Outsourcing - Human resource management issues

Foreword

This booklet is part of a series of guides issued by the Australian Public Service Commission (the Commission), following the passage of the Public Service Act 1999.

Since the passage of the Act, the Commission has published seven guides in the three series: Working with the Act, Working Together, and Values and Conduct.

From now all Commission guides and advices will be published in this new series, commencing with this title on outsourcing.

To help keep track of how many guides exist, this first booklet will be numbered no. 8. The earlier guides will be listed in sequence and given a number inside the front cover of all new booklets and, as they are reprinted or revised, will be renumbered into the new series as nos. 1-7.

Under the Public Service Act, responsibility for employment decisions has generally been devolved to Agency Heads, giving them greater flexibility to manage their own workplaces, within the framework of the Act and subordinate legislation.

The management of employees affected by a decision to outsource an activity is a crucial and integral part of any outsourcing initiative. This booklet provides advice on the legal context, key principles and good practice issues that need to be addressed in managing the human resource aspects of outsourcing.

This booklet has been prepared in consultation with the Department of Finance and Administration (Finance), which has overall policy responsibility for market testing and outsourcing in the Australian Public Service (APS), and the Department of Employment and Workplace Relations (DEWR). It replaces the earlier Commission publications Outsourcing: Human Resource Management Principles, Guidelines, Good Practice (September 1996), Outsourcing: Human Resource Management Principles, Guidelines, Good Practice (Second edition, July 1998) and Employment Framework for Information Technology Outsourcing (July 1998).

The Commission has also prepared:

- a Human Resource Management Kit for IT Outsourcing
These documents provide agencies with an overview of the processes and a framework within which to manage the human resource management aspects of outsourcing. The Kit and the Guide have been updated by the Commission and are available on the website.

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Public Service Commissioner

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Introduction

Outsourcing is not a new concept. It has been used by public sector organisations for many years in areas such as mail delivery, refuse collection, road maintenance and cleaning. Since the early 1990s outsourcing of Commonwealth functions has taken place at an increasing rate. The nature of services being contracted out has also changed with outsourcing extending into areas previously seen as core government activities.

The report of the National Commission of Audit, released in June 1996, examined issues such as the role of the government and whether Commonwealth government services were being provided in the best way. The key findings and recommendations in that report included a suggestion that agencies should be required to market test all activities within a three to five year period unless there was good reason not to do so, and that functions should be contracted out where it was cost effective to do so.

In May 1997, the government agreed, in principle, to the outsourcing of its Information Technology (IT) Infrastructure subject to a competitive tendering process. A whole of government approach to IT outsourcing was agreed which involved budget funded agencies covered by either the Financial Management and Accountability Act 1997 or the Commonwealth Authorities and Companies Act 1997 being arranged into groups or clusters. Until the end of 2000, the former Office of Asset Sales and Commercial Support (OASCS) was responsible for implementing the IT Outsourcing Initiative. Following a review of the implementation of the Initiative (the Humphry Review), the government decided that responsibility for IT outsourcing and monitoring of progress would be devolved to individual agencies from January 2001.

In May 2000, the government restated its commitment to competitive tendering and contracting out generally, and mandated the market testing of relevant activities by agencies covered by the Financial Management and Accountability Act 1997, starting with corporate services. In May 2000, responsibility for the implementation of this market testing and
contracting out program was placed with OASCS. Following the administrative changes announced on 23 November 2001, responsibility for this function is now with Finance.

The management of employees affected by a decision to outsource an activity is a crucial and integral part of any outsourcing initiative. Both the former Industry Commission (now the Productivity Commission) in its report, Competitive Tendering and Contracting by Public Sector Agencies and the Auditor-General in his Audit Report No. 45 1991-92 on the outsourcing of the Department of Veterans’ Affairs National Computer Centre underscored the importance of effective human resource management (HRM) in achieving a productive and efficient outsourcing process. More recently, the Humphry Review also emphasised the importance of the effective management of staffing issues associated with outsourcing.

The purpose of this booklet is to:

- emphasise the importance of developing an effective HRM strategy, linked to the overall corporate strategy, in each outsourcing exercise
- assist APS agencies to ensure that any legislative requirements are satisfied and to achieve good practice in managing the people management aspects of outsourcing.

This booklet makes no judgement about whether an activity should be outsourced or not. This is a matter for the relevant decision maker(s).

Chapter 1 of this booklet discusses the legal context for the HRM issues of outsourcing.

Chapter 2 identifies the key principles underlying the effective management of employees affected by an outsourcing decision and stresses the importance of developing an appropriate corporate strategy, supported by a specific HRM plan, in each outsourcing exercise.

Chapter 3 discusses in detail the two staffing approaches that have been developed for handling the HRM aspects of outsourcing, the ‘Phased’ approach and the ‘Clean Break’ approach.

Chapter 4 focuses on the ethical issues associated with outsourcing and the measures that can be adopted to assist in ensuring the probity of an outsourcing process.

1. The legal context

Outsourcing, or competitive tendering and contracting, refers to an arrangement whereby an APS agency has an activity, function or service, which was previously undertaken in-house, performed by a private sector provider or another public sector organisation. Under such an arrangement, the original agency retains overall responsibility and accountability for the activity, function or service.
Administrative re-arrangements conducted under section 72 of the Public Service Act 1999 (the PS Act)—for example, where functions and staff are moved within the APS or from the APS to a non-APS Commonwealth authority—and sales of assets (or privatisations) do not fall within the definition of outsourcing.

- The Commission is currently preparing detailed advice for agencies on administrative re-arrangements.
- Further information on asset sales is available from Finance.

While there is no specific legislation governing the outsourcing of APS functions, APS employees affected by outsourcing decisions are subject to the relevant provisions of various Acts including the PS Act, the Workplace Relations Act 1996 (the WR Act), the Superannuation Act 1976 and the Superannuation Act 1990 (the Superannuation Acts) and the Archives Act 1983 (the Archives Act).

The relevant provisions of the PS Act, the WR Act and the Archives Act are discussed in more detail below. Further information on the Superannuation Acts is set out in Appendix A, while the specific superannuation arrangements for employees under the 'Phased' and 'Clean Break' approaches are explained in Chapter 3.


In addition, legislation dealing with administrative law issues, including the Administrative Appeals Tribunal Act 1975, the Ombudsman Act 1976, the Administrative Decisions (Judicial Review) Act 1977, the Freedom of Information Act 1982, the Privacy Act 1988 and the Information Privacy Principles may be relevant.

These other legislative requirements are not dealt with in this booklet.

1.1 Public Service Act and subordinate legislation

While the PS Act does not contain specific references to outsourcing of APS functions, parts of the Act are relevant to employees involved in market testing or outsourcing processes and to employees whose employment is affected by a decision to outsource a function.

Certain provisions of both the APS Values and the APS Code of Conduct are relevant to the management of outsourcing exercises.

The APS Values include:
• the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves (s.10(1)(c))
• the APS has the highest ethical standards (s.10(1)(d))
• the APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public (s.10(1)(e))
• the APS establishes workplace relations that value communication, consultation, cooperation and input from employees on matters that affect their workplace (s.10(1)(i)).

The Code of Conduct includes:

• an APS employee must behave honestly and with integrity in the course of APS employment (s.13(1))
• an APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment; (s.13(7))
• an APS employee must 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 (s.13(10))
• an APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS (s.13(11)).

Agency Heads are required to uphold and promote the APS Values and are bound by the Code of Conduct in the same way as APS employees (see sections 12 and 14 of the PS Act respectively).

The steps that can be taken by an agency to assist in ensuring the ethical management of an outsourcing exercise are discussed in Chapter 4.

Other provisions of the PS Act that may be relevant in a particular outsourcing exercise are an Agency Head's powers to reduce the classification of an APS employee and to terminate an APS employee's employment (sections 23 and 29 of the PS Act respectively). The effective management of employees who become excess to requirements as a result of an outsourcing exercise is discussed in Chapter 2.

In addition, the Public Service Commissioner's Directions 1999 (the Directions) provide that an Agency Head must put in place measures to ensure that a person who has received a redundancy benefit or similar payment from an APS agency or a non-APS Commonwealth employer is not engaged as an APS employee if 12 months has not elapsed since the person's employment ended.

This limitation applies to persons who receive a redundancy benefit or transition payment as a result of the outsourcing of a Commonwealth function.
1.2 Workplace Relations Act

Certain provisions of the WR Act are relevant to the outsourcing of APS functions.

Transmission of business

The transmission of business provisions of the WR Act provide that federal awards and agreements will bind an employer which is the ‘transmittee, assignee or successor’ of a business.

There has been a number of recent Federal Court and High Court decisions concerning the transmission of business provisions of the WR Act. DEWR advices on the implications of these decisions for APS market testing and outsourcing are available at www.dewr.gov.au.

Transmission of business is not an impediment to outsourcing or market testing. It is one of a number of factors that government agencies and potential tenderers need to consider and manage in their market testing and contracting out processes.

Agencies should ensure that tenderers are made aware of the transmission of business provisions of the WR Act in order that they may develop a commercial risk assessment and management strategy. Examples of possible clauses for inclusion in Requests for Tender (RFTs) to advise tenderers to make themselves aware of possible implications of transmission of business cases are at Appendix B.

Freedom of association

In September 2000 in ASU v Greater Dandenong City Council [2000] FCA1231, Madgwick J of the Federal Court found that, in outsourcing its home and community care services, the Council had contravened the freedom of association provisions contained in Part XA of the WR Act, on the basis that the employees of the Council had either been dismissed or their positions had been altered to their prejudice because they were entitled to the benefit of an industrial instrument.

In his decision Madgwick J commented that the freedom of association provisions are not an impediment in themselves to outsourcing. However, this case highlights the need for agencies, in market testing or outsourcing, to focus on achieving value for money by identifying the most efficient and effective way of providing services, not on reducing terms and conditions of employment.

In April 2001, a Full Court of the Federal Court dismissed an appeal by the Council against Madgwick J’s judgment [2001] FCA349.

Agencies should also note that, where freedom of association issues arise, it can cause delays in proceeding with outsourcing. For example, Kenny J of the Federal Court in the Transport
Workers' Union of Australia v BP Australia Ltd [2001] FCA1174 issued an interlocutory injunction restraining the employer from contracting out the work performed by 17 aircraft refuellers at Perth airport.

1.3 Archives Act

The Archives Act provides a framework for consistent and accountable record-keeping practices and places restrictions on the destruction and the transfer of the ownership or custody of Commonwealth records:

- Section 24 of the Archives Act places a general prohibition on the transfer of ownership or custody of records to non-Commonwealth bodies. This prohibition does not apply if the permission of the National Archives of Australia (NAA) is given.
- To facilitate the transition of service delivery to a contractor, the NAA has issued General Disposal Authority 25 authorising the transfer of custody of certain existing records to non-Commonwealth bodies, subject to a number of terms and conditions being imposed on the contractor (usually by contractual means). These terms and conditions are set out in General Disposal Authority 25.

To avoid breaching the Archives Act, it is essential for agencies that are outsourcing the conduct of functions and activities to continue to observe their responsibilities for ensuring the proper creation, management and retention of Commonwealth records.

In essence, while Commonwealth government work may be outsourced, the responsibility for keeping full and accurate records of that work cannot be outsourced. Some key points to bear in mind with regard to Commonwealth records and the law are:

- Records relating to the responsibilities of an agency must be created, managed and disposed of in an accountable manner, even if the agency itself does not directly create them, store them or ultimately dispose of them.
- Agencies should transfer to a private contractor the custody of only those records that the contractor needs to ensure continuity of service.
- Ownership of records generally should remain with the Commonwealth.
- The Commonwealth should own all records that it needs to maintain accountability to the Parliament and to the people-this outcome should be guaranteed by contractual means.
- All records created as a result of services provided by a contractor on behalf of the Commonwealth must be owned by the Commonwealth.
- Records created as a result of services provided by a contractor to the Commonwealth may not need to be owned by the Commonwealth.
- Records owned by the Commonwealth should be destroyed by a contractor only with the permission of the agency, in accordance with the requirements of the Archives Act.
- Agencies are responsible for keeping full and accurate records of the management of all outsourcing contracts.
The NAA publication *Records Issues for Outsourcing* (July 1998), which includes General Disposal Authority 25, contains further information on the requirements of the relevant legislation and general guidance relating to recordkeeping in outsourcing situations. This publication is available from the NAA’s website at: www.naa.gov.au/recordkeeping/outsourcing/outsourcerecords/summary.html.

2. Importance of Human Resource Management issues

Careful attention to HRM issues is crucial to achieving positive outcomes for agencies, the Commonwealth, new service providers and clients, as well as fair treatment of employees affected by outsourcing decisions.

2.1 Principles underlying Human Resource Management aspects of Outsourcing

Effective implementation of HRM is based on several key principles:

**Ensuring that all employees affected by an outsourcing decision are treated fairly**

This principle is central to the success of good people management and the smooth operation of the outsourcing process. To help facilitate the fair treatment of staff, employees and their representatives should be consulted on issues affecting them as a result of the outsourcing of Commonwealth functions. An integral part of the implementation process will be the development and utilisation of a communications strategy.

**Providing a degree of certainty about the staffing approach to be adopted**

Agencies will need to decide on the appropriate staffing approach to use at the start of any market testing or outsourcing process. This is important both in terms of assisting tenderers to prepare their bids and in informing employees of their options. The provision of timely information to staff is crucial to maintaining a transparent process, and in fostering a harmonious industrial relations climate. In order to achieve this, agency management will need to clearly understand the objectives of the process and to have a comprehensive communication strategy. Clear communication of the staffing approach that is chosen will assist all relevant parties to make appropriate decisions.
Seeking to maximise a harmonious industrial environment and to minimise the potential for industrial disputation prior to, and during, the changeover to the new service provider

The minimisation of industrial disputation and the promotion of a harmonious workplace relations environment enables a smooth changeover to the new service provider and a reduction in uncertainty for employees affected by the process.

To achieve this agencies will need to identify industrial issues early in the process and develop contingency plans to deal with any industrial and staffing issues that may arise.

Maintaining the viability of the function and continuity of business during the outsourcing process

It is imperative that the viability of an activity be maintained prior to, and during, the changeover to the new service provider. The effectiveness of the management of the changeover period will require that all parties be fully informed of their role in the process and the desired outcomes. An effective changeover will reduce the disruption to employees, the new service provider and the government.

Ensuring that related processes are focused on achieving the best value for money

Achieving value for money involves the choice of the most appropriate solution for a particular outsourcing activity. Value for money will not necessarily be achieved by accepting the lowest priced offer as price alone is not a reliable indicator of value. An assessment needs to be made of the factors that are important in each outsourcing exercise and decisions taken on the basis of what represents the best value for the Commonwealth, taking into account all relevant benefits and costs. For further information on achieving value for money, agencies should refer to the Value for Money Toolkit, which is available on Finance’s website at www.finance.gov.au.

Ensuring that staff are aware of what constitutes ethical standards and behave ethically in relation to the outsourcing of an activity

APS employees occupy positions of trust, power and privilege and they must act with the highest ethical standards if they are not to breach that trust or misuse that power or privilege.

Agencies need to ensure that employees are aware of what constitutes ethical standards and behave ethically in relation to the outsourcing of an APS activity. The APS Values and the Code of Conduct are relevant to the behaviour and actions of staff involved in the outsourcing of an activity.
Ethical management of the outsourcing exercise is discussed in chapter 4.

2.2 Planning processes

Prior to embarking on an outsourcing exercise, it is good practice for an agency to develop a corporate strategy or framework to ensure a coordinated approach to the HRM aspects of outsourcing.

Ideally, the corporate framework will outline the policy and guidelines to be adopted by the agency in outsourcing and provide a template for the development of a project plan specific to the particular exercise. The flow chart at the end of this chapter places people management in the context of an outsourcing strategy.

2.3 Human Resource Management plan

HRM issues have a major bearing on the successful conduct of an outsourcing exercise.

While some of those issues will have been addressed in the development of the corporate strategy, it is good practice for an agency to develop a specific HRM plan to ensure that attention does not focus exclusively on the commercial aspects of an outsourcing decision.

The earlier the HRM issues are identified and addressed, the more likely it is that employees and their representatives will have an understanding of the reasons for, and the processes involved in, the outsourcing exercise. As a result, employees will be better informed to make decisions about their future, and better able to contribute positively to the outsourcing processes.

The HRM plan must take into account the interacting elements of the outsourcing exercise and must be sufficiently flexible to adapt to changing circumstances. It is extremely important to ensure that sufficient lead-time is allowed to meet target dates.

It is suggested that agencies should address the elements discussed below when developing an HRM Plan. A checklist is at Appendix C.

Resource Allocations

Sufficient resources, including financial resources, should be allocated to implement the HRM plan.

A detailed analysis of the staffing profile within the work areas affected by outsourcing will provide an indication of the scope and nature of the exercise. The allocation of resources to support the HRM plan will be affected by such things as:
• the number and location of ongoing and non-ongoing employees and the extent of any temporary performance arrangements
• the number of workers’ compensation cases
• the marketability of the skills of existing employees.

Resources could include:

• dedicated project team members who are adequately trained in, and conversant with, the HRM processes and issues associated with outsourcing an activity
• support services for the HRM project team—this could include facilities, travel, training, retraining, consultancy and other fees
• staff to implement the communication plan (discussed below)
• adequate personnel resources to process the resignations of employees moving to the new service provider and the redeployment or retrenchment of affected employees (for example, to provide advice on options, to calculate severance and other payments and to use the services of ComSuper for the calculation of superannuation benefits).

Communications strategy

There is a need to develop a communications strategy to provide early and ongoing consultation with employees involved in and affected by the outsourcing of an activity, and with their representatives.

The plan should be dynamic, and properly integrated into the HRM plan. It should:

• clearly state the roles and responsibilities of project team members, including central and regional team members, if applicable, and target dates
• as early as practicable, provide processes for discussions with employees and their representatives and for their input to the development of HRM strategies (including the formal consultative requirements under the relevant redeployment, reduction and retrenchment (RRR) provisions)
• contain a timetable for regular communication to employees and their representatives (for example, through information sessions, bulletin boards, newsletters) to provide details of:
  o the outsourcing processes, the proposed time frame and updates on progress of the activity;
  o options available to employees (for example, employment with the new service provider, redeployment, etc.)
  o support services available to employees
  o the possible impact on other areas of the organisation that may be affected by the change, by raising the level of awareness and understanding of staff in areas where displaced employees from the outsourcing exercise may be placed.
An honest approach to the provision of information on the likely impact of outsourcing on employees is likely to contribute to a smoother implementation of the change.

**Staff support strategy**

In addition to regular communication and consultation with employees and their representatives, a staff support strategy should be developed to help minimise the personal stress of employees affected by an outsourcing decision. Support mechanisms should be sufficiently flexible to meet the needs of different work groups in various ways at different stages of the outsourcing exercise and be provided through both group and individual sessions.

Support could include:

- information and briefings from:
  - agency HRM & industrial relations specialists
  - ComSuper
  - Australian Taxation Office
  - Centrelink
  - providers of redeployment services/job placement agencies
  - financial counsellors.
- information kits to provide employees with details of their individual financial entitlements, details of counselling and support available, an outline of the relevant RRR provisions and, in the case of the ‘Phased’ approach, the conditions to apply on movement to the new service provider
- allocation of resources to deal with individual staff issues (to address individual problems, preparation of staff training/retraining plans and provision of counselling and outplacement assistance, if required)
- skills training and retraining activities to assist redeployment. (Such activities may include the development of interview skills, assistance with the preparation of job applications and curricula vitae, etc).

**Fairness**

Agencies are responsible for ensuring that all employees affected by the outsourcing process are treated fairly and should ensure that:

- all employees have access to appropriate training and retraining opportunities
- all employees are given a reasonable opportunity to compete for positions available for redeployment
- any employees with special needs are identified and additional support and advice offered to assist them during this period, for example:
  - the provision of information in languages other than English
  - the provision of specialist support and counselling services.
Effective management of excess employees

Employees who become excess as the result of an outsourcing exercise should be managed in accordance with the relevant provisions of the PS Act (section 23 deals with reduction, section 27 with movement between agencies and section 29 with termination) and the relevant RRR arrangements operating in the agency.

Typically, these RRR arrangements will be set out in the agency's Certified Agreement or in Australian Workplace Agreements (AWAs). The Australian Public Service Award 1998 (the APS Award) provides default RRR arrangements for any agencies which do not have agency agreements or AWAs in place.

Agencies should be aware of any mandatory time frames under these provisions in developing an implementation timetable - i.e. the HRM plan should ensure the date negotiated for handover of the activity to the new service provider takes into account the time frames required under the relevant RRR provisions.

So that employees may make informed decisions on redeployment and retrenchment options, agreements generally require that they be given:

- information on the formal processes
- information on entitlements and the support mechanisms available, for example:
  - estimates of superannuation and other entitlements
  - professional financial counselling
  - advice on redeployment opportunities and the support available
  - access to advice on employment opportunities outside the APS.

The early development of revised staffing profiles in the affected work area(s) will help to identify redeployment opportunities. Staff in some employment categories will have better redeployment prospects than others. Useful mechanisms that may be adopted include:

- personal approaches to other agencies to canvass likely redeployment opportunities
- staff surveys to help plan for the allocation of sufficient resources at critical stages of the HRM plan
- the use of any relevant provisions in an agency's Certified Agreement or AWA which might allow for the creation of suitable redeployment opportunities for excess employees by allowing the retrenchment of other employees in the organisation.

Agencies should be aware that not all employees displaced by the outsourcing of an activity are likely to be covered by the RRR provisions in operation in the agency. In most agency agreements, it is likely that all non-ongoing employees and ongoing employees serving a probationary period will be excluded from the operation of the RRR arrangements set out in the agreement. In the case of non-ongoing employees engaged for a specified term or the duration of a specified task, agency agreements or individual employment arrangements may provide for compensation for early termination of the engagement in certain circumstances.
This highlights the importance of developing and analysing the profile of the employees in the affected areas as early as possible.

For further information on the management of excess staff situations, agencies should refer to Public Service Act Implementation Advice No 12-Excess Employees issued by the Commission.

This advice replaces that contained in the Commission's booklet Management of Excess Staff Situations in the APS-Human Resource Management Principles, Guidelines, Good Practice.

The good practice advice contained in that booklet, however, may still be useful in assisting agencies to effectively manage employees who are excess to requirements as a result of the outsourcing of an activity. The Commission is currently preparing a revised booklet on the management of excess staff situations in the APS.

**Contract management arrangements**

The agency which outsources an activity retains overall responsibility for ensuring that the activity continues to be performed at the required standard and that client service needs are adequately met. It is therefore good practice for an agency to include appropriate contract management arrangements in their outsourcing strategy. This ensures the activity is successfully maintained during the handover to the new service provider and during the contract period.

Both the Auditor-General and the Joint Committee of Public Accounts and Audit have commented on the importance of APS agencies focusing more strongly on developing contract management skills and expertise. The Australian National Audit Office has also produced a better practice guide on Contract Management which is available on its website at www.anao.gov.au.

The Commission provides APS-wide development and training on a range of issues including contract management. Further information is available on the Commission's website.

**2.4 The variables that might apply in each outsourcing exercise**

The circumstances of each outsourcing exercise may vary considerably given the particular interests and priorities of the agency and the workplace relations environment. The extent to which any of these variables apply may influence the human resource strategy and staffing approach adopted.

These variables may include:

- the extent to which the agency has a continuing interest in the performance standard of the activity and the risks associated with outsourcing delivery of services. The level
of risk may be determined by how critical the activity is to the agency's core business. For example, the performance standard for an agency's computer services is likely to be more critical than for its cleaning services.

- the extent to which the skills of existing employees are critical to the continuation of the activity. This may be determined by the specialist nature of the activity, or the length of training or experience required to perform the activity.
- whether specialist skills are required to perform the activity and the availability of those skills in the general labour market.
- the capacity of the agency to manage the staffing consequences of the adopted approach. An agency's capacity may be affected by:
  - the time frame involved
  - the number of employees involved in the activity
  - the cost of each approach, and the organisational costs of supporting them
  - the availability of sufficient specialist HRM staff to assist on site
  - whether sufficient resources are available within the agency, or whether assistance may need to be provided through consultancy arrangements
  - the industrial relations environment
  - redeployment prospects for the employees involved
  - the capacity of the organisation to fund retrenchment and redeployment activities.

The two staffing approaches developed for dealing with the HRM aspects of outsourcing - the 'Phased' approach and the 'Clean Break' approach - are explained in the following chapter. In each outsourcing exercise, agencies will need to decide which of these two approaches to use at the start of any market testing or outsourcing process. This is important not only for informing employees of the options they have but also because the approach adopted will affect responses from tenderers in the tendering process and may affect overall pricing.

### Human resource management - one element in an outsourcing activity

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- Phased or clean break approach
- A decision to adopt one approach should be made as early as possible in the process.
3. Staffing approaches - 'Phased' and 'Clean break'

In dealing with staffing issues an agency should seek to achieve fair outcomes for affected employees, ensure continuity of service delivery and minimise transaction costs.

Experience over recent years has highlighted a range of common HRM issues that arise in any market testing or outsourcing process. This has led to the development of two approaches for handling the HRM aspects, namely:

- the 'Phased' approach
- the 'Clean Break' approach.

Each approach provides a discrete set of options for dealing with the people management and workplace relations aspects of any market testing or outsourcing process. Only one approach is to be used in any exercise and agencies should avoid hybrid models that involve combining features of each of the staffing approaches.
3.1 Key features of the 'Phased approach'

The 'Phased' approach is designed to operate where it is important to the continuity of service delivery that the new service provider employs a significant proportion of the appropriately skilled existing employees. This is usual where the viability of the function to be outsourced is critically dependent on the skills and experience of existing agency employees.

The 'Phased' approach provides for employees currently performing the activity to be considered for jobs with the new service provider prior to the activity being outsourced and prior to invoking the outsourcing agency’s RRR provisions.

Under this approach:

- The APS agency negotiates with employees and their representatives on the terms and conditions to be offered to staff accepting employment with the new service provider and, once finalised, tenderers are advised of the agreed terms and conditions in the RFT material:
  - Note however that in relation to IT outsourcing, an agreed whole of Government approach has been established. In situations where it is decided to use the 'Phased' approach, the transitional entitlements of employees accepting employment with the new service provider are fixed. Further details are provided below.
  - In other than IT outsourcing, this negotiation process may occur prior to the RFT being issued (in which case the agreed terms and conditions should be included in the RFT).
  - If, however, the negotiations are not finalised by the time the RFT is ready to be issued, the RFT process may proceed with the APS agency agreeing to keep tenderers advised of the progress of negotiations. This would allow tenderers to commence work on other aspects of the RFT while the negotiations are being finalised.
  - It is desirable to advise tenderers of the final arrangements in relation to these terms and conditions prior to the completion of the RFT process in order to allow them to finalise their bids. In circumstances where this is not possible and a preferred tenderer is chosen, notification should occur when the final details of these terms and conditions are settled and any necessary adjustment of the price will need to be negotiated with the preferred tenderer prior to a Services Agreement being signed.

- The RFT and the Services Agreement will require the new service provider to meet its additional staffing requirements initially by offering employment on the agreed terms and conditions from the pool of employees performing the work or function proposed for outsourcing.

- Once the successful tenderer has been chosen, the APS agency has discussions with the successful tenderer on the employment opportunities for the employees currently performing the function who wish to move to the new service provider. The
discussions will generally take place in the context of the agreed terms and conditions of employment as set out in the RFT (but see comments above in relation to a situation where the terms and conditions have not been finalised).

- Agency employees who accept a negotiated job with the new service provider are identified prior to the activity being outsourced. This ensures that these persons do not receive an offer of voluntary retrenchment and a job with the new service provider.
- In-scope employees (i.e. those whose jobs are affected by the outsourcing of a particular function) resign to accept a job with the new service provider.
- The Services Agreement should include a provision which requires a payment to the APS agency by a new service provider if they employ a person who has received a severance benefit from the APS agency within six months of handover date (see section below entitled *Mechanism to support the 'Phased' approach* for further details):
  - The use of such a contractual provision will assist in ensuring that the new service provider supports the effective application of the 'Phased' approach by carrying out any recruitment of the APS agency's employees prior to handover.
- The Services Agreement should also include a provision which prevents the engagement of identified agency personnel who were involved in the tender evaluation or decision making process by the successful tenderer for six months after the Services Agreement is signed (refer to section on Restrictions on key decision makers in Chapter 4).
- In-scope APS employees who do not gain a job with the new service provider are dealt with under the relevant RRR arrangements operating in the APS agency:
  - There are restrictions on subsequent employment in the APS of persons who receive a redundancy benefit from the APS or from a non-APS Commonwealth employer (see clauses 4.4, 4.4A and 4.4B of the Directions and the Commission's Public Service Act Implementation Advice Number 29-Limitations on the engagement of persons who have received a redundancy benefit for further advice on this issue).

### 3.2 Staff entitlements under the 'Phased' approach - IT Outsourcing

The entitlements of affected employees who resign to take up employment with the new service provider under the 'Phased' approach are as follows:

- A transition payment of one week's salary for each completed year of Commonwealth service (and a pro rata amount for each completed month of service) with a minimum of four weeks and a maximum of 16 weeks salary:
  - This transition payment falls within the definition of a redundancy benefit as set out in the Directions. Employees who receive this payment from a Commonwealth employer are therefore covered by the arrangements set out
in the Directions which limit the subsequent employment in the APS of such persons for a 12 month period.

- The dollar amount of the redundancy benefit an employee would have been entitled to receive had they been offered and accepted voluntary retrenchment from the APS at the time of outsourcing is frozen:
  - Employees who are made redundant within three years of commencing with the new service provider will, in addition to any redundancy benefit made by the new service provider, be paid this frozen redundancy benefit, minus the amount of the transition payment made at the time of resignation from the APS agency.
  - This payment does not fall within the definition of a redundancy benefit as set out in the Directions. A person who is paid this benefit after being made redundant by the new service provider is not therefore covered by the arrangements set out in the Directions which limit subsequent APS employment, provided 12 months has elapsed since their previous Commonwealth employment ended.

- Employees with more than 12 months service will have their long service leave (LSL) accruals paid out:
  - While no LSL credits are carried across to the new service provider, all employees will have their period of Commonwealth service (which has been recognised for LSL purposes) recognised by the new service provider for the purpose of the new service provider's qualifying period for access to LSL.

- Employees who were entitled to paid maternity leave prior to outsourcing and who commence their mandatory period of maternity leave within 12 months of taking up employment with the new service provider will have up to 12 weeks paid maternity leave.

Affected employees who do not resign because they are either unsuccessful in gaining employment with the new service provider, or decline an employment offer by the new service provider, may be placed elsewhere in the agency or dealt with under the relevant RRR provisions in operation in the agency.

Where agencies are considering using the 'Phased' approach in IT outsourcing, the Commission and DEWR should be consulted early in the process on the implementation arrangements for this agreed package of staff entitlements.

**Superannuation issues**

APS employees who, under the 'Phased' approach, resign to take up employment with the new service provider have all the normal superannuation options available on resignation from Commonwealth employment.

Since 1 July 1999, the general preservation rules applying to superannuation payments have required the preservation of all superannuation contributions made and all interest earned after
that date. There are, however, certain grandfathering provisions which allow an amount equivalent to the amount the person would have been entitled to receive as a retrenchment benefit in cash prior to 1 July 1999 to continue to be available in cash if the relevant superannuation scheme rules permit.

In the CSS and PSS, members who joined the schemes before 1 July 1999 will continue to be able to access a cash payment on resignation from the APS of the member's contributions and interest at the date of exit (provided that this amount does not exceed the retrenchment benefit the employee could have received as cash as at 1 July 1999).

For members who joined the PSS on or after 1 July 1999, no benefit will be available in cash. For other members, at some time in the future the accumulated member contributions and interest may exceed the amount of the cash retrenchment benefit that would have been available to that member prior to 1 July 1999. If this occurs, any amount in excess of the 1 July 1999 cash benefit would have to be preserved. For long-term members it will be some time before any part of the member component requires preservation.

In addition to the normal superannuation options available on resignation, members of the PSS and CSS who, under the 'Phased' approach, resign to take up employment with the new service provider will be able to roll over their total superannuation benefit into the new service provider's (or another) superannuation scheme. Such schemes will also be subject to general preservation rules and may also have scheme-specific rules requiring a higher level of preservation.

Further information on superannuation issues is available from ComSuper.

**Taxation treatment of transition payment**

The transition payment is regarded as an Eligible Termination Payment (but not a bona fide redundancy payment) and is taxed up to a maximum of 31.5%.

**Accrued entitlements**

Employees are entitled to payment in lieu of unused recreation leave (but not sick leave) credits on resignation from the Commonwealth.

**3.3 Staff entitlements under the 'Phased' approach - Non IT Outsourcing**

Negotiations between the APS agency, affected employees and the new service provider will determine the salary and other conditions of employment of staff who resign from the APS to take up employment with the new service provider under the 'Phased' approach.
Employees are entitled to payment in lieu of unused recreation leave and (provided they have at least ten years service) long service leave on resignation from the Commonwealth. The information set out in the section above concerning the superannuation entitlements of persons under the ‘Phased’ approach applies equally in non-IT outsourcing situations.

Affected employees who either are not successful in gaining employment with the new service provider, or who choose not to take up such employment, may be dealt with under the relevant RRR provisions in operation in the agency concerned. Further information on the operation of these provisions is set out in the section entitled ‘Clean Break’ approach.

3.4 Mechanism to support the ‘Phased’ approach

Where an agency adopts the ‘Phased’ approach, employees accepting employment with the new service provider are expected to resign from the APS to take up their new employment.

An additional mechanism has been developed to ensure that a private sector provider supports the effective application of the ‘Phased’ approach by carrying out any recruitment of APS employees before handover. This is achieved by including a provision in the tender documentation which will have the effect of requiring the new service provider to pay an amount (say $25,000 or another specified amount determined by the agency) to the outsourcing agency in each case where that provider employs a person who has received a severance benefit within six months of the outsourcing of the activity.

The adoption of such an arrangement recognises the investment of resources by the Commonwealth in arranging a ‘Phased’ approach. The provision is not intended as a restriction on the employment of former APS employees but rather as a mechanism to ensure that the new service provider supports the effective implementation of the ‘Phased’ approach where it is being used. The use of this mechanism to support the ‘Phased’ approach will assist in ensuring the integrity of APS outsourcing.

A suggested set of words is included in the sample clauses for RFTs and Services Agreements at Appendix D.

3.5 Key features of the ‘Clean Break’ approach

The ‘Clean Break’ approach does not involve any negotiation of jobs and terms and conditions of employment by the outsourcing agency with the new service provider. The new service provider is free to enter negotiations with affected employees regarding employment opportunities with the new service provider.

This does not preclude the agency entering discussions with the new service provider about the number of employees required to perform the function. All employees associated with the activity to be outsourced are placed in suitable jobs elsewhere in the agency or are subject to the relevant RRR arrangements applying in the APS agency.
Under the ‘Clean Break’ approach, the following steps would usually occur:

- The recruitment of persons to perform the function after it is outsourced is left solely to the new service provider—it may recruit the people it needs to perform the function from any source:
  - The APS agency does not broker or negotiate either jobs or terms and conditions of employment with the new service provider.
  - No agreements or understandings are entered into between the APS agency and the new service provider, or the APS agency and its employees, about the employment of any specific individuals or any groups of individuals by the new service provider.

- The APS agency should not provide details of in-scope employees to the new service provider except for general information which may be required under due diligence (for example, details of staffing structures and profiles).

- Employees currently performing the function to be outsourced are dealt with under the relevant RRR arrangements in operation in the agency.

- The new service provider may negotiate directly with employees of the APS agency about employment prospects and those employees are free to choose whether or not to accept a job offer from the new service provider.

- There are no leave without pay or secondment arrangements for in-scope employees to work for the new service provider (leave to undertake short periods of training with the new service provider may be given if this is in accordance with the limitations and guidelines that ordinarily apply to applications for leave for that purpose in the agency concerned).

- There are no restrictions on the subsequent employment of in-scope employees of the APS agency with the new service provider or any private sector employer:
  - APS employees may accept an offer of employment with the new service provider before the handover date.
  - The Services Agreement should include a provision which prevents the engagement of identified agency personnel who were involved in the tender evaluation or decision making process by the successful tenderer for six months after the Services Agreement is signed (refer to section on Restrictions on key decision makers in Chapter 4).
  - There are also restrictions on subsequent employment in the APS of persons who receive a redundancy benefit from the APS or from a non-APS Commonwealth employer (see clauses 4.4, 4.4A and 4.4B of the Directions and the Commission’s Public Service Act Implementation Advice Number 29-Limitations on the engagement of persons who have received a redundancy benefit for further advice on this issue).
3.6 Staff entitlements under the 'Clean Break' approach

**Redeployment, reduction and retrenchment (RRR) arrangements**

Under the 'Clean Break' approach, employees affected by a decision to outsource a particular function are dealt with under the RRR arrangements in operation in the APS agency:

- Detailed provisions relating to the management of excess APS employees are now generally found in agency-specific Certified Agreements or in AWAs.
- These arrangements typically provide eligible employees with a number of options— redeployment within the APS, voluntary retrenchment (with payment of a redundancy benefit and accrued entitlements) or involuntary termination after a retention period (with payment of accrued entitlements).

Agencies need to comply with the relevant provisions of the PS Act and the RRR procedures in operation in the agency when dealing with affected employees under the 'Clean Break' approach.

**Taxation treatment of severance benefits**

The Australian Taxation Office has advised that a severance payment is regarded as a 'bona fide redundancy' payment for taxation purposes if there is no agreement in place between the APS agency (i.e. the Commonwealth) and either the employee or the new service provider about the employment of the employee by the new service provider. When this condition is met, the severance benefit is taxed at a concessional rate.

The concessional tax treatment of a severance payment is not compromised if an employee obtains employment, through his or her own efforts, with the new service provider either prior to or after ceasing employment with the APS agency.

More detailed advice on the taxation treatment of severance benefits is at Appendix E.

**Superannuation issues**

Under the 'Clean Break' approach, contributors to either the CSS or the PSS who are made redundant on or after 1 July 2000 have the choice of preserving their benefit in the relevant scheme or taking their benefit as a pension or as a lump sum:

- Under the CSS rules employees must be over the age of 31 to be paid a pension; there is no minimum age requirement to be paid a pension under the PSS.
- Employees who choose a lump sum option are subject to the general and scheme-specific superannuation preservation rules in relation to employer and member contributions which are described in Appendix A.
Further information on superannuation issues is also available from ComSuper.

**Accrued entitlements**

Employees are entitled to payment in lieu of unused recreation leave and (provided they have at least 12 months service) long service leave, but not sick leave, on termination from the APS.

### 3.7 Advantages and disadvantages of each approach

As noted above, each approach provides a discrete set of options for managing the human resource and workplace relations issues of an outsourcing exercise. Some of the advantages and disadvantages of the two approaches are discussed below.

**'Phased' approach**

The main advantage of the 'Phased' approach is that there may be greater opportunity for an APS agency to influence appropriately skilled employees to continue in employment with the new service provider. In addition, the preferred tenderer and APS agency can work cooperatively at a much earlier stage of the process on the recruitment of employees by the new service provider. This will assist in ensuring that the activity continues to operate efficiently, especially in an environment where some of the necessary skills and knowledge may not be available elsewhere. The 'Phased' approach also increases the likelihood of a smoother handover to the new service provider.

The use of the 'Phased' approach can also minimise the incidence of employees receiving a redundancy benefit in addition to a job with the new service provider. In negotiations, and through the use of appropriate provisions in the Services Agreement, measures can be introduced which are likely to encourage employees to resign to take a job with the new service provider.

The complex nature of the negotiations with employees and their representatives and with tenderers can be seen as a disadvantage to the use of the 'Phased' approach. The ability to work within tight and reasonably well-defined time frames is essential to maintaining the viability of the activity or function while the outsourcing process is finalised. In the non-IT context, the nature of negotiations with employees and their representatives and tenderers on the terms and conditions of employment for employees who accept employment with the new service provider can be complex and potentially protracted. This can greatly extend the time frame of the outsourcing exercise, increase the real costs of outsourcing and compromise the objective of achieving better use of resources and the cost effective delivery of services. There may be increased risk of staff leaving before the outsourcing process is complete if they see little or no financial benefit in staying on rather than accepting alternative job offers.
The use of the 'Phased' approach will not necessarily obviate the need to make redundancy payments although the number of redundancies will generally be less under this approach. Redundancy payments may still be required since employees cannot be compelled to resign from APS employment or to take up employment with the new private sector provider.

'Clean Break' approach

The main advantages of using the 'Clean Break' approach are that it is an administratively simpler process for agencies and it can be implemented within a reasonably short time period. The benefits available to employees under the 'Clean Break' approach can also be used as an incentive to ensure that affected employees continue in employment with the outsourcing agency until the new provider takes over the function. As there is no attempt to broker jobs with the new service provider, negotiations can be much less protracted than under the 'Phased' approach, thereby minimising the potentially heavy resource requirements that may need to be devoted to the process.

The disadvantages of the 'Clean Break' approach include the cost to the APS agency in terms of the redundancy payments and/or redeployment costs for the employees who have been performing the function. There may also be risks to the continuity of service delivery if, as a result of this approach, the new service provider is unable to recruit employees with sufficient experience and skills to perform the necessary work, particularly on handover. Both the outsourcing agency and the new service provider may be uncertain about the number and skills of employees who will take up job offers with the new service provider at the commencement date of the outsourced arrangements.

3.8 Variations to the 'Phased' and 'Clean Break' approaches where the new service provider is an APS agency or a Non-APS Commonwealth employer

There are certain limitations on the full application of the 'Phased' approach and the 'Clean Break' approach where a function is outsourced to another APS organisation, or to a non-APS Commonwealth body, as opposed to a private sector provider.

Where an APS agency or a non-APS Commonwealth employer successfully tenders for an APS function, the decision to adopt either the 'Phased' or the 'Clean Break' approach will have been made early in the process.

- In circumstances where the 'Phased' approach is adopted, consideration may be given to the use of the relevant powers under the PS Act to move any affected APS staff to the new service provider. Agencies should consult the Commission and DEWR early in the process where such a situation may arise.
• In circumstances where the 'Clean Break' approach is adopted, and the new service provider is an APS agency, any employee who received a voluntary redundancy payment from the outsourcing APS agency would be subject to the arrangements set out in the Directions concerning their subsequent engagement in the APS for a period of 12 months. These arrangements are set out in more detail in Public Service Act Implementation Advice Number 29-Limitations on the engagement of persons who have received a redundancy benefit.

• In circumstances where the 'Clean Break' approach is adopted, and the new service provider is a non-APS Commonwealth employer, the eligibility of an APS employee who receives a redundancy payment from the outsourcing APS agency to take up employment with a non-APS Commonwealth employer will depend on the arrangements applying in that agency for the employment of persons who have received a redundancy benefit from Commonwealth employment.

4. Ethical management of the outsourcing exercise

The government is committed to ensuring that the APS has the highest ethical standards. Public Servants occupy positions of trust, power and privilege and they must act with the highest ethical standards if they are not to breach that trust or misuse that power or privilege.

The government has stated its commitment to ensuring that the APS has the highest ethical standards with the introduction of a set of APS Values and a Code of Conduct in sections 10 and 13 respectively of the PS Act.

The APS Values describe the standards and outcomes that are necessary to maintain public confidence in the integrity of the public service and the professionalism of public servants. The Code of Conduct provides a clear statement to those within the APS, and the public, of the conduct and behaviour expected of APS employees. APS employees are required to behave at all times in a way that upholds the APS Values and the integrity and good reputation of the APS.

Certain provisions of the APS Values and the Code of Conduct are relevant to the management of outsourcing exercises and to the handling of the human resource management aspects of outsourcing. For example, the APS Values require the highest ethical standards and commitment to accountability arrangements while the Code of Conduct requires APS employees to behave honestly and to disclose, and take reasonable steps to avoid, real or apparent conflicts of interest. It also prohibits the improper use of inside information to gain a benefit for an employee or for any other person.

In outsourcing an activity, an agency should ensure that:

- employees perform their functions in a professional manner
- services are delivered to the Australian public in a fair and impartial way
- decisions are made in the interests of the Commonwealth
• employees observe the highest ethical standards and that all employees are aware of and understand the APS Values and APS Code of Conduct.

In addition, agencies may wish to consider to what extent a service provider will be required, under the terms of the contract, to:

• provide services in a manner consistent with the APS Values and the Code of Conduct
• comply with the principles of workplace diversity as set out in the agency's workplace diversity program.

4.1 Probity issues

Some of the measures that agencies might adopt to assist in ensuring the probity of the outsourcing process include:

• All significant decisions and recommendations are subject to review by peers and senior management.
• Comprehensive evaluation and negotiation processes are established to inform decision makers about the respective merits of each tender.
• A comprehensive probity plan is established and external independent probity advisers are used to advise on all probity aspects of the tender process including the evaluation and decision-making processes.
• In-scope employees are generally excluded from the evaluation and negotiation processes, thereby limiting the prospect of any real or apparent conflict of interest or potential conflict of interest:
  o This does not prevent in-scope employees from participating in evaluation processes where they have specialist knowledge and experience essential to a full and proper evaluation of tenders. In cases where it is not practicable to exclude such specialist employees from the process entirely, care should be taken to limit their role to those areas where their involvement is essential.
• All persons involved in the tendering process are subject to probity protocols.
• The use of an independent probity auditor to advise decisions-makers on the integrity of the process and to assist in ensuring that all relevant processes are fair and transparent.
• The inclusion of a contractual provision in RFTs and in Services Agreements that restricts the subsequent employment, or engagement as a contractor, of key decision-makers in the outsourcing process for a certain period (see section below for further information).

The Australian Government Solicitor’s (AGS) Legal Briefing Number 51 of 25 October 1999 provides further guidance on the probity aspects of tendering. A set of probity protocols which agencies may use in ensuring that proper ethical standards are maintained is at Appendix F.
These protocols have been developed to apply to APS employees, project team members and consultants and are in addition to any other obligations such as those in the Public Service Act, the Crimes Act, the Criminal Code, the Privacy Act, the Archives Act and guidance such as Guidelines on Official Conduct of Commonwealth Public Servants.

4.2 Restrictions on key decision makers

One particular issue that has arisen in the context of ensuring probity in the outsourcing process is how persons in authority might be restricted from taking up employment with a tenderer.

To maintain the integrity of the process, key decision makers should not be employed or engaged by a successful contractor within at least six months of the completion of the tendering process. It is not intended that such a contractual provision would affect in-scope employees who may in the normal course of events seek and/or be offered employment with a tenderer rather it is clearly aimed at persons in authority in a tender process who are influential in selecting who will be the successful tenderer.

Advice has been received from the AGS to the effect that contractual arrangements can be put in place to prohibit people from taking up employment, or being engaged on a contract for service, in these circumstances.

In addition to the contractual provision for the Service Agreement, a similar provision has been developed for inclusion in the RFT which precludes the solicitation, enticement or engagement of key agency employees during this process. Sample clauses for inclusion in RFTs and Services Agreements are contained in Appendix D. Agencies may also wish to seek their own legal advice in the drafting of any contractual or RFT clauses.

Appendix A

Superannuation Acts

In June 1997, the Minister for Finance announced a number of changes to the superannuation arrangements for Commonwealth employees affected by the outsourcing of a function or the sale of an enterprise. The effect of these changes:

- removed the previous uncertainty surrounding the question of access to the lump sum superannuation benefit for APS employees affected by outsourcing decisions who accepted voluntary retrenchment
- allowed APS employees in either the PSS or the CSS who resign to take up a job with the new supplier to access the additional option of rolling over their total superannuation benefit into the new service provider's (or another) superannuation scheme.
In addition, a number of changes to the rules relating to the availability of cash lump sums for members of both the PSS and the CSS came into effect on 1 July 2000. The following outlines the effect of the various rules on the availability of cash lump sums on retrenchment.

All superannuation payments are subject to general preservation rules as well as scheme-specific rules. The general rules apply except where scheme-specific rules require a higher level of preservation.

General preservation rules

Since 1 July 1999, the general rules have required the preservation of all superannuation contributions made and interest earned after that date until preservation age and retirement from the workforce. There are, however, grandfathering provisions which allow an amount similar to the retrenchment benefit available in cash prior to 1 July 1999 to be available in cash if, and only if, the scheme rules permit. Before 1 July 1999 only the Superannuation Guarantee (SG) component was subject to preservation.

CSS and PSS scheme rules

The CSS and PSS rules provide a lump sum benefit as one option on retrenchment. Those rules, however, have required the full preservation of the employer component of the lump sum benefit since 1 July 2000. This means that the full value of the benefit may be taken from the relevant scheme but the employer component must be rolled over into another complying superannuation fund to be preserved until preservation age and retirement from the workforce (see table below).

For members who joined the PSS on or after 1 July 1999, no benefit will be available in cash.

For members who joined the PSS before that date, at some time in the future their accumulated member contributions and interest may exceed the amount of the cash retrenchment benefit that would have been available to that member prior to 1 July 1999 under the general preservation rules. If this occurs, any amount in excess of the 1 July 1999 cash benefit will have to be preserved. For long-term members it will be some time before any part of the member component requires preservation.

Preservation age table

<table>
<thead>
<tr>
<th>Date of birth</th>
<th>Preservation age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1 July 1960</td>
<td>55 years</td>
</tr>
<tr>
<td>1 July 1960 to 30 June 1961</td>
<td>56 years</td>
</tr>
<tr>
<td>1 July 1961 to 30 June 1962</td>
<td>57 years</td>
</tr>
</tbody>
</table>
1 July 1962 to 30 June 1963  58 years
1 July 1963 to 30 June 1964  59 years
After 30 June 1964  60 years

Other options

The changes introduced on 1 July 2000 have no effect on the other options available to employees who are retrenched as a result of the outsourcing of an APS function.

Appendix B

Transmission of Business - Examples of sample clauses for inclusion in requests for tender and services agreements

Sample Requests for Tender Clause

Tenderers should be aware that the transmission of business provisions of the Workplace Relations Act 1996 (Cth) (in particular, sections 149(1)(d), 170MB and 170VS) (the ‘Transmission of Business Provisions’) may apply. Neither the Commonwealth nor any APS agency makes representations in relation to whether or not the Transmission of Business Provisions apply and each Tenderer should obtain its own legal advice prior to submitting its proposal. In the event that the Transmission of Business Provisions apply, neither the Commonwealth nor any APS agency will agree to any adjustment to a Tenderer’s pricing arrangements nor will the Commonwealth or any APS agency otherwise be liable to the Tenderer for any costs that may arise from the application of the Transmission of Business Provisions.

Sample Services Agreement Clauses

The (Name of Agency) is not responsible or liable to the Contractor in respect of any Losses the Contractor may incur as a consequence of the transmission of business provisions of the Workplace Relations Act 1996 (Cth) applying to the Services. For the purposes of this clause, a reference to the transmission of business provisions of the Workplace Relations Act 1996 (Cth) is a reference to sections 149(1)(d), 170MB, and 170VS of the Workplace Relations Act 1996 (Cth).

Nothing in [the above clause] is to be construed as an acknowledgment or acceptance by the parties that the transmission of business provisions of the Workplace Relations Act 1996 apply as a result of the execution of this Services Agreement.
Appendix C

Checklist - Human Resource Management plan

Aim:

To define the human resource management objectives, processes and responsibilities for the implementation of an outsourcing decision to enable timely implementation of the relevant procedures and to identify the responsibility for each of those procedures.

Steps:

Identify key stakeholders, including affected employees, contracting and project managers, central and local management, personnel management and personnel processing areas and relevant staff representatives.

Develop a plan which supports the agency's preferred approach (i.e. 'Clean Break' or 'Phased'), and the commercial objectives and time frames of the outsourcing exercise.

Keep in mind any special considerations due to the particular circumstances of the outsourcing exercise. Such issues could include:

- the location of the activity
- the classification and/or skills profile of the employees
- employment status (i.e. ongoing, non-ongoing, intermittent or irregular)
- the industrial relations environment
- the number of employees involved and the consequential impact on resources
- the timing of decisions
- the likelihood of an excess staff situation
- early provision of information to employees.

A staffing profile will assist in the identification of the critical areas which need support or specialist staff.

Resources:

- Has the strategy for managing the HRM elements been clearly identified?
- Have employees been consulted to identify critical areas where specialist support may be required?
- What funding has been/should be set aside for managing the HRM Plan?
- What is the time frame and what are the target dates and are they consistent with the project plan?
For support of activity:

- How many specialist support staff are required, and who are they?
- What are the responsibilities and reporting lines of each team member?
- How much training is required for support staff to upgrade skills and obtain sufficient knowledge to manage the HRM aspects of the outsourcing processes?
- What facilities/infrastructure are required (e.g. dedicated office, office equipment, travel facilities, etc.)?

Staff support:

- What is the time frame and what are the target dates?
- Have the critical areas of need been identified?
- How much funding is required?
- Who is responsible for collection of staffing profile information?
- What assistance is going to be given to employees (group and/or individual)?
- Is external assistance needed (e.g. a provider of redeployment assistance)?
- Are external consultants required for specialist assistance?
- Who is responsible for arranging assistance?
- Who is to arrange for calculation of severance payments, if required?
- Who is to liaise with ComSuper for retirement benefit information?
- Who is to manage the other payroll aspects, e.g. group certificates?

Consultation and communications:

- What is the time frame and what are the target dates?
- Is the time frame sufficient to meet the requirements of the agency's RRR provisions?
- Who is responsible for developing a communication plan for dissemination of information to employees and their representatives?
- What is the mechanism for interaction with other project teams (e.g. tender and implementation teams)?
- How is information to be presented (e.g. information sessions, information kits, newsletters, bulletin boards, electronic mail, etc.)?
- How much involvement will the executive have (e.g. visits to sites, internal memos, etc.)?
- How will individual assistance be delivered?

Consultation/liaison with employees and their representatives:

- What is the time frame and what are the target dates?
- What consultation, if any, is required under the agency's Certified Agreement?
- Who are the nominated staff representatives (including workplace delegates, organisers and officials)?
• Who is responsible for communication and consultation with employees and their representatives?
• What information needs to be conveyed formally?
• How will staff representatives be involved in the process (e.g. involvement in information sessions, RRR processes, ‘Phased’ approach negotiations)?
• Who is to liaise on relevant RRR provisions?

Fairness:

• How are employees with special needs to be identified?
• What additional support is to be provided (e.g. translators, interpreters, literacy skills training)?
• Has appropriate funding been allocated to provide the support?

Management of excess employees:

• What is the time frame and what are the target dates?
• Is the time frame sufficient to meet requirements of the agency’s RRR provisions?
• Who is to advise employees on options/rights/entitlements available and how?
• How are employee preferences to be identified?
• Who is to identify redeployment prospects?
• Who is to advise on vacancies-local, internal to the agency, across the APS?
• How are substitution arrangements to be managed, if at all?
• Who is to decide when employees should be declared excess?
• Is training/re-training to be provided?
• Who should obtain severance/superannuation figures?
• Is external assistance needed (e.g. specialist counsellors)?
• Who is going to prepare timetable of assistance (including processing of severance payments) to coincide with the implementation time frame and the relevant RRR provisions?
• Will excess or potentially excess employees be referred to the APS Labour Market Adjustment Program (APSLMAP) or another provider of redeployment assistance (if this is provided for under the RRR provisions in operation in the agency)?
• Has funding been allocated for referrals to APSLMAP or another provider of redeployment assistance (if this is provided for under the RRR provisions in operation in the agency)?
• In the event that fifteen or more employees are retrenched, who will notify Centrelink?

Appendix D
Restraint provisions - Sample clauses sample clauses for inclusion in requests for tender and services agreements

Suggested clauses for inclusion in Requests for Tender (RFT) and Services Agreements which prevent:

a. a tenderer during the RFT process, and
b. the contractor for a period of six months after the Services Agreement is signed,

soliciting or engaging key agency personnel who are or have been involved in the evaluation and/or decision making processes for the RFT or Services Agreement (the restraint clauses) appear below.

The RFT restraint applies to all tenderers during the tender process and operates through RFT rules.

The Services Agreement restraint applies to the new service provider from the date of contract execution and includes an effect clause which describes time periods for the restraint. The clause has the effect of making each time period-six months, five months, four months, three months, two months, and one month-severable and separately enforceable. This is means that, for example, should a court find a six month restraint unreasonable, but find a five month restraint reasonable, they can strike the six month restraint without removing the restraint altogether.

Included in the suggested clauses for the RFT and Services Agreement are draft provisions which require that a payment of $25 000 (or another specified amount determined by the agency) be made to the APS agency by the new service provider if they employ a person who has received a redundancy benefit from the APS agency within six months of the handover date- this clause is only to be used where the 'Phased' approach is adopted.

Services Agreement Provision

XX. AGENCY PERSONNEL

XX.1 The Service Provider must not, and must ensure that its agents, subcontractors and related corporations do not:

a. solicit, entice away or attempt to solicit or entice away any Key [Agency] Personnel from continuing to be engaged by [Agency] , either on behalf of the Service Provider or any other person; or
b. engage any Key [Agency] Personnel,

during the period:
a. commencing on the Commencement Date and continuing for 6 months after the Commencement Date;
b. commencing on the Commencement Date and continuing for 5 months after the Commencement Date;
c. commencing on the Commencement Date and continuing for 4 months after the Commencement Date;
d. commencing on the Commencement Date and continuing for 3 months after the Commencement Date;
e. commencing on the Commencement Date and continuing for 2 months after the Commencement Date; or
f. commencing on the Commencement Date and continuing for 1 month after the Commencement Date.

XX.2 The restraints contained in clause XX.1 will be regarded as separate, distinct and several as regards each time period so that the unenforceability of a restraint in respect of one time period will not affect the enforceability of the others.

XX.3 For the purposes of clause XX.1:

a. ‘Key [Agency] Personnel’ means the following [Agency] persons

LIST NAMES HERE

b. ‘Engagement’ means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and ‘Engage’, ‘Engaged’ and ‘Engaging’ have a like meaning.

ONLY INCLUDE XX.4-XX.7 WHERE ’PHASED’ APPROACH IS USED

XX.4 Where the Service Provider employs or engages a person within six months of the commencement of the contract who has received a redundancy benefit from the Agency the Contractor will pay to the Agency an amount of $25,000 (or another specified amount determined by the Agency).

XX.5 A payment will be due and payable in respect of each person engaged, irrespective of the period of employment or engagement by the Service Provider, provided they are in the employment of the Service Provider at some time between the commencement of the contract and the sixth month anniversary of the contract. The Service Provider will pay the amount within 14 days of being advised by the Agency of the amount payable by the Service Provider. If the amount is not paid within 14 days the Agency has the right to deduct the amount from monies otherwise payable to the Service Provider.

XX.6 No payment is required where the Contractor employs or engages a person who has resigned from the APS.
XX.7 The Service Provider is to provide in writing to the Agency within 14 days after:

a. the Commencement date, the names, dates of birth, addresses and dates of commencement of all person employed or engaged by the Service Provider on the commencement of the contract to perform work covered by the contract; and
b. the commencement of a person’s employment or engagement if the person is employed or engaged within six months after the commencement of the contract to perform work covered by the contract, the name, date of birth, address and date of commencement of the person.

Request for Tender Provision

'CLEAN BREAK' OPTION

ZZ EMPLOYMENT OF CURRENT STAFF

ZZ.1 The Agency will apply the ‘Clean Break’ approach to existing employees who currently perform the services for the Agency. This means:

a. no provision has been made for the transfer of employees to an incoming Service Provider;
b. subject to clause ZZ.2, tenderers are free to recruit from any source the employees they require to meet their business needs;
c. no agreements or undertakings are embarked upon or reached between the Agency and any Tenderer, or the Agency and its employees about the employment of any specific individuals or any groups of individuals by a Tenderer; and
d. employees are free to choose whether or not to accept a job offer from Tenderers.

This leaves it open to Tenderers to indicate in their Tender whether they will employ Agency staff, but places no obligation on the Agency to assist in or assume any responsibility for the transfer of staff.

ZZ.2 Each tenderer must not, and must ensure that its agents, subcontractors and related Corporations do not:

a. solicit, entice away or attempt to solicit or entice away any Key Agency employees from continuing to be engaged by the Agency or the Commonwealth (as applicable), either on behalf of the tenderer or any other person; or
b. engage any key Agency employees;

during the period:

a. commencing on the date the tenderer gives this RFT; and
b. continuing until the date the Commonwealth signs a formal written contract in the form of the Services Agreement with a successful tenderer or otherwise terminates or abandons the whole of the process under this RFT.

ZZ.3 For the purposes of the above clause:

Key Agency personnel means Agency personnel who are or have been:

a. members of the steering committee or evaluation committee for the evaluation process for this RFT;

b. team leaders for the evaluation process for this RFT;

c. an evaluation coordinator for the evaluation process for this RFT;

d. in a position of substantial influence in relation to the evaluation process for this RFT that is like or greater than that of the positions specified in clauses ZZ.3(a) to ZZ.3(c) inclusive above; and without limiting the foregoing, include (insert names of particular persons who fall within the definition).

'Engagement' means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and 'Engage', 'Engaged' and 'Engaging' have a like meaning.

Request for Tender Provision

'PHASED' OPTION

ZZ EMPLOYMENT OF CURRENT STAFF

ZZ.1 The Agency will apply the 'Phased' approach to existing employees who currently perform the services for the Agency. This means:

a. the preferred tenderer will be required to meet any additional staffing requirements it needs to perform the function being outsourced by the Agency initially from the pool of staff performing the work in the Agency;

b. the Agency will hold discussions with the preferred tenderer about the employment opportunities for APS employees currently performing the function;

c. FOR NON-IT Outsourcing

The Agency

OPTION 1-has negotiated with its staff and their representatives the following package of terms and conditions of employment which will be offered to those employees who are offered and accept a job with the successful tenderer

(PROVIDE DETAILS)
OPTION 2—will negotiate with its staff and their representatives about the terms and conditions of employment to be offered to staff accepting a job with the preferred tenderer and

2A—all tenderers will be advised of these terms and conditions prior to the conclusion of the RFT process OR

2B—the preferred tender will be notified of these terms and conditions when they are settled and any necessary adjustment of the price will be negotiated with the preferred tenderer prior to a Services Agreement being signed. OR

c. FOR IT Outsourcing the following package of terms and conditions of employment which will be offered to those employees who are offered and accept a job with the successful tenderer (PROVIDE DETAILS OF TRANSITIONAL PACKAGE)

d. APS employees who accept a negotiated job with the preferred tenderer will be identified prior to the function being outsourced and will be expected to resign from the APS to accept a job with the preferred tenderer;

e. the Services Agreement will include a provision which will require the Service Provider to pay the Agency $25,000 (or another specified amount determined by the Agency) if the Service Provider employs a person who has received a redundancy benefit from the Agency within 6 months of the date the Services Agreement is signed.

ZZ.2 Each tenderer must not, and must ensure that its agents, subcontractors and related Corporations do not:

a. solicit, entice away or attempt to solicit or entice away any Key Agency employees from continuing to be engaged by the Agency or the Commonwealth (as applicable), either on behalf of the tenderer or any other person; or

b. engage any Key Agency employees;

during the period:

a. commencing on the date the tenderer gives this RFT; and

b. continuing until the date the Commonwealth signs a formal written contract in the form of the Services Agreement with a successful tenderer or otherwise terminates or abandons the whole of the process under this RFT.

ZZ.3 For the purposes of the above clause:

Key Agency personnel means Agency personnel who are or have been:

a. members of the steering committee or evaluation committee for the evaluation process for this RFT;

b. team leaders for the evaluation process for this RFT;
c. an evaluation coordinator for the evaluation process for this RFT;
d. in a position of substantial influence in relation to the evaluation process for this RFT that is like or greater than that of the positions specified in clauses ZZ.3(a) to ZZ.3(c) inclusive above; and without limiting the foregoing, include (Insert names of particular persons who fall within the definition).

'Engagement' means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and 'Engage', 'Engaged' and 'Engaging' have a like meaning.

Appendix E

Taxation treatment of redundancy benefits under the 'Clean Break' approach

The Australian Taxation Office (ATO) has provided the following advice on the taxation treatment of redundancy benefits paid to employees under the 'Clean Break' approach. For assistance and further information on these issues agencies should contact the ATO.

Bona fide redundancy

Such payments fall for consideration under the provisions of section 27F of the Income Tax Assessment Act 1936 (the Income Tax Act) and are explained in Taxation Ruling TR 94/12.

In essence, section 27F of the Income Tax Act is designed to provide concessional tax treatment to that part of an Eligible Termination Payment (ETP) that represents a compensation payment to an employee for the hardship and inconvenience experienced upon losing a job—APS terms this equates to the severance payment of two weeks pay for each completed year of service under clause 23.3 of the Australian Public Service Award 1998 (APS Award) or equivalent payments under an agency-specific Certified Agreement or AWA.

Some useful principles on what constitutes a 'bona fide redundancy' are set out in Taxation Ruling TR 94/12 and these are as follows:

- There must be an involuntary termination of employment (ordinarily instigated by the employer who ultimately decides the number of staff positions to be reduced and which employees will actually be made redundant).
- Redundancy can be described as the situation where an employer no longer requires employees to carry out the work of a particular kind or to carry out work of a particular kind at the same location.
- Redundancy refers to a job becoming redundant and not to an employee becoming redundant. An employee's job is considered redundant if:
an employer has made a definite decision that the job the employee has been
doing will no longer be done by anyone
that decision is not due to the ordinary and customary turnover of labour
that decision led to the termination of the employee’s employment
that termination of employment is not on account of any personal act or
default of the employee.

Dismissal also includes the notion of constructive dismissal which arises if an employer places
an employee in a position in which the employee has little option but to tender his or her

45 resignation. For example, an employer may be reducing the size of its operation and may
offer voluntary redundancy to a selected employee. If the employee refuses the offer, he or
she may be forced to accept another position which may not be commensurate with his/her
qualifications and experience or may involve a lower level of remuneration. Alternatively the
employee may consider that by not accepting the package, he or she may be dismissed
without the benefits available under the package. The termination of employment in these
circumstances would amount to constructive dismissal.

For ‘bona fide redundancy’ payments to qualify for concessional tax treatment the following
conditions contained in section 27F of the Income Tax Act must be satisfied:

- There must be an ETP made in relation to the taxpayer:
  - in consequence of the taxpayer being dismissed from employment because of
    a ‘bona fide redundancy’.
- The time of dismissal or termination must be before:
  - the date on which the taxpayer attained age 65; or
  - such earlier date on which the taxpayer's employment would necessarily have
    had to terminate under the terms of employment because of the taxpayer
    attaining a certain age or completing a certain period of service.
- If the taxpayer and employer were not at arm’s length in relation to the termination of
  employment, the amount of the ETP must not be greater than the amount that could
  reasonably be expected to have been paid if the parties had been at arm’s length.
- There must not be, at the time of termination, any agreement between the current
  employer (i.e. the outsourcing agency) and either the taxpayer or the new service
  provider about the employment of the taxpayer by the new service provider at a later
  time.

Involuntary dismissal

The ATO has advised that one test to be satisfied for a payment to qualify as a ‘bona fide
redundancy’ payment is that the dismissal is involuntary -that is, the termination is instigated
by the employer. In relation to the APS, if an Agency Head terminates the employment of an
ongoing employee under section 29 of the PS Act and a benefit is paid under clause 23.3 of
the APS Award or similar provision in a CAor AWA, the requirement for the dismissal to be involuntary is satisfied.

**Outsourcing**

The ATO has also advised that in relation to the use of the 'Clean Break' approach in an outsourcing situation, where an APS agency will no longer be carrying out a particular function and will no longer require the people to do the work that is to be done by the new service provider, then prima facie there is a 'bona fide redundancy'.

**Agreement to employ**

There is also, however, another test that must be satisfied for a payment to be regarded as a 'bona fide redundancy' payment, namely that at the 'time of termination' there must not be any 'agreement' between the outsourcing agency and the taxpayer, or between the outsourcing and the new service provider, about the employment of any specific individuals or any groups of individuals by the new service provider.

**Time of termination**

Under subsection 27F(1) of the Income Tax Act this is the date that an employee ceases work with the employer who is making them redundant.

**Agreement**

Subsection 27A(1) of the Income Tax Act defines an 'agreement' in very broad terms, namely 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings'.

The ATO has advised that the agreement test is subjective and in the end depends on the circumstances of each case. The critical issue is whether there is, prior to entitlement to a redundancy payment, an arrangement between the department and the new service provider to re-employ a specific individual. To achieve this, the APS agency and the new service provider would clearly have to enter into negotiations on an employee's behalf.

The ATO has expressed the view that where a tenderer indicates, as part of the tender, that it intends to employ a group of very specifically skilled staff (e.g. all of the agency's lawyers, or all its senior managers), there is likely to be an arrangement to re-employ specific persons and as such this would not be a 'bona fide redundancy'.

However, where the tenderer indicates an intention to employ as many of the employees as they find useful to their continued business operations, and to enter into discussions with the outsourcing agency about the number and profile of staff required to perform the function (as is
countenanced under the 'Clean Break' approach), the ATO has indicated that it would not see this as an arrangement to re-employ specific persons and as such there would be a 'bona fide redundancy'.

The ATO has confirmed that the mere provision of names, classifications and details of service of all employees will not in itself constitute an agreement or understanding between a department and the new service provider that would compromise the concessional tax treatment of redundancy payments for any of these employees who subsequently are made redundant and take up employment with the new service provider. However, it should be made clear to the new service provider that the department is adopting the 'Clean Break' approach and as such would not be in a position to enter into any negotiations regarding the future employment of any current employees.

A 'bona fide redundancy' situation would arise where employees, through their own efforts and dealings with the tenderer, are able to secure employment with the tenderer. The fact that an employee:

- enters into negotiations with the new service provider about subsequent employment opportunities prior to his or her termination from the APS;
- accepts an offer of employment with the new service provider prior to his or her termination from the APS; and/or
- commences employment with the new service provider immediately after ceasing employment with the APS; does not of itself compromise the concessional tax treatment of redundancy payments.

Appendix F

Probity protocols for employees and consultants

Probity of process is important to ensure objective, fair and consistent treatment and assessment of tenderers and their tenders during the competitive tendering process, promote industry and community confidence in the project and to effectively manage Commonwealth risk.

These protocols have been prepared for agency employees and consultants involved in the project and should be circulated and observed by agency employees and consultants at the commencement of Request for Tender preparation. They supplement any other obligations applying to public servants (e.g. the Public Service Act, the Crimes Act, the Criminal Code, the Privacy Act, the Archives Act and Guidelines on Official Conduct of Commonwealth Public Servants).
Breach of these protocols by an agency employee or consultant or encouragement by a tenderer or potential tenderer to breach these protocols should be immediately reported to the project manager appointed by the agency.

Observance of these protocols requiring action by the project manager, or probity issues involving the project manager personally, should be reported by the project manager to their supervising officer.

In these protocols ‘tenderer’ includes their employees, contractors and consultants and potential tenderers.

Protocols

Confidentiality and privacy

Agency employees must comply with the confidentiality and privacy obligations imposed under the Public Service Act and Privacy Act. Consultants must comply with the confidentiality and privacy obligations under their consultancy agreement or any other confidentiality undertaking entered into with the agency.

Declarations of interest

If an agency employee or consultant, including their employees, have any existing business or personal relationship or develop such a relationship during the project with a tenderer which could raise a conflict of interest or give the appearance of a conflict of interest, they must inform the project manager promptly in writing of the nature of such relationship.

A ‘conflict of interest’ is a situation in which the employee or consultant has a business, financial or personal interest or obligation that conflicts with their employment or consultancy obligations to the Commonwealth or obligations in relation to the project. It may influence, or may appear to influence, their objective involvement in the project. The agency employee, consultant and the consultant’s employees must not allow themselves to be in a conflict of interest situation. If at any time, an agency employee, consultant or a consultant’s employee has an actual, apparent or potential conflict of interest, then they must:

a. disclose that interest promptly to the project manager; and
b. take action necessary to avoid the conflict as directed by the project manager.

Single point of contact and communication with tenderers

All inquiries or contact from tenderers about the project or tendering processes must be directed to the project manager. All information to be communicated to tenderers should be approved for dissemination by the project manager. Where practical all communications are
preferred in writing. Communications should be limited to factual answers only and personal opinions should not be provided. All verbal communications with tenderers should be recorded contemporaneously and be logged with the project manager.

Meetings with industry

Whenever possible at least two Commonwealth representatives should be present at any meetings with a tenderer. A record of the meeting must be made contemporaneously and be logged with the project manager.

Consistency of information

Consistent and uniform information should be provided to all tenderers whether or not such information is requested by one or all tenderers to ensure that any one tenderer does not receive an unfair advantage over another.

Gifts, hospitality and other benefits

Agency employees and consultants involved in the project must not seek or accept any gifts, hospitality or any other benefits from any tenderer. They must immediately inform the project manager or Agency Head if any tenderer offers them any gifts, hospitality or other benefits. Benefits include a tenderer funding agency employees' attendance at tenderer sponsored conferences or associated social functions.

Offers of employment

If any tenderer discusses the possibility of offering agency employees or consultants involved in the project employment during or after the completion of the project, they must immediately inform the project manager or Agency Head.

Existing relationships with industry

It is possible that arrangements may exist which require agency personnel or consultants engaged directly on the project to interact with a tenderer in matters unrelated to the project (e.g. incumbent suppliers). The project or the tendering processes should not be discussed during interactions relating to these existing arrangements.

Media

All media contact or requests concerning the project or tendering process should be directed to the project manager.
Perception

Not only must a high standard of probity be maintained, but agency employees and consultants involved in the project must also ensure that their conduct does not give rise to a perception that would allow for the erosion of industry and community confidence in the way in which the project and the tendering processes are implemented. Agency employees and consultants should avoid any conduct that has a tendency to increase the risk of issues of integrity to be raised as a matter of public concern.