

OHCHR Questionnaire: The role of the public service as an essential component of good governance in the promotion and protection of human rights

1) Good practices and your views regarding the organisation, training and education of the public service.

Under the *Public Service Act 1999* (the Act), Australian Public Service (APS) agency heads have responsibility for a range of matters including

- training and other forms of capability improvement for APS employees working in their agency
- promotion of the APS Values and the Code of Conduct (<http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/aps-values> ; <http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/code-of-conduct>).

The APS Values place a statutory responsibility on all APS employees to deliver services fairly, impartially and courteously, in a manner that is sensitive to the diversity of the Australian public.

The Code of Conduct requires employees to comply with all applicable Australian law when acting in the course of their employment. This includes the requirement to comply with Australia's domestic human rights legislation.

The Values and Code are binding on all employees; failure to act in accordance with them can lead to a variety of sanctions, up to and including termination of employment.

On 20 August the Australian House of Representatives passed the *Public Service Amendment Bill 2012*. Among other things, that Bill, if enacted, will amend the APS Values to include a new value that will reinforce the commitment of APS employees to human rights, namely:

Respectful: The APS respects all people, including their rights and their heritage.

That Value will be supported by binding Directions issued by the Public Service Commissioner under s.11 of the Act.

It is expected that the Bill will be introduced to the Senate for debate in October 2012.

Also in 2012-2013, as part of Australia's Human Rights Framework, a public sector education and training package will be delivered to ensure the delivery of services and development of policies, programs and legislation is undertaken in a manner compatible with Australia's international human rights obligations.

2) Activities developed to assist and support the public service at the national, regional and international levels, in particular where human rights aspects were taken into consideration and improved the public service.

The Australian Public Service Commission (the Commission) contributes to the Australian Government's aid program, with a focus on the strategic goal "Effective Governance".

The goal of the Commission's programs is to support progress towards good governance through the development of public sector capability and capacity in partnership with developing countries

(currently Ghana, Nigeria, Indonesia, Papua New Guinea and all Pacific Islands Forum member countries).

The Commission's priorities are to strengthen the capability of partner governments to develop and implement strategic initiatives to improve their public sector effectiveness, efficiency and the quality of services to citizens. The program includes a focus on gender rights, creating opportunities for women in partner country public services through a commitment to gender mainstreaming across the program.

Within Australia, the Commission supports the Public Service Commissioner in his role to lead and shape a unified, high-performing APS. The statutory responsibilities that support this vision are detailed in the Act and include:

- evaluating the extent to which agencies incorporate and uphold the APS Values;
- evaluating the adequacy of systems and procedures in agencies for ensuring compliance with the APS Code of Conduct;
- promoting the APS Values and Code of Conduct;
- developing, promoting, reviewing and evaluating APS employment policies and practices;
- facilitating continuous improvement in people management throughout the APS;
- coordinating and supporting APS-wide training and career development;
- contributing to and fostering leadership in the APS;
- providing advice and assistance on public service matters to agencies on request, and;
- providing independent external review of actions by the Merit Protection Commissioner.

6) Good practices of public service reform in a post-conflict context or after major transitions which ensure improved delivery of human rights relevant services

In supporting transitions out of conflict, Australia recognises the need for integrated approaches, including the need for a civilian-military unified response in stability operations to promote the rule of law in fragile states. For example:

- In 2012-2013, Australia will provide a further \$12 million in core support to the Peace Building Fund over four years to strengthen institutional capacity in post-conflict countries and prevent a relapse into violence. Australia's total contribution is \$23 million.
- In 2012-2013, Australia will provide an additional un-earmarked \$2 million to the UNDP's Bureau for Crisis Prevention and Recovery (BCPR) to give this crisis agency the ability to be responsive and catalytic in fragile situations.
- By 2014, Australia will have 500 highly experienced and trained civilian specialists ready to deploy at short notice to countries experiencing fragility, including to establish the rule of law and strengthen governance and legal institutions. Several such advisers have recently deployed to Afghanistan and Sierra Leone.

7) *The conditions for access to public service positions, any restrictions which apply and the process for appointment, promotion, suspension and dismissal or removal from office as well as the judicial or other review mechanism which apply to these processes.*

Under the Act, APS agency heads are responsible for employment decisions, including recruitment and selection decisions, affecting their agency. These decisions must comply with the Act, the Public Service Regulations 1999 (the Regulations) and the Public Service Commissioner's Directions 1999 (the Directions), which specify:

- employment decisions in the Australian Public Service (APS) are based on merit
- the APS provides a reasonable opportunity to eligible members of the community to apply for employment
- engagement and promotion decisions are made using a competitive selection processes
- other employment decisions are made on the basis of an assessment of the person's work-related qualities and the work-related qualities required for efficient and effective organisational performance
- agency heads must develop selection processes that are fair and transparent.

The specific grounds for termination as set out in the Act are:

- the employee is excess to the requirements of the agency;
- the employee lacks, or has lost, an essential qualification for performing his or her duties;
- non-performance, or unsatisfactory performance, of duties;
- inability to perform duties because of physical or mental incapacity;
- failure to satisfactorily complete an entry-level training course;
- failure to meet a condition of engagement imposed under subsection 22(6) of the Public Service Act;
- breach of the Australian Public Service Code of Conduct.

Former employees who have been dismissed from the APS on one of these grounds may seek review of that decision from Fair Work Australia under the unfair dismissal or general protections provisions of Fair Work Act.

In addition to the remedies available under the Fair Work Act, former APS employees may also be able to apply for judicial review of termination decisions on the ground of failure to comply with the requirements of administrative law.

8) *How the requirement for equal access to public service positions is met, and whether affirmative measures have been introduced and, if so, to what extent*

The APS is committed to supporting a culture of equity, inclusion and diversity, and to ensuring the public service workforce is representative of the broader Australian community. Diversity includes differences in gender, age, language, ethnicity, cultural background, religious beliefs and family responsibilities. In the context of the workplace, diversity encompasses all of these characteristics, as well as differences between individuals in educational level, life experience, work experience, socio-economic background and personality.

APS agencies are required to ensure that all employees have equal access to employment opportunities, are treated fairly and with respect, and are not subject to discrimination or harassment in their workplace.

Section 18 of the Act requires agency heads to establish workplace diversity programs to ensure that agency corporate, business and human resource plans demonstrate that they value diversity and promote equity in employment. Agencies are required to evaluate the effectiveness of their workplace diversity programs and to review them at least once every four years.

The APS Indigenous Employment Strategy, which is managed by the Australian Public Service Commission, has a focus on attracting Indigenous Australians into the APS, with a particular emphasis on strategies to improve the retention and career progression of Indigenous APS employees. Under one element of the Strategy, the Commission works in partnership with APS agencies to provide employment opportunities for Indigenous Australians through the APS Indigenous Pathways Programs for Indigenous Graduates, Cadets and Trainees.

In 2012 the Commission launched the *As One – APS Disability Employment Strategy* to strengthen the APS as a disability-confident employer, and to improve the experience of people with disability in APS employment. The strategy was prepared in consultation with key stakeholder groups, including employees with disability, APS leaders and hiring managers, peak bodies and private sector organisations, using a range of consultation channels and drawing on international experience and insight.

The Public Service Commissioner's Directions 1999 include provisions to enable APS agency heads to put in place special measures to identify particular employment opportunities as open only to Aboriginal and Torres Strait Islander applicants or applicants with intellectual disability. The Directions also allow APS agencies to directly engage a person with disability through a disability employment service provider where the person is unable, or is likely to be unable, to compete successfully in a merit selection process due to their disability.