

A COMPREHENSIVE APPROACH TO VALUES AND CODES OF CONDUCT

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In a recent submission to PM&C's public service reform team (www.themandarin.com.au/218023-stewardship-as-an-aps-value-is-the-new-it-word/), Paddy Gourley, Helen Williams and I support stronger action to improve the capability of the APS and its standing as an institution, but do not support adding 'stewardship' to the APS Values. Stewardship is a responsibility of ministers and senior public servants, not a value that every public servant can be expected to uphold.

But we also strongly support a comprehensive review of the APS Values.

Indeed, such a review might be broadened to clarify the distinct roles and responsibilities of Commonwealth employees working outside of as well as within the APS, including those employed under the Members of Parliament (Staff) Act and those in agencies and Government-owned corporations outside the APS.

This could form a key element of an integrated package of reforms drawing on those Thodey Report recommendations rejected by the Morrison Government which the Albanese Government is committed to revisit, and the recommendations from the Robodebt Royal Commission that is to report in June 2023 (<http://robodebt.royalcommission.gov.au/publications/andrew-podger-ao-report-robodebt-royal-commission>).

A central purpose of the APS Values has always been to define the central role of the APS as an institution in our democratic system of Government. A comprehensive review might help to establish a framework for setting values not only for the APS but also for other groups of Commonwealth employees clarifying their particular roles and responsibilities. Such a framework could also guide codes of conduct including for ministerial staff (which Thodey recommended should be in legislation) and the decisions yet to be taken in response to PM&C's recent report on amendments to the MOP(S) Act in response to the Jenkins Review. And it would also assist Minister Gallagher in her stated desire to consider the application of the APS Values to non-APS agencies.

Such an integrated and comprehensive review of the APS Values and those that should shape the behaviour of other Commonwealth employees would not be based on some popularity test amongst the employees, but should focus on a serious examination of respective roles and responsibilities in our quasi-Westminster system. One of my concerns with the 2023 amendments to the Values was that, while arguably making them simpler and more memorable, they also reduced their substance in terms of defining the unique role of the APS in particular by omitting merit, a keystone in the proper working of the public service.

The framework I suggest the Government consider would focus on each group of employees and their relationship with the Government and the Parliament, their relationship with the public, their workplace relationships and their ethical behaviour.

For the APS this would highlight that the APS is:

- Apolitical or non-partisan and professional
- Responsive to the elected government
- Accountable through the system of ministerial responsibility
- Impartial and committed to serving the public
- Merit-based in all aspects of employment

- Highly ethical in its exercise of public power.

Much of this is already captured in the current legislation but, importantly, merit – the central civil service attribute since the 1854 Northcote-Trevelyan Report - would be reinserted. Such a revision of the APS Values would make redundant the Thodey suggestion of a new set of principles.

Most of these values would, as now, also apply to the Parliamentary Service but, because that Service is in the legislature not the executive arm of government, it is not accountable through ministers nor is it responsive to the elected government. Accountability is through the Presiding Officers and it serves all Members of Parliament.

The changes to the MOP(S) Act proposed by the PM&C review would distinguish between:

- Electoral staff
- Personal staff of ministers
- Personal staff of other Members and Senators.

This sensible approach would facilitate clarification of the different values appropriate for those MOP(S) Act employees in the legislature – electorate staff and personal staff of non-ministerial Members and Senators – and those who are the personal staff of ministers. Unlike the APS and the Parliamentary Service, none of these employees would be required to be non-partisan and the merit principle would not be as strictly applied (though some sensible constraints are recommended by Jenkins and the PM&C review). Those in the legislature would be accountable primarily to their employing Member or Senator and through them to the Presiding Officers; ministerial staff would be accountable through the system of ministerial responsibility.

This general framework would also suggest that employees in non-APS agencies such as the ABC and CSIRO should have values similar to those for the APS but recognising their greater independence from the elected government (as often set out in their own legislation) and that accountability through the system of ministerial responsibility essentially relates to the agencies' boards (which commonly report to both ministers and the Parliament) rather than to the agencies' employees.

An interesting question is whether employees of government-owned companies and corporations should be subject to values distinct from those in any private commercial body. My view is that it is reasonable for the public to expect those working in the companies they own to have some commitment to serving them, to fair or impartial treatment and being accountable, even if the other APS Values should not be imposed. This might be reflected in the values set by the boards after consultation with their shareholder ministers.

This suggested framework for setting values not only for the APS but also for other Commonwealth employees evidently would need more work. Questions include how the APS Values relate to the APS Employment Principles, the degree to which impartiality and merit should apply to MOP(S) Act employees and whether employees of government-owned companies and corporations should be subject to any particular values and how these might be articulated.

But the benefit of this sort of approach is that it encourages a more systematic approach to setting values and codes of conduct across the Commonwealth sector. It would also reinforce other elements that need to be in the post-Thodey, post-Robodebt reform agenda, such as strengthening the role of the APS Commissioner, ensuring more merit-based senior appointments, addressing capability and promoting more citizens-centred services.