THE ETHICAL CHALLENGES IN THE PUBLIC SERVICE

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Thank you for inviting me to this Forum.

It is some years since I was last in Hong Kong. Indeed I came here with my wife a year before the handover, for a holiday and to catch up with friends working at the university. It was a most enjoyable visit, and I very much appreciate the opportunity to return, even if for a much shorter visit.

No doubt the transition from the British colonial administration has had its challenges. I hope that it has also been a refreshing and invigorating experience, just as Australia experienced when it broke the shackles of British colonialism. We celebrated our centenary of federation last year, recognising how far we have come as a nation, and how successful we have in fact proven to be as we accepted our own multicultural identity and our own place in the Asia-Pacific region.

But we also acknowledge the benefits of our heritage, both Indigenous and non-Indigenous, including the British contribution to our democratic processes and our professional public administration.
Key Messages

In addressing the ethical challenges in the public service, I would like to highlight three particular points:

- Firstly, the importance for modern, self-confident Government of having fundamental public sector values deeply embedded in our public administration, governing the way we do business, while allowing us to be results-oriented, flexible and adaptable.

- Secondly, however, we must be careful that the discussion of those values and ethics doesn't become too philosophical or too unreal: values-based-management needs hardwiring into organisational systems and procedures if it is to successfully affect behaviour and relationships, which is what it is all about. This includes governance arrangements, corporate planning, fraud control and risk management, performance management and appraisal as well as learning and development activities. And if we want to influence behaviour, there is no avoiding the responsibility of leadership – practicing what we preach, appreciating our own influence, and acknowledging our own human frailties.

- Thirdly, the Australian Public Service model I will describe this morning is not the model for every system of government. I hope you will find aspects of it interesting and useful, but you will need to be selective pick and adapt any ideas and arrangements from our values-based management you wish to apply in your system of government. In particular, you will need to consider carefully the risks of fraud or corruption you face and the extent to which you need firm checks and balances within a values-based management framework to manage those risks.
Self-confident Government

I recently attended in Glasgow the biennial conference of the Commonwealth Association of Public Administration and Management (CAPAM). The theme was “creating self-confident Government”.

The theme perhaps reflected renewed appreciation of the vital role of government and public services in the post-September 11 environment, or perhaps unease about how far some governments have pursued the role of markets and deregulation.

What was interesting was the focus on ensuring that the self-confidence we seek is justified. If we want esteem, recognition and public respect – and to be able to take pride in our Public Service, we need to be sure that public sector values are deeply embedded, and that we are indeed performing efficiently and effectively.

The characteristics for self-confident Government which emerged from the Conference included such things as increased involvement by citizens in public administration; more partnerships across programs, agencies, jurisdictions and with the private sector and community organisations; and more deliberative processes of organisational learning and scenario planning (helping to “weave the future”, as one speaker put it). But most important was an appreciation of the democratic fundamentals, including the rule of law, and the maintenance of impartiality, accountability and responsiveness to the elected Government.

Public Service Reform in Australia

Australia’s system of government established in 1901 is based primarily on the British system, but it also draws on the United States’ model. It is a Parliamentary democracy, but it is also a Federation of States (and Territories). The national, or Commonwealth, Government role encompasses our international relations such as defence, foreign affairs, customs and trade, and clear national responsibilities such as the economy and communications; increasingly the Commonwealth plays a major role in competition policy and
regulation of industry, and in promoting improved national standards in health, education and welfare. The States focus continues to be more on delivering services such as the police force, hospitals and education and on physical infrastructure such as roads, water and power.

As I speak about our experiences, you will see these distinctions are important, as the risks of fraud and corruption vary with functions, and with the spread of authority to spend public money or to regulate people and businesses. My focus is primarily on Commonwealth experience, particularly for the Australian Public Service. I will nonetheless refer a little to some of the approaches being taken by Australian State Governments.

In 1999 my predecessor, Ms Helen Williams wrote about the Australian Public Service:

‘Values have traditionally played a central role in the context of public service ethics and can be traced back to both Weberian philosophy and to the influence of developments such as the British Northcote-Trevelyan reforms which were introduced as a reaction to the previous climate of patronage and favouritism.’ (Williams, 1999)

Values and ethics, until recently however, have been implicit, not explicit. They were achieved through the application of specific rules, rather than through the understanding of concepts.

For many years, centrally prescribed rules and controls were used to achieve high standards of conduct by Australian public servants. But the way public servants work has changed a great deal over the past decade or so, yet the Government and community has made it clear they expect, if anything, higher levels of conduct, accountability and transparency in decision-making.

Detailed rules, while ensuring good process, do not ensure efficiency.

The cost of government and the increasing expectations of citizens have led to a rigorous review of the funding of public services and the efficiency with which they are performed.
The Australian Public Service, and the public sector more generally, has undergone sustained, incremental reform over the last 25 years. This reform has included:

- Financial management reform
- Competition policy reform
- Improved responsiveness to the elected Government
- Workplace relations reform
- Service delivery reform
- E-Government.

Non-core activities have been privatised or corporatised, delivery functions outsourced, other activities are being market-tested, regulation and prescription are being significantly lessened and employer powers have been devolved to individual agency heads.

Agencies are required to be more results-oriented, and to be more flexible and agile, more responsive to customers and more innovative in use of technology.

A key challenge has been to find an enduring framework within which this greater flexibility can operate properly and confidently.

Of course in recent times, private sector organisations, such as Enron, and, in Australia, One.Tel and the HIH Insurance Group, have come under the spotlight for their lack of values and standards of behaviour, particularly those universal values that demand transparency and open accountability. Issues of governance have arisen front and centre in the private sector, as essential constraints on the operation of free markets.

‘At the same time there is growing emphasis on corporate governance issues in the private sector and both the public and private
sектors…From both sides … public and private sector management practices appear to be converging. (Williams, 1998)

The Australian Government reform program has included the introduction of a number of pieces of legislation, directed at sound corporate governance and financial management based upon principles rather than detailed rules. It has seen the devolution of responsibility from central agencies to the array of agencies that make up the Australian Public Service, and various authorities and Government Business Enterprises operating outside the core Public Service.

Rather than being governed by rules and regulations that say how public servants must behave, there is now a set of principles that guide behaviour.

In the public sector, what kind of values would fulfil the needs of government, the public service and the expectations of the Australian community? And how can we embed those values so that they truly govern the behaviour of public servants and provide tangible support to public servants as they carry out their policy advising and program management responsibilities?

Fundamentally, the values we are looking for are about relationships and personal behaviours: our relationships with government, the public, our stakeholders and our work colleagues, and our personal ethical behaviour, which establish “the way we work around here”. The values must reflect our particular institutional framework, but they must also reflect universal principles such as honesty, integrity, diligence and respect.

Public Service Act

In Australia, the passage of the Public Service Act in 1999 was an important milestone. The Act contains a set of Australian Public Service Values and a Code of Conduct for public servants. Its passage marked a shift away from centrally prescribed rules about employment processes to legislated principles, giving Agency Heads the flexibility to manage, while at the same time requiring the Public Service Commissioner to evaluate agencies’ performance against the Values.
The fifteen APS Values are in law. Each Value is supported by Directions from the Public Service Commissioner. Employees must ‘at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.’ Sanctions are available against breaches of the Code of Conduct including failure to uphold the Values.

Agency Heads are required to uphold and promote the Values, and the first two functions of the Public Service Commissioner spelt out in the Act are to evaluate the extent to which Agencies incorporate and uphold the Values, and to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct. The Commissioner must also report annually to the Minister, for presentation to the Parliament, on the state of the APS.

The APS Values are therefore not just aspirational statements. It is expected that Agencies will embed them into their systems and procedures and ensure that they are reflected in their agencies’ culture. A challenge for the APS Commission is to limit the gap between rhetoric and reality.

Let me turn to the Values enshrined in the Public Service Act. While the Act does not group the Values, or the elements of the Code of Conduct, or prioritise them, it might assist if I group them in terms of the way they define or shape relationships and personal behaviour.

First, there are the Values that effectively define the Australian Public Service as an institution, and our relationship with the Government:

- the APS is apolitical, impartial, professional
- employment decisions are based on merit
- the APS is openly accountable
- the APS is responsive to the elected Government.
Second, there are those that set out our relationship with the public:

- delivering services effectively, impartially and courteously;
- sensitive to the diversity of the public;
- focusing on achieving results.

Third, there are the Values that concern workplace relations, particularly:

- the merit principle;
- valuing communication, consultation, cooperation
- achieving results and managing performance;
- promoting equity in employment;
- providing reasonable opportunity to all members of the community to apply for APS employment;
- providing a fair system of review of decisions.

Fourthly, there is the Value of having the highest ethical standards, which must govern personal behaviour. This Value is supported by various elements of the Code of Conduct such as behaving honestly and with integrity, acting with care and diligence, treating everyone with respect and courtesy and without harassment, avoiding conflict of interest and not making improper use of our position.

The requirement to be ethical is, arguably, up there with the other Values that define us as public servants. Because we are paid by the taxpayer, and we exercise power delegated to us by the Parliament from the public, the public rightly expects the highest of ethical standards, more so than anyone else in the community.

A copy of the APS Values and Code of Conduct is attached to my paper.
As you will see from the detailed wording of our Values, they do reflect the Australian structure of government. But fundamentally, they reflect universal public administration values of honesty, integrity, impartiality, professionalism, accountability and transparency.

**Embedding the values in agencies**

As I mentioned previously, the Public Service Act requires that ‘an agency head must uphold and promote the APS Values.’ APS agencies are achieving this in various ways to varying degrees.

We are currently undertaking a project on Evaluating the Values in Agencies. The purpose of this project is to use the experience of a number of agencies in relation to promoting and upholding the APS Values to produce a good practice guide for all APS agencies. The following indicates some of the measures Agencies are pursuing.

The Department of Transport and Regional Services is doing some good work on ethics awareness. In its foundation program for the Department’s leadership initiatives it includes a component on developing and understanding the impact of ethics and values on decision-making. A recent staff survey gave particular attention to the importance of Values to the Department’s culture and governance arrangements. Staff are regularly reminded about the importance of the Values through various means including computer screen savers, staff notices and circulars.

The Department of Health introduced an ethics awareness program for all its staff a few years ago entitled “The Fork in the Road Café”. The Department encourages staff to look out for ethical dilemmas and stop and talk to respected colleagues whenever they face such dilemmas, and decide on their approach transparently and carefully. The Department also uses its Chief Executive Instructions to provide detailed guidance on issues such as conflict of interest.

A number of agencies incorporate a commitment to upholding the Values and complying with the Code into their employment conditions (Certified
Agreements). Increasingly agencies also include assessing values and behaviour in the context of individual performance assessments, and require attendance at training courses and briefings.

The Australian Bureau of Statistics’ management and leadership development courses emphasise the APS Values and Code of Conduct and include discussions about relevant case studies. Course graduates are expected to behave as ‘model exemplars’ for other employees.

The Department of Foreign Affairs and Trade has a comprehensive approach to inculcating Values into everyday work. Its Certified Agreement highlights the importance of high standards of conduct and a conduct and ethics unit has been operating in the Department for several years to promote ethical behaviour through an ethics outreach program and to investigate breaches of the Code. The APS Code is complemented by a Code of Conduct for Overseas Service, which is agreed to by all those who proceed on posting.

The Department of Defence has developed an ‘Ethics Matters’ Intranet site, which provides specific advice on ethical matters. This is supplemented with an ethics newsletter and videos. All civilian performance agreements require employees to act in a manner consistent with the Values and the Code of Conduct.

Depending on their business, organisations may highlight particular Values that are a priority. So Centrelink which provides social security and related services to clients around Australia, highlights the importance of relations with the public and customer service. In doing so, however, it must not overlook the other Values in the Public Service Act.

In incorporating the Values and the Code of Conduct into their corporate management processes, Agencies also assess the risks in their own businesses, and the impact if a problem were to occur. For example, an organisation such as Customs with many junior staff exercising authority in many locations may have much clearer, stricter guidelines on personal behaviours such as acceptance of gifts than an organisation such as a central policy department.
As I mentioned, the Commission is looking to issue a guide next year on good practice for agencies. We are also in the process of finalising guidelines on official conduct, aimed at both agencies and individual APS employees to help them manage both common and rare ethical dilemmas.

**Evolution of Values-based Management and Leadership Capabilities**

It may be useful to reflect briefly upon the recent international focus on values-based management and on leadership and leadership capabilities.

A New Zealand colleague spoke at a seminar earlier this year about how management attention has moved over the years from objectives-based management, or management for results, through to increased attention to how we achieve those results with an emphasis on skills and performance management and more recently now to values and capability in its broadest sense. The latest shift recognises the importance of relationships and partnerships and perhaps builds in a more forward looking approach that can better deal with change and uncertainty.

Reflecting on this evolution in terms of what it means for identifying and developing successful leaders, we have moved from a focus on experience and the vertical career path, to skills and competencies, and now to capabilities and “emotional intelligence”.

This presentation of developments in management thinking is helpful, I think, so long as we view it with a degree of scepticism, and require some hard-nosed practical testing. Indeed, that was exactly the way my New Zealand colleague put it.

Values, and leadership capabilities, do offer ethical frameworks that encourage flexibility and adaptability and high performance, but they also need “hardwiring”. So values-based management adds a very useful dimension to the previous focus on results and performance, but should not replace these; and leadership capabilities provide an extra forward-looking
element to proven performance and management skills, but should not replace them.

That said, leadership is the single most important factor in embedding ethical behaviour, and the APS Commission focuses much of its activities on leadership development; and training of future leaders in values and ethics. A copy of the Senior Executive Leadership Capability Framework we use is attached to my paper.

Fraud and Corruption – Commonwealth and State jurisdictions

Our model sets a high level framework of principles which agencies must then uphold and promote through their own systems and procedures. We have come to this framework in a context of a reasonably well-embedded culture based on public sector values. We also have in place legislation and guidelines which contribute to the hardwiring of those values into the service.

Other jurisdictions, however, may feel that a more centralised approach is needed because the culture is not sufficiently embedded and the risks are too high to allow the degree of devolution we have in the Australian Public Service.

I should emphasise however, whatever the level of risks, addressing the underlying culture and clarifying the behaviours we require is essential. If we can raise the general ethical standards of our public servants, we make it easier to identify those who are genuinely corrupt and fraudulent. The Australian practice also requires firm action to address fraud and corruption.

In May this year, the Attorney-General’s Department issued the Commonwealth Fraud Control Guidelines which clearly define the Government’s requirement that all budget-funded agencies, and other relevant bodies, put in place practices and procedures for effective fraud.
control, to better position them to prevent and deal with fraud. These draw upon the basic framework of the APS Values and our financial legislation.

As I mentioned earlier, State Governments are more extensively involved in service delivery, and detailed business regulation and civilian policing. Accordingly, there is generally more risk of fraud and corruption. Some Australian States have established anti-corruption and anti-fraud agencies which conduct investigations and hearings and provide corruption prevention advice. They are also seeking to couple these accountability mechanisms with preventative measures based on guidance and education similar to that achieved in the APS by way of the Values. In New South Wales, the Independent Commission Against Corruption (ICAC) reported its focus to be ‘directed toward addressing and anticipating corruption risks in the public sector. In particular … investigation and corruption prevention work’. In Queensland, the Crime and Misconduct Commission works to combat and reduce the incidence of major crime in Queensland, improve the integrity of the Queensland public sector and reduce the incidence of misconduct in the Queensland public sector.

**Current Ethical Challenges for the Australian Public Service**

I report annually to Parliament on the state of the Australian Public Service. A major theme of my latest report to the Parliament, entitled the *State of the Service Report 2001-02*, is how agencies are embedding the APS Values and Code of Conduct in their governance systems and procedures and the culture of their organisations. This year the report identified the following challenges for the APS:

- the need for APS leaders to set a good example and promote open discussion, including around the dilemmas where the Values may need to be balanced;
• the need for Values to be appreciated across the whole APS workforce including non-ongoing employees, and also by those with whom APS employees frequently work such as labour hirees and contractors;

• the increased prevalence of contracting and outsourcing, and the need to apply some or all of the Values to outsourced service providers, particularly those providing services on behalf of agencies to the public;

• the increased risk of conflicts of interest arising from increased contracting and outsourcing, and other forms of partnering;

• there is also a particular challenge around recordkeeping, including electronic recordkeeping, and the Value of open accountability.

The Report also draws attention to other emerging challenges for the Service including the need for continued improvement in performance management and organisational capability, the need for better workforce planning, and the need for more attention to whole-of-government approaches to policy development, service delivery and issues management.

**Conclusion**

Public servants occupy a unique place in our democratic society. Meeting the demands of government and, the expectations of the public, while fulfilling all the requirements of the law is a constant balancing act which is not always easy to sustain. Having a set of Values, articulated and contained in legislation, provides the basic framework for understanding our obligations, while allowing the flexibilities that a rapidly changing environment demands. It may also underpin a more self-confident Government and Public Service.

To complement a principles-based culture it is also necessary to have the essential hardwiring in place, such as fraud control and risk management procedures and appropriate governance systems, performance management and training. Leaders have a particular role in modelling the values, to promote such a culture across the entire organisation.
Recently, my current Minister, Tony Abbott paid tribute to the quality of individual public servants with a strong commitment to serving the public interest. His very personal comment was that:

‘Australia is incredibly lucky to have a cadre of senior public servants who are diligent to a fault, culturally self-aware, brighter than the average businessman or politician … senior officials retain an old-fashioned sense of vocation, of serving the nation as much as holding down a job. Most could earn more doing something else but remain at their posts from a sense of calling.’

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The APS Values

The Australian Public Service:

- is apolitical, performing its functions in an impartial and professional manner;
- is a public service in which employment decisions are based on merit;
- provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
- has the highest ethical standards;
- is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- has leadership of the highest quality;
- establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
- provides a fair, flexible, safe and rewarding workplace;
- focuses on achieving results and managing performance;
- promotes equity in employment;
- provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government;
- provides a fair system of review of decisions taken in respect of employees.
APS Code of Conduct

The Code of Conduct requires that an employee must:

- behave honestly and with integrity in the course of APS employment;
- act with care and diligence in the course of APS employment;
- when acting in the course of APS employment, treat everyone with respect and courtesy, and without harassment;
- when acting in the course of APS employment, comply with all applicable Australian laws;
- comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
- maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- use Commonwealth resources in a proper manner;
- not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
- not make improper use of:
  (a) inside information, or
  (b) the employee’s duties, status, power or authority,
  in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person;
- at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS;
- while on duty overseas, at all times behave in a way that upholds the good reputation of Australia; and
- except in the course of his or her duties as an APS employee or with the Agency Head's express authority, not give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.