

# Public Service Commissioner Direction

No 2 of 2022

Under the

***Government Sector Employment Act 2013***

I, Kathrina Lo, Public Service Commissioner of New South Wales, pursuant to section 13 of the *Government Sector Employment Act 2013*, give the following direction.

Dated 19 August 2022



Kathrina Lo

**Public Service Commissioner**

## No 2 of 2022

# Public Service Commissioner Direction

Under section 13(1) of the *Government Sector Employment Act 2013*

## 1. Application

This direction is given to the heads of all government sector agencies.

Compliance with this direction is mandatory, subject to section 13 (4) and (5) of the *Government Sector Employment Act 2013*.

## 2. Date of operation

This direction has effect from 1 November 2022 until further notice.

## 3. Definitions

In this direction:

**government sector agency** has the same meaning as in section 3 of the *Government Sector Employment Act 2013*, as amended from time to time.

**head of a government sector agency** has the same meaning as in section 3 of the *Government Sector Employment Act 2013*, as amended from time to time.

**The Code of Ethics and Conduct for NSW government sector employees** and **Code** means the Code contained in Section 2.2 of *Behaving Ethically: A Guide for NSW government sector employees* as published on the Public Service Commission website on 26 August 2022 and set out at Schedule 1.

## 4. Direction

I direct the head of each government sector agency to implement *The Code of Conduct and Ethics for NSW government sector employees* on and from 1 November 2022, and to require employees of that agency to comply with the Code.

**Note:** The head of a government sector agency may implement the Code by way of incorporation in an agency code of conduct to form a single consolidated document, or by adoption separately.

## 5. Replacement of former direction

This direction replaces the following direction (former direction) on and from 1 November 2022:

(1) Public Service Commissioner Direction No 1 of 2015 (**April 2015 Direction**) made by the former Commissioner on 20 April 2015.

**Note:** The April 2015 Direction requires the heads of the government sector agencies listed in Schedule 1 to that Direction to implement the Code on and from 1 September 2015.

## 6. Savings

Conduct that occurred while the former direction was in effect remains subject to that direction as if it had not been replaced.

**Note:** References to government sector agencies and heads of government sector agencies listed in the Schedule to Direction 1 of 2015 are, where relevant, construed or treated in accordance with applicable *Administrative Changes Orders* or other applicable legislation.

## 7. Publication

This direction will be made publicly available on the Public Service Commission website as soon as practicable after it is given.

## 2.2 The Code of Ethics and Conduct for NSW government sector employees

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## 2.2 The Code of Ethics and Conduct for NSW government sector employees

# Preliminary

### Purpose

The purpose of the Code is to identify mandatory requirements and best practice conduct for all government sector employees which is consistent with Part 2 of the *Government Sector Employment Act 2013* (GSE Act) (the *Ethical framework for the government sector*).

The *Ethical framework for the government sector* is to be demonstrated by employees in their working relations with other government sector employees, clients and customers, stakeholders and the government of the day.

The Code applies at all times when employees are acting in the course of, or in connection with, NSW government sector employment.

The Code also specifies actions to be taken if there are breaches, or allegations of breaches, of the Code.

Heads of government sector agencies are required to implement the Code and to require employees of their agencies to comply with the Code, subject to section 13(4) of the GSE Act.

However, heads of government sector agencies are not personally covered by the Code if they are not a government sector employee. Statutory officeholders, including heads of Separate Public Service Agencies which are statutory officeholders and do not hold office in the Public Service (see GSE Act, Schedule 1, Part 3), are not government sector employees and therefore are not covered by the Code.

Nevertheless, those heads of government sector agencies which are statutory officeholders and not personally covered by the Code are invited to accept coverage voluntarily.

### Relationship to Department and agency codes of ethics and conduct

The Code applies to NSW government sector employees, irrespective of the Department or agency for which they are working. Agency heads may choose to extend this Code's application to contractors and volunteers engaged by the agency, if appropriate.

Departments and agencies may supplement this Code – but not alter or subtract from it – with requirements and advice specific to their organisation's operating environment and business risks. This material may be incorporated into this Code to form a single consolidated document, or published separately.

The Public Service Commission (02 9272 6000) is available to advise on how to integrate agency codes of ethics and conduct with this sector-wide Code.

### Review

The Code may be amended from time to time by the Public Service Commissioner.

## 2.2 The Code of Ethics and Conduct for NSW government sector employees

### Legislation

A principle of the *Ethical framework for the government sector* is to uphold the law. The law includes, but is not limited to:

- *Anti-Discrimination Act 1977 and Commonwealth discrimination legislation* (regarding equal employment opportunity and equal access to services)
- *Child Protection (Working with Children) Act 2012* (regarding obligations to obtain checks and clearances for employees engaged in child-related work)
- *Children and Young Persons (Care and Protection) Act 1998* (regarding obligations relating to the care and protection of, and provision of services to, children and young persons, including obligations relating to exchange of information and co-ordination of services between agencies)
- *Children's Guardian Act 2019*, regarding obligations relating to reportable conduct concerning child protection matters
- *Crimes Act 1900* (regarding criminal offences)
- *Data Sharing (Government Sector) Act 2015* (regarding sharing data with other NSW government sector agencies)
- *Government Advertising Act 2011* (regarding requirements to issue advertising compliance certificates)
- *Government Information (Public Access) Act 2009* (regarding public access arrangements to agency information)
- *Government Sector Employment Act 2013* sections 25 and 30 (regarding the general conduct and management of organisations in accordance with the core values) and section 63 (regarding workforce diversity and the integration of workforce diversity into agency workforce planning)
- *Government Sector Finance Act 2018* (regarding the system of internal control over the financial and related operations of agencies)
- *Health Records and Information Privacy Act 2002* (regarding the fair and responsible handling of health information)
- *Independent Commission Against Corruption Act 1988* (regarding reporting of any matter suspected on reasonable grounds to involve corrupt conduct and to comply with any requirement or direction of the ICAC in relation to a referral of matters by the ICAC)
- *Modern Slavery Act 2018* (regarding reporting and conducting risk-based assessments to identify, and address modern slavery risks)
- *Ombudsman Act 1974* (regarding obligations to cooperate with investigations by the Ombudsman)
- *Privacy and Personal Information Protection Act 1998* (regarding the protection of personal information, and the protection of the privacy of individuals generally)
- *Public Interest Disclosures Act 1994* (regarding receiving, assessing and dealing with public interest disclosures) (to be replaced by the Public Interest Disclosures Act 2022 when the latter Act commences)
- *State Records Act 1998* (regarding the creation, management and protection of agency records and public access to those records)
- *Public Works and Procurement Act 1912* (regarding the procurement of goods and services by government agencies)
- *Work Health and Safety Act 2011* (regarding the health and safety of employees and the maintenance of healthy and safe workplaces).

## 2.2 The Code of Ethics and Conduct for NSW government sector employees

# The *Ethical framework for the government sector*

### Introduction

Part 2 of the GSE Act establishes the *Ethical framework for the government sector*.

The objective, core values and principles of the *Ethical framework for the government sector* are to be demonstrated in the conduct of all government sector employees and heads of government sector agencies.

### *Ethical framework for the government sector*

#### Objective

- Recognise the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day
- Establish an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.

#### Core values

The core values for the government sector and the principles that guide their implementation are:

#### Integrity

- Consider people equally without prejudice or favour
- Act professionally with honesty, consistency and impartiality
- Take responsibility for situations, showing leadership and courage
- Place the public interest over personal interest.

#### Trust

- Appreciate difference and welcome learning from others
- Build relationships based on mutual respect
- Uphold the law, institutions of government and democratic principles
- Communicate intentions clearly and invite teamwork and collaboration
- Provide apolitical and non-partisan advice.

#### Service

- Provide services fairly with a focus on customer needs
- Be flexible, innovative and reliable in service delivery
- Engage with the not-for-profit and business sectors to develop and implement service solutions
- Focus on quality while maximising service delivery.

#### Accountability

- Recruit and promote employees on merit
- Take responsibility for decisions and actions
- Provide transparency to enable public scrutiny
- Observe standards for safety
- Be fiscally responsible and focus on efficient, effective and prudent use of resources.

#### General provisions

The Public Service Commissioner has the function of promoting and maintaining the government sector core values.

There is no hierarchy among the core values and each is of equal importance.

Nothing in the *Ethical framework for the government sector* gives rise to, or can be taken into account in, any civil cause of action.

## 2.2 The Code of Ethics and Conduct for NSW government sector employees

# Mandatory conduct

**Note:** This Part of the Code sets out the mandatory provisions of the Code that apply to all government sector employees and heads of government sector agencies.

All government sector employees have responsibilities to:

- Demonstrate high levels of personal conduct consistent with the *Ethical framework for the government sector*
- Seek assistance when unsure about how to implement the *Ethical framework for the government sector*
- Promote the implementation of the *Ethical framework for the government sector* to their colleagues
- Report possible breaches of the *Ethical framework for the government sector* to relevant officers.

All managers and executives have the responsibilities of government sector employees (above), and in addition have responsibilities to:

- Lead and promote implementation of the *Ethical framework for the government sector* in their workplace
- Ensure their workplace culture, practices and systems (including recruitment and promotion) operate consistently with the *Ethical framework for the government sector*

- Recognise and promote employee and team conduct that exemplifies the *Ethical framework for the government sector*
- Act promptly and with due process to prevent and address any breaches of the *Ethical framework for the government sector*
- In the case of a senior executive (including an acting senior executive), declare in writing private interests that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive
- Ensure that any real or perceived conflicts of interests are avoided or effectively managed.

Department Secretaries and heads of agencies have the responsibilities of executives (above), and in addition have responsibilities to:

- Lead and promote implementation of the *Ethical framework for the government sector* in their agency
- Ensure the general conduct and management of the functions and activities of their Department or agency are in accordance with the core values of the *Ethical framework for the government sector*
- Oversee the implementation of the *Ethical framework for the government sector* and make improvements where necessary.



## 2.2 The Code of Ethics and Conduct for NSW government sector employees

### When is the *Ethical framework for the government sector* to be applied?

The *Ethical framework for the government sector* is to be applied at all times in working relations with colleagues, clients and customers, stakeholders and the government of the day. These working relationships are depicted in the infographic at the bottom of this page.

### How do I act in the public interest?

You should treat all people with whom you have contact in the course of your work:

- Equally without prejudice or favour
- With honesty, consistency and impartiality.

You should also, in the course of your work:

- Place the public interest over your personal interest
- Uphold the law, institutions of government and democratic principles
- Provide apolitical and non-partisan advice
- Provide transparency to enable public scrutiny
- Be fiscally responsible and focus on efficient, effective and prudent use of resources.

Acting in the public interest requires leadership, courage and innovation to develop practical recommendations and actions that are consistent

with the core values and will help the Government of the day achieve its objectives. Acting in ways that are expedient or convenient, but which do not promote the integrity, trust, service and accountability of the public sector, is not in the public interest.

### How do I manage conflicts of interests?

Sometimes you may find that your private interests make it difficult for you to perform your duties impartially in the public interest. This may happen when there is a direct conflict between your current duties and responsibilities and your private interests (an 'actual' conflict of interests); when a person could reasonably perceive that your private interests are likely to improperly influence the performance of your official duties, whether or not this is in fact the case (a 'reasonably perceived' conflict of interests); or when you have a private interest that could conflict with your official duties in the future (a 'potential' conflict of interests). Actions you should take include:

- Always disclose actual, potential or reasonably perceived conflicts of interests to your manager as soon as you become aware of the conflict
- Where a conflict of interests occurs it should always be resolved in favour of the public interest, rather than your own.





## 2.2 The Code of Ethics and Conduct for NSW government sector employees

To resolve any conflicts of interests that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include, but are not limited to <sup>1</sup>:

- Informing likely affected persons that a disclosure has been made, giving details and the agency's view that there is no actual conflict or the potential for conflict is minimal
- Appointing further persons to a panel/committee/team to minimise the actual or perceived influence or involvement of the person with the actual or reasonably perceived conflict
- Where the persons likely to be concerned about a potential, actual or reasonably perceived conflict are identifiable, seeking their views as to whether they object to the person having any, or any further, involvement in the matter
- Restricting the access of the person to relevant information that is sensitive, confidential or secret
- Directing the person to behave at all times in ways that are consistent with their agency's responsibilities and functions
- Removing the person from duties or from responsibility to make decisions in relation to which the 'conflict' arises and reallocating those duties to another employee (who is not supervised by the person with the 'conflict')
- Persons with a 'conflict' who are members of boards or committees absenting themselves from or not taking part in any debate or voting on the issue.

### **As a senior executive, how do I declare private interests?**

A senior executive (including an acting senior executive) must make a written declaration of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive.

Where a senior executive has no such private interests to declare, they must declare a "nil return".

After a senior executive makes an initial declaration, a fresh declaration must be made:

- As soon as practicable, following any relevant change in the senior executive's private interests
- As soon as practicable, following the senior executive's assignment to a new role or responsibility
- At least annually.

A template form for making a private interests declaration is included in Section 4.4 of *Behaving Ethically: A guide for NSW government sector employees*. The form may be used as is, or augmented by a department/agency to reflect the operating environment and/or business risks which are specific to the department/agency.

A *senior executive* must provide their declaration to:

- In a department, the Secretary
- In an executive agency related to a department, the agency head
- In a separate Public Service agency, the agency head
- In the Teaching Service, NSW Police Force, NSW Health Service, Transport Service of NSW and any other service of the Crown, the head of the service.

A *Department Secretary* must provide their declaration to the Secretary of the Department of Premier and Cabinet.

The *Secretary of the Department of Premier and Cabinet* must provide their declaration to the Public Service Commissioner.

A *head of an executive agency related to a department* must provide their declaration to the Department Secretary.

<sup>1</sup> For further detail on managing conflicts of interests, see [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au) and [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

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A head of a transport-related service must provide their declaration to the Secretary of the Department of Transport.

A head of any other service of the Crown must provide their declaration to the Secretary of the Department of Premier and Cabinet.

Government sector agency heads who are statutory officeholders should provide any voluntary declaration to the person exercising employer functions in relation to the statutory officeholder, to the extent that this is possible. For example, statutory officers whose employment is governed by a contract of employment with their responsible Minister, or who are subject to Ministerial direction or control, should make their voluntary declaration to that Minister. Where this is not possible or appropriate in the circumstances, voluntary declarations may be made to the Secretary, Department of Premier and Cabinet.

### Responsibilities of person receiving declaration

A person to whom a declaration is to be provided is responsible for ensuring:

- Senior executives complete declarations
- Handling and storage of declarations complies with the requirements of the *Privacy and Personal Information Protection Act 1998*.

### How do I treat colleagues, customers, clients and stakeholders?

All government sector employees are to treat their colleagues, customers, clients and stakeholders in their agency and in other agencies, and the government of the day by:

- Considering people equally without prejudice or favour
- Acting professionally with honesty, consistency and impartiality
- Taking responsibility for situations, showing leadership and courage
- Placing the public interest over personal interest
- Appreciating difference and welcoming learning from others

- Building relationships based on mutual respect
- Upholding the law, institutions of government and democratic principles
- Communicating intentions clearly and inviting teamwork and collaboration
- Providing apolitical and non-partisan advice
- Providing services fairly with a focus on customer needs
- Being flexible, innovative and reliable in service delivery
- Engaging with the not-for-profit and business sectors to develop and implement service solutions
- Focusing on quality while maximising service delivery
- Recruiting and promoting employees on merit
- Taking responsibility for decisions and actions
- Providing transparency to enable public scrutiny
- Observing standards for safety
- Being fiscally responsible and focus on efficient, effective and prudent use of resources.

### How should I interact with lobbyists?

All government sector employees and heads of government sector agencies must comply with Premier's Memorandum M2019- 02 NSW Lobbyists Code of Conduct published on the Department of Premier and Cabinet's website, as amended from time to time.

### How do I use public resources appropriately?

You must use public resources in an efficient, effective and prudent way. Never use public resources – money, property, equipment or consumables – for your personal benefit, or for an unauthorised purpose.

If you are responsible for receiving, spending or accounting for money, ensure you know, understand and comply with the requirements of the *Government Sector Finance Act 2018*, the *Public Works and Procurement Act 1912* and the *Government Advertising Act 2011*.

## 2.2 The Code of Ethics and Conduct for NSW government sector employees

# Behaviour contrary to the Code

### The effect of behaviour that is contrary to the Code

Behaviour contrary to this Code and to the *Ethical framework for the government sector* can bring individual employees into disrepute, undermine productive working relationships in the workplace, hinder customer service delivery, and damage public trust in your agency or the broader government sector.

If you are unsure of what is appropriate conduct under any particular circumstances, discuss the matter with your supervisor, manager or the relevant member of your agency's executive. Heads of government sector agencies may also contact the Public Service Commissioner.

### If you see behaviour contrary to this Code

If you see someone act in ways that are contrary to this Code, you should in the first instance discuss that person's behaviour with your immediate supervisor or manager, or report your concerns to any member of the agency's executive.

If you believe certain conduct is not just unethical, but may also be corrupt, a serious and substantial waste of government resources, maladministration or a breach of government information and privacy rights, then report your concerns to your agency's Public Interest Disclosures Coordinator or Disclosures Officer, the head of your agency or the relevant investigating authority (such as the Ombudsman, Independent Commission Against Corruption or the Auditor-General). Under the *Public Interest Disclosures Act 1994* it is both a criminal offence and misconduct to take reprisals against an employee who makes a public interest disclosure.

### Actions when allegations are made

If it is alleged that you have acted in a way that is contrary to this Code, you will have an opportunity to provide your version of events. How this will happen will be proportionate to the seriousness of the matter.

In those cases where the allegation is minor or of a low level, your manager will usually discuss this matter directly with you. If the allegations are more serious, a formal process may be required.

If you are investigating an allegation of a behaviour that is contrary to this Code, you must ensure your decision-making is fair and reasonable by acting consistently with four principles<sup>1</sup>:

- Procedural fairness for both the complainant and staff member
- Investigations should be handled expeditiously. This will minimise the potential for breaches of confidentiality and lack of procedural fairness
- Confidentiality for all parties, where practicable and appropriate, until such time as the investigation process is completed
- Meticulous recordkeeping, including recording of reasons for all significant decisions.

<sup>1</sup> See resources at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)



## 2.2 The Code of Ethics and Conduct for NSW government sector employees

For employees of Public Service agencies, the GSE Act and GSE Rules set out how allegations of misconduct are to be dealt with.

Government sector agencies that are not part of the Public Service (the Teaching Service, Police Force, Health Service, Transport Service and other services of the Crown) are not bound by the misconduct provisions in the GSE Act and GSE Rules unless so prescribed. Non-Public Service agencies have their own legislative and/or policy requirements for dealing with allegations of misconduct.

For employees in the Public Service, Part 8 of the GSE Rules sets out the procedural requirements for dealing with allegations of misconduct, which include requirements that you be advised of the detail of the allegation; the process to be undertaken to investigate and resolve the matter; and that you be provided an opportunity to respond to the allegations.

For employees in the Public Service, the GSE Act sets out the actions that a Public Service agency head may take where there is a finding of misconduct against an employee. These actions are as follows:

- Terminate the employment of the employee (without giving the employee an opportunity to resign)
- Terminate the employment of the employee (after giving the employee an opportunity to resign)
- Impose a fine on the employee (which may be deducted from the remuneration payable to the employee)
- Reduce the remuneration payable to the employee
- Reduce the classification or grade of the employee Assign the employee to a different role
- Caution or reprimand the employee.



## 2.2 The Code of Ethics and Conduct for NSW government sector employees

# Good practice guides

The following good practice guides are provided for use by all government sector employees:

### Good practice guide 1 - deciding and acting ethically

To make the best-available decision:

#### Scope the problem

Clarify the scope of the problem, and consider carefully how the problem affects (or may affect in the future) work colleagues; clients and customers; stakeholders; and the government of the day. Wherever possible, consult affected people and communities.

#### Develop options

Develop a mix of options that address these questions:

- **Duties:** What are your responsibilities as defined by the law, Government policies, agency procedures, and your role description? Is it legal? Is it consistent with the principles & policies of the agency and the NSW government sector?
- **Results:** Which options will yield the greatest benefit (or least harm) to the most people, and minimise the number of people who might be disadvantaged – in the short and longer term? What will the consequences be for my colleagues, the agency and yourself? What will the consequences be for other parties?
- **Justice:** Which options support due process, transparency, fair compensation for any loss, and fair treatment of those affected by any decision?
- **Rights:** Which options support the legal rights of citizens?
- **Public interest:** Which options best advance the public interest, without regard to your own

reputation, career, personal views or potential for personal gain or loss?

- **Resources:** What is the likely impact on government finances, workforce, infrastructure and other assets?
- **Innovation:** Can the issue be addressed in new ways (such as the redesign of services, reengineering of work practices, or a new model of service delivery)?

#### Evaluate and decide

Choose the option that best addresses the above issues and is in the public interest, supports integrity, builds trust, delivers better services and ensures accountability. To establish if your actions are consistent with the *Ethical framework for the government sector* consider your answers to the following questions:

- **Integrity:** Would your colleagues say you had considered the views of all interested parties and acted in the right way, even if it was at your personal cost?
- **Trust:** Would your action, if it became public, build confidence in the public sector?
- **Service:** Would your clients and customers say your actions improved the quality of the services they receive?
- **Accountability:** Would the head of your agency say your actions are consistent with the *Ethical framework for the government sector* and the law?

#### Implement

Implement the decision in ways that are consistent with the objectives, values and principles of the *Ethical framework for the government sector*.

#### Review and identify opportunities for continuous improvement.

## 2.2 The Code of Ethics and Conduct for NSW government sector employees

### Good practice guide 2 – encouraging ethical behaviour by other employees

Ways to support the ethical behaviour of other employees include:

#### **Personal**

Encourage your colleagues to act ethically by making ethical decisions and acting ethically yourself.

#### **Interpersonal**

Encourage all employees to openly discuss ways to better implement the *Ethical framework for the government sector* in their individual actions, your team's practices and in your services to clients and customers.

#### **Organisational**

Ensure the leadership, culture, governance, management and work practices, individual employee behaviour and customer services of your workplace are consistent with the *Ethical framework for the government sector*.

The Public Service Commission will provide additional advice and guidance to the government sector as needed to support conduct that is consistent with the objective, core values and principles of the *Ethical framework for the government sector*.