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## Joint Committee of Public Accounts and Audit

### Inquiry into probity and ethics in the Australian public sector

#### Submission by the Australian National Audit Office

#### Introduction

1. In seeking to achieve the outcomes required by Parliament and Government for citizens, the Australian public sector operates largely under principles-based frameworks, established by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Service Act 1999* (Public Service Act). While principles-based, these frameworks impose high expectations, including: 'high standards of governance, performance and accountability'<sup>1</sup>; and 'an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public'.<sup>2</sup>
2. The specific integrity, probity and ethical arrangements applying to public sector personnel will depend on the type of organisation that engages them and their engagement status. The PGPA Act establishes the overarching governance, performance and accountability framework for resource use and management within the sector and refers to 'entities' headed by 'accountable authorities' and comprising 'officials'. The Public Service Act regulates the conduct and employment of a specific group of officials comprising the Australian Public Service (APS) and refers to 'agencies' headed by 'agency heads' and comprising 'APS employees'. Not all PGPA Act officials are in the APS<sup>3</sup>, and separate arrangements may apply to statutory office holders and contractors.
3. Within the sector, there is both collective and individual responsibility for maintaining integrity, probity and ethical conduct — shared by framework policy owners, the heads of public sector organisations, and their personnel. The approach taken to compliance by each of these actors is fundamental to integrity outcomes in the public sector context, as 'compliance ensures standards for integrity are met'.<sup>4</sup>
4. Policy owners establish the rules of operation in key areas — including resource use and management, procurement, grants administration, cyber security, record-keeping, legal work, FOI and integrity — and then largely rely on PGPA accountable authorities and APS agency heads to be

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<sup>1</sup> PGPA Act ss5(c)(i).

<sup>2</sup> Public Service Act ss3(a).

<sup>3</sup> As at 3 July 2023, there were 189 PGPA entities. As at 30 June 2021, the APS employed 153,945 people across 97 agencies.

<sup>4</sup> Australian Public Service Commission, Fact sheet: Defining Integrity, 9 December 2021. Available at: <https://www.apsc.gov.au/working-aps/integrity/integrity-resources/fact-sheet-defining-integrity>.

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responsible for compliance. Under the principles-based approach, mandatory rules are largely set to control actions where risks are deemed highest.

5. Key policy owners include: the Department of Finance for the PGPA Act framework; the Australian Public Service Commission for the Public Service Act integrity framework<sup>5</sup>; the National Archives of Australia for the record-keeping framework; and the Attorney-General's Department for the performance of Commonwealth legal work and the Legal Services Directions.<sup>6</sup>

6. The heads of public sector organisations also establish internal frameworks within their organisations to instruct their personnel on certain matters. For example, the accountable authority of a PGPA entity is authorised to issue Accountable Authority Instructions (AAIs), which can impose obligations additional to the minimum standards established under the PGPA Act and PGPA Rule.<sup>7</sup>

7. At the individual level, the PGPA Act contains 'general duties of officials' applying to both the accountable authority and entity officials, which are relevant to integrity, probity and ethics. The general duties relate to: acting with care and diligence; acting honestly, in good faith and for a proper purpose; not misusing one's position; the proper use of information; and disclosing interests.<sup>8</sup> Taken together, the general duties establish an overarching framework for integrity, probity and ethical behaviour applying to the accountable authorities and officials of all PGPA Act entities.

8. There are also 'general duties of accountable authorities' applying to the accountable authority of a PGPA entity.<sup>9</sup> These include the duty to govern the entity in a way that promotes the proper use and management of public resources for which the accountable authority is responsible.<sup>10</sup> Proper means efficient, effective, economical and ethical use or management of public resources.<sup>11</sup>

9. If an organisation is also an agency under the Public Service Act, additional ethical and probity requirements apply to its leaders and APS employees, including the APS Values and APS Code of Conduct set out in the Act. The Act provides that an agency head 'must uphold and promote the APS Values'<sup>12</sup> and members of the Senior Executive Service (SES) are expected to promote the APS Values and Code of Conduct 'by personal example and other appropriate means'.<sup>13</sup> However, these requirements do not directly apply outside of the APS.

- The APS Values include an 'Ethical' value, which is that: 'The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.' The Australian Public Service Commissioner may issue directions relating to the APS Values.<sup>14</sup> The Directions set out

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<sup>5</sup> Under ss41(1) and ss41(2) of the Public Service Act the Australian Public Service Commissioner has integrity-related functions that include: 'to uphold high standards of integrity and conduct in the APS'.

<sup>6</sup> The directions set out requirements for sound practice in the provision of legal services to the Australian Government. They offer tools to manage legal, financial and reputational risks to the Australian Government's interests. Available at: <https://www.ag.gov.au/legal-system/office-legal-services-coordination/legal-services-directions-and-guidance-notes>.

<sup>7</sup> The Public Governance, Performance and Accountability Rule 2014 is made by the Minister for Finance. The PGPA Rule and other legislative instruments such as the Commonwealth Procurement Rules and Commonwealth Grants Rules and Guidelines establish the requirements and procedures necessary to give effect to the governance, performance and accountability matters covered by the PGPA Act. Available at: <https://www.finance.gov.au/government/managing-commonwealth-resources/pgpa-legislation-associated-instruments-and-policies>.

<sup>8</sup> Specific requirements relating to the disclosure of interests also appear in the PGPA Rule.

<sup>9</sup> An accountable authority can be a single person or a group of persons, such as a governing board.

<sup>10</sup> PGPA Act ss15(1)(a).

<sup>11</sup> PGPA Act s8.

<sup>12</sup> Public Service Act s12.

<sup>13</sup> Public Service Act ss35(3)(c).

<sup>14</sup> Public Service Act s11.

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requirements to be met to uphold the 'Ethical' value. The requirements include: 'acting in a way that models and promotes the highest standard of ethical behaviour', 'complying with all relevant laws, appropriate professional standards and the APS Code of Conduct' and 'acting in a way that is right and proper, as well as technically and legally correct or preferable'.<sup>15</sup>

- The APS Code of Conduct has 13 requirements that include: behaving honestly and with integrity in connection with APS employment; acting with care and diligence; complying with all applicable Australian laws; complying with any lawful and reasonable direction; avoiding conflicts of interest and disclosing material personal interests; proper use of resources; not providing false or misleading information; not misusing power or authority; upholding the APS values; and upholding the integrity and good reputation of the agency and the APS.
- Further probity requirements apply to APS Senior Executive Service (SES) employees and/or APS agency heads. These include the declaration of interests and the declaration of gifts, benefits and hospitality.
- Section 57 of the Act specifies the responsibilities of the Secretary of a Department. These include: 'to implement measures directed at ensuring that the Department complies with the law'.<sup>16</sup>

10. The interaction between the Public Service Act and PGPA Act is recognised in section 32 of the PGPA Act. It states that to avoid doubt, the finance law is an Australian law for the purposes of subsection 13(4) of the Public Service Act. If the Public Service Act applies to an official of a PGPA entity, the official will be required under subsection 13(4) of the Public Service Act to comply with applicable Australian laws, which include the finance law.<sup>17</sup> This means that if the official contravenes the finance law, sanctions may be imposed on the official under section 15 of the Public Service Act.<sup>18</sup>

11. The integrity, probity and ethical requirements applying to contractors are managed in different ways, at an agency level, as there is no whole-of-workforce framework or approach applying across the APS. This is the case notwithstanding the fact that a large number of contractors are doing work in and as part of the operations of APS agencies, alongside APS personnel, as part of a mixed workforce.<sup>19</sup>

12. In addition, activity-specific frameworks will often contain ethical requirements focused on the activity they regulate. These include the frameworks for: grants administration; government procurement; government advertising; protective security; appearing before parliament; the

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<sup>15</sup> Australian Public Service Commissioner's Directions 2022, s14. Available at: <https://www.apsc.gov.au/working-aps/commissioners-directions>.

<sup>16</sup> Public Service Act ss57(2)(c).

<sup>17</sup> Section 13 sets out the APS Code of Conduct. Subsection 13(4) provides that an APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means any Act, or any instrument made under an Act, or any law of a State or Territory, including any instrument made under such a law.

<sup>18</sup> Section 15 relates to breaches of the APS Code of Conduct.

<sup>19</sup> ANAO, Effectiveness of the Management of Contractors performance audit series, Chapters 1 and 5. Available at: <https://www.anao.gov.au/work/audit-insights/effectiveness-the-management-contractors>

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caretaker period; liaising with lobbyists; conducting investigations; legal work; risk management; and fraud control.<sup>20</sup>

13. Integrity, probity and ethical requirements, including those in activity-specific frameworks, may be expressed as minimum requirements. Further requirements may be established by the head of an organisation through AAls and internal policies. Public sector personnel must also comply with any applicable ethical requirements set out in general government policies, professional codes and standards, or legislation (such as the enabling legislation of statutory bodies and corporations law).

14. A summary of integrity, probity and ethical arrangements in the sector is found in Chapter 1 of the three ANAO performance audits on probity management in financial regulators, which the Committee is reviewing.<sup>21</sup> The situation for contractors is discussed in Chapters 1 and 5 of the ANAO audit series on the Effectiveness of the Management of Contractors in the Department of Defence, Services Australia and the Department of Veterans' Affairs.<sup>22</sup> The National Anti-Corruption Commission (NACC) has also released a summary of integrity arrangements, titled *Towards Integrity Maturity: Mapping the Commonwealth integrity landscape*.<sup>23</sup>

### ANAO audits of ethics

15. The ANAO audits against framework requirements, to provide independent assurance to Parliament and assist it to hold the executive government to account.

16. In recent years the ANAO has increasingly brought into scope issues of ethics (as defined in the PGPA Act and Public Service Act), particularly where meeting mandatory requirements is not sufficient to ensure compliance with the high expectations set out in principles-based legislation and frameworks. This enhanced focus, including the development of ANAO methodology guidance for audits of ethics, is discussed in Appendix 1 of this submission.

#### Audits under review

17. The following performance audits, which the JCPAA is reviewing as part of its inquiry, were either planned by the ANAO to review aspects of selected entities' probity management, or made findings relating to ethics in the course of a wider ANAO review of program administration.

- Auditor-General Report No.31 2022–23 *Administration of the Community Health and Hospitals Program*<sup>24</sup>
- Auditor-General Report No.18 2022–23 *The Acquisition, Management and Leasing of Artworks by Artbank*<sup>25</sup>

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<sup>20</sup> Whether an entity is a non-corporate Commonwealth entity or a corporate Commonwealth entity under the PGPA Act will also determine which elements of the PGPA Act and PGPA Rule will apply to the entity. Corporate Commonwealth entities are legally separate from the Commonwealth. There were 100 non-corporate Commonwealth entities and 72 corporate Commonwealth entities as at 6 March 2023.

<sup>21</sup> See paragraph 17 below.

<sup>22</sup> ANAO, Effectiveness of the Management of Contractors performance audit series. Available at: <https://www.anao.gov.au/work/audit-insights/effectiveness-the-management-contractors>

<sup>23</sup> NACC, available at: [https://www.nacc.gov.au/sites/default/files/documents/2023-08/CIMF-towards-integrity-maturity-mapping-the-commonwealth-integrity-landscape\\_0.pdf](https://www.nacc.gov.au/sites/default/files/documents/2023-08/CIMF-towards-integrity-maturity-mapping-the-commonwealth-integrity-landscape_0.pdf).

<sup>24</sup> Available at: <https://www.anao.gov.au/work/performance-audit/administration-of-the-community-health-and-hospitals-program>.

<sup>25</sup> Available at: <https://www.anao.gov.au/work/performance-audit/acquisition-management-and-leasing-artworks-artbank>.

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- Auditor-General Report No.30 2022–23 *Probity Management in Financial Regulators* — Australian Prudential Regulation Authority<sup>26</sup>
- Auditor-General Report No.36 2022–23 *Probity Management in Financial Regulators* — Australian Securities and Investments Commission<sup>27</sup>
- Auditor-General Report No.38 2022–23 *Probity Management in Financial Regulators* — Australian Competition and Consumer Commission<sup>28</sup>

18. In the Community Health and Hospitals Program audit, the ANAO assessed administrative effectiveness, including the application of the Commonwealth grants framework. Amongst other things, the ANAO found that the Department of Health and Aged Care’s administration was ineffective and fell short of ethical requirements. In particular, the department deliberately breached the Commonwealth Grants Rules and Guidelines and failed to advise government where there was no legislative authority for grant expenditure. Appendix 4 of the audit report sets out key ethical behaviour requirements and instances of entity non-compliance. The department is an APS agency.

19. In the Artbank audit, the ANAO examined the responsible department’s approach to acquiring, managing and leasing Australian contemporary art under the Artbank program. The ANAO found issues in licensing practices. Fifteen duplicate copies of 14 time-based digital works were created so that those works could be rented 22 times to more than one client at a time. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts is an APS agency.

20. In the series of three performance audits of probity management in financial regulators – ASIC, APRA and the ACCC – the ANAO set out to review the operation of requirements relating to probity, ethics and integrity, using a common methodology. The ANAO reviewed both general framework requirements and specific requirements in the entities’ enabling legislation. However, in the absence of a clearly defined model for what an appropriate probity framework would look like, the ANAO developed its own approach.<sup>29</sup> The ANAO found that probity management in APRA and ASIC was largely effective while it was partly effective in the ACCC. The primary difference between the ACCC and the other entities was the lower maturity of its probity monitoring process. A feature of the ACCC’s probity arrangements is their complexity, including the requirement, under its enabling legislation, for a Code of Conduct for Commission Members and Associate Members. This is in addition to the APS Code of Conduct applying to ACCC employees, who are members of the APS. The ACCC is an APS agency, while ASIC and APRA are not.

21. Issues relating to compliance with ethical requirements, the assessment of integrity maturity in entities, and overlapping integrity requirements are discussed further in the next section of this submission.

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<sup>26</sup> Available at: <https://www.anao.gov.au/work/performance-audit/probity-management-financial-regulators-australian-prudential-regulation-authority>.

<sup>27</sup> Available at: <https://www.anao.gov.au/work/performance-audit/probity-management-financial-regulators-australian-securities-and-investments-commission>.

<sup>28</sup> Available at: <https://www.anao.gov.au/work/performance-audit/probity-management-financial-regulators-australian-competition-and-consumer-commission>.

<sup>29</sup> The ANAO reviewed a selection of probity risks requiring management by Australian Government entities, including a number of specific risks requiring management by entities involved in financial regulation activities. The risks selected for review related to: code of conduct; the management of conflict of interest; the management of key regulatory risks (such as regulatory capture risk and financial trading); the management of senior executive remuneration; probity in procurement; the oversight of corporate credit card expenditure; the management of gifts, benefits and hospitality; the identification and management of fraud risks; and the management of public interest disclosures.

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## Improving compliance with ethical requirements

### Audit findings

22. ANAO audits provide evidence that the Australian public sector regularly falls short of complying with both the intent and requirements of its regulatory frameworks and lacks effective accountability for performance. Some identified non-compliance has been deliberate, raising ethical issues including at the leadership level. Appendix 2 of this submission describes selected areas where ANAO audit work provides evidence of persistent non-compliance across the sector and levels of resistance to accountability for performance.

23. While audit findings do not prove that there is a systemic integrity problem, long-running findings are an indicator that action is necessary to avert the risk of issues becoming systemic. All of which indicate that current approaches may not be effectively supporting framework expectations of a high integrity culture.

24. This raises the question of whether the current risk tolerance for compliance with framework expectations is appropriately supporting integrity. Audits suggest that in making outcome versus compliance decisions, the risk tolerance for non-compliance is high, particularly where consequences are low or benefits are high. That is, an 'achievement orientation' and 'getting things done' — including by 'cutting corners' if necessary — has a significantly higher value than compliance. It may be that incentives and rewards need to be reset, including through the performance management system, which is a component of the control environment operating in the public sector.

25. At the heart of the issue is complying with the requirements and intent of established frameworks. They must be more than aspirational. They have a legislative basis and need to be followed and enforced. The approach that actors in the system — the policy owners, heads of organisations and their personnel — take to compliance is fundamental to integrity outcomes. The Australian Public Service Commission has emphasised that 'compliance ensures standards for integrity are met'<sup>30</sup> and section 14 of the Australian Public Service Commissioner's Directions 2022 provides that upholding the 'ethical' value in subsection 10(2) of the Public Service Act requires 'complying with all relevant laws' and 'acting in a way that is right and proper, as well as technically and legally correct or preferable.'<sup>31</sup>

### Providing assurance to the Parliament – the role of internal regulators and integrity assessment

26. There are almost no formal mechanisms in public sector integrity frameworks to provide assurance on compliance. Often the ANAO is the only source of compliance reporting — as in the probity audit series under review by the Committee — and ANAO resources mean that coverage is limited. While entity accountable authorities and agency heads must be responsible for compliance within their organisations, policy owners should at least have processes in place to identify the level of compliance across the sector and be willing to modify their regulatory approach if it is not working. Audits generally observe that policy owners are reluctant to take accountability for providing robust advice to entities, defaulting to advising that decisions are for accountable authorities.

27. The existing frameworks were developed by internal regulators and proposed to Parliament by the executive government, on the basis of their fitness for purpose and the expectation that they

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<sup>30</sup> APSC, Fact sheet: Defining Integrity, 9 December 2021, <https://www.apsc.gov.au/working-aps/integrity/integrity-resources/fact-sheet-defining-integrity>.

<sup>31</sup> Australian Public Service Commissioner's Directions 2022, s14. Available at: <https://www.apsc.gov.au/working-aps/commissioners-directions>.



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would be fully complied with. It is currently difficult to see how most framework owners are able to provide assurance to government or the Parliament on the effectiveness of the frameworks they, largely, advised should be implemented and which they administer.

28. In the absence of system-level assurance by internal regulators, the Committee may wish to consider how the Parliament could receive assurance directly, to drive compliance with integrity, probity and ethical requirements and accountability for performance.

29. The JCPAA recently considered the role of the Department of Finance as policy steward of the procurement framework and emphasised the need for leadership from the system steward and regulator. The committee stated: 'That doesn't mean being accountable for every procurement, but it does mean collecting more and better information about agencies' compliance with the CPRs to give it an accurate picture of how the procurement framework is operating.'<sup>32</sup>

30. As set out in Appendix 3 of this submission, the critical role of policy owners in maintaining a culture of integrity in the sector, including respect for the rule of law, has also been a focus of recent reviews of the public sector and its performance. These reviews have included the following.

- The 2019 Thodey Review of the APS, which recommended the reinforcement of APS institutional integrity to sustain the highest standards of ethics and build a pro-integrity culture and practices in the APS. The review proposed an enhanced role for the APSC, amendments to the Public Service Act, embedding integrity guidance in induction processes, and that the APSC and Department of Finance extend APS integrity requirements to service providers and long-term APS contractors and consultants.
- The 2023 capability review of the APSC, which identified a need 'for the Commission to fulfil a more central role in government' and identified 'Leading on integrity for the APS' as one of the most important focus areas. The review also observed that: 'A particular point of difference between stakeholders and staff related to the integrity agenda. Most staff see the Commission as fulfilling its role in upholding the integrity of the APS through guidance material, while stakeholders saw a more substantial role for the Commission, with stronger direction and leadership.'
- The 2023 Robodebt Royal Commission, which included chapters on 'Improving the Australian Public Service' and 'Lawyers and legal services.'

31. Under the Public Service Act the Australian Public Service Commissioner, supported by the APSC, has functions that include: 'to uphold high standards of integrity and conduct in the APS', 'to monitor, review and report on APS capabilities', 'to evaluate the extent to which Agencies incorporate and uphold the APS Values and the APS Employment Principles', and 'to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct.'<sup>33</sup>

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<sup>32</sup> Joint Committee of Public Accounts and Audit, *Report 498: 'Commitment issues' – An inquiry into Commonwealth procurement*, p. viii and paragraphs 2.47-2.62. Available at: [https://www.aph.gov.au/parliamentary\\_business/committees/joint/public\\_accounts\\_and\\_audit/~/\\_link.aspx?id=8D910891B0724A72BD2621E9AFB70D9D&z=z](https://www.aph.gov.au/parliamentary_business/committees/joint/public_accounts_and_audit/~/_link.aspx?id=8D910891B0724A72BD2621E9AFB70D9D&z=z).

<sup>33</sup> Public Service Act ss41(1)(b), ss41(1)(c), ss41(2)(f) and ss41(2)(l). The APSC publishes information and data about the APS in the annual State of the Service Report. The report includes information on aspects of ethics and integrity. Available at: <https://www.apsc.gov.au/working-aps/state-of-service/2022>.

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32. As set out in Appendix 4 of this submission, in April 2022 the APSC released a non-mandatory *Integrity Metrics Resource* directed to APS agencies.<sup>34</sup> The resource potentially provides a basis for consistent integrity assessment and subsequent reporting to internal regulators and the Parliament. There is also a *Commonwealth Integrity Maturity Framework*, released by the Australian Commission for Law Enforcement Integrity in December 2022 and subsequently taken up by the National Anti-Corruption Commission (NACC).<sup>35</sup> The NACC states that the project has drawn from the APSC's Integrity Metrics Maturity Model.

33. The NACC's *Commonwealth Integrity Maturity Framework* comprises eight integrity principles, with each principle accompanied by a four-level maturity scale. An important feature of the framework is the inclusion of performance management as part of 'Principle 2: Integrity knowledge and performance management', and the development of specific integrity maturity indicators for performance management.<sup>36</sup> This approach provides the basis for:

- a performance management system that explicitly references integrity requirements;
- a performance management system geared to monitoring and incentivising integrity as well as achieving outcomes; and
- a pathway for driving integrity maturity within individual organisations and across the sector.

34. Regulators in the sector could usefully collaborate to develop a common integrity maturity assessment framework for all Commonwealth entities, as a basis for mandated integrity performance reporting to regulators and the Parliament. The PGPA Rule 2014 — which currently provides a framework for entities' annual performance statements and annual reports — could be amended to incorporate such a requirement. A common approach, mandated by internal regulators, would generate a standardised data set for the analysis of integrity performance and risk across the sector.

**Sector-wide integrity framework**

35. In its recent procurement report, the JCPAA also observed that the Commonwealth procurement framework did not apply consistently across the public sector, and recommended that it apply by default.<sup>37</sup>

36. There is scope to consider the development of a common sector-wide integrity framework. As discussed, the specific integrity arrangements applying to personnel operating in the public sector — which include APS employees, PGPA officials, statutory office holders and contractors — depends on

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<sup>34</sup> APSC, *Integrity Metrics Resource*, 28 April 2022. Available at: <https://www.apsc.gov.au/working-aps/integrity/integrity-metrics-resource>.

<sup>35</sup> NACC, *Commonwealth Integrity Maturity Framework*. Available at: <https://www.nacc.gov.au/commonwealth-integrity-maturity-framework>.

<sup>36</sup> The four integrity maturity indicators for performance management, at pp.9-10 of the framework, are as follows.

Level 1: integrity is not explicitly referenced in employee duty statements or performance agreements.

Level 2: integrity is referenced in employee duty statements and performance agreements, but there are no mechanisms to ensure consistency of assessment.

Level 3: integrity is a core consideration in employee duty statements and performance agreements and is consistently monitored in performance assessments.

Level 4: individuals are assessed (e.g. randomly and periodically) to determine if and how integrity knowledge is being applied in practice in the workplace.

<sup>37</sup> Joint Committee of Public Accounts and Audit, *Report 498: 'Commitment issues' – An inquiry into Commonwealth procurement*, paragraphs 2.44-2.46, paragraphs 2.144-2.149, recommendation 2.



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the type of entity that engages them and their engagement status. There is also overlap between the requirements of the PGPA Act, Public Service Act, and some legislation applying to statutory bodies.<sup>38</sup>

37. While probity, ethical and integrity requirements have slightly different technical definitions and nuances, depending on the applicable legislation, they are all very similar in practice. A common integrity framework, applying to all personnel involved in public sector activity, would streamline and reinforce core expectations, provide a basis for the assessment of integrity performance across all personnel and entity types, and provide a basis for standardised integrity reporting to internal regulators and the Parliament.

**Parliamentary role**

38. The Committee may also wish to consider its own role in any enhanced integrity maturity assessment and reporting framework. The Committee reviews all rules under the PGPA Act before they are tabled in the Parliament and has a role in approving any changes to the annual report rule for Commonwealth entities under the PGPA Act. The Committee also has a general oversight role regarding the PGPA Act and performance of the sector.<sup>39</sup>

39. The options discussed above would mean that the Parliament will continue to rely on internal regulators. As the Committee observed in its recent report on procurement, policy owners such as the Department of Finance have been unwilling to take a stronger regulatory posture, and recent reviews have concluded that the APSC should lead more actively. Ensuring high levels of integrity may require a stronger approach to oversight of the sector. Setting principles-based rules and leaving their implementation to entity accountable authorities, without robust accountability, has not resulted in strong sectoral performance. The ANAO has for a number of years suggested that the policy owners of frameworks — in areas such as resource management, procurement, grants administration, cyber security, record-keeping, FOI and ethical conduct — should take a stronger regulatory posture. A lack of change to this posture may indicate that stronger and more independent oversight functions are required, including with a clear mandate to serve the Parliament.

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<sup>38</sup> For example, and as discussed, a feature of the ACCC's probity arrangements is their complexity, including the requirement, under its enabling legislation, for a Code of Conduct for Commission Members and Associate Members. This is in addition to the APS Code of Conduct applying to ACCC employees, who are part of the APS.

<sup>39</sup> Joint Committee of Public Accounts and Audit, Role of the Committee (the PGPA Act). Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Accounts\\_and\\_Audit/Role\\_of\\_the\\_Committee](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/Role_of_the_Committee).

## Development of the ANAO's methodology guidance for audits of ethics

### Banking Royal Commission

The 2019 *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*<sup>40</sup> highlighted issues of corporate governance and culture of relevance to the Australian public sector, including:

- the criticality of organisational culture to entity performance, values and conduct; and
- the need for those charged with governance to exercise strategic oversight of non-financial risks such as compliance risk and conduct risk.

While the specific focus of the (Hayne) Royal Commission and earlier inquiries was on financial institutions, their key insights on culture and governance have wider applicability and provide lessons for all accountable authorities of Australian government entities, including governance boards. The Auditor-General presented a series of four audits in April and May 2019 that reviewed whether the boards of four corporate Commonwealth entities had established effective arrangements to comply with selected legislative and policy requirements, and adopted practices that support effective governance.<sup>41</sup>

### Auditor-General's 2020 mid-term report

Analysis of ANAO audit findings, presented in the Auditor-General's 2020 mid-term report<sup>42</sup>, indicated there was strong evidence, from both performance and financial audits, that the public sector's approach to procurement regularly fell short of expectations set out in regulatory frameworks. In many cases it was difficult for entities to be able to demonstrate that they have provided value in the use of public resources. It was also particularly concerning to regularly see entities complying with the letter of the procurement rules but not with their intent. Often the evidence suggested that the decision to exempt procurements from open competition was based more on it being a less costly and easier process for the entity to undertake, rather than a focus on the overall value of the use of taxpayers' funds.<sup>43</sup>

The mid-term report highlighted that the public sector operates largely under a self-regulatory approach. Policy owners establish the rules of operation and then largely leave it to entities' accountable authorities to be responsible for compliance. There are almost no formal mechanisms in these frameworks to provide assurance on compliance. Often the ANAO is the only source of

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<sup>40</sup> K M Hayne, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Final Report, 1 February 2019. Available at: [Misconduct in the Banking, Superannuation and Financial Services Industry | Royal Commissions](#).

<sup>41</sup> Available at: <https://www.anao.gov.au/work/audit-insights/board-governance>. Chapter 1 of this audit series discussed the Hayne Royal Commission's findings in the public sector context. Three further audits in this series were tabled during 2020-21.

<sup>42</sup> *Auditor-General's mid-term report*, 7 October 2020. Available at: <https://www.anao.gov.au/work/speeches-and-papers/auditor-general-mid-term-report>.

<sup>43</sup> Ibid. p.4.

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compliance reporting and its resources mean that coverage is quite limited. While accountable authorities must be responsible for entities' compliance, it was also clear that policy owners needed to be held accountable if the regulatory frameworks they put in place for the public sector did not result in an acceptable level of compliance. For this to occur, they should at least have processes in place to identify the level of compliance and be willing to modify their regulatory approach if it is not working.<sup>44</sup>

The mid-term report observed that a challenge facing the ANAO's performance audit work was how the culture of an organisation is considered during an audit. The performance of an entity cannot always be determined by the extent to which it complies with a particular framework. In many audits, culture comes into the frame in relation to the governance arrangements of organisations. This became most obvious in audits of cyber security where it became clear that complying with the minimum requirements of the framework was not a sufficient test for cyber security. The ANAO developed a framework of cyber resilience designed to consider whether entities had developed a cyber security culture. Similar issues existed in other compliance audits, such as in procurement and grants management, where culture is a driver of the proper use of public resources. Compliance with minimum standards is essential, but internal culture drives entity behaviours and affects whether their approach to compliance results in actions consistent with the intended outcomes of a framework.<sup>45</sup>

The mid-term report further observed that in this respect, a key area requiring attention was the ANAO's application of its mandate relating to ethics — the fourth 'e' in the definition of 'proper' use and management of public resources in the PGPA Act. Most ANAO audit work done in the other three areas — effectiveness, economy and efficiency — could draw on performance against clearly defined objectives, frameworks, rules or standards. However, the area of ethical behaviour can be much more nuanced. It is clearly unethical to comply with the letter of a rule, but in a way which undermines its intent. For example, using the provision of 'extreme urgency brought about by events unforeseen' to grant an exemption from open competitive tendering, simply because the procurement process was left too late. While ANAO audits had outlined the facts of these situations, there was a reluctance to call out the ethics of this behaviour. On this basis, the development of an audit methodology to assess ethics became a priority for the ANAO.<sup>46</sup> ANAO methodology guidance for audits of ethics was finalised in 2022.

### **ANAO methodology guidance for audits of ethics**

In conducting performance audits of entities, the ANAO obtains evidence to inform an assessment of whether the audited entity executes its activities in accordance with the requirement to promote proper use of public resources. Findings may be made as to whether the use or management of public resources was efficient, effective, economical and ethical. In forming an overall conclusion in a performance audit, the ANAO may also form a view on whether the entity's activities have been executed in accordance with both compliance with rules and policy frameworks and the intent of those frameworks, including the requirements of the *Public Service Act 1999* (PS Act) for the Australian Public Service (APS) to act with integrity in all that it does.

It is hoped that greater scrutiny in the area of ethics will help ensure that the public sector is looking beyond technical compliance and operating in line with the intent of established rules and

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<sup>44</sup> Ibid. p.5.

<sup>45</sup> Ibid. p.6.

<sup>46</sup> Ibid. pp.6-7.

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frameworks, alongside community expectations of integrity. A culture of integrity in an organisation flows from the standards set by its leaders.

To this end, the ANAO has developed a methodology for assessing the ethical use and management of public resources, in addition to considering technical compliance with rules and policy frameworks.

The ANAO consulted with the Australian Public Service Commission and the Department of Finance to develop the methodology, which applies the existing Australian Government Sector ethical requirements as the framework for auditing.

The methodology defines the Australian Government Sector ethical framework as comprising:

- The legal framework applicable to the entity being audited. The legal framework applying to all APS agencies comprises the finance law and the law governing the operation of the APS including the APS Values and Code of Conduct.
- Activity-specific frameworks (that is, key public sector resource management frameworks for specific Australian Government activities such as the Commonwealth Grants Rules and Guidelines and the Commonwealth Procurement Rules).
- Government Policy Orders, which are orders made by the Finance Minister under finance law that specify a policy of the Australian Government that is to apply to the entity being audited.
- Entity-specific frameworks, which may include, for example, the entity's policies, guidelines and procedures.

The selection of the appropriate elements of the ethical framework to apply to an audit will depend on the type of entity being audited, the type of audit and any circumstances unique to the activity being audited.

While methodologies for internal audits of ethics and entity culture are well documented, both within and outside of Australia, such methodologies for independent audits of ethics in public sector entities are not readily available. The ANAO consulted with the Institute of Internal Auditors Australia to help inform the development of practical guidance on auditing culture against the Australian Government Sector Ethical Framework.

There are three scenarios included in the methodology under which ANAO performance audits may include consideration of ethics: effectiveness audits of ethical frameworks; audits with specific ethical criteria; and audits which include consideration of ethics in findings.

The objective of an effectiveness audit of ethical frameworks is to examine the effectiveness of the establishment or implementation of the Australian Government Sector ethical framework by the audited entity or entities. This type of audit incorporates aspects of audits of effectiveness of governance frameworks, compliance with ethical frameworks and organisational culture.

Audits with specific ethical criteria have a narrower focus and consider specific matters such as compliance with ethical requirements as one of the criteria in a performance audit which is also considering effectiveness, efficiency or economy. For example, in an audit considering effectiveness of a procurement, the ethics of decision-making in the conduct of public administration, the provision and consideration of advice, and evidence and management of conflicts of interest and probity may also be considered. This type of audit would conclude on whether the procurement was ethical, as well as effective and economical.

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In audits which include consideration of ethics in findings, there are no specific criteria regarding ethics, but during the course of the audit as findings relating to effectiveness, efficiency or economy are made, there is consideration of whether those findings also indicate unethical conduct.

The methodology also provides a framework for applying the ethics methodology to any performance or financial audit throughout the typical phases of an audit i.e. assessing and responding to the risk of ethical matters on the audit, assessing if findings are of an ethical nature, assessing the materiality of ethical findings, the impact of ethical findings on the overall audit strategy and risk assessment, reporting ethical findings, and the impact of ethical findings on the audit conclusion.

Where ANAO findings or a conclusion are made as to whether the use or management of public resources by the entity has been ethical, it is a matter for an accountable authority to assess whether the audit findings in the particular case reflect the broader posture of the entity or relate to individual APS staff conduct.

As the ethics methodology was being developed, the ANAO continued to assess entities' use and management of public resources. In some audits where instances of non-compliance with key ethical behaviour requirements were identified, the ANAO included an appendix to the audit report summarising these key requirements and the findings raised. An example of such an audit is [Administration of the Community Health and Hospitals Program](#), including Appendix 4 *Non-compliance with ethical requirements*.

## **Selected areas where audit evidence indicates that the sector regularly falls short of expectations set out in its regulatory frameworks**

### **Procurement**

In procurement, audits have identified cases where entities seek to comply with the letter of the procurement rules without considering how this achieves the principles underpinning the rules. Often minimum compliance has the appearance of creating convenience for the entity and the provider rather than seeking the fundamental outcomes contemplated in the procurement framework (including value for money for the taxpayer) or the PGPA Act (proper use of resources). In these cases, the implementation of procurement arrangements has fallen short of reasonable standards and appears to be primarily an exercise in form over substance.

Audits with procurement findings include the following.

Auditor-General Report No.37 2022-23 *Procurement of Office Furniture*

Auditor-General Report No.34 2022-23 *Procurement of the Permissions Capability*

Auditor-General Report No.21 2022-23 *Department of Defence's Procurement of Hunter Class Frigates*

Auditor-General Report No.5 2022-23 *Digital Transformation Agency's Procurement of ICT-Related Services*

Auditor-General Report No.42 2021-22 *Procurement of Delivery Partners for the Entrepreneurs' Programme*

Auditor-General Report No.30 2021-22 *Procurement by the National Capital Authority*

Auditor-General Report No.6 2021-22 *Management of the Civil Maritime Surveillance Services Contract*

Auditor-General Report No.1 2021-22 *Defence's Administration of Enabling Services — Enterprise Resource Planning Program: Tranche 1*

Auditor-General Report No.18 2020-21 *Defence's Procurement of Combat Reconnaissance Vehicles (Land 400 Phase 2)*

Auditor-General Report No.9 2020-21 *Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport*

Auditor-General Report No.4 2020-21 *Establishment and Use of ICT Related Procurement Panels and Arrangements*

Auditor-General Report No.2 2020-21 *Procurement of Strategic Water Entitlements*

Auditor-General Report No.37 2019-20 *Procurement of Garrison Support and Welfare Services*

Auditor-General Report No.32 2019-20 *Value for Money in the Delivery of Official Development Assistance through Facility Arrangements*



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Auditor-General Report No.25 2019-20 *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements*

Auditor-General Report No.4 2019-20 *OneSKY: Contractual Arrangements*

Auditor-General Report No.9 2018-19 *Procurement Processes and Management of Probity by the Moorebank Intermodal Company*

Auditor-General Report No.24 2018-19 *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*

Auditor-General Report No.40 2018-19 *Modernising Army Command and Control — the Land 200 Program*

**Grants administration**

In the grants space, there is evidence of 'gaming', or actions designed to achieve pre-determined results by technically meeting mandatory requirements, but in a way that is inconsistent with framework principles. There is also evidence of deliberate non-compliance with legal requirements set by the grants rules. Recent audits indicate that a view appears to have emerged that likely non-compliance with legal requirements is a risk that can be taken on by entities.

Audits with grant findings include the following.

Auditor-General Report No.45 2022–23 *Australia's Provision of Military Assistance to Ukraine*

Auditor-General Report No.41 2022-23 *Management of the Try, Test and Learn Fund Transition Projects*

Auditor-General Report No.31 2022-23 *Administration of the Community Health and Hospitals Program*

Auditor-General Report No.1 2022-23 *Award of Funding under the Building Better Regions Fund*

Auditor-General Report No.21 2021-22 *Operation of Grants Hubs*

Auditor-General Report No.16 2021-22 *Award of Funding under the Safer Communities Fund*

Auditor-General Report No.47 2020-21 *Administration of Commuter Car Park Projects within the Urban Congestion Fund*

Auditor-General Report No.31 2020-21 *Award of Funding under the Supporting Reliable Energy Infrastructure Program*

Auditor-General Report No.11 2020-21 *Indigenous Advancement Strategy — Children and Schooling Program and Safety and Wellbeing Program*

Auditor-General Report No.23 2019-20 *Award of Funding under the Community Sport Infrastructure Program*

Auditor-General Report No.12 2019-20 *Award of Funding Under the Regional Jobs and Investment Packages*

Auditor-General Report No.22 2018-19 *Award of a \$443.3 Million Grant to the Great Barrier Reef Foundation*

Auditor-General Report No.3 2017-18 *Award of Funding under the Community Development Grants Program*

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Auditor-General Report No.2 2018-19 *Administration of the Data Retention Industry Grants Program*

**Record keeping**

A lack of adequate documentation and records to support the rationale for decisions made and actions undertaken often makes it difficult for entities to demonstrate that activity was undertaken in accordance with framework requirements and with complete integrity. In this respect the Commissioner for Law Enforcement Integrity observed, in late 2022, that lack of record keeping can create corruption vulnerabilities within an entity.<sup>47</sup>

Of the 211 performance audits tabled in parliament in the last five years, 193 (91.5 per cent) included findings with respect to record keeping.

**Performance measurement and reporting**

The low priority given to the quality of performance measurement and reporting (both of which are mandatory duties of accountable authorities) has been consistently identified in performance audits and more recently in the audits of performance statements. Selective use of performance information and the use of unvalidated data can lead to biases in reporting and diminish the quality of decision making. Poor quality performance information reduces the ability to undertake effective evaluation.

There is a low priority given to serving the Parliament — through the provision of ‘meaningful information to the Parliament’ as expected by the PGPA Act<sup>48</sup> — which is also reflected in the approach of many entities in answering parliamentary committee questions and implementing agreed parliamentary committee recommendations.

**Accountability for performance**

There is audit evidence of a lack of priority given to addressing identified issues and taking accountability for performance.

- Follow-up audits of entities’ implementation of Parliamentary and ANAO recommendations indicate that agreed recommendations are not always implemented. Of particular concern is the lack of focus on the implementation of agreed Parliamentary committee recommendations.
- Some responses to audit reports try to diminish their value, by suggesting that: a conclusion refers to a minor issue, when under auditing standards a negative conclusion can only relate to a material finding; the entity was already aware of the issue and was dealing with it, when evidence does not support this; or an audit has not appropriately taken account of context, when the entity is really seeking to hide the conclusions in a narrative of excuses.

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<sup>47</sup> Australian Commission for Law Enforcement Integrity, *Investigation Report: Operation Tardis An investigation into payments made under the Cape Class Patrol Boat contract by the Department of Home Affairs*, 5 December 2022, p. 37, paragraph 233. Available at: [https://www.aclei.gov.au/sites/default/files/documents/2022-12/investigation\\_report\\_-\\_operation\\_tardis.pdf](https://www.aclei.gov.au/sites/default/files/documents/2022-12/investigation_report_-_operation_tardis.pdf)

<sup>48</sup> PGPA Act ss5(c)(ii).

## Consideration of ethics, integrity and probity in recent public sector reviews

### Thodey review

The 2019 Thodey review of the Australian Public Service<sup>49</sup> recommended the reinforcement of APS institutional integrity to sustain the highest standards of ethics and build a pro-integrity culture and practices in the APS (recommendation 7).<sup>50</sup> The related 2020 Sedgwick report on institutional integrity in the APS<sup>51</sup> set out the findings of consultations by Mr Stephen Sedgwick, a former Public Service Commissioner and Finance Secretary, and made recommendations to assist in devising a response to recommendation 7 of the Thodey review.

### APSC capability review

Under the Public Service Act the Australian Public Service Commissioner, supported by the APSC, has functions that include: ‘to uphold high standards of integrity and conduct in the APS’, ‘to monitor, review and report on APS capabilities’, ‘to evaluate the extent to which Agencies incorporate and uphold the APS Values and the APS Employment Principles’, and ‘to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct.’<sup>52</sup>

The 2023 capability review of the APSC<sup>53</sup>, the first in a planned program of reviews of APS agencies, considered that the APSC’s most important focus areas included: leading on integrity for the APS by focusing resources to assert itself as a leader on integrity; providing clear, authoritative guidance to agencies, with a stronger position stance; and building whole-of-service capability.<sup>54</sup>

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<sup>49</sup> *Our Public Service, Our Future. Independent Review of the Australian Public Service*, 20 September 2019. Available at: <https://www.apsreview.gov.au/index.htm>.

<sup>50</sup> Recommendation 7 of the Thodey review was to:

*Reinforce APS institutional integrity to sustain the highest standards of ethics.*

- *APS Commissioner to work with Secretaries Board and agencies with responsibility for integrity to build pro-integrity culture and practices in the APS.*
- *Amend the Public Service Act 1999 to: provide own-motion powers for the APS Commissioner to initiate investigations and reviews; require agencies to provide integrity information to the APSC; and include requirements to ensure agency heads and SES avoid or manage potential conflicts of interest after leaving the APS.*
- *APSC to embed integrity guidance in APS-wide induction, training and other core systems and processes.*
- *APSC and Finance to ensure all agencies extend APS integrity requirements to service providers, long-term APS contractors and consultants.*

<sup>51</sup> Stephen Sedgwick AO, *Report into consultations regarding APS approaches to ensure institutional integrity*, October 2020. Available at: <https://www.apsc.gov.au/working-aps/integrity/integrity-resources/report-consultations-regarding-aps-approaches-institutional-integrity>.

<sup>52</sup> Public Service Act ss41(1)(b), ss41(1)(c), ss41(2)(f) and ss41(2)(l).

<sup>53</sup> *Capability Review, Australian Public Service Commission*, June 2023. Available at: <https://www.apsc.gov.au/initiatives-and-programs/workforce-information/research-analysis-and-publications/capability-review-australian-public-service-commission>.

<sup>54</sup> The APSC capability review stated at p.11 that:

*The Commission also has areas to improve, which are discussed in the report. In considering the future challenges for the APS, and for the Commission to fulfil a more central role in government, these are the most important focus areas:*

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## Department of Health and Aged Care capability review

A further capability review, of the Department of Health and Aged Care, was released in August 2023.

The review noted that Auditor-General Report No.31 2022–23 *Administration of the Community Health and Hospitals Program* and a recent independent review had ‘highlighted the need for a stronger focus on compliance’ and that the department ‘needs to double down on efforts to enhance integrity’.<sup>55</sup>

The ANAO’s performance audit of the Community Health and Hospitals Program found that the Department of Health and Ageing’s administration was ineffective and fell short of ethical requirements. The ANAO observed that in describing the outcomes of the Australian Government Solicitor’s (AGS) legal risk assessments to the Minister, the department did not clearly state that, for several grants, the AGS had indicated that there was no legislation that could reasonably be relied on to authorise expenditure on the proposal.<sup>56</sup> Recent audits indicate that a view appears to have

- 
- *Providing clear, authoritative guidance to agencies, with a stronger position stance. This was identified by many agency heads. Advice cannot be vague and optional. The Commission needs to be firmer, and drive implementation of advice as well as evaluating where it has been actioned.*
  - *Improving its understanding of the needs of agencies and building whole-of-service capability where the APS needs it.*
  - *Undertaking more focused and deliberate engagement. This will help build the Commission’s influence and two-way information sharing and discussion on policies, directions and capability development.*
  - *Leading on integrity for the APS. The Commission effectively implemented a suite of pro-integrity measures for the APS during 2021–22. However, there is more to do and the Commission needs to focus resources to assert itself as a leader on integrity, along with the Attorney-General’s Department and the Department of the Prime Minister and Cabinet.*

The APSC capability review also stated at p.16 that:

*A particular point of difference between stakeholders and staff related to the integrity agenda. Most staff see the Commission as fulfilling its role in upholding the integrity of the APS through guidance material, while stakeholders saw a more substantial role for the Commission, with stronger direction and leadership.*

<sup>55</sup> Capability Review, Department of Health and Aged Care, August 2023. Available at: <https://www.apsc.gov.au/initiatives-and-programs/workforce-information/research-analysis-and-publications/capability-review-department-health-and-aged-care>.

The review stated at p.27 that:

*The review team also notes a recent audit report and an independent review highlighted the need for a stronger focus on compliance, both for government processes and the programs administered by the department:*

- *the recent Auditor-General report, Administration of the Community Health and Hospitals Program (June 2023) found that the department’s ‘administration of [Community Health and Hospitals Program] was ineffective and fell short of ethical requirements’*
- *the Independent Review of Medicare Integrity and Compliance (March 2023) found ‘the current system is overly fragmented, disjointed, and lacking in contemporary tools to detect and address non-compliance and fraud, despite the best endeavours of bureaucrats, regulators, and peak bodies’.*

The Health capability review further stated at p.28 that:

*The department’s responsibilities are broad and involve billions of dollars of public expenditure. While the department is working to enhance integrity and adhere to APS values, the review team believes, like all departments, it needs to double down on efforts to enhance integrity.*

<sup>56</sup> Auditor-General Report No.31 2022–23 *Administration of the Community Health and Hospitals Program*, p.96 and paragraphs 2.92 and 2.93.

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emerged that likely non-compliance with legal requirements is a risk that can be taken on by entities.<sup>57</sup>

**Robodebt royal commission**

The report of the Royal Commission into the Robodebt Scheme included chapters on 'Lawyers and legal services' (chapter 19) and 'Improving the Australian Public Service' (chapter 23).<sup>58</sup>

In a July 2023 address which included observations on legal advising within government in the context of the Robodebt scheme, NACC Commissioner Brereton argued against expressing legal advice in terms of 'risk' – that a particular course has high, medium or low legal risk – rather than in terms of what the law is. He did so on the basis that: 'A minister, or a board of directors, given advice that a course involves high legal risk, can nonetheless decide to take that risk. They might well be less inclined to do so if the advice was that, in the opinion of the lawyer, the proposed course of action was unlawful, even if it was unlikely that anyone would ever be able to mount a challenge to it. A related practice is providing a draft advice to the client which, if undesired by the client, is not finalised.' He added that: 'I do not mean to stigmatise these practices as necessarily corrupt; but they are corrosive of integrity.'<sup>59</sup>

Following the release of the Robodebt Royal Commission report in July 2023, it was announced that a taskforce led by the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Australian Public Service Commission would be established to support Ministers in preparing a government response.<sup>60</sup>

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<sup>57</sup> See also Auditor-General Report No.45 2022–23 *Australia's Provision of Military Assistance to Ukraine*, paragraphs 3.41–3.42 and footnote 54. Available at: <https://www.anao.gov.au/work/performance-audit/development-and-implementation-australia-approach-to-providing-military-assistance-to-the-government>. The ANAO reported that Defence records indicated that the acting Secretary of Defence was advised orally, on 28 February 2022, of risks relating to identified sources of legal authority for the payment of a proposed grant. Later that day a Defence SES officer advised colleagues by email that another SES officer had 'discussed with the acting Secretary who has indicated he can accept these risks, and that we should go ahead, while reporting our non-compliance.' While the nature of the identified non-compliance was not documented in this email, the ANAO's review indicated that the reference was to non-compliance with requirements of the Commonwealth grants framework set out in the Commonwealth Grants Rules and Guidelines 2017 (CGRGs), a statutory instrument made by the Minister for Finance under the PGPA Act. Paragraph 2.10 of the CGRGs provides that 'Officials must comply with the CGRGs'. The ANAO observed that 'deliberate non-compliance with the grants framework raises issues of 'proper' and 'ethical' use of public resources under the PGPA Act.'

<sup>58</sup> Catherine Holmes AC SC, *Royal Commission into the Robodebt Scheme*, Report Volume 1. Available at: <https://robodebt.royalcommission.gov.au/>. Among other things, Chapter 23 discussed: the application of the APS Values (Parts 1 and 4); recent APS reviews (Part 2); APS structural arrangements (Part 3); the obligations of APS senior executives and agency heads (Part 5); and record-keeping failures (Part 7).

<sup>59</sup> The Hon PLG Brereton AM RFD SC, 'Keynote Address: The Launch of the National Anti-Corruption Commission', UN Global Compact Network Australia 2023, Australian Dialogue on Bribery and Corruption, Future frontiers in Australian integrity frameworks, 18 July 2023. Available at: <https://www.nacc.gov.au/news-and-media/future-frontiers-australian-integrity-frameworks-enhancing-corporate-integrity>.

<sup>60</sup> Message to all APS staff on the Royal Commission into the Robodebt Scheme, 10 July 2023. Available at: <https://www.pmc.gov.au/news/message-all-aps-staff-royal-commission-robodebt-scheme>

## Integrity maturity models

### APSC

Under the Public Service Act the Australian Public Service Commissioner, supported by the APSC, has functions that include: ‘to uphold high standards of integrity and conduct in the APS’, ‘to monitor, review and report on APS capabilities’, ‘to evaluate the extent to which Agencies incorporate and uphold the APS Values and the APS Employment Principles’, and ‘to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct.’<sup>61</sup>

In April 2022 the APSC released an *Integrity Metrics Resource*<sup>62</sup> to assist agencies to measure, monitor and report on their integrity performance. The resource is intended to support agencies to understand their current integrity measurement capability and make informed decisions on where to focus future effort to lift integrity measurement, monitoring and reporting. The resource comprises the following.

- An integrity metrics maturity model – a self-assessment tool to help agencies review the current status of their approach to integrity measurement and make informed decisions on where additional focus may be required to uplift their integrity measurement and reporting capability.
- An integrity metrics register – which provides examples of a range of metrics that can be used to measure agency and employee integrity.
- An integrity dashboard – which provides a visual representation of an agency’s integrity performance and is a way to deliver information to leaders.

While measuring integrity performance is not mandated, the APSC states that it is considered good practice for agencies to undertake this activity at regular intervals. Agencies are not required to report on integrity performance to the APSC.

### ACLEI/NACC

In December 2022 the Australian Commission for Law Enforcement Integrity (ACLEI) released a *Commonwealth Integrity Maturity Framework*<sup>63</sup> to support the design, implementation and review of the effectiveness of integrity frameworks in Commonwealth entities. The framework was launched in anticipation of the National Anti-Corruption Commission’s (NACC) establishment and now appears on the NACC website.<sup>64</sup> ACLEI was subsumed by the NACC from 1 July 2023.

The NACC’s functions include educating the public sector and the public about corruption risks and prevention.

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<sup>61</sup> Public Service Act ss41(1)(b), ss41(1)(c), ss41(2)(f) and ss41(2)(l).

<sup>62</sup> APSC, *Integrity Metrics Resource*, 28 April 2022. Available at: <https://www.apsc.gov.au/working-aps/integrity/integrity-metrics-resource>.

<sup>63</sup> ACLEI, *Commonwealth Integrity Maturity Framework*, 9 December 2022. Available at: <https://www.apsacademy.gov.au/news-events/news/launch-commonwealth-integrity-maturity-framework>.

<sup>64</sup> NACC, *Commonwealth Integrity Maturity Framework*. Available at: <https://www.nacc.gov.au/commonwealth-integrity-maturity-framework>.



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The framework comprises the following.

- A set of 8 integrity principles that are derived from key Commonwealth integrity laws, policies and procedures. Each principle summarises the corresponding governance obligations and controls. The integrity principles are:
  1. Values and code of conduct
  2. Integrity knowledge and performance management
  3. Integrity policies, resources and systems
  4. Integrity risk management
  5. Prevent, detect and manage fraud and corruption
  6. Integrity in public resource management
  7. Protect people, information and assets
  8. Monitor and evaluate organisational integrity.
- Each integrity principle is accompanied by a 4-level maturity scale, with each level of maturity building on the previous level (see below).
- A self-assessment guide and 12 FAQs. The self-assessment is described as a participative diagnostic exercise.

Entities decide how to use the integrity maturity resources, and integrity maturity self-assessment is optional.

The NACC states that the project has drawn from the Australian Public Service Commission's Integrity Metrics Maturity Model.