

Joint Committee of Public Accounts and Audit
ANSWERS TO QUESTIONS ON NOTICE

Australian Public Service Commission
20 November 2023 (date of appearance)

Department/Agency: Australian Public Service Commission

Topic: Inquiry into probity and ethics in the Australian public sector

Senator: Linda Reynolds

Type of question: Proof Committee Hansard, Joint Committee of Public Accounts and Audit, Inquiry into probity and ethics. Pages 11 - 13

Date set by the committee for the return of answer: 15 December 2023

Number of pages: 4

Question:

1. **Senator REYNOLDS:** Wouldn't it be better and more sensible to have a single framework, rather than expecting every department and agency to do the work to come up with their own? It might have some level of consistency, but it won't be consistent, so it will never be able to be measured consistently and reported consistently.
2. **Senator REYNOLDS:** What's the time frame? Can you take that on notice and also provide more detail about what the timeline is, the implementation process and how you will end up getting a system that is consistent and in which everybody's been marked in the same way. Obviously, they're starting at different places, but how do you get them to the same destination using the same metrics and reporting on the same metrics, not marking their own homework?
3. **CHAIR:** To be cheeky, because I can't ask you for a policy opinion: if the committee were of a mind to recommend such a thing, could you perhaps take on notice and, using your dot point 1 from recommendation 15, give us some specifications as to what you would see as good practice in such a strategy that an accountable authority might use, so we could digest that? It would be helpful in our recommendations.
4. **Senator REYNOLDS:** No, that's exactly where I was going. In all of these changes, what would give ministers more comfort or satisfaction that the product that they're getting on commitments on things they take through the parliamentary budget process or just the normal daily advice and decisions that are sought? What would give ministers that comfort that the legality in not just identifying risk but in a risk mitigation strategy, which seems to be missing from a lot of advice—maybe this is an issue about whether CRAs are adequate. Maybe you could take that on notice. What are the things you think—it doesn't matter the different agencies, roles and responsibilities—could be done to give ministers assurance that what they're getting is legal, is appropriate and achieves the outcomes that either they or the bureaucrats who are administering programs are seeking from the minister?

Senator REYNOLDS: In terms of how risk is managed, this is sort of a theme. A risk rating is given. It's low, medium or high. But what is the risk mitigation strategy or assessment that sits behind that? In and of itself, if it's a really important objective, the minister might decide to proceed with it even though it's a high risk if there's a risk mitigation strategy in place and it's of high importance. Something that's low risk can

still go very wrong if it's not properly managed. Perhaps you could take that and provide some more advice to us on how risk is currently assessed and managed, because clearly risk and how risk is managed and advised through the process is a thread running through this.

Response to question 1

The data maturity models referred to in the evidence and the examples of good practice identified by the APS Integrity Taskforce,¹ provide examples of the metrics individual agencies may consider using to benchmark and assess the maturity of their internal integrity culture and controls. It is important to note that the specific integrity measures that are most appropriate in each agency will be affected by the operational context of each entity. That context will also affect the way in which measures are implemented and the maturity.

In addition to those entity-level data models, there are currently four key reporting requirements that apply broadly to agencies across the Commonwealth: the APS Employee Census, the Annual APS Agency Survey, the Australian Institute of Criminology's (AIC) annual fraud census and the annual reporting under the Protective Security Policy Framework.

- a. The APS Employee Census is completed by employees of all Public Service Act agencies and provides a range of important insights into the composition of the APS and staff perceptions of key integrity metrics. As well as asking respondents whether they have witnessed corruption, the survey also asks about a range of other indicators relevant to assessing the health of each agency's culture, systems and accountability.
- b. The Annual APS Agency Survey completed by agency heads takes a consistent approach to collecting information on investigations, breaches of the Code of Conduct and sanctions, and the types of incidents and complaints captured on agencies' human resources systems.

Key Employee Census and Agency Survey results for the APS, are reported publicly in the State of the Service Report. The APSC also requires agencies to publish Employee Census results including action plans. This improved transparency is supported by Secretaries Board, promoting a higher bar of individual and agency accountability, to drive positive shifts in behaviour and whole-of-system improvements.

- c. Under the Commonwealth Fraud Control Framework, all non-corporate Commonwealth entities are also required to respond to the AIC's annual fraud census.² The census collects data from agencies about the number and types of fraud matters they have investigated; controls in place to prevent, detect and respond to fraud; and the estimated value of fraud losses and recoveries. The Government has indicated its intention to expand the Commonwealth Fraud Control Framework from 1 July 2024 to become the Commonwealth Fraud and Corruption Control Framework. The AIC census will be expanded to capture data on corruption controls within Commonwealth entities and related matters. This will provide important insights into the prevalence of and responses to corruption across the public sector.

¹ [Integrity good practice guide | PM&C \(pmc.gov.au\)](#)

² [Commonwealth Fraud Control Framework | Attorney-General's Department \(ag.gov.au\)](#)

- d. The PSPF requires accountable authorities of non-corporate Commonwealth entities (NCCEs) to complete an annual self-assessment and report to their relevant portfolio Minister and the Department of Home Affairs. Entities report on their level of maturity against the four protective security outcomes (security governance, information, personnel and physical security) and the 16 core requirements that articulate what entities must do to achieve the four protective security outcomes.

The APSC and AGD will look at Recommendation 11 in the *Louder than Words* action plan, in combination with recommendation 15 to incorporate best practice for measuring and reporting on integrity data. This is further outlined in the response to question 2 and 3.

Response to question 2

By taking forward recommendation 11 in the action plan, in 2024 the Attorney-General's Department will lead the development of an Integrity Strategy, in partnership with APSC. The strategy is planned for the Commonwealth public sector, providing a framework focussing on:

- enhancing the Australian public's visibility of work to improve public sector integrity
- strengthening coordination and information-sharing across government agencies, and
- harnessing information and data to improve reporting and a consistent approach to benchmarking, aggregation, monitoring and measurement of integrity.

Response to question 3

Recommendation 15 in the action plan, acknowledges the importance of being able to measure integrity issues in order to address them. While maturity of agencies differ, the application of best practice for measuring integrity and reporting will be consistent. The integrity strategy referenced in the response to question 2 will bring into greater focus the integrity-related data collection at the system level outlined in the response to question 1, and integrity-related data that exists at the agency level.

Response to question 4

In accordance with action 3 of recommendation 8 of the action plan, AGD is developing guidance for government lawyers on how to provide clear and consistent advice on the lawfulness of policy proposals, administration of public resources and executive action.

AGD has been considering the appropriate approach to framing legal advice on lawfulness, in light of recent developments. In this context, AGD considers it is preferable for legal advice on the lawfulness of proposed government action to not be expressed solely in terms of 'risk'. As such, legal advice should not just provide a risk rating as to whether the proposed action is lawful or unlawful. Rather, legal advice of this kind should clearly express the lawyer's view as to whether the proposed action would be lawful or unlawful, together with an explanation of any uncertainty which attaches to the lawyer's assessment. If the legal advice concludes the proposed action would be unlawful, it should also identify, where appropriate, alternative courses of action the government could lawfully take to achieve its policy objectives. This might include modifying the proposed action, taking a different course of action, or pursuing legislative amendments.

Ultimately, it is a matter for relevant decision makers – including ministers in relevant circumstances – to decide the approach to be taken, as informed by the legal advice. A decision-maker may, for example, choose to seek a second opinion to test or confirm the

legal advice they have received. However an actual absence of lawful authority is not something that can be mitigated or ‘risk managed’.