, with explanation to parliament if the proposed appointment is not made with the recommendation of the APS Commissioner. The preferred model is the independence and expertise that the State Services Commissioner (NZ) brings to the appointment of chief executives under the *State Sector Act 1988* (NZ).<sup>98</sup>
- Improved security of tenure for APS leaders to a standard that is not subject to political interference. A variation of the New Zealand precedent is recommended for the APS Commissioner to recommend through the Prime Minister to the Governor-General to remove a secretary from office on the grounds of either 'just cause or excuse'. (See *State Sector Act 1988* (NZ), s 39)

### Trust and the national institutional role of the APS

Poor trust perpetuates low trust outcomes undermining APS effectiveness.<sup>99</sup> The salience of the Westminster tradition, together with the statutory responsibility of APS leadership for stewardship of the APS in its apolitical service to the Government, the Parliament and the Australian public,<sup>100</sup> posits the APS as a key national institution in Australia's parliamentary democracy.

Ultimately, government ministers decide the public interest as they are democratically elected to do so, and as constitutionally recognised in administering the departments of the state. However, the Parliament has accorded stewardship of those departments to the APS, and arguably the public expects it to be so.<sup>101</sup> 'Civil servants are the guardians of public trust underlying the exercise of all public authority.'<sup>102</sup>

#### *Restating the key institutional role of the APS*

The institution of the APS is expected to be expert and values-based. It is the principal institution experienced and authorised to engage directly with citizens and the users of government policies and programs. It has an unrivalled position therefore to hold institutional memory and offer the depth and breadth of policy advice required to best inform decisions on the public interest and policy choices. The APS is the constancy in a system where parliaments end upon dissolution for each election and governments depend on the temporal confidence of the House. The APS is therefore institutionally positioned to be the knowledge custodian of the issues pertinent to the long-term interests of the nation. In a parliamentary democracy, the APS has an enduring and fundamental role in offering an



independent, informational, analytical and experienced check on the politically expedient instincts of the government of the day and any populist pressures that may influence the exercise of public power.

This key institutional role underscores the critical public integrity imperative for the APS and its ministerial masters: to promote its capacity to consistently provide full, frank, fearless, and apolitical advice that is efficient and effective in responding to the policy directions of the elected government of the day.

Accordingly, we recommend that the APS' governing legislation<sup>103</sup> should restate the key institutional role of the APS in Australia's parliamentary democracy, explaining its service to governments of the day, parliament, and the Australian public. We also recommend that APS leadership, through the Secretaries Board model, develop and ensure organisational learning and knowledge management strategies across the sector for the effective curation of past experiences into accessible and politically neutral stores of institutional knowledge. This is also particularly important in looking forward to 2030 with the expected increased and more fluid career interchange between the public and non-public sectors for workers.

### **The reform opportunity**

Concerns about the growth in the number and role of partisan ministerial advisers, use of consultants, think tanks and other alternative sources of advice relate a perceived 'hollowing out' of the policy skills of the APS, and trust in their capacity to advise, which justifies in turn greater use of non-APS sources. As in any competitive market, multiple policy advice sources to ministers should provide contestability and drive quality in the APS product. However, as we approach 2030, this needs better management to maximise the APS' institutional value in the system.

Whether the APS chooses to address criticism of quality by developing specialist policy hubs within the sector, for example, is a structural response to performance that can be informed by historical models of varying successes. Policy coordination models would want to avoid creating a 'coordinators' layer of red tape. Or, structuring for a critical mass of expertise of 'do-ers' may later transition back into the contemporary devolved model of public sector administration. While delivering on performance is a key determinant of public trust (and concerns integrity's quality of 'purpose'), according to the evidence, the value of process in that performance counts more for public trust.<sup>104</sup>

#### *Rethinking outsourcing policy advice*

The real reform opportunity looking ahead to 2030 is not to decry the outsourcing of policy advice, but to re-frame, define and embrace it as a legitimate performance process when it can act as a pressure valve in the system on the occasions when ministers seek advice that compromises the impartiality or non-partisanship of the APS.<sup>105</sup>

This would reframe ministers' relationships with the APS by normalising access to a wide and flexible range of non-APS advice sources in circumstances that would otherwise compromise the APS Value for impartiality and undermine public trust and confidence in the institutional integrity and role of the APS. This dual-advice process (the independence of advice of the APS and the politically responsive advice) activates when necessary to maintain public trust and confidence in the APS, while still meeting the needs of ministers. Also, this dual-advice process would facilitate a contest of ideas in a legitimate policy advice system. This is not quite the US system with an institutional structure to stream its supply of neutral and political advice, nor even the Dutch, Belgian or Austrian policy advice systems that have long included multiple sources of advice through neo-corporatist structures.<sup>106</sup> In 2030, these non-APS providers of politically responsive advice would not be an alternative structure, nor recurring costs like a larger Ministerial staff, but a fluid and flexible network of providers who are engaged as needed.

That is not to suggest that the consultants or specialists in the non-public sector are partisan or politically-motivated. However unlike the APS, their commercial or organisational values may not preclude providing advice specifically, and contractually bounded, by the politically-interested purpose or scope of a brief. In further support of the policy advice system, there should be corresponding codes of conduct for ministers and ministerial staff that



properly explain and guide their roles and responsibilities, as well as their interactions with the APS as a national values-based institution.

Expecting ministers to outsource their requests for overly-responsive advice that compromises APS Values is intended to sustain the APS as the provider of expert, independent advice informed by long-range purpose that only its institutional position in the system can support. Reform provision should ensure that the APS remains always as one of the advisors to ministers in all portfolio matters, so that it retains access to its role in providing the independent and respected apolitical view. This ongoing seat at the policy table would include the APS providing its independent comment on the merits of the outsourced advice. Such inclusion of the APS is in the public interest as it performs its key institutional role described above to serve the government of the day, parliament and the public. Conversely, it would not be in the public interest (nor publicly defensible) to exclude the independent advice of the APS from public policy decision-making processes.

Any perceived pressure on the APS not to be full and frank, to oblige ministers in avoiding transparency under FOI or other mechanisms, would be irrelevant under this proposal, as the minister is not politically motivated to require its one source to argue or evidence its decision because there would be more than one source if required.

It could be more a case of 'let the contest of ideas win'. As a former New Zealand Prime Minister commented (on the trailblazing and proactive release of Cabinet papers and their supporting research and evidence once decisions have been made, and his preference for written advice notwithstanding FOI): 'It really shouldn't be a big story when ministers and officials disagree – that's the system working'.<sup>107</sup> New Zealand's progressive approach to transparency would assist its ranking as the second least corrupt country in the world.<sup>108</sup> Indeed, the OECD has found that transparency in policy-making correlates positively with trust in politicians<sup>109</sup> and, it might be concluded, in the public service.

### 5.2.2 Avoiding policy and regulatory capture

Designing and implementing public policy and regulations distributes costs and benefits. Stakeholders are interested to affect these 'rules of the game' to influence who wins and who loses.

The public interest in democracies is served by 'transparent, balanced and fair competition of interests' in public decision-making. However, policy or regulatory 'capture' is where there has been 'undue influence of vested interests' in public-decision-making. 'Rent seeking' is obtaining benefits (rents) without contributing to new wealth (such as through production or innovation). This 'monetising of networks' is detrimental to economic growth, worsens social inequalities, and reduces public revenue. In decreasing democratic governance, capture fails policy goals to address problems, because of the undue influence of narrow interests.<sup>110</sup>

By definition, capture is not in the public interest. Public perception of those in power favouring, or being captured by 'elites' erodes public trust, as well as governments' credibility and legitimacy.

Across OECD countries, there is mounting evidence of capture by powerful interests in public procurement, trade, taxes and customs policies, as well as regulation of telecommunications, energy, transport and water. These can be characterised by relatively strong market failures. Also, 'competition authorities and regulatory agencies are a natural target for capture'.<sup>111</sup> An Australian leadership perspective reports that 'responding to the shrill voices of sectoral interests too often gets in the way of long-term policy development in the national interest...The biggest tension between politicians and their public servant advisers revolves around this issue'.<sup>112</sup>

Capture by networks of friends and influences also risks 'grey gifts' of power (which is exercise of discretion to give value, favour or opportunity to a related person and which may or may not lead to monetary benefit, such as fast-tracking an application). Other significant risks of capture are closed industry networks, or the ever-increasing competition for talent between the private and public sectors leading to 'revolving doors' between regulated industry and the regulator or relevant policy agency. Risks of conflicts of interests are higher where the field has

technical complexity, opacity, asymmetric information, unchecked discretion, opportunity plus ability, and capacity.<sup>113</sup>

### Managing post-employment potential conflicts

While there are institutional benefits in career interchange and diversity, how the conflicts of interest are managed will be key for public integrity.

*Cooling off periods:* In Australia, the APS post-employment rules in the code of conduct require disclosure and appropriate management of the conflict of interest at the agency head's discretion.<sup>114</sup> Agency heads may also include contractual provisions for employment with successful tenderers to restrict employment of APS employees,<sup>115</sup> and may decide through agency policy whether a cooling off period is appropriate. Cooling off periods of one year (five years for lobbying) apply in Canada, and five years for cooling off for Germany. In the UK, most senior officers must seek permission before they can take up business appointments<sup>116</sup> (although it is understood that the advice is sometimes ignored). France, Canada, Italy and Spain have dedicated integrity bodies for post-employment consideration.

*APSC involvement:* We recommend that agency heads consult with the APS Commissioner for an independent, expert check to decide how to manage potential post-employment conflicts of interest. The APSC could also assist agencies to prepare integrity risk maps and frameworks for curbing vulnerabilities to support better agency decision-making, with options such as providing focused examples of unacceptable conduct and relationships for groups working in high-risk areas.<sup>117</sup>

### Mitigating grey corruption

'The red lines are painted thick and clear', but the 'value of codification is limited when dealing with complex issues'<sup>118</sup> and conflicts of interests.<sup>119</sup> Strategies for mitigating grey corruption from the risks of capture begin with:

- Public institutional integrity that invests in integrity leadership;
- Promoting a merit-based professional public sector to avoid cultures of favouritism and nepotism;
- Supporting an open culture that has ethical conversations, role-modelling and regular ethical education opportunities;
- Encouraging reporting;
- Providing effective whistleblower protection; and
- Developing ethical corporate strategies (e.g. how to establish reciprocal relationships with outside interest groups; strategies to separate or rotate functions; or strategies to 'disrupt coordination'<sup>120</sup> by including outside, unconnected experts to assist decision-making).

*Other approaches:* Compliance audits alone will not detect capture through legal means, although performance and impact evaluations might indicate the presence of capture, and recommend more effective control environments and conflict of interest management.<sup>121</sup> Integrity audits can also 'strengthen the coherence and harmonisation' of responses to integrity risks. The extent to which audit functions have adopted dedicated integrity objectives in their mandates or strategies could be considered.<sup>122</sup> Other strategies include measures to increase fair competition; ensuring rigorous analysis and encouragement of open accessible debate of all policy choices with a cost-benefit analysis wherever possible; and critically, to increase transparency of all relevant processes and considerations. Information can be used as a 'substitute for wealth'<sup>123</sup> for the poor and unconnected. The Information Commissioner could assist agencies in advising on greater publication of information while balancing privacy interests (e.g. publishing meeting diaries).

*Institutional support:* We also recommend institutional support from the integrity system (as recommended in Section 6, below) for preventing and discovering the 'grey' area of corruption. A pro-integrity institution could oversee, and assist agencies to plan for and deal with potential risks. Administration of the Lobbyists' Register and

the Foreign Influence Transparency Scheme would be consistent with the pro-integrity body's role, and a broad-based anti-corruption body would investigate and expose corruption.

## 6 Legislative and institutional framework

### 6.1 Mapping integrity

The APS integrity system and the commonwealth public sector agencies it sits within is a complex framework that requires explanation.

The APS integrity system,<sup>124</sup> has a 'multi-agency' approach, generally considered a strength in itself,<sup>125</sup> with agencies responsible for standards and oversight,<sup>126</sup> judicial and administrative review,<sup>127</sup> detection and investigation,<sup>128</sup> prosecution,<sup>129</sup> and international cooperation.<sup>130</sup>

The APS integrity system sits within the broader system that promotes the integrity of all commonwealth public sector agencies. The first National Integrity System Assessment (NISA) in 2005,<sup>131</sup> found this broader system to have the following strengths: financial management arrangements, in particular fraud control;<sup>132</sup> independent investigation, prosecution and judicial processes; monitoring by the Ombudsman and Auditor-General; and the active role of Senate Committees backing up statutory accountability arrangements.<sup>133</sup> It also highlighted the value of the Administrative Review Council (ARC), which has now been abolished.<sup>134</sup>

A simple, first step that the APS can take to clarify this complex framework,<sup>135</sup> reassure the public of its coherence, and create visibility, is to map it.

While a version of such a map has recently been developed in the Government's recent consultations,<sup>136</sup> we recommend that it also reflect lines of proactive support for integrity, not merely reactive lines of oversight. It should also reflect any engagement with non-governmental actors. Finally, it should include a sub-map of oversight, support, appointment, and financial control for bodies themselves to clarify 'who guards the guardians', and who finances them.

### 6.2 Drivers for a new design

Despite strengths within the current system, successive parliamentary inquiries, expert submissions, non-Government Bills introduced to the House, comprehensive external assessments by qualified and experienced non-government actors have been concerned that the overall Commonwealth integrity system is 'fragmented', 'ill-defined', 'flawed', 'inadequate' and 'uncoordinated'. There are significant accountability gaps in who and what is covered. Within the Commonwealth, there are 'wrong-door' experiences, 'bad apples' not held to account, confusion and invisibility of the system and process outside the inner expert circle of existing agencies, and learned naivety in agencies. There are missed opportunities to strengthen public integrity within even the existing framework despite the best efforts, expertise and commitment of key public servants charged with those responsibilities.

These and other gaps identified by a number of actors within the current integrity system fall into three broad categories:

1. *Leadership for pro-integrity*: There is a lack of overall leadership, supervision and coordination of proactive integrity measures, and corruption preventive measures.<sup>137</sup>
2. *Capacity for anti-corruption*: There is lack of investigatory powers, forensic ability, supported reporting methods,<sup>138</sup> and strategic invigilation of high-risk areas, like procurement,<sup>139</sup> to address threats of corruption across the whole public sector.<sup>140</sup>

3. *Integrated system-wide research:* There is a lack of system-wide data, assessment and research to identify risks, trends and responses in both promoting integrity and fighting corruption.<sup>141</sup>

Resourcing is one causal factor. Structural power and legislative frameworks are also to blame for this lack of coherence and effect. The Commonwealth has significantly lower resource allocation for anti-corruption across all jurisdictions in Australia and New Zealand.<sup>142</sup> The Commonwealth also is the only jurisdiction in Australia without a dedicated broad-based anti-corruption agency, although it has been recommended many times over the last two decades.<sup>143</sup> Non-government Bills recommending an anti-corruption body have been introduced previously. The current Bills before Parliament were introduced in November 2018.<sup>144</sup> The Government released its proposal for public consultation in December 2018.<sup>145</sup>

The APS Review is a valuable opportunity to design an integrity system that is comprehensive, fit for purpose, and informed by decades of domestic and international experiences – rather than a continuation of the ‘uncoordinated’ development and ‘political accident’<sup>146</sup> of the present arrangements.

### 6.3 A dual-institution model

Most calls for reform have been for a new agency described as an ‘integrity commission.’ However, the proposed agencies prioritise anti-corruption rather than promoting integrity. For example, the Australian Government’s current proposal for a Commonwealth Integrity Commission is ‘to detect, deter and investigate suspected corruption and to work with agencies to build their resilience to corruption and their capability to deal with corrupt misconduct’.<sup>147</sup> The purported ‘pro-integrity’ role for the proposed National Integrity Commission in a current Private Member’s Bill describes a ‘corruption prevention program’ through a National Integrity and Anti-Corruption Action Plan.<sup>148</sup> Each of the proposed Commissioner’s duties tie references of integrity to prevention of corruption.<sup>149</sup> The proposed National Integrity Commissioner’s role for training, education, advice and research is for corruption prevention.<sup>150</sup>

We propose that a 2030 pro-integrity framework needs more than a dedicated anti-corruption agency with corruption-prevention responsibilities. A new framework also needs a highly visible, pro-integrity body charged with leading the public service in ‘how to be best always’ to build up and sustain public integrity strength and resilience from its very foundations. With a much broader conceptual focus than preventing corruption, a pro-integrity mission is concerned with promoting integrity for its own sake; for the quality of public service that is purposeful, robust, legitimate and can be trusted to meet its commitments; and for improving public trust and confidence.<sup>151</sup> A well-executed pro-integrity mission will also deliver better performance outcomes.<sup>152</sup>

Our recommendation is to adopt a dual-institution model: a pro-integrity body and a new broad-based independent commission against corruption. On this model, integrity would be formalised as the primary responsibility of a statutorily independent pro-integrity body as the guardian of APS Values. Given the existing institutional framework, we recommend this new body be built upon the existing foundations of the APSC. The ‘new APSC,’ would be a significant institutional evolution. Its powers, resources and status would be enlarged to be the acknowledged leader on integrity, supervising and coordinating all other actors. A recent survey of European jurisdictions found similar ‘integrity’ bodies in the Netherlands, the European Commission, Sweden and Belgium.<sup>153</sup> By contrast, a new independent commission against corruption (with appropriate powers and resources) would create the capacity to invigilate, investigate and expose corruption. These two institutions would share infrastructure for receiving reports, and a research group where data, lessons, and insight are pooled, then directed out to influence both institutions’ actions.

#### 6.3.1 Key changes to current approaches

We recommend the legislative framework include the wisdom of many for system reform in establishing an anti-corruption agency, including entrenchment of a systematic corruption prevention framework. Research and reform

effort for an anti-corruption agency is well-advanced.<sup>154</sup> However, in proposing a dual-institutional model instead of a single integrity commission we seek to address the practical implementation difficulties experienced in recent decades by other models of integrity agencies.

A pro-integrity agency would provide the genuinely proactive complement to the reactive primary purpose of an anti-corruption investigative body. The proactive body should provide the umbrella coordination and sector-wide leadership role to help the system be greater than the sum of its constituent parts. For example: combined learning effort, shared data analytics, whole of sector risk management, identification and action on accountability gaps, with the proactive body the statutory safety net of last resort.

The proposed dual-institution model would address:

- *Instability*: Proactive support by the integrity body to agencies depends on a practical relationship that is open, cooperative, and even vulnerable. The relationship must foster a willingness to learn and be guided, rather than an instinct to be guarded and defensive due to the possible, serious, legal and reputational consequences with an investigative anti-corruption entity. This identifies a fundamental instability in an institution wanting another agency to be open and transparent within promises of confidentiality to drive forward a pro-integrity agenda, while at the same time charged with invigilating, monitoring, investigating and ultimately exposing agency actors for corruption. The first function demands a degree of trust and cooperation, while the second function invariably leads to distrust and defensiveness in an adversarial setting.<sup>155</sup> It is much more stable to split the functions.
- *Prioritising 'important'*: Decades of experience demonstrate that priority of effort and allocation of finite resources favours the 'urgent over the important', especially where performance measurement of the reactive role is easier (and more newsworthy) and typically quantitative (e.g. how many cases, took how long) than the proactive role.<sup>156</sup> Almost invariably in a number of anti-corruption jurisdictions – both nationally and internationally – preventative and pro-integrity responsibilities are underused and deprioritised and given limited resources. The urgency, measurability and prominence of corruption investigation tend to trump the important yet hard to measure, low-profile nature of integrity promotion.<sup>157</sup>
- *Referral and capacity*: The devolution principle is designed to contain budget for the independent anti-corruption body by referring matters back to agencies, to be dealt with on the premise that the agency will take responsibility for the issues and build its own future capabilities.<sup>158</sup> However this can fail expectations in practice, because the agency may perform the referred function poorly (undermining integrity outcomes) or may outsource the role (undermining the intended savings to the public purse and agency capability building). The anti-corruption body is necessarily limited by the reasons of its referral back to the agency in the first place, and its own more urgent investigative load. The proposed proactive body could provide the agency with genuine capability-building and expert consultancy to support the devolved function.
- *Conflict of interest*: Institutionally separating the proactive (consultancy and ethical guidance) role from the possibly subsequent investigative role avoids risking any perceived conflict of interest.

### 6.3.2 A New Australian Public Service Commission

#### Function and scope: First and foremost an integrity agency

Integrity has been variously prioritised by the APSC over the last 20 years. Formalising the pre-eminence of this new pro-integrity body would be a very clear, visible and strong statement that integrity lies at the very heart of government.

Further, the new APSC's other responsibilities for workforce planning, capacity building, professionalism, merit protection and general public management improvement are perfectly consistent with an institutional integrity approach which emphasises robustness and purpose, but ensures balance with legitimacy and trustworthiness. Also as noted by the New Zealand Government during recent consultations for review of the State Services Commission, 'Today's context is different from when the [NZ State Services] Commission was primarily responsible

for appointing, promoting, classifying, grading, or dismissing public servants... today is all about leadership at the system level'.<sup>159</sup> Similarly, the human resource functions of the APSC have evolved towards systemic leadership which is not inconsistent with the enlarged role of a pro-integrity body. Finally, as indicated above, it is recommended that the scope of the new APSC expand beyond the APS itself to cover the entire public sector (in parallel with the proposed anti-corruption commission).<sup>160</sup>

### **Powers and resources**

The APSC we envision primarily operates by collaborating with agencies and building trust. It mostly supports and supervises the embedding activities described above. Further, if agencies are subject to corruption-related investigations, then it provides aftercare to help rebuild an agency's positive culture. However, consistent with good regulatory design,<sup>161</sup> it is important that the new APSC have strong powers in the background to ensure other actors are motivated to stay at the table and engage proactively in these activities.

The APS Commissioner is currently invested with a range of powers. In particular, with the same investigative and compulsion powers as the Auditor General,<sup>162</sup> the Commissioner can, by their own motion: evaluate APS workforce management policies; evaluate systems and procedures for ensuring compliance with the Code of Conduct; and inquire into alleged breaches of the Code of Conduct by Agency Heads. However, consistent with the current devolved ethos of the APS, the APS Commissioner cannot by their own motion investigate other APS employees without agency head or Prime Ministerial referral. We recommend that while, agencies remain the primary forum for investigation, the Commissioner can by their own motion follow up any investigation or systems review that they think insufficient.

The biggest problem for the APS Commissioner previously, however, has been their substantive position to exercise what formal powers are available to them, if need be. First, the APSC is only partially funded directly, and must acquire other funding by providing paid courses to other agencies, at their request. This shifts power away from the APSC to set any agenda opposed by such agencies. The market for integrity is not obviously driven by its recipients. Instead, we recommend secured funding for the APSC, independently determined by Parliament.<sup>163</sup> Secondly, and perhaps as a consequence of the foregoing, the Commissioner can appear to lack standing and gravitas required amongst his or her peers. This could be ameliorated by new structures such as an additional Secretaries Board specifically tasked with improving APS public integrity and capability, chaired by the Commissioner.<sup>164</sup> Importantly, with the statutory independence of the APSC for its pro-integrity role, we also recommend the appointment of the Commissioner as an Officer of the Parliament.<sup>165</sup> This would be commensurate with the Commissioner's role as guardian of the Values of the key national institution of the APS<sup>166</sup> and consistent with its existing provision for removal where, unlike most agency heads, the Commissioner may only be removed from their five year tenure upon address by both Houses of the Parliament addressed to the Governor-General.<sup>167</sup>

Finally, to formalise the integrity leadership and coordinating role of the Commissioner, the Integrity Agencies Group should also be given an official status, ensure all relevant actors are included, and continue to be chaired by the Commissioner.<sup>168</sup>

### **Appointing the APS Commissioner**

Given his/her pivotal position within the entire APS integrity system, the appointment of the APS Commissioner should be designed for maximal independence, merit, and individual integrity. However, the current appointment process is a weakness. The Commissioner is appointed at the recommendation of the Prime Minister to the Governor-General. Appointments in this manner have already led to allegations of misconduct, controversy and partisanship, and at the apex of a system designed to address these issues.<sup>169</sup>

We recommend a statutory requirement for a bipartisan appointment process similar to that for the Auditor-General;<sup>170</sup> and an ineligibility period (e.g. 6-12 months) following service in a federal or state's Minister's office, whether in an employed or volunteer capacity.



### 6.3.3 Commonwealth Anti-Corruption Commission

#### **An anti-corruption commission as public assurance mechanism**

An independent anti-corruption commission meets the need for greater investigatory, forensic, reporting and invigilation capacity across the Commonwealth public sector. This is now common ground across a number of different advocates, including the current government.<sup>171</sup> The core argument against such a commission has always been that there is little evidence of a corruption crisis within the Commonwealth. This fits with a general view that risks of corruption generally increase further down the levels of government.<sup>172</sup>

Regardless, the objection misses the point of an anti-corruption commission. Its first and primary aim is effective vigilance. It searches for corruption. And it would fulfil its purpose, therefore, even if such searches uncover little or no corruption. This is because such searches would publicly validate the integrity of the public sector. It is this independent validation that is crucial to securing public trust. The anti-corruption commission is an assurance mechanism for the Australian public, if there is no corruption; and, also a powerful sword for reform, if there is.<sup>173</sup>

It is outside the scope of this paper to provide a comprehensive recommendation on the precise model of a Commonwealth Anti-Corruption Commission. We will simply highlight some key elements to fit within the new, overall integrity regime recommended.

#### **Defining ‘corrupt conduct’**

The Commonwealth Anti-Corruption Commission will be empowered to investigate corrupt conduct. We recommend that ‘corrupt conduct’ be construed broadly. For example, following the recommendation of the Australia Institute, legislation might state that it has ‘the ability to investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration, if the Commissioner deems the conduct to be serious or systemic.’<sup>174</sup> Such a broad definition best fits the aims of protecting institutional integrity. It allows the Anti-Corruption Commission to move beyond merely targeting individual crimes, but to also investigate more institutional issues arising from serious or systemic misconduct.

#### **Prioritising the greatest threats to integrity**

It has been recommended that an anti-corruption commission be structured in a way that prioritises investigating behaviour of public officials with access to coercive and law-enforcement powers.<sup>175</sup> While obviously important, we recommend against such prioritisation. An anti-corruption commission should prioritise the greatest threats to the integrity of the public sector. Such threats might be great because of the seniority of who is involved (ministerial corruption), or because they go to the heart of the government’s legitimacy (electoral corruption), or simply because of the scale of entrusted resources squandered (large procurement corruption). In none of these cases, however, need public officials with coercive or law-enforcement power be involved.

#### **Expanding jurisdiction beyond public officials**

If we adopt the ideal of institutional integrity put forward in this paper, then an institution can be corrupted, even if its individual officials are not. External actors can seek to systematically manipulate, defraud or compromise an institution’s integrity without any knowing involvement by public officials. Most obviously, this can arise in the context of contractors and providers to government.<sup>176</sup>

However, otherwise unrelated parties can conspire to prey upon blindspots and weaknesses in the government’s capacities to impartially exercise its powers, for example widespread, coordinated tax evasion. This very vulnerability of public institutions to such practices risks public trust. For this reason, we recommend following the view put forward by Gleeson and McClintock (with respect to the NSW Independent Commission Against Corruption) that jurisdiction for corrupt conduct expand to include such non-government actors.<sup>177</sup>

### 6.3.4 Engaging External Actors: Public accountability and building a constituency

All current models for the Commonwealth Anti-Corruption and/or Integrity Commissions recommend various forms of top-down accountability. Most plausibly, the Commissions should be overseen by a Parliamentary Committee, as well as an inspector, as used in state-based jurisdictions.<sup>178</sup> However, the Commissions' critical roles in providing assurance about government itself, these 'top-down' measures should be complemented by 'bottom-up' accountability and engagement. The Commissions could follow the Hong Kong ICAC model of a special external oversight committee (joint or separate), which includes the representatives of key academic and civil society actors.<sup>179</sup>

The Commissions also need to prioritise informing the public of their work, and committing to as high a level of transparency as possible.<sup>180</sup> In the context of the anti-corruption commission, this is one important reason for allowing public hearings.<sup>181</sup> Such engagement with public and civil society not only provides accountability, but also builds an external constituency for the Commissions. Revealing corruption, misconduct or other failures of integrity can lead to pushback by the powerful.<sup>182</sup> The support of such an external constituency that understands and values the Commissions' work is vital to their durability.<sup>183</sup>

## 6.4 A single, comprehensive *Public Integrity Act*

Coherent and visible centrepiece legislation would promote public trust and confidence in the importance and effectiveness of the public integrity framework.

However, a moderate first-stage approach would be to enlarge the current *Public Service Act 1999* to provide for the pro-integrity, APSC, with new legislation to establish the anti-corruption body. Limiting the effect of this reform to the APS might technically comply with the APS Review Panel's terms of reference but it will not address the public integrity system weaknesses in limited scope and coverage, incoherence, and invisibility. Also for a major legislative reform, this would not only be a less efficient approach to drafting but it would miss the public trust opportunity to stake a claim for significant change and a catalyst for public sector focus and priority.

Therefore, we recommend as the more effective option a single, more comprehensive *Public Integrity Act* that both replaces and enlarges the current narrowly-focused *Public Service Act*, and provides the proactive and anti-corruption bodies with broad jurisdictions.

The current APS values-based framework and code of conduct of the *Public Service Act 1999* covers only two-thirds of all Commonwealth public servants. We recommend that all those currently within jurisdiction of the *Public Governance, Performance and Accountability Act 2013* would be included, which would also enable the general duties and obligations of the PGPA<sup>184</sup> to be moved logically into the centrepiece *Public Integrity Act* with the values, principles and standards of conduct.<sup>185</sup> PSA employment matters would retain their current, more limited scope, as necessary. The balance of the PGPA would continue as supported by the *Public Integrity Act* and its purpose. The benefits of a legislative integrity and values-based framework is consistent with the PGPA's recent independent review findings for strong leadership and culture to pursue the spirit, and not merely comply with the letter of the public trust obligations.<sup>186</sup>

### Including external providers in the Act

Outsourced service providers, contractors and consultants should be included within scope, as they are paid by the public purse or are entrusted with the exercise of public authority.<sup>187</sup> The Auditor-General's 'follow the dollar' jurisdiction and Victoria's IBAC provide drafting precedent for extending such jurisdiction 'whether under contract or otherwise'.<sup>188</sup> The proactive body should offer advice and options to support agencies in suitable contract design and necessary follow-through to facilitate meaningful and effective jurisdiction beyond the contract period, if necessary for proportionate consequences.<sup>189</sup>

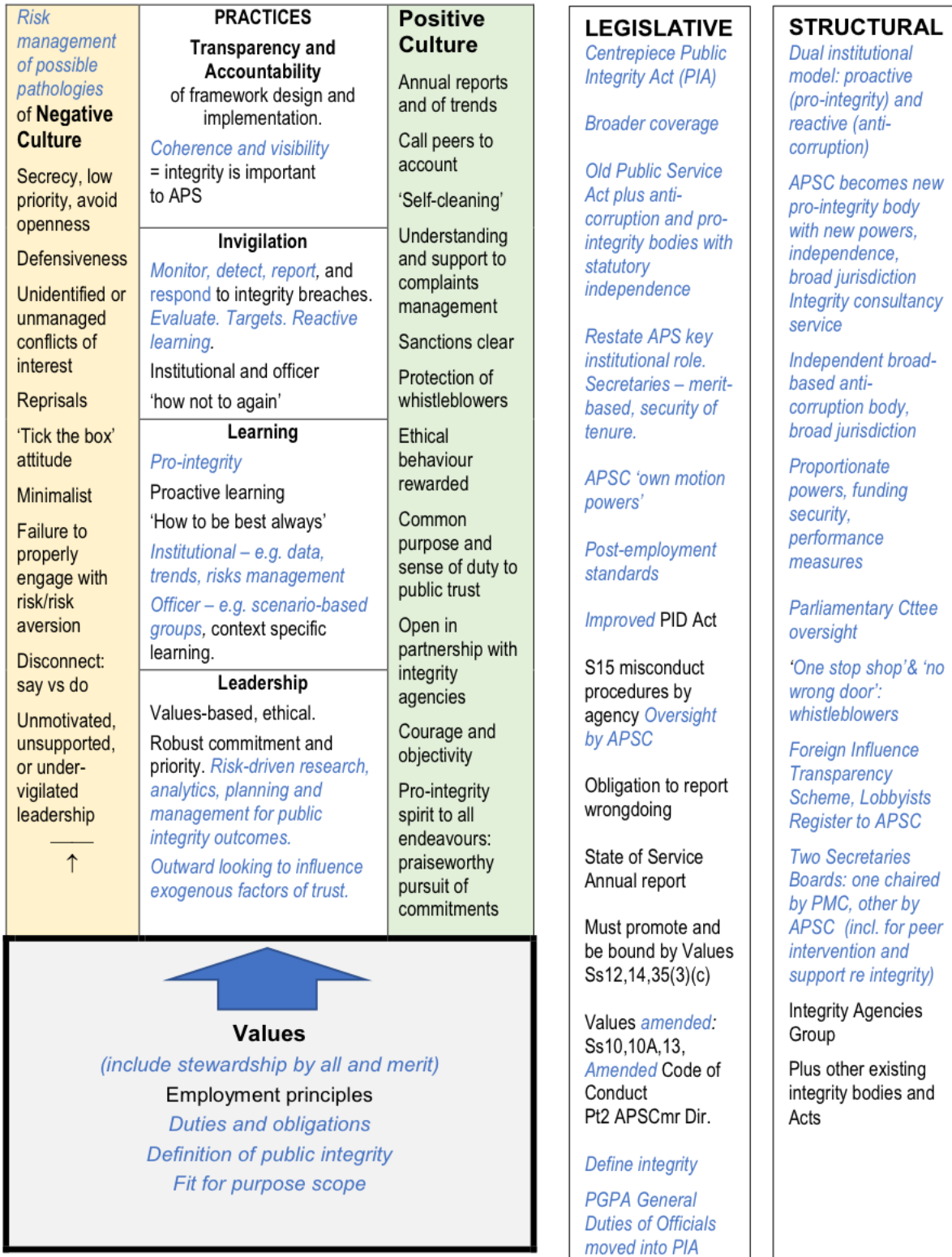


A system of integrity-relevant accreditation (like workplace health and safety assurance) may assist transparency, accountability and public sector confidence in the credentials of private providers that are consistent with expectations for public integrity. In public procurement, some countries have set criteria for bidders to show a satisfactory record of integrity ('white listing') for a clean record and implementing an ethics code.<sup>190</sup>

**Figure 3** provides a representative summary of the culture and practice (soft elements) with the legislative and institutional (hard) elements of a pro-integrity framework. The recommended changes to current arrangements are highlighted in blue italic text.

**Figure 3: Recommended elements of the public integrity framework in 2030**

NB. Representative inclusive summary only. *Blue italic text indicates new or extended activities.*



[Figure description in the Appendix](#)

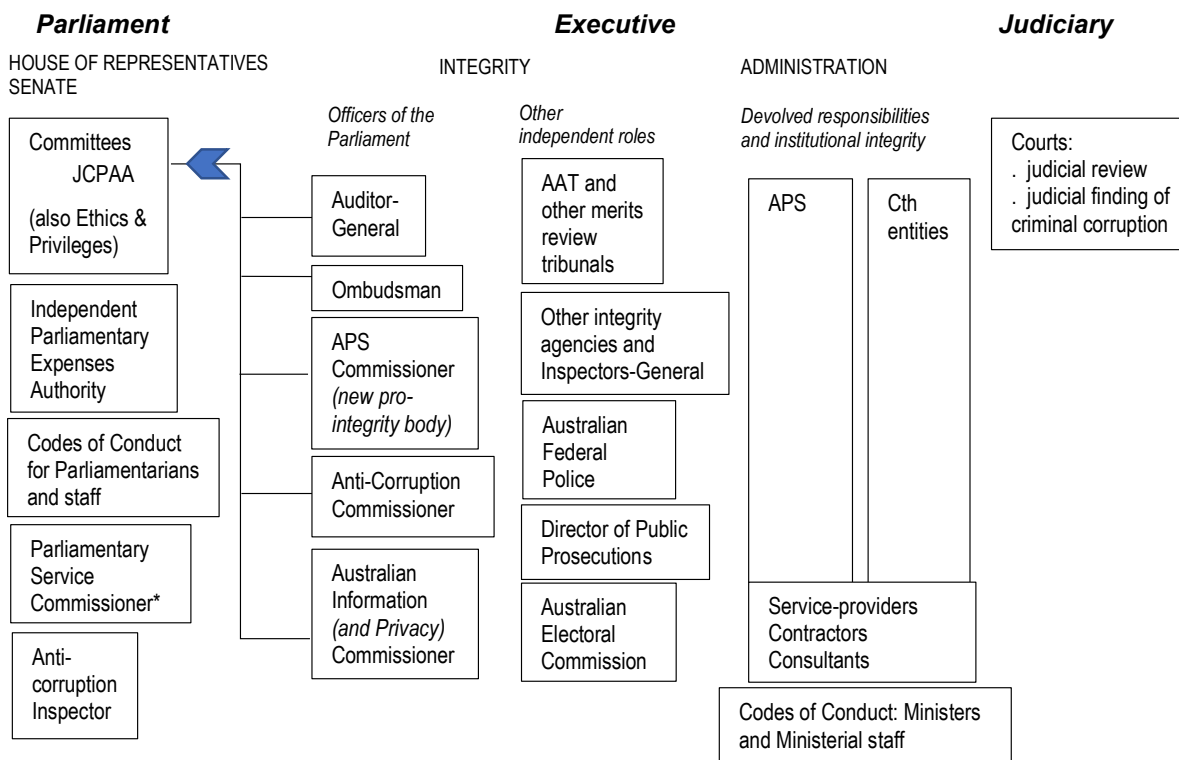
## 7 Internal understanding of external concerns

### 7.1 Outward-looking strategies

Given the consequences of trust on performance, APS leadership (collectively and individually) should develop strategies to look outwards. Leaders may explore the external factors affecting trust perceptions, and assess which may be within their spheres of influence to improve trust outcomes. These trust assessments are in addition to the internally-focused cultural, legislative and institutional frameworks to improve public integrity. The assessments may include specific strategies to manage expectations, improve civics literacy, engage in genuine policy conversations to build partnerships, 'share' public policy-making power and influence, as well as take a risk-mitigation approach for those factors that are reasonably beyond their control.

An enlarged Integrity System Map for 2030 in **Figure 4** includes coverage of institutional as well as political behaviours that are beyond our scope. This externality is important though, as the map both recognises the interconnectedness of the trust fortunes of parliamentarians and bureaucracy, and seeks to secure public trust and confidence in the long-term independence of functions, tenure, and budget as recommended by international benchmarks and research<sup>191</sup> in a 'future-proofed' proposal for all the five core integrity roles to be appointed as Officers of the Parliament.

**Figure 4: An Integrity System Map for 2030**



Other actors:

- Civil society
- Independent journalism
- Not-for-profit organisations
- Business

\*Currently same office holder as APS Commissioner

[Figure description in the Appendix](#)

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## CONCLUSION

### 8 Public institutional integrity

The late 20<sup>th</sup> century saw a ‘modernisation’ of the APS, with a number of important reforms that enshrined effectiveness and efficiency, responsiveness, and government control. The APS today is much better for it.

The 21<sup>st</sup> century, however, brings a disrupted, volatile and uncertain media landscape, implicated in growing popular distrust of institutions in general; a complementary, partisan and sometimes populist politics; immense technological opportunities and risk; threats of undue foreign influence; and the ever-blurring boundaries of public and private sectors.

To be fit for purpose for 2030 and beyond, the APS must respond in ways that prioritise public integrity unlike ever before. To justify public trust, the APS must aim for overall institutional integrity. With pursuit of clear purpose, the APS will drive performance. With legitimacy, the APS will enshrine key process values. By keeping its commitments, the APS will make sure it is a trusted partner. With robust accountability mechanisms and aligned incentives, the APS will offer the public the assurance it requires.

The current APS Values, with minor amendments, reflect an APS already reaching for institutional integrity. Our recommendations outline ways to further embed those values in APS culture and practices and support them with a clear, and highly visible legislative framework centred on a dual integrity-institution model.

Neither the APS nor the government of the day can control every factor that determines public trust. But the recommended strong integrity regime, complemented by an internal understanding of the external factors influencing trust, place it in the best position possible to be an essential and trusted Australian institution into 2030 and beyond.

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## Legislation and Cases

*Auditor-General Act 1997 (Cth)*

*Auditor-General Act 2009 (Qld)*

*National Integrity Commission Bill 2018 (Cth) and Explanatory Memorandum*

*National Integrity Commission Bill 2018 (No.2) (Cth)*

*Ombudsman Act 2001 (Qld)*

*Public Interest Disclosure Act 2013 (Cth)*

*Public Governance, Performance and Accountability Act 2013 (Cth)*

*Public Service Act 1999 (Cth).*



## APPENDIX: FIGURE DESCRIPTIONS

### Figure 1: Public integrity, performance and the trust consequences

If the perceived public integrity is high, then it can result in the following high trust consequences:

- Cooperative behaviour
- Civic participation
- Cohesion (institutional and social)
- Lower transaction costs (in policy development; and in compliance and enforcement)
- Attractive to quality public officers (recruitment and retention).

These high trust consequences lead to high performance.

If the perceived public integrity is low, then it can result in the following low trust consequences:

- Resistance (even against own interests)
- Suspicious of motive
- Cynicism
- Critical of competence
- Increased friction in society
- Sense of alienation or disenfranchisement.

These low trust consequences lead to less performance.

[Return to text following Figure 1](#)

### Figure 2: Possible impediments for an impartial and responsive APS – and possible consequences

The following causes and influences (in no particular order):

- NPM and a focus on results
- Speed of 24/7 news cycle
- Power of social media
- Demand for immediate fixes over longer-term solutions
- (Perceived) pressure for plausible deniability
- Impact of Ministerial advisors
- (Perceived) political appointments to APS
- Weaknesses in merit-based selection
- Timidity about security of tenure
- Leadership style
- Less APS anonymity
- Belief that can be sacked if Minister loses 'trust and confidence' (Barratt case)
- Transparency and accountability demands 'creating command and control relationships'
- Extent of embedding of APS Values

- Short-termism
- Removal of incumbents without probationary period or 'without clear evidence of disloyalty or incompetence'
- Perceived threat of relevance
- Increase in alternative sources of policy advice
- Second-guessing politics of choices
- Doubts re APS policy capabilities,

can lead to the following possible consequences (in no particular order):

- Incentivising partisanship
- Censored options
- Low staff confidence in leadership
- Demoralised, cynical attitudes
- Alignment and responsiveness become more important than 'speaking truth to power'
- Increased outsourcing and externalisation
- Fragmentation
- Frequent changes to policy due to short-term considerations
- 'Blurring lines' between partisan and neutrality will 'impede strategic Prime Ministership'
- 'Hollowed' out policy capacity
- Equity of evaluation system not guaranteed
- Ethical compromise,

which, whether these are perceived or actual influences and consequences, can provide lowered trust and confidence results for Ministers, APS leaders and employees, and the public.

[Return to text following Figure 2](#)

### Figure 3: Recommended elements of the public integrity framework in 2030

NB. Representative inclusive summary only.

There are three main components of the recommended public integrity framework:

- Culture and Practices, which are influenced by values
- Legislative
- Structural.

(Where an activity is recommended as a new or extended activity, this will be indicated in their descriptions.)

#### Values

The following are relevant to Values in leading to culture and practices:

- Inclusion of stewardship by all and merit in Values (new or extended)
- Employment principles
- Duties and obligations (new or extended)
- Definition of public integrity (new or extended)
- Fit for purpose scope (new or extended).

## Practices and cultures

Practices exist between negative and positive cultures.

As an element of the recommended public integrity framework, practices may be described as including:

### Transparency and accountability

- of framework design and implementation. Coherence and visibility (new or extended activity) equals or means that integrity is important to APS.

### Invigilation

- as new or extended activities: monitor, detect, report and respond to integrity breaches. Evaluate. Targets. Reactive learning.
- Institutional and officer
- 'how not to again'

### Learning

- Pro-integrity (new or extended)
- Proactive learning
- 'how to be best always'
- Institutional – e.g. data trends, risks management (new or extended)
- Officer – e.g. scenario-based groups (new or extended), context specific learning.

### Leadership

- Values-based, ethical
- Robust commitment and priority
- Risk-driven research, analytics, planning and management for public integrity outcomes (new or extended)
- Outward looking to influence exogenous factors of trust (new or extended)

### Risk management of possible pathologies of negative culture

As an element of the public integrity framework, it is also recommended that there is risk management of possible pathologies (new or extended) of **negative culture**, including of:

- Secrecy, low priority, avoid openness
- Defensiveness
- Unidentified or unmanaged conflicts of interest
- Reprisals
- 'Tick the box' attitude
- Minimalist
- Failure to properly engage with risk/risk aversion
- Disconnect: say vs do
- Unmotivated, unsupported, or under-vigilated leadership.

### Positive culture

As an element of a public integrity framework, the following is recommended of **positive culture**:

- Annual reports and of trends
- Call peers to account

- ‘Self-cleaning’
- Understanding and support to complaints management
- Sanctions clear
- Protection of whistleblowers
- Ethical behaviour rewarded
- Common purpose and sense of duty to public trust
- Open in partnership with integrity agencies
- Courage and objectivity
- Pro-integrity spirit to all endeavours: praiseworthy pursuit of commitments.

## Legislative

It is recommended that the **legislative** element of the public integrity framework in 2030 include:

- Centrepiece Public Integrity Act (PIA) (new or extended)
- Broader coverage (new or extended)
- Old Public Service Act plus anti-corruption and pro-integrity bodies with statutory independence (new or extended)
- Restate APS key institutional role. Secretaries – merit-based, security of tenure. (new or extended)
- APSC ‘own motion powers’ (new or extended)
- Post-employment standards (new or extended)
- Improved (new or extended) PID Act
- S15 misconduct procedures by agency. Oversight by APSC (new or extended)
- Obligation to report wrongdoing
- State of Service Annual report
- Must promote and be bound by Values. Ss12,14,35(3)(c)
- Values amended (new or extended): Ss10,10A,13, Amended (new or extended) Code of Conduct Pt2 APSCmr Dir.
- Define integrity (new or extended)
- PGPA General Duties of Officials moved into PIA (new or extended)

## Structural

It is recommended that the **structural** element of the public integrity framework in 2030 include:

- Dual institutional model: proactive (pro-integrity) and reactive (anti-corruption) (new or extended)
- APSC becomes new pro-integrity body with new powers, independence, broad jurisdiction Integrity consultancy service (new or extended)
- Independent broad-based anti-corruption body, broad jurisdiction (new or extended)
- Proportionate powers, funding security, performance measures (new or extended)
- Parliamentary Cttee oversight (new or extended)
- ‘One stop shop’& ‘no wrong door’: whistleblowers (new or extended)
- Foreign Influence Transparency Scheme, Lobbyists Register to APSC (new or extended)
- Two Secretaries Boards: one chaired by PMC, other by APSC (incl. for peer intervention and support re integrity) (new or extended)
- Integrity Agencies Group
- Plus other existing integrity bodies and Acts

[Return to text following Figure 3](#)

## Figure 4: An Integrity System Map for 2030

Mapping an integrity system for 2030 should include Parliament (House of Representatives and Senate), Executive (Integrity and Administration), and Judiciary.

The integrity role should include the following five Officers of the Parliament with oversight by the JCPAA (of Parliament, Committees):

- Auditor-General
- Ombudsman
- APS Commissioner (new pro-integrity body)
- Anti-Corruption Commissioner
- Australian Information (and Privacy) Commissioner.

Other independent roles of the Executive in the integrity system include:

- AAT and other merits review tribunals
- Other integrity agencies and Inspectors-General
- Australian Federal Police
- Director of Public Prosecutions
- Australian Electoral Commission.

The Administration under the Executive has devolved responsibilities and institutional integrity for the APS and Commonwealth entities, and their service-providers, contractors and consultants.

The Executive would also include codes of conduct for Ministers and Ministerial staff.

In addition to the role of Committees of Parliament such as the JCPAA and Ethics and Privileges committee, a 2030 integrity system map would include the following other roles concerning Parliament:

- Independent Parliamentary Expenses Authority
- Codes of Conduct for Parliamentarians and staff
- Parliamentary Service Commissioner (currently same office holder as APS Commissioner)
- Anti-Corruption Inspector.

A 2030 integrity system map including the Judiciary would include the role of Courts (judicial review and judicial finding of criminal corruption).

Other actors in an integrity system map for 2030 would include: civil society, independent journalism, not-for-profit organisations, and business.

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## ENDNOTES

- 1 Key findings in OECD Statistics Working Papers, (2018): Murtin et al. (2018).
- 2 OECD (2013), 21.
- 3 Global Corruption Barometer Survey Data Release by Griffith University and Transparency International on 20 August 2018. Also, see Transparency International (2018) [Corruption Perceptions Index](https://www.transparency.org/cpi2018) <https://www.transparency.org/cpi2018>.
- 4 APS Review Panel: [A Vision for Australia's Public Service](https://www.apsreview.gov.au/news/vision-australias-public-service) <https://www.apsreview.gov.au/news/vision-australias-public-service> [accessed 13/01/19] as updated 22/02/19.
- 5 See, Management Advisory Board-Management Improvement Advisory Committee, (1993), 5.
- 6 Contrary to the impression sometimes given by talk of the 'compliance-values' dichotomy, Paine (1994). See also, Blijswijk (2004); Maesschalck (2004); Cooper (2006); Huberts et al. (2014); Heywood et al. (2017).
- 7 This account of the core elements of integrity is based on Kirby (2018). It also aligns with definitions put forward by Philp (2007), ch 7; Breakey et al. (2015); Brock (2014); Grebe and Woermann (2011).
- 8 Breakey et al. (2015).
- 9 Rothstein (2011).
- 10 Miller (2014); Brown et al. (2005).
- 11 Consequences of a well functioning integrity system should include quality of decisions and services: Dobel (1999), p.xii. Trust is critical to the job we have as public servants, if we are to do them well: Eccles (2017). Also, Below (2018); Miller (2014); OECD (2017a).
- 12 Garofalo and Geuras in Cox (2009); Miller (2014); Eccles (2017).
- 13 See e.g. Cox (2009), 44, 61.
- 14 See recent letter from the Shadow Attorney-General dated 13/02/19 to the Secretary of the Department of the Prime Minister and Cabinet concerning 'the use, or withholding, of information for political purposes' by public servants during Senate Committee processes and identifying concerns of 'a break from past practice of the independent public service': copied in Dennett (2019).
- 15 Tim Vines' Submission to the APSC Review (2018).
- 16 Arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Previous criticism of ASIC for being 'too weak and trusting of the big end of town' has been joined by the failings of APRA being described as a 'hear no evil, see no evil' regulator: 'APRA has allowed the super system to operate with little transparency and accountability, to the detriment of millions of Australians and their retirement savings.' (Ferguson, 2018) In 2017, the ATO was in 'unprecedented crisis' with a deputy commissioner and others facing charges amid an alleged '\$165M tax-fraud syndicate scandal';(Norington, 2017) public allegations of information security breaches with detail on bypassing of passwords; (news.com.au, 2017) and allegations of a culture of fear to keep employees quiet, retribution against whistleblowers and an 'obsession with reputation' which was a 'recipe for corruption'. (Power, 2017) In 2018, ABC-Fairfax investigative reports claimed 'draconian' abuse of power against small businesses and whistleblowing. (Ferguson et al., 2018)
- 17 Newton (1999b); Newton and Norris (2000); Anderson and LoTempio (2002).
- 18 Hetherington and Rudolph (2008).
- 19 However, the difficulties, and sometimes unintended consequences of 'performance management' should not be underestimated (see, Margetts, et al. (2010)) and should be weighed against the other aims of institutional integrity.
- 20 Van de Walle et al. (2008); Bok (2001); Van Ryzin (2011). See also, Citrin and Stoker (2018).
- 21 Hibbing and Theiss-Morse (2002).
- 22 Levi (1998).
- 23 Tyler (1990); Rothstein (2011).

- 24 Smith and Lipsky (1993); Levi (1998).
- 25 Peel (1998), Warren (2018); although note, Uslaner (2002), 193; Philp (2007), ch 10.
- 26 Lind and Tyler (1988); Tyler (2001); DeConinck (2010); Krosgaard et al. (2002); Van Den Bos (2001); Roy et al. (2015). Others argue for a link between inequality, a perception of substantive unfairness, and distrust: Uslaner (2011).
- 27 Frey (1997); Frey and Oberholzer-Gee (1997); Pettit (1995); Peel (1998).
- 28 See, Hawley (2014).
- 29 Power (1997); O'Neil (2002).
- 30 *Public Service Act (1999)*, s10.
- 31 When introducing a values-based framework the Management Advisory Board-Management Improvement Advisory Committee, (1993), noted "there will also be an increasing emphasis on results, although the need for careful attention to process will not diminish' (3).
- 32 *Public Governance, Performance and Accountability Act (2003)*, s5 (c) (iv); s15 (1), (b).
- 33 APSC (2017), 1.3.5; See Lawson (2011), V.A. for a clear account of the law supporting this position.
- 34 Incorporating 'honest' from the Code of Conduct: *Public Service Act (1999)*, s 13(1)
- 35 Mugiu-Pippidi (2014); Rothstein (2011); Dahlstrom and Lapuente (2017).
- 36 De Schrijver et al. (2010); Treviño and Weaver (2001); Kim and Rubianty (2011); Demmke and Moilanen (2012).
- 37 For the importance of stewardship as a value see, Dobel (2007), 166-7; ANAO (2003), 8; Asia-Pacific Economic Committee (2011); Barrett (2003); CPSU Submission to the APS Review (2018), 20, 48. Arguably it is a constitutional principle, see *Report of the Royal Commission into Commercial Activities of Government and Other Matters*, (1992), (W.A.), 3.1.5 cited in Finn, (1994), 234. 'Trusteeship,' resonates the old common law principles of public offices as public trusts. See, Finn (2010). In this context, the integrity of the public institution can be seen as the resource being managed for the public as beneficiaries.
- 38 Edwards et al. (2012), 128; Advisory Group on Reform of Australian Government Administration (2010), 5, 21-2, 47-9; ANAO (2013), 10. This is also reflected in the types of duties currently reserved for leadership in the *Public Governance, Performance and Accountability Act (2003)*, Div 2.
- 39 Thompson (2003).
- 40 Morrison (2013).
- 41 To be clear, the object of stewardship, and implied duty of loyalty, is the *integrity* of the public institution, not the institution itself. There will therefore be cases where stewardship of the integrity of the institution run against the self-interest or even existence of the institution. Stewardship may require ending an institution (e.g. when it becomes redundant, without legitimate purpose); or, it may require damage to its reputation (e.g. when whistleblowing is the only effective way to address serious failures of institutional integrity).
- 42 See below, section 5.1.2.
- 43 See, section 2.
- 44 In addition to the overall structural changes recommended below in section 6.
- 45 Demmke and Moilanen (2012), 66.
- 46 Hsieh et al. (2018), 164; Demmke and Moilanen (2012), 20, 60; Hoekstra et al. (2016), 104, 116; Uhr (2005), 72. The APSC also acknowledged the worry about good policy words like 'ethics' and 'values' is that employees will fear that 'the words stayed on paper and were not always translated into action': APSC (2003), 31; APSC (2004), 129-134.
- 47 Absent from SOSRs of 2016-17 and 2013-14: APSC (2014), APSC (2017).
- 48 On the need for the SOSR to incorporate such material: Uhr (2005), 74. The National Integrity Systems Assessment also highlighted the value of the Administrative Review Council (ARC), which has now been abolished: Brown et al. (2005), 88-9, and Boughey and Weeks (2015).
- 49 Uhr (2005); Glor and Greene (2003).
- 50 Lasthuizen (2011); Hsieh et al. (2018).
- 51 APSC (2009).
- 52 Solomon (1992, 1999, 2000, 2004); Kaptein (2008, 2011a, 2011b); Webb (2012). See, Hsieh (2011a) 166-170 for survey of other possible tools available measurement tools.

- 53 This could align with the APSC's current 'Values Evaluation Project.'
- 54 See, APSC (2018).
- 55 Demmke and Moilanen (2012), 2.
- 56 Treviño, et al. (2000); Brown, M.E. and Treviño (2006); Heres and Laithuiszen (2012).
- 57 Huberts et al. (2007); de Hoogh and den Hartog (2008); Lasthuizen (2008); Mayer et al. (2009),
- 58 Brown, Treviño and Harrison (2005); de Hoogh and den Hartog (2008); Mayer et al. (2009).
- 59 For example, 'Exemplifies personal drive and integrity' is treated as one of the five core capability clusters for the Senior Executive Leadership Capability Framework, now expanded into the the Integrated Leadership System: APSC (2019).
- 60 See, APSC (2018).
- 61 Menzel (2015), 356; Van Monfort et al. (2013).
- 62 Brown et al. (2005), 70.
- 63 Eg. [National Judicial College of Australia](https://njca.com.au) <<https://njca.com.au>>; [Judicial College of Victoria](http://www.judicialcollege.vic.edu.au) <<http://www.judicialcollege.vic.edu.au>>.
- 64 De Graaf (2010), 777; Briggs (2009).
- 65 Hoekstra and Huberts (2016), 57-8.
- 66 De Graaf (2010).
- 67 Briggs (2009).
- 68 De Graaf (2010).
- 69 Hoekstra and Huberts (2016), 72-3.
- 70 Wolfe et al. (2015).
- 71 Senate Select Committee on Public Interest Whistleblowing (1994); Senate Select Committee on a National Integrity Commission (2017); Parliamentary Joint Committee on Corporations and Financial Services (2017); Brown et al. (2018). In a recent international study comparing Australia's federal sector with the US, Belgium, Netherlands, Israel, Republic of Korea, only Australia had no independent or specialist whistleblowing agency that either investigates or assists whistleblowers to access remedies: Brown et al. (2018), 45.
- 72 Brown et al. (2018).
- 73 Various reports confirm that protections for private sector whistleblowers are 'weak' and 'limited' (Parliamentary Joint Committee on Corporations and Financial Services (2017); Wolfe et al. (2015)). This incompleteness also undermines the broader public sector integrity system, given the nature and extent of contracting out arrangements, and public officers working alongside private sector contractors. Private sector whistleblower protections should therefore be improved and integrated with the public sector whistleblowing system. (See recommendations to improve private sector whistleblowing in Parliamentary Joint Committee on Corporations and Financial Services, (2017); Brown et al., (2018)).
- 74 Such as the 2016 Moss Review (e.g. investigation mechanisms were overly complex); and the 2017 Parliamentary Joint Committee on Corporations and Financial Services (e.g. need for the establishment of a 'one stop shop' Whistleblower Protection Authority, inconsistencies and fragmentation in the framework, consideration of a reward and bounty system like US and Canada). Consultations also confirm concerns with a perceived dilution of its effectiveness with the inclusion of 'employment' rather than in workplace legislation; poor understanding of reprisal behaviours; and managing 'accidental' public interest disclosures.
- 75 Such as the G20 Compendium of Best Practices and Guiding Principles for Legislation and G20 Anti-Corruption Implementation Plan commitments (self-assessment) made at Brisbane G20 Summit in 2014. Also, Wolfe et al. (2015); OECD (2016).
- 76 Whistleblower legislative protection in the private sector is weaker, incomplete and fragmented; as well as key reforms highlighted in reviews of implementation such as those concerning limitations in coverage and a 'one stop shop' support.
- 77 E.g. Moss Review findings on breadth of disclosable conduct and whether the focus should be on the most serious integrity issues. Data retention scheme under telecommunications legislation (which downgraded Australia's rating for anonymity in the 2015 international comparative assessment). Australian Secret Intelligence Organisation Act 1979, new s.35P.
- 78 OECD (2018).
- 79 See, for example, the analysis of the New Zealand police's cultural change efforts in Rowe and Macauley (2017).



- 80 Kolthoff (2007); Demmke and Moilanen (2012), 88ff.
- 81 *Public Service Act 1999*, s 10(5); also, s 3(a) for 'an apolitical public service' as the first object of the Act.
- 82 *Australian Public Service Commissioner's Directions 2016*, s17(d), (e), (f).
- 83 *Public Service Act 1999*, s10(1).
- 84 *Australian Public Service Commissioner's Directions 2016*, s13(j).
- 85 Keating (1995). Also, see Bourgon (2008).
- 86 Aucoin (2012): expectation for 'promiscuous partisanship'. Similar partisanship pressures have been examined in non-Anglophone countries: Bellò and Spano (2015), Boräng et al. (2017), van den Berg (2017).
- 87 See sections 2-4 above.
- 88 E.g. Podger (2012); Shergold (2012); Keating (2003), 94-95. Nearly two decades ago, surveys of secretaries provided little evidence of intimidation: Weller (2001), although on secretaries' views, they are 'hardly disinterested reporters': Mulgan (1998), 9. Also see Diamond (2017); Lindquist and Eichbaum (2016).
- 89 E.g. Briggs (2009), Podger (2018). See recent letter from the Shadow Attorney-General dated 13/02/19 to the Secretary of the Department of the Prime Minister and Cabinet relating instances where 'the public service has been asked to undertake work of a political nature' and identifying concern at 'a break from past practice of the independent public service': copied in Dennett (2019).
- 90 CPSU Submission to the APS Review (2018), 232, 56.
- 91 [Anonymous Submission to the APS Review](https://contribute.apreview.gov.au/submissions/view/038658a59f8cf94e4e17d) (2018)  
<<https://contribute.apreview.gov.au/submissions/view/038658a59f8cf94e4e17d>>.
- 92 Quoted in Shergold (2012), 4.
- 93 See discussion also at section 5.
- 94 Cooper (2018).
- 95 Burgess (2018); Donaldson (2018).
- 96 Ackerman (2010a), 42: warns that a strong public service may insulate itself from broader currents of public opinion or scholarly research. This proposal would be an opportunity for the panel to be informed of an external perspective on the sector or environment in which the leader will impact and, for example, offer (i.e. not determinative) views on the candidate's likely effectiveness given the qualities exhibited against selection criteria, or suggest well-informed external challenges and scenarios to consider in the development of interview questions. This is a simple strategy to support the process against the potential for insular or internal-only perspectives on leadership and portfolio. Its more comprehensive approach would also assist in building, not only public, but ministers' trust and confidence in the quality of leadership. The public service chair of the panel would retain appropriate control of the process, adjust the extent of involvement as may be appropriate, and assure proper public service context. There is precedent in at least State jurisdictions.
- 97 References to the APS Values and Code of Conduct commonly appear in advertisement for APS vacancies currently. Following through with explicit inclusion in the selection process would also assist in building institutional integrity.
- 98 Note a review of the 30-year old State Sector Act 1998 (NZ) is underway currently: [Have My Say](https://www.havemysay.govt.nz)  
<<https://www.havemysay.govt.nz>>. Also note suggestions made by Keating (2005), 96-97.
- 99 See discussion of the consequences of high and low trust in section 3.1.
- 100 *Public Service Act 1999*, ss3(a), 41(2)(g), 57(1)(c), 64(3)(a).
- 101 The CPSU's recent survey also found that nine out of ten members believed that good government relies on a great APS as a *cornerstone of a fair society*\* which is also consistent with submissions to the APS Review on APS role and a long history of media and academic commentary. CPSU Submission to the APS Review, 5 (\*emphasis added).
- 102 Sossin (2005), 2.
- 103 We also recommend under section 6.4 that this legislation could be a much more comprehensive centrepiece of the proposed integrity framework than the *Public Service Act 1999* is currently.
- 104 Also see discussion at sections 2-4 above.
- 105 Or when ministers seek non-partisan advice that is specialist or highly expert in nature or purpose such as from universities or royal commissions.

- 106 van den Berg (2017): For the Dutch system, the demand for external opinions to counter displeasing internal and external policy opinions appears to have been growing since the 2000s onwards.
- 107 Keys (2016), p 3.
- 108 Transparency International (2018): Corruption Perceptions Index ranking of 180 countries.
- 109 OECD (2017d), 17-18.
- 110 OECD (2017c), 3-44, 73; OECD (2010); Murray (2016); Murray and Frijters (2017).
- 111 OECD (2017c), 22, 44, 73-74. Also see endnote 16 and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
- 112 Borthwick (2012), 101.
- 113 OECD (2017c), 39-40, 64.
- 114 APSC (2017b).
- 115 Many APS agencies reported including references to their post-public employment rules in contracts with private sector organisations: OECD, (2010), 46.
- 116 OECD, (2010), 69, 88.
- 117 See e.g. in OECD (2017c), 78. See also *Risk-driven Strategy* as part of *Embedding Culture* under section 5.1.3.
- 118 Kallas (2007), 6.
- 119 There is limited available evidence on the effectiveness of legislation over Codes of Conduct or other specific post-employment instruments: OECD (2010), 52. Also see, OECD (2009); OECD (2017c); and OECD (2017e).
- 120 Murray and Frijters (2017), 145.
- 121 E.g. OECD (2017c), 70, 76.
- 122 OECD (2017a), 158.
- 123 OECD (2017c), 66.
- 124 It is most common to speak of a 'national integrity system,' that is the total set of laws, agencies, procedures, practices, incentives and attitudes that together promote the integrity of all different agents (including even business, and civil society). However, sometimes we want to speak of the set of laws, agencies, procedures, practices, incentives and attitudes that together promote the integrity of a *particular* subset of agents, for example, just the public institutions and officers of the *Commonwealth*, or the *State of NSW*, or in this case a further subset of commonwealth institutions: the *APS*, (or even more precisely, as understood in this paper given its mandated scope, those institutions and officers falling under the *Public Service Act 1999* and as directly responsive to the Framing Question quoted in the Preface regarding improvements to the 'APS's current integrity regime'). Thus, just as the National Integrity System Assessment ('NISA') review speaks of the 'Commonwealth Public Sector Integrity System' when doing this, we shall speak of the 'APS Integrity System,' (we could alternatively have spoke of the 'APS integrity *Sub*-system'). However, to avoid misinterpretation, two further things should be made clear. First not all, in fact not most of the component parts of the 'APS Integrity system' will, themselves, be APS institutions. For example, the judiciary, police and the media are external to the APS, but are important parts of the system that promote its integrity by holding it accountable. Secondly, many more particularised 'sub-systems' within the broader national integrity system will share component parts. Thus, the national media will be part of the national integrity system, *and* Commonwealth integrity system, *and* APS integrity system, and so on.
- 125 OECD (2013), 25; Brown et al. (2018), 9.
- 126 Those bearing on the APS: Attorney-General's Department; APSC, including both the APS Commissioner and the Merit Commissioner; Auditor-General; Officer of the Australian Information Commissioner, Department of Finance and Deregulation, Senate Committees. Others include: the Australian Electoral Commission, and Parliamentary Standards.
- 127 Federal Judicial System; Administrative Appeals Tribunal.
- 128 Australian Federal Police (including the Fraud and Anti-Corruption Centre); ACLEI, Australian Criminal Intelligence Commission, Office of the Commonwealth Ombudsman; Australian Transaction Reports and Analysis Centre Inspector-General of Intelligence and Security.
- 129 Office of the Commonwealth Director of Public Prosecutions.
- 130 International Crime Cooperation Central Authority; Attorney-General's Department Portfolio Agencies; AusAID. While not of obvious relevance to the APS, dealing with corruption can involve cross-jurisdictional challenges (e.g. foreign bribery). See Brown et al. (2018), 41ff.

- 131 Brown et al. (2005). A second NISA is currently scheduled for release in April, 2019.
- 132 Further improved by the establishment of the Fraud and Anti-Corruption Centre in 2013.
- 133 Brown et al. (2005), 34.
- 134 Brown et al. (2005), 88-9. See, Boughey and Weeks (2015).
- 135 See, Senate Select Committee on a National Integrity Commission (2017): 'The current integrity framework was 'a complex and poorly understood system that can be opaque, difficult to access and challenging to navigate' (4.136).
- 136 As part of the consultation papers for the Commonwealth Integrity Commission proposal, released on 13 December 2018: Attorney-General's Department (2019).
- 137 Brown et al. (2005), 21ff: 'No coherent system-wide corruption prevention framework; Inadequate support for parliamentary and ministerial standards.'
- 138 MacMillan (2018) has noted that, while Ombudsman: 'From time to time people would contact the office to inquire about steps that could be adopted to deal with a corruption allegation, for example, in a contracting arrangement, personnel recruitment or financial management. The person would often explain that they had come to the Ombudsman as they didn't know where else to go. Some callers were reluctant to give details of an allegation until they knew what would happen. Some were not interested in giving further details when advised that the AFP may be contacted – they did not want police involvement at that early stage, which is why they'd called the Ombudsman. Advising the caller that the Ombudsman did not have the forensic skills to investigate a complex matter, and that investigation options would have to be discussed with the agency to which the allegations related, was also discouraging to callers. Nor was it possible to advise the caller how the matter would be finalised or reported.' Brown et al. (2018) 22, also note, 'While the Australian Public Service Commissioner's Directions (2016) require all APS employees 'to report and address misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way', there is no requirement on APS agency heads to report these to anyone else, other than in an annual statistical return to the APSC, after the event.' See also, recommendation for a one step shop: Brown et al. (2018), 44ff. Finally, see Recommendation 12.1, Parliamentary Joint Committee on Corporations and Financial Services (2017), 158.
- 139 Brown et al. (2018), 29: 'Finally, it is remarkable that specialist, independent anti-corruption capacity and oversight is weak in respect of the single largest source of corruption risk – procurement of goods, equipment, facilities and services.' See also, ANAO (2018a).
- 140 Australia Institute (2017a), 1; Brown et al. (2018), 21ff; Prenzler and Faulkner (2010).
- 141 Brown et al. (2018); Hobbs and Williams (2017).
- 142 Brown et al. (2018), 37-8.
- 143 Aulby, (2017a) and (2017b); Brown et al., (2018); Hobbs and Williams, (2017); National Integrity Committee, (2018); Watson, (2017); Whealy, (2017). See discussion of arguments for and against considered by Senate Select Committee on the Establishment of a National Integrity Commission, (2016), 11-39 and by the Senate Select Committee on a National Integrity Commission, (2017), 181-217.
- 144 *National Integrity Commission Bill 2018* (Private Member's Bill - McGowan, Cathy, MP introduced 26 November 2018); *National Integrity Commission Bill 2018 (No.2)* (as amended Waters, Larissa, Sen., 29 November 2018).
- 145 A proposed Commonwealth Integrity Commission was announced on 13 December 2018. Receipt of public submissions closed 1 February 2019.
- 146 Senate Select Committee on the Establishment of a National Integrity Commission, (2016), 24.
- 147 The Australian Government's Commonwealth Integrity Commission proposal (December 2018, p.3).
- 148 Explanatory Memorandum, *National Integrity Commission Bill 2018 (Cth)* 3.
- 149 *National Integrity Commission Bill 2018*, Clause 18(1)(a)-(c),(f)-(g).
- 150 *National Integrity Commission Bill 2018*, Clause 18(1)(d)-(e)- no explicit reference is made to integrity for either role in the head clause 18 and although integrity research is referenced in cl. 29 that activity is moderated by cl.31 which requires the Commissioner to give *priority* to research which deals with corruption risk and issues, and makes use of the Commission's experience in dealing with specific corruption.
- 151 See sections 4 and 5.
- 152 See section 3.1.

- <sup>153</sup> A recent survey of European jurisdictions by Demmke and Moilanen, (2012), 83ff, found similar 'integrity' bodies in Netherlands (Ministry of the Interior (and BIOS)), the European Commission (Unit HR.B.1- Ethics, Rights and Obligations and the Unit SG.B.4 - Public Service Deontology), Latvia (KNAB), Sweden (KRUS) and Belgium (*le Bureau d'éthique et de déontologie administrative* in the Ministry of Budget).
- <sup>154</sup> National Integrity Committee (2018) and Australia Institute (2017a), (2017b). Brown et al. (2018) Senate Select Committee on a National Integrity Commission (2017). Also see endnotes 144 and 145.
- <sup>155</sup> Kuris (2015), 133: '...ACAs may also face difficulties interacting with partners outside the justice system. There is an inherent tension between the advisory roles that such agencies exercise when they coach partner agencies on ethical behaviour and corruption risk reduction and the adversarial role they play when they police the same agencies for violations. Public officers trying to implement preventive recommendations may worry that disclosing corruption risks to guard dog ACAs may invite unwanted scrutiny and open up a criminal investigation.'
- <sup>156</sup> Webbe (2018), 23-24, 27, 38-39.
- <sup>157</sup> Kuris (2015), 128-9: 'ACA leaders have limited resources to allocate, and will naturally tend to prioritize criminal cases likely to lead to convictions, in order to demonstrate clear achievements and validate their grant of coercive powers. Domestic and international constituencies also expect to see such powers used. The law enforcement officers hired to staff guard dog ACAs are trained and conditioned to see corruption issues through the lens of criminal investigation. Even for multi-purpose ACAs with strong preventive powers, investigations and prosecutions (or the lack thereof) overshadow preventive and educational efforts, as in Latvia's Korupcijas noveŗšanas un apkaroŗanas birojs (KNAB) and Botswana's Directorate for Corruption and Economic Crime (DCEC) .... It seems fair to assume that typical guard dog ACAs routinely pursue the criminal investigations they are empowered to undertake. 128-9. See also, Lawton and Macauley, (2017), 723-4; Demmke and Moilanen, (2012), 54.
- <sup>158</sup> The devolution principle has been criticised in Queensland as taking the anti-corruption body 'in a different direction to that recommended by Fitzgerald': Lewis (2010), 58. As an example of the rates of referral back to agencies to deal with complaints compared to those retained by the anti-corruption body following provision for devolution see Prenzler (2009), 583.
- <sup>159</sup> [Have My Say](https://www.havemysay.govt.nz) <<https://www.havemysay.govt.nz>>.
- <sup>160</sup> In light of this, the APSC might need to change its name to become, for example, the Australian Public Sector Commission. See broadened scope in sections 6.3 and 6.4.
- <sup>161</sup> Braithwaite, (1998), 352: 'this is the basic idea of the regulatory pyramid: Trust first, and thereby get the efficiency benefits of trust in most cases, but motivate trust as obligation by signaling very clearly a preparedness to escalate intervention to progressively less trusting interventions when trust is abused. The paradox of the pyramid is that by signaling a willingness to escalate to draconian strategies of total distrust ... once can increase the proportion of regulatory activity that is based on trust.'
- <sup>162</sup> *Public Service Act 1999* (Cth), s 43(2).
- <sup>163</sup> See section 7.
- <sup>164</sup> The current Secretaries Board, chaired by the Secretary of Prime Minister and Cabinet, would retain its jurisdiction over all other APS issues.
- <sup>165</sup> See following on independence of appointment, and section 7. Also, the recommended role for the Commissioner in recruitment and selection of secretaries in section 5.2.
- <sup>166</sup> See section 5.2: key institutional role.
- <sup>167</sup> *Public Service Act 1999* (Cth), s47.
- <sup>168</sup> On the importance of such networks see, Hoekstra and Huberts (2016), 36. See current membership of [Integrity Agencies Group](https://www.apsc.gov.au/integrity-agencies-group-0) at <<https://www.apsc.gov.au/integrity-agencies-group-0>>.
- <sup>169</sup> Burgess (2018); Donaldson (2018).
- <sup>170</sup> *Auditor-General Act 1997* (Cth), s.9 and Sch.1 (2). State jurisdictions offer similar bi-partisan appointment processes such as the Qld Auditor-General and Ombudsman (s.92(b) *Auditor-General Act 2009* (Qld) and s.59 *Ombudsman Act 2001* (Qld)). Also, New Zealand is considering this similar process in its review of the *State Sector Act 1988* (NZ).
- <sup>171</sup> See endnotes 143, 144, 145.
- <sup>172</sup> Hoekstra and Huberts (2016), 177. However, it is also consistent with the view that higher-level corruption is more difficult to uncover.

- <sup>173</sup> In the Second Reading Speech for the Independent Commission Against Corruption Bill, the Premier, the Hon. Nick Greiner, said: 'Let me make it absolutely clear that this initiative is a component of the Government's program to restore the integrity of public administration and public institutions in this State. Nothing is more destructive of democracy than a situation where the people lack confidence in those administrators and institutions that stand in a position of public trust. If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safeguarded, and that community confidence in the integrity of public administration is preserved and justified.' (New South Wales, (1998), 673).
- <sup>174</sup> Australia Institute, (2017b), 3.
- <sup>175</sup> Attorney-General's Department, (2019).
- <sup>176</sup> The public hold the APS and the government as a whole responsible not merely their own actions, but also those done in the public's name, and with public resources. As such, it is vital as public-private collaborations becomes even more dynamic in the future, the integrity and anti-corruption regime remains a constant across such activities. For example, in the Netherlands, the jurisdiction of similar legislation extends to any person 'under government supervision and responsibility is appointed to a position with an undeniably public character to perform duties of the State or one its bodies.' This has been interpreted to include a freelancer, or a managing director of a private limited liability company performing state tasks. Hoekstra and Moilanen, (2016), 88.
- <sup>177</sup> Gleeson and McClintock, (2015), 37.
- <sup>178</sup> Australia Institute, (2017a), 4; Brown et al., (2018), 49.
- <sup>179</sup> De Speville, (2010), 56. See also, Lawton, A. and Macaulay, M (2014) for the value of citizen engagement in local standards committees.
- <sup>180</sup> OECD, (2013), 30ff.
- <sup>181</sup> It may not be decisive, given the concerns debated within the rest of the literature. However, one possible mechanism to insure the propriety of having a public hearing is if the Commissioner is required to gain permission from an independent panel, which may or may not be the same as the external oversight panel.
- <sup>182</sup> Schwartz, (2003), 2.
- <sup>183</sup> Ackerman, (2010b).
- <sup>184</sup> *Public Governance, Performance and Accountability Act 2013*, ss 25-32.
- <sup>185</sup> Flexibility for a core set of public service values and duties applying to bodies currently under the PGPA can be drafted as may be necessary, enabling also additional values as may be required such as for the public broadcaster, ABC.
- <sup>186</sup> Alexander and Thodey (2018).
- <sup>187</sup> Transparency and accountability gaps: Administrative Review Council (1998); Brown et al. (2005), 69; Transparency International UK (2013); David-Barrett (2015); Transparency International (2018).
- <sup>188</sup> *Independent Broad-Based Anti-Corruption Act 2011 (Vic)*, s 6.
- <sup>189</sup> Decentralised contract expertise is a public sector weakness: David-Barrett (2015), 22; Transparency International UK (2013).
- <sup>190</sup> OECD (2007a), 83-84.
- <sup>191</sup> E.g. 'Jakarta Principles' (2012); OECD (2017d) (2017e); Brown (2018).





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