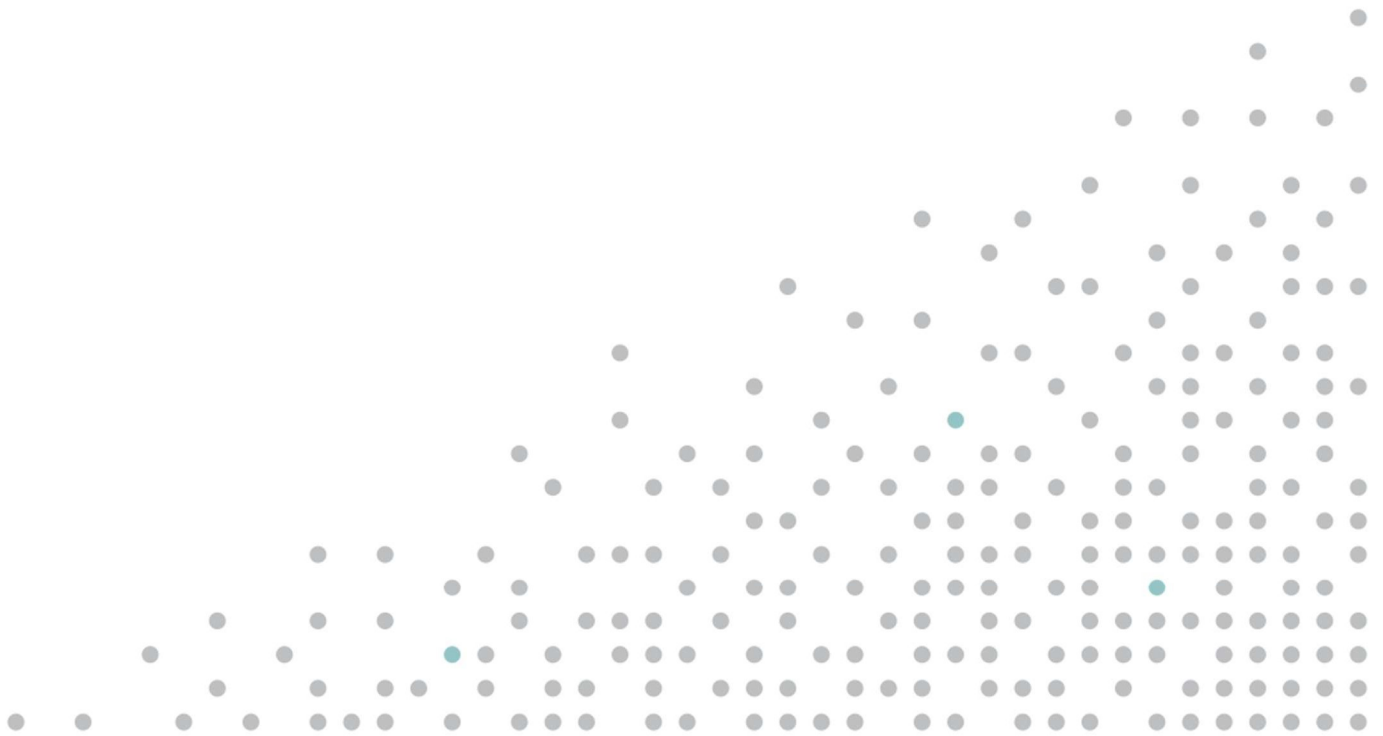




Australian Government
Department of Finance



General duties of officials

Resource Management Guide No. 203

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Audience

1. This guide is relevant to officials of non-corporate Commonwealth entities and corporate Commonwealth entities (collectively, Commonwealth entities), including their accountable authorities.
2. Generally, officials are people who are employees of, or are otherwise in, or form part of, a Commonwealth entity. Part 1 of this guide has more detail on who is an official.
3. Employees and members of the governing boards of Commonwealth companies are **not** officials for the purpose of the PGPA Act.

Key points

4. Officials are required to exercise their powers and perform their functions under the PGPA Act and rules in accordance with certain standards of behaviour. The PGPA Act does this through imposing a set of general duties on officials:
 - duty of care and diligence (section 25)
 - duty to act honestly, in good faith and for a proper purpose (section 26)
 - duty in relation to use of position (section 27)
 - duty in relation to use of information (section 28)
 - duty to disclose material personal interests (section 29).
5. To meet these duties, officials need to consider and, where relevant, comply with:
 - finance law, which includes the PGPA Act and rules and instruments made under the PGPA Act, as well as Appropriation Acts, and
 - the systems of risk management and internal control in their entity established by their accountable authority (including any delegations or authorisations).
6. These general duties in the PGPA Act do not limit duties contained in other Commonwealth laws or any principles or rules of common law or equity (section 31 of the PGPA Act). The duties in the PGPA Act are in addition to any other legal duties that an official may have under their employment framework or through an employment contract, e.g.:
 - Australian Public Service (APS) employees employed under the Public Service Act 1999 (PS Act) are also subject to the APS Code of Conduct (section 13 of the PS Act)
 - parliamentary staff employed under the Parliamentary Service Act 1999 are also subject to the Parliamentary Service Code of Conduct (section 13 of the Parliamentary Service Act 1999)
 - defence personnel or AFP officers have duties, values or professional standards of employment set out in the Defence Force Discipline Act 1982 and the Australian

[Federal Police Act 1979](#) (some of these duties may displace duties in the PGPA Act).

7. The duties in the PGPA Act are consistent with duties in APS Code of Conduct. For APS employees, adherence with the APS Code of Conduct will ordinarily meet the requirements of the duties under the PGPA Act (for a comparison of duties under the PGPA Act and PS Act, see the Appendix).
8. Officials who do not discharge their general duties can be subject to employment sanctions, including termination of employment (for staff) or termination of appointment (for board members or office holders).

Related resources

- [Introduction to the PGPA Act and Commonwealth Resource Management Framework](#)
- [Frequently asked questions](#)
- [RMG 212: Prescribing officials for non-corporate Commonwealth entities](#)

The contact is PGPA@finance.gov.au

1 – Who is an official?

9. Each Commonwealth entity has officials. An official is an individual who is in, or forms part of, the entity ([section 13\(2\)](#) of the PGPA Act). These individuals can be officers, employees or members of the entity, or a person or member of a class of persons prescribed by the rules made under the PGPA Act to be an official.
10. [Section 9](#) of the PGPA Rule helps to clarify which individuals are considered officials depending on whether the entity is a:
 - ‘non-listed entity’ – departments of state, parliamentary departments and all corporate Commonwealth entities
 - ‘listed entity’ – all non-corporate Commonwealth entities (other than the departments of state and parliamentary departments) that are prescribed by an Act or the [PGPA Rule](#) to be a listed entity.
11. An official of a non-listed entity is a person who is in, or forms part of, the entity, including:
 - an [accountable authority](#) (or member thereof)
 - an officer, employee or member of the entity (whether they are engaged under section 22 of the [PS Act](#), section 22 of the [Parliamentary Service Act 1999](#) or other legislation)
 - a person, or class of people, who have been specifically prescribed by an Act or rules as an official of the entity (for further information on prescribing people as officials, see [RMG 212: Prescribing officials from non-corporate Commonwealth entities](#)).

12. A person does not have to be employed on an ongoing basis to be an official. An employee engaged for a specified term or for the duration of a specified task, or for duties that are irregular or intermittent will be an official.
13. An official of a listed entity is a person who is prescribed by an Act or the PGPA Rule to be an official. Contracted individuals are not officials of a listed entity unless they are specifically prescribed to be officials of the entity in Schedule 1 to the PGPA Rule, the entity's enabling legislation, or section 9(1) of the PGPA Rule (for further information on prescribing people as officials, see RMG 212: Prescribing officials from non-corporate Commonwealth entities).
14. The following people are not officials:
 - ministers
 - judges
 - consultants or independent contractors who have not been prescribed as officials
 - a person, or class of people, who are prescribed by an Act or rules not to be officials.

Who is an accountable authority?

15. An individual who is, or is a member of, the accountable authority of the entity (e.g. department secretaries, chief executives or members of a governing board) is also an official.
16. Accountable authorities are required to adhere to the general duties of officials set out in sections 25 to 29 of the PGPA Act, in addition to the duties that apply specifically to accountable authorities set out in sections 16 to 19. For more on the additional duties for accountable authorities, see RMG 200: Guide to the PGPA Act for accountable authorities.

2 – Duty of care and diligence

17. An official is required to exercise their powers, perform their functions and discharge their duties with the same degree of care and diligence that a reasonable person would exercise if they were an official of the entity and occupied that position (section 25 of the PGPA Act).
18. This reasonable person test is similar to the common law reasonable person test. An official has to consider whether they have taken reasonable steps, given the circumstances, to assess the consequences of their actions. To take reasonable steps, the person needs to be appropriately informed, capable, aware of the law, and fair minded.
19. A reasonable person will weigh the following factors before acting:
 - the foreseeable risk of harm their actions create versus the utility of the actions

- the extent of the risk so created
- the likelihood that the risk will actually cause harm to others
- any alternatives of lesser risk, and the costs of those alternatives.

20. Examples of exercising care and diligence:

- for banking relevant money or entering into an arrangement an official could demonstrate that they have considered and followed their entity's internal controls and any relevant guidance
- in a high-risk activity or decision-making process such as engaging in significant business contracts with third parties, an official could exercise more caution to inform themselves of all the circumstances in order to make a reasonable decision (*ASIC v Lindberg* [2012] VSC 332).

21. Examples of not exercising care and diligence could be:

- not taking reasonable steps to inform yourself about significant issues before making a decision
- knowingly performing actions that are inconsistent with statutory obligations
- undertaking an unfamiliar task without checking legislative requirements, related guidance and the entity's operational guidelines.

Case Study 1

George is the manager of a high-value procurement process that involves his entity entering into a contract with a private sector company. While on the internet one night at home, George visits the blog of an environmental group that he often visits that details allegations of serious environmental breaches against the private sector company. The company has not been charged with any offence as yet, but the blog says that investigations are ongoing.

Appropriate action: Despite the nature and source of the information, George should investigate the allegations commensurate with the level of risk that this issue poses to his entity. George will also need to ensure that any particular course of action is not inconsistent with the Commonwealth Procurement Rules or pose unreasonable contractual risks to the entity. He should document his assessment, ensuring a clear audit trail, and communicate all relevant information to the accountable authority.

22. For APS employees, the APS Code of Conduct requires the employee to “act with care and diligence in connection with APS employment” (section 13(2) of the *PS Act*, the Parliamentary Service Code of Conduct in the *Parliamentary Service Act 1999* has a similar provision).

3 – Duty to act honestly, in good faith and for a proper purpose

23. To act honestly, in good faith and for a proper purpose ([section 26](#) of the PGPA Act) means that an official must act in a sincere or honest way for a purpose that they are employed to do and empowered to undertake. In doing so, an official is required to manage or use public resources in an efficient, effective, economical and ethical (proper) manner.
24. In practice, an official could think of their duty to act in good faith and for a proper purpose, by considering whether an informed person would deem an action to be appropriate. This means that the official is performing an action consistent with the purposes of the entity in efficient, effective, economical and ethical way.
25. Examples of not acting in good faith and for a proper purpose could be:
 - providing information to a person in a way that intentionally deceives or misleads them
 - undertaking an activity that is outside the powers and functions of the entity
 - purporting to have authority to approve something when you knowingly do not
 - withholding relevant information with the intent to influence the decision of a delegate or statutory office holder.

Case Study 2

Sally is a newly appointed IT asset manager in a Commonwealth entity. She has been approached by Lucy, one of her staff, to borrow a laptop projector to use for her daughter's slumber party over the weekend. Lucy tells Sally that the last IT asset manager regularly allowed staff to take the laptop projector home. She is also one of Sally's best employees and a very trustworthy person and has undertaken to cover repair costs if the projector is damaged.

Appropriate action: Sally reviews the entity's guidelines on the use of entity assets, but it does not detail a policy on the personal use of assets by staff. However, the guidelines do require the proper use and management of all entity assets. On balance, Sally declines Lucy's request, considering it to not be within the spirit of the proper use and management of the entity's asset, despite there being a precedent. Sally also takes time to explain to Lucy reasons for refusing her request.

26. For APS employees, the APS Code of Conduct requires the employee to:
 - “behave honestly and with integrity in connection with APS employment” (section 13(1) of the [PS Act](#)) and
 - “use Commonwealth resources in a proper manner and for a proper purpose” (section 13(8) of the [PS Act](#)).

4 – Duty in relation to position

27. An official must not improperly use power conferred through their positions to gain, or seek to gain, a benefit or an advantage for themselves or for another person, or cause, or seek to cause, detriment to the Commonwealth entity that employs them, to the Commonwealth more broadly or to any other person ([section 27](#) of the PGPA Act).
28. An official contravenes this duty when they engage in conduct with the intention of obtaining an advantage or causing detriment, regardless of whether the benefit or detriment actually occurs.
29. Misusing a position can include using the entity's property or information or taking advantage of opportunities that arise by virtue of the official's employment with the entity. These are advantages that an outside person would not have access to. Misuse of a position may also involve a breach of the duty of care and diligence and the duty to act in good faith and for a proper purpose.
30. 'Position' includes:
 - a permanent or temporary work assignment,
 - the powers or functions that have been delegated to an official, or the duties an official has been properly authorised to undertake on behalf of another official, or
 - the general status that is associated with being an official.
31. 'Advantage' has a wide meaning and includes both financial and non-financial advantages, such as providing favourable treatment to a person during a procurement tender or recruitment process.
32. 'Detriment' also has a wide meaning covering detriment caused by an official misuse their position either positively or negatively.
33. Examples of misuse of position could be:
 - an official using their official title to seek a discount that benefits them personally
 - on behalf of the entity, entering into a contract for the provision of goods or services with a family member or friend, without disclosing the potential material personal interest
 - using Commonwealth resources for personal purposes without clear approval.

Case Study 3

Anna is the finance manager of a Commonwealth entity that is about to tender to engage an accounting firm to assist with an internal audit. While in Melbourne, she had a coffee meeting with Greg, a potential tender applicant. Anna insisted on paying for the coffees. When they are walking back to their cars after coffee, it starts to rain. Greg's car is not far away and Anna's car is three blocks down the road. Greg offers Anna his umbrella, which has his accounting firm branded on it and says that she may as well keep it as he has about 20 of them back at the office.

Appropriate action: While Anna would love to accept the umbrella and stay dry, she is concerned that by receiving and using the umbrella it might be perceived within her entity and externally that she has been favourably influenced by the tender applicant. There are a number of possible actions available to Anna. These include:

- Anna accepts the loan of the umbrella, but returns it promptly or
- Anna considers the risks associated with accepting the gift and instead suggests that they walk to Greg's car and he give her a lift to her car.

34. For APS employees, the APS Code of Conduct requires the employee not to “make improper use of inside information, or the employee’s duties, status, power or authority in order to gain, to seek to gain, a benefit or advantage for the employee or for any other person or cause, or seek to cause a detriment to the agency, the Commonwealth, or any other person” (section 13(10)(b) of the PS Act).

5 – Duty in relation to information

35. An official must not improperly use information accessed, gained or made available by virtue of their employment or position with a Commonwealth entity to gain, or seek to gain, a benefit or an advantage for themselves or for another person (section 28 of the PGPA Act). The official must also ensure they do not cause, or seek to cause, detriment to the Commonwealth entity that employs or employed them, to the Commonwealth more broadly or any other person. An official contravenes this duty if they:
- engage in conduct involving information gained through their employment with the intention of obtaining an advantage or causing detriment, regardless of whether the benefit or detriment actually occurs
 - give information to a third party who was not entitled to have the information and who gains an advantage or causes detriment because they have the information.
36. Misuse of information may also involve a breach of the duty of care and diligence, the duty to act in good faith and for a proper purpose, and the duty in relation to the use of position and could also breach other legal obligations (e.g. the Privacy Act 1988).
37. There are secrecy provisions in other legislation applying to the work of particular Commonwealth entities. For example, sections 191, 200A and 193S of the Aboriginal and Torres Strait Islander Act 2005 place secrecy requirements on certain officials.

Relevant officials need to be aware of these statutory requirements and the obligations imposed on them.

38. Examples of misuse of information could be:

- releasing information to the media without appropriate authority
- using protected data held by a government entity for personal financial gain
- providing information to a person or company that gives, or potentially gives, that person or company a competitive advantage in a procurement tender.

Case Study 4

Shaun works for a Commonwealth entity and meets Raoul at a friend's barbecue. Raoul and Shaun start talking about what they do for a living. Shaun mentions that he is busy because he is working on the government's innovation policy. Raoul tells Shaun that he runs a small fintech company that is keen to access the government's innovation funding. Raoul asks Shaun if he knows if the government is going to have programs that will help companies like his.

Appropriate action: Shaun advises Raoul that he is unable to give him any details beyond what is publicly available. By doing this, Shaun recognises that revealing any information gained through his role working on the innovation policy may result in Raoul gaining an advantage over others. However, Shaun advises Raoul of what has been made public and refers him to the entity's website for more details.

39. For APS employees, the APS Code of Conduct requires an employee to not improperly use inside information in order "to gain, or seek to gain, a benefit or an advantage for the employee or for any other person or to cause, or seek to cause, detriment to the employee's agency, the Commonwealth or any other person" (section 13(10) of the *PS Act*) and imposes a duty through *Public Service Regulation 2.1* not to disclose certain information without authority (i.e. information communicated in confidence or where disclosure could be prejudicial to the effective working of government).

6 – Duty to disclose interests

40. An official is required to report material personal interests in relation to the affairs of the entity they work for (*section 29* of the PGPA Act). Material personal interests could directly relate to an official's personal role or, more broadly, to the overall purpose of the entity. The PGPA Rule details how and when officials need to disclose material personal interests, and the circumstances when the duty to disclose does not apply (sections *12–16D* of the PGPA Rule).
41. The overriding principle for a declaration of a material personal interest should be: if in doubt, declare the interest in accordance with the appropriate process. Taking this step should protect both the official and the Commonwealth entity.

42. A material personal interest is one that can give rise to a real or apparent conflict of interest that could affect the ability of an official to discharge their duties. Material personal interests could arise, for example, when:
- a member of an accountable authority is also a director of an organisation that is seeking to provide services to the Commonwealth entity
 - an official is on an employment selection panel that is interviewing a friend or family member for a position with the Commonwealth entity
 - an official approving or recommending the approval of a grant is directly or indirectly involved with an organisation seeking the grant.

Case Study 5

Juhan is on a panel that is assessing the procurement tenders for his entity's new cleaning contract. One of the tender applicants, John, is a parent of one of Juhan's son's classmates. Juhan does not socialise with John other than brief conversations at school events. Juhan is only one of several people on the panel and has limited ability to influence the panel's decision. Members of the panel do not know that an applicant is known to Juhan and there is little chance of them finding out.

Appropriate action: Consistent with the procedures issued by the entity's accountable authority, Juhan discloses the relationship in writing to the accountable authority of his entity. Juhan offers to exclude himself from the discussion on the merits of John's tender application. This disclosure also mitigates the risk of perceived conflict of interest if Juhan develops a friendship with John in the future.

43. For APS employees, the APS Code of Conduct requires an employee to "take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment" and "disclose details of any material personal interest of the employee in connection with the employee's APS employment" (section 13(7) of the *PS Act*).
44. This requirement is consistent with the duty in [section 29](#) of the PGPA Act and does not impose any further obligations on APS employees. Meeting the requirements of section 13(7) will ordinarily meet the requirements of [section 29](#) of the PGPA Act.

7 – Sanctions for breaching the general duties

45. Officials who breach the general duties in the PGPA Act can be subject to employment sanctions under their employment framework including termination of employment (for staff) or termination of appointment (for board members or office holders).
46. For example, for APS employees finance law is defined as an Australian law for the purposes of section 13(4) of the *PS Act*, so that an official who contravenes the duties in the PGPA Act may be subject to sanctions under section 15 of the PS Act.
47. Secretaries of departments, heads of executive agencies and APS employees who are part of an accountable authority may only have their appointment or employment

terminated in accordance with sections 59, 67 and 29 of the *PS Act* respectively. Secretaries of parliamentary departments may have their appointments terminated only in accordance with sections 60, 61 and 64XE of the *Parliamentary Service Act 1999*.

48. Officials who are members of an accountable authority of a corporate Commonwealth entities can have their employment terminated if they breach their general duties (sections 25 to 29) under section 30 of the PGPA Act. In this case, the person who has the power to appoint the official also has the power to terminate their employment for breaches.

Appendix – Comparison of complementary duties of the PGPA Act and the Public Service Act

A significant proportion of officials have obligations under the *PS Act*. Given the breadth of the relevant legislative provisions of the PS Act, if officials meet the requirements of the PS Act, they will as a result ordinarily meet their duties under the PGPA Act. The table below detail how the general duties of officials under the PGPA Act and the relevant provisions of the APS code of conduct complement each other.

The Australian Public Service Commissioner has issued directions and associated guidance material about the responsibilities that apply to APS employees and office holders under the PS Act, particularly the APS Values and Code of Conduct. APS employees should read this guide on the general duties of officials in conjunction with the Commissioner’s guidance on the APS Values and Code of Conduct, which is available on the APSC website.

Duty	PGPA Act	PS Act	Complementary duties
Care and diligence	<u>25</u>	13(2)	The PS Act requires an APS employee to act with care and diligence in connection with APS employment. The standard of care and diligence required would be that of a reasonable person undertaking the duties of the APS employee.
Good faith, honesty, and proper purpose	<u>26</u>	13(1) and 13(8)	The PS Act requires an APS employee to behave honestly and with integrity and to use resources in a proper manner and for a proper purpose.
Use of position	<u>27</u>	13(10)(b)	The PS Act prohibits an APS employee from making improper use of the employee’s duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for himself or herself or for any other person or cause, or seek to cause, detriment to the agency, the Commonwealth or any other person.

Duty	PGPA Act	PS Act	Complementary duties
Use of information	<u>28</u>	13(10)(a)	<p>The PS Act prohibits an APS employee from making improper use of inside information in order to gain, or seek to gain, a benefit or advantage for himself or herself or for any other person or cause, or seek to cause, detriment to the agency, the Commonwealth or any other person. It also requires APS employees not to disclose certain information without authority.</p> <p>Regulation 2.1 of the Public Service Regulations, which is part of the APS Code of Conduct, places a duty on APS employees not to disclose certain information without authority (i.e. information communicated in confidence or where disclosure could be prejudicial to effective working of government).</p>
Disclosure of interests	<u>29</u>	13(7)	<p>The PS Act requires an APS employee to take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment and disclose details of any material personal interest in connection with APS employment.</p>