

Code of Conduct

Employment Instruction Number 12

1. Scope

- 1.1. This Employment Instruction:
- a) is issued in accordance with section 16 of the *Public Sector Employment and Management Act 1993* (the Act) which provides the Commissioner with the power to make rules, not inconsistent with the Act, relating to the good management of the Public Sector and which include a Code of Conduct to be observed in the Northern Territory Public Sector; and
 - b) is to be read in conjunction with Part 1A (General Principles Relating to Public Sector) of the Act.
- 1.2. This Employment Instruction is the Code of Conduct (the Code) which stipulates the basic level of conduct expected of 'Public Sector Officers' as defined in section 5F(2) of the Act.

2. Code of Conduct Generally

- 2.1. A Public Sector Officer (defined in section 5F(2) of the Act to include the Commissioner for Public Employment, a Chief Executive Officer, or an employee) must comply with the Act and this Code.
- 2.2. For the purpose of the Code, if the "Public Sector Officer" referred to in the Code is:
- a) the Chief Executive Officer, then any related reference to "Chief Executive Officer" is deemed to be a reference to the Commissioner for Public Employment; or
 - b) the Commissioner for Public Employment, then any related reference to "Chief Executive Officer" or "Commissioner for Public Employment" is to be deemed to be a reference to the Chief Executive Officer of the Department of the Chief Minister.
- 2.3. The Code cannot address all the possible challenges that a Public Sector Officer may face in his or her employment in the Northern Territory Public Sector. Where a Public Sector Officer is in doubt as to the applicability and scope of the provisions of the Code, or as to the appropriate course of action to be adopted in any given circumstance, the matter should be discussed with a more senior officer, a Chief Executive Officer or the Commissioner, as appropriate.

3. *Issuing of Agency Specific Code of Conduct or guidelines*

A Chief Executive Officer may issue an agency-specific code of conduct which is consistent with the Act, its associated subordinate legislation, this Code and any other relevant legislation.

4. *Application of Code of Conduct*

This Code applies to all Public Sector Officers. The Code is underpinned by the Public Sector principles which are specified in Part 1A of the Act and set out below:

- a) Administration Management Principle;
- b) Human Resource Management Principle, including the Merit and the Equality of Employment Opportunity Principles; and
- c) Performance and Conduct Principle.

5. *Familiarity with Principles*

A Public Sector Officer must familiarise him or herself with the Code, and the General Principles of Part 1A of the Act.

6. *Breach of Discipline*

Disregarding the Code and Part 1A of the Act, or acting in a manner inconsistent with those principles, is a breach of discipline under section 49(a) of the Act.

7. *Standards*

In order to maintain public confidence in the integrity of the Northern Territory Public Sector, a Public Sector Officer must exhibit, and be seen to exhibit the highest ethical standards in carrying out his or her duties, and must pursue, and be seen to pursue, the best interests of the people of the Northern Territory.

8. *Trust and Confidence*

It is essential for the proper working of Government that a Public Sector Officer retains the trust and confidence of his or her employer, colleagues and clients in the manner in which he or she discharges his or her official responsibilities.

9. *Personal and professional behaviour*

In the performance of his or her duties, a Public Sector Officer must:

- a) exercise his or her best possible technical and/or professional judgement;
- b) develop and maintain knowledge of his or her professional field;

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- c) commit time and energy to furthering the agency's purpose and achievements;
 - d) be familiar with and comply with the requirements of the Act, the *Financial Management Act* and other legislative, industrial or administrative requirements relevant to his or her official responsibilities;
 - e) have regard to all official guidelines concerning the performance of his or her assigned duties;
 - f) provide all necessary and appropriate assistance to members of the public and other Public Sector Officers;
 - g) seek to obtain value for public money spent and avoid waste or excessive use of public resources;
 - h) take reasonable care for his or her own, and others, occupational health and safety;
 - i) follow reasonable directions relating to occupational health and safety;
 - j) use relevant safety equipment provided; and
 - k) report workplace accidents in accordance with occupational health and safety standards and programs as soon as practicable after they occur.

10. Relationships between Public Sector Officers and Government

10.1 Support to Government of the day

A Public Sector Officer must provide full support to the Government of the day regardless of which political party or parties are in office.

10.2 Advice to Government

A Public Sector Officer is responsible for providing to Government advice which is frank, independent, based on an accurate representation of the facts and as comprehensive as possible. This includes setting out the advantages, disadvantages, costs and consequences of the available options and, where appropriate, recommending a particular course of action.

10.3 Implementation of Government policy

A Public Sector Officer is also responsible for carrying out decisions and implementing programs promptly, conscientiously and with full regard to Government policy. In implementing programs, a Public Sector Officer's own values should not supplant those explicit or implicit in Government policy. It will be necessary both in providing advice and in implementing programs to exercise judgement as to which facts or courses of action are most relevant or important. Judgement must, however, always be exercised with due regard to legislative

requirements, Government policy or a supervisor's directions, together with considerations of equity and efficiency.

10.4 *Contact with Minister and ministerial staff*

Contact between a Minister and ministerial staff is normally with the Chief Executive Officer. Where a Minister or ministerial staff member contacts an employee directly, the employee must advise his or her Chief Executive Officer of the contact as soon as possible.

11. *Relationships between Public Sector Officers and Members of the Legislative Assembly*

11.1 Contact by Members of the Legislative Assembly who are not Ministers will usually be to make representations on behalf of a constituent or by a Member of the Opposition in relation to their duties as Opposition spokesperson on Government activities.

11.2 *Representations on behalf of a constituent*

- a) Constituent representations must be channelled to, and/or received by, an appropriately senior Public Sector Officer who has responsibility for the subject matter of the representation.
- b) Written responses should, where possible, be cleared by a Chief Executive Officer prior to dispatch.
- c) Where an oral response is given, a Public Sector Officer shall ensure that all due care is exercised in providing that response, particularly where the content of the information is likely to be sensitive or constitute other than factual material which is readily available elsewhere.
- d) If a Public Sector Officer is in any doubt about releasing information, the advice of his or her Chief Executive Officer should be sought.
- e) Representations by Members of the Legislative Assembly do not confer any privilege or priority in dealings with agencies. In addition, a Public Sector Officer responsible for providing responses must, when contemplating release of such material, be mindful of legislation concerning the security, confidentiality or protocol governing certain categories of information.

11.3 *Representation from an Opposition Spokesperson*

- a) Opposition Spokespersons normally contact the Minister with portfolio responsibility.
- b) In the absence of the Minister, the Spokesperson may contact a Chief Executive Officer. If a Spokesperson contacts a Public Sector Officer, any

request must be referred back to his or her Chief Executive Officer for instructions prior to a written or oral response being provided.

- c) Further, it should be noted that Opposition Spokespersons do not have a right to access agency files and are not entitled, by virtue of their office, to be provided with written or oral information regarding future or proposed policies or strategies.

12 *Relationship between Public Sector Officers of the Legislative Assembly and Members of the Legislative Assembly*

12.1 For Public Sector Officers of the Department of the Legislative Assembly this section takes precedence over any other sections in the Code which relate to contact with Ministers and Ministerial staff, and relationships with Members of the Legislative Assembly.

12.2 Public Sector Officers of the Department of Legislative Assembly must:

- a) provide professional advice and support for the Parliament independently of the Executive Government of the Northern Territory;
- b) provide non-partisan and impartial advice and services to the Parliament, parliamentary committees and to all Members of the Legislative Assembly; and
- c) maintain appropriate confidentiality about dealings with the Parliament, with parliamentary committees and with Members of the Legislative Assembly.

13 *Public comment*

13.1 *Meaning of public comment*

"Public comment" includes public speaking engagements (including comments on radio and television), expressing views in a letter to the press or in books or in notices, or 'online' (e.g. social networking sites), and any other comment made in circumstances where it is reasonably foreseeable that publication or circulation of the comment will flow to the community at large.

13.2 *Public comment on Government matters*

Except where required by law, or as authorised by the responsible Chief Executive Officer, a Public Sector Officer must not make public comment on Government matters in an official capacity.

If authorised by the Chief Executive Officer, comments made by a Public Sector Officer must be confined to factual information and must not, as far as possible, express an opinion on official policy or practice unless required to do by the circumstances of the particular situation, e.g. when asked to do so in court.

13.3 *Circumstances in which public comment is inappropriate*

While a Public Sector Officer, as a member of the community, has the right to make public comment and enter into public debate on political and social issues, there are some circumstances in which public comment is inappropriate. These include:

- a) the implication that the public comment, although made in a private capacity, is in some way seen to be an official comment of the Government or of the Public Sector Officer's agency;
- b) where a Public Sector Officer is directly involved in advising on or directing the administration or implementation of Government policy and the public comment would compromise his or her ability to continue to do so in an efficient and professional manner; and
- c) where public comment, regardless of the connection (or lack of connection) with a Public Sector Officer's normal duties, amounts to criticism sufficiently strong or persistent to give rise to the public perception that the Public Sector Officer is not prepared to implement or administer the policies of the Government of the day as they relate to his or her duties.

14 *Use of information acquired in the course of employment*

14.1 *Disclosure of information acquired in the course of employment*

A Public Sector Officer must not disclose information or documents acquired in the course of his or her employment, other than as required by law or where proper authority has been given.

14.2 *Misuse of information*

A Public Sector Officer must not misuse information gained in his or her official capacity. Misuse includes, but is not limited to:

- a) speculation, for personal gain or otherwise, in shares on the basis of confidential information about the affairs of a business or of proposed Government action;
- b) seeking to take advantage for personal reasons or for another person on the basis of information about that person held in official records;
- c) gossiping or rumour mongering on the basis of personal or other information held in official records; and
- d) providing a former Public Sector Officer, or appearing to provide a former Public Sector Officer, favourable treatment or access to privileged information.

14.3 *Integrity and security of documents and information*

A Public Sector Officer must take care to maintain the integrity and security of documents or information for which he or she is responsible (refer also Employment Instruction Number 9 - Employee Records).

14.4 *Freedom of information*

A Public Sector Officer must ensure that the privacy of an individual is maintained and only release information in accordance with the *Information Act*. Authorisation from a Chief Executive Officer is required before action is commenced.

14.5 *Northern Territory Criminal Code*

The Northern Territory Criminal Code contains provisions relating to the misuse and communication of confidential information and other matters relating to a Public Sector Officer.

15 *Use of official facilities, equipment and resources*

15.1 Unless a Chief Executive Officer grants permission, official facilities and equipment, e.g. telephones, facsimiles, photocopiers, computers must not be used for non-government or private purposes.

15.2 In granting such permission, a Chief Executive Officer must have regard to the risk of exposing the agency to potential legal liabilities which could result from the private use of facilities or equipment by a Public Sector Officer.

15.3 If permission is granted to use official facilities, equipment and resources the equipment must be used in accordance with the applicable Northern Territory Public Sector policies or standards concerning the use of Government facilities and equipment.

15.4 A Public Sector Officer must not utilise the skills or working time of other Public Sector Officers for their personal benefit or gain.

16 *Financial and other private interests*

16.1 *Disclosure of interests*

A Public Sector Officer must disclose in writing to his or her Chief Executive Officer any financial or other interests held by the Public Sector Officer immediately upon becoming aware that a potential conflict between personal interest and official duty, whether real or apparent, has arisen or is likely to arise.

Notwithstanding the above, where a Chief Executive Officer considers it appropriate, any or all Public Sector Officers of an agency may be required to provide written statements of their financial or other interests as set out below.

The types of interests and contemplated interests which are to be considered by Public Sector Officers in determining whether or not they might conflict with their official duties include, but are not limited to, the following:

- a) shareholdings or other interest in a company or business, whether held by a Public Sector Officer as an individual or as a member of another company or partnership, or through a trust;
- b) interest in land or property;
- c) significant liabilities to organisations or individuals excluding indebtedness for home mortgages or for current and ordinary household and living expenses;
- d) outside employment, appointments or directorships, whether remunerated or not; and
- e) Local Government office.

The above interests are to be considered by a Public Sector Officer not only in relation to him or herself, but also in relation to his or her immediate family.

16.2 *Ultimate decision*

In the event of a real or apparent conflict of interest, a Chief Executive Officer must decide whether:

- a) a Public Sector Officer can continue his or her duties in the area;
- b) a Public Sector Officer should be requested to divest himself or herself of the interest; or
- c) a re-arrangement of duties amongst staff, or a transfer to perform duties that involve no such real or apparent conflict, should be organised.

The ultimate decision concerning the appropriate course of action is one for a Chief Executive Officer.

16.3 *Bankruptcy*

If a Public Sector Officer becomes bankrupt during his or her employment, he or she must inform his or her Chief Executive Officer who will determine if any action is required.

17 ***Disclosure of offences against the law***

- 17.1 A Public Sector Officer who has been charged, convicted or acquitted of an offence is required to advise his or her Chief Executive Officer regardless of whether the Public Sector Officer believes the offence relates directly to his or her assigned duties.

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- 17.2 In determining the appropriate course of action following such advice, the Chief Executive Officer must have regard to what constitutes an irrelevant criminal record under the *Northern Territory Anti-Discrimination Act*.

18. Political participation

18.1 Awareness of potential conflict of interest

A Public Sector Officer involved in the political arena, whether as an independent parliamentary candidate, spokesperson, representative, fundraiser or parliamentary candidate for a political party, cause or movement, must be aware of the potential for conflict of interest.

18.2 Likely potential conflict of interest

When a Public Sector Officer becomes aware that a potential conflict, whether real or apparent, has arisen or is likely to arise, the Public Sector Officer must immediately inform his or her Chief Executive Officer. The matter will then be dealt with under the 'Financial and other private interests' section referred to earlier in the Code.

18.3 Withdrawal

A Public Sector Officer must be aware that if a conflict of interest exists, it may be necessary to withdraw from the political arena or from employment in the Northern Territory Public Sector.

18.4 Caretaker periods

A Public Sector Officer must acquaint him or herself with the conventions regarding "caretaker periods", that is, the period immediately before an election. In particular, following the dissolution of parliament, the Government assumes a "caretaker" role and avoids taking major policy decisions, making appointments of significance or entering into major undertakings or contracts.

19. Outside employment

19.1 Employment outside the Northern Territory Public Sector

A Public Sector Officer must obtain written permission from his or her Chief Executive Officer before engaging in paid employment (including employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward) outside his or her duties as a Public Sector Officer.

Such permission must be renewed by a Public Sector Officer annually unless otherwise determined by his or her Chief Executive Officer.

19.2 *Factors for consideration by a Chief Executive Officer*

In approving applications to undertake the paid employment, a Chief Executive Officer must not give approval unless satisfied it will not interfere with the performance by the Public Sector Officer of his or her duties.

In considering whether there is interference, amongst other things a Chief Executive Officer should consider whether conflict may arise, whether real or apparent, between a Public Sector Officer's duties and the proposed paid employment. In particular, consideration should be given as to whether the paid employment and/or other organisation concerned is in, or is entering into, a contractual relationship with the Government, whether its primary purpose is to lobby Government agencies or members of Parliament, or whether it is in a regulatory relationship with any Government body.

19.3 *Notice of approval*

Approval to engage in the paid employment must be in writing and must state any restrictions which a Chief Executive Officer has placed on the paid employment.

19.4 *Change in circumstances*

A Public Sector Officer is required to notify his or her Chief Executive Officer of any change in the nature or circumstance of approved paid employment and such notification will constitute a fresh application for approval.

19.5 *Voluntary or unpaid activities*

In general, it is not necessary for a Public Sector Officer to obtain permission to involve him or herself in voluntary or unpaid activities. However, where a conflict of interest arises, whether real or apparent, between these activities and official responsibilities, a Public Sector Officer must raise the issue with his or her Chief Executive Officer and accept his or her decision on whether the Public Sector Officer can continue in that activity.

19.6 *Outside employment in a Public Sector Officer's private time*

Any permitted work outside employment or voluntary work must be performed wholly in a Public Sector Officer's private time. Except in the case of voluntary work, private time does not include a Public Sector Officer's normal working hours during periods of paid leave.

Note:

Normal working hours for a Public Sector Officer who is on half pay means half of the normal working hours.

20. *Acceptance of gifts and benefits*

20.1 *Judgement and responsibility*

The acceptance of gifts or benefits by Public Sector Officers is an area requiring sound judgement. Benefits include offers of cash, gifts, free travel, substantial hospitality, accommodation or entertainment. Accepting such gifts or benefits is a matter of judgement for the individual Public Sector Officer concerned who must be satisfied that his or her responsibilities will not in any way be compromised or appear to be compromised by acceptance. The Public Sector Officer will bear personal responsibility for any decision to accept a gift or benefit.

20.2 *Guiding principles*

In deciding whether to accept gifts or benefits, a Public Sector Officer will be guided by the following principles:

- a) a Public Sector Officer must not solicit or accept any gifts or benefits, the receipt or expectation of which might in any way tend to influence, or appear to tend to influence, the Public Sector Officer in his or her official capacity;
- b) in the event that any substantial gift, offer or suggestion of such is made directly or indirectly to a Public Sector Officer, the facts shall be reported at the first opportunity to the Chief Executive Officer;
- c) a Public Sector Officer must avoid all situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind is securing, or attempting to secure, the influence or favour of the Public Sector Officer; and
- d) a Public Sector Officer must take all reasonable steps to ensure that his or her spouse, children or dependents, or staff members, are not the recipients of benefits which could give the appearance of an indirect attempt to secure the influence or favour of a Public Sector Officer.

20.3 *Permission to accept a gift*

In any event, a Public Sector Officer accepting a gift or benefit of a substantial nature must have the specific permission of the Chief Executive Officer.

20.4 *Agency guidelines / policy*

A Chief Executive Officer may issue agency guidelines/policy regarding the acceptance of gifts and benefits by Public Sector Officers, consistent with the Code. These should give consideration to the following:

- a) the relationship of the agency to the donor;

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- b) the primary business of the donor;
 - c) the likelihood of further contact with the donor;
 - d) whether the gift is being accepted as part of a formal exchange of gifts between official representatives of the Northern Territory and another Government;
 - e) the possible adverse consequences to the Northern Territory's interests which may result from the acceptance or refusal of a gift; and
 - f) the type of gift or benefit which in the context of the agency's operations can be seen as inconsequential or trivial.

20.5 The agency guidelines/policy do not form part of the Code or the legislation.

21. Fairness and equity

21.1 Principles of equity

Within policy guidelines, a Public Sector Officer has a responsibility to ensure fairness in decision making and equity in program administration. In managing programs or in making decisions concerning individual matters, a Public Sector Officer must take the following principles of equity into consideration:

- a) natural justice; and
- b) social equity, which is concerned with the substance and the effect of administrative decisions on individuals and the community, particularly disadvantaged members of the community.

21.2 Basis for decisions

A Public Sector Officer must take all reasonable steps to ensure that the information upon which his or her decisions or actions are based is factually correct and relevant to the decisions or actions. A Public Sector Officer must avoid acting in a way which could be seen as unreasonable or discriminatory.

21.3 Decisions based on statutory power

Where a Public Sector Officer makes a decision based on a statutory power, the Public Sector Officer concerned must:

- a) ensure that the legislation under which the decision is made authorises the making of that decision;
- b) ensure that he or she has the authority or the delegation to make the decision;

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- c) ensure that any procedures which are required by law to be complied with in the making of a decision have been observed;
 - d) ensure that the decision, the evidence upon which it is based, and the reasons for the decision are properly documented; and
 - e) avoid unnecessary delay in making decisions or taking action.

21.4 *Improper Exercise of Discretionary Powers*

A Public Sector Officer must not exercise discretionary powers for improper purposes or on irrelevant grounds. Improper exercise includes failing to take all relevant facts into consideration, taking irrelevant facts into consideration and not having regard to the merits of each particular case.

22. ***Reports and Comment by a Public Sector Officer***

When required to give references for, or make reports on, other Northern Territory Public Sector Officers or on persons outside of the Northern Territory Public Sector, a Public Sector Officer has a duty to provide frank and accurate comment. A Public Sector Officer must take care to avoid making statements which could be regarded as malicious. Situations in which a report potentially could be regarded as having been made with malice include:

- a) where a Public Sector Officer knowingly includes false or doubtful allegations in a report;
- b) where the language of the report is excessively strong or weak, in a manner which might unreasonably mislead the recipient of the report or misrepresent the Public Sector Officer who is the subject of the report; and
- c) where extraneous material is deliberately introduced or where omissions are deliberately made so as to create a misleading impression.

Note:

Section 64A of the Act provides protection from legal proceedings for persons who, in good faith, conduct an investigation for a Chief Executive Officer or the Commissioner under the Act and provide a report in good faith.

Section 59G of the Act provides protection from legal proceedings for persons who, in good faith, exercise a power or perform a function as a member of an appeal board.

23. ***Discrimination***

23.1 *Provisions of the Northern Territory Anti-Discrimination Act*

The Northern Territory *Anti-Discrimination Act* prohibits discrimination on the grounds of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association activity,

religious belief or activity, political opinion, affiliation or activity, irrelevant medical record, irrelevant criminal record or association with a person who has, or is believed to have, one of the above attributes.

23.2 *Compliance with Northern Territory Anti-Discrimination Act*

A Public Sector Officer is required to comply with the provisions of the Northern Territory *Anti-Discrimination Act* in his or her dealings with other Public Sector Officers and members of the public.

24. *Public Sector Officers to exercise due care*

A Public Sector Officer is expected to exercise due care in ensuring the accuracy, timeliness and impartiality of information and advice given regardless of whether a service fee is charged for that information or advice.

25. *Disclosure of wrongdoing*

A Public Sector Officer has a duty to report any unethical behaviour, improper conduct, fraud, corrupt act or wrongdoing by any other Public Sector Officer.

A Public Sector Officer has a duty to report suspected improper conduct to the Independent Commissioner Against Corruption (ICAC) in accordance with the Directions and Guidelines issued by the ICAC. A report may also be made to a supervisor and/or Chief Executive Officer and/or the Commissioner for Public Employment.



VICKI TELFER
Commissioner for Public Employment

29 June 2020