



Circular 2012/1

Heads of APS Departments and Agencies

Heads of Corporate Services

REVISIONS TO THE COMMISSION'S GUIDANCE ON MAKING PUBLIC COMMENT AND PARTICIPATING ONLINE

This circular is to advise agencies:

- of revised guidance on making public comment and participating online; and
- that the guidance set out in Circular 2009/6 is no longer current and the circular has been withdrawn.

Background

2. The Australian Public Service Commission (the Commission) has for many years provided guidance to agencies on APS employees' rights and obligations in making public comment.

3. In November 2009, *Circular 2009/6: Protocols for online media participation* was released. The Circular provided guidance to APS employees participating in online media, and followed earlier interim protocols on the same topic released in 2008. The 2009 guidance supplemented guidance on making public comment and was incorporated into *APS Values and Code of Conduct in Practice: a guide to official conduct for APS employees and Agency Heads* (Chapters 3 and 15) published by the Commission.

The Revised Guidance

4. As a result of feedback on the application of the guidance, and following consultation, the Commission has developed new guidance for APS employees and Agency Heads to help APS employees understand the issues to take into account when considering making public comment, including online, and to help inform agency policies in this regard. The revised guidance is at Attachment A.

5. The guidance has been incorporated into Chapter 3, with consequential amendments to Chapter 15 of *APS Values and Code of Conduct in Practice*—'APS employees as citizens'. This online publication is updated from time to time to reflect current advice on the practical application of the APS Values and Code of Conduct.

6. Circular 2009/6 is no longer current and has been cancelled.

Further information

7. Further information can be obtained from the Commission's Ethics Advisory Service (EAS) by phone on (02) 6202 3737 or by email at ethics@apsc.gov.au.

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January 2012

Attachment A

Making public comment

APS employees have the same right to freedom of expression as other members of the community, subject to legitimate public interests, such as the maintenance of an impartial and effective public service in which the community can have confidence.

The term 'public comment' is used broadly, and includes comment made on current affairs

- at public speaking engagements
- during radio or television interviews
- on the internet (including blogs, social networking sites and other online media that allow user participation and interaction)
- in letters to the press
- in books or notices
- in academic or professional journals
- in other forums where the comment is intended for, or may be accessed by, the community.

Different roles

Broadly speaking, APS employees make public comment in two capacities: official and unofficial.

Making comment in an official capacity

Some APS employees, as part of their official duties, provide comment to the media and others in the community about agency activities and government programmes. Sometimes they are required to respond to criticism, such as about a lack of probity or competence in their agency.

APS employees may also be called upon to act as the public face of their agency, or to explain the operations of particular government policies. This might occur, for example, in meetings with, or presentations to, members of the public and/or agency stakeholders; by providing comment to the media; or through participation in, or moderation of, official online forums.

When making comment in an official capacity, employees remain bound by the APS Values and Code of Conduct, including the duty under Public Service Regulation 2.1 not to disclose certain information without authority, and are also required to abide by their agencies' policies relating to clearance of material for public release.

Agencies may find it useful to develop policies on the application of the APS Values and Code of Conduct to the specific types of public comment that their employees are expected to make in their official roles. It is important that such policies reflect:

- the apolitical character of the APS. The role of APS employees in referring to government policy is to help to explain it, or to provide information about its implementation—rather than to promote or 'market' a policy or initiative (see also

Chapter 5: Involvement of public servants in public information and awareness initiatives)

- the requirement for all APS employees to act honestly, professionally, and with respect and courtesy.

The role of statutory office holders may be less clear and will need to be considered on a case-by-case basis, having regard to any requirements of the statute(s) establishing their office. While statutory office holders who are agency heads are bound by the Code of Conduct in the same way as any other agency head, statutory officers who are not agency heads (e.g. members of certain tribunals) are bound by it only in certain circumstances (Public Service Regulation 2.2 sets these out).

Some statutory office holders have responsibility for promoting good practice in particular fields, or protecting the interests of individuals or groups. Statutory office holders should have regard to the extent to which their functions properly permit public comment, and, in making any such comment, should be careful to avoid taking partisan positions.

Making comment in an unofficial capacity

Outside the role of their APS employment, employees may wish to make public comment in a professional or a private capacity.

- ***Professional.*** Some employees are subject matter experts in fields that may relate to their APS employment—or which may be wholly separate from it—and might make comment in that capacity. For example, an APS employee who is a scientist might publish in academic journals, or speak at professional conferences, in their own time and outside their APS role.

In such cases, it is important for the employee to notify their manager of any comment that they propose to make in their 'expert' role that might reasonably reflect on their APS employment. This would need to be considered in light of the agency's policies and the APS Values and Code of Conduct. It is important that the employee also make it clear, when making public comment in this role, that they are not representing their agency or the Government.

Agencies and employees need to manage situations where the relationship between the employee's professional interests and their APS employment may create ambiguity about the capacity in which the employee's comments are being made. In exceptional circumstances an agency may need to direct the employee to avoid making comment.

- ***Private.*** APS employees may generally make public comment in a private capacity, so long as they make it clear they are expressing their own views.

In either case, employees should have regard to the general principles set out below.

Making public comment in an unofficial capacity—general principles

The Code of Conduct requires APS employees to behave at all times 'in a way that upholds the APS Values and the integrity and good reputation of the APS'—section 13(11) of the *Public Service Act 1999* (the PS Act). When APS employees are making

public comment in an unofficial capacity, it is not appropriate for them to make comment that is, or could be perceived to be:

- being made on behalf of their agency or the Government, rather than an expression of a personal view
- compromising the APS employee's capacity to fulfil their duties in an unbiased manner. This applies particularly where comment is made about policies and programmes of the employee's agency
- so harsh or extreme in its criticism of the Government, a member of parliament from another political party, or their respective policies, that it raises questions about the APS employee's capacity to work professionally, efficiently or impartially. Such comment does not have to relate to the employee's area of work
- so strong in its criticism of an agency's administration that it could seriously disrupt the workplace. APS employees are encouraged instead to resolve concerns by informal discussion with a manager or by using internal dispute resolution mechanisms, including the APS whistleblowing scheme if appropriate
- a gratuitous personal attack that might reasonably be perceived to be connected with their employment
- unreasonable criticism of an agency's clients and other stakeholders
- compromising public confidence in the agency or the APS.

At all times, APS employees must be mindful of the requirements set out in Public Service Regulation 2.1 concerning the disclosure of information.

Because of their position, senior APS employees in particular should carefully consider the impact of any comments they make. Senior Executive Service (SES) employees have a special responsibility under section 35 of the PS Act to promote the APS Values and compliance with the Code of Conduct, by personal example and other appropriate means within their own agencies. SES employees within each agency are also part of a collective leadership group that extends across the APS. Because of the influence that SES employees carry with stakeholders, and because they are likely to be required to advise on or lead the implementation of government policies and programmes, SES employees should be particularly careful when making public comment. The role of SES employees provides more scope for conflict, real or perceived, between a personal view and:

- the ability to fulfil current and potential duties in an apolitical, impartial and professional manner
- the ability to be responsive to the Government.

It is quite acceptable for APS employees to take part in the political life of their communities. The APS Values stipulate that the APS is, among other things, 'apolitical, performing its functions in an impartial and professional manner', but this does not mean that APS employees must be apolitical in their private affairs. Rather, it means that employees should avoid behaving in a way that suggests they cannot act apolitically or impartially in their work.

Similarly, APS employees are entitled to participate in union activities. The APS Values and Code of Conduct apply to these activities in the same way as they apply to all other activities of APS employees, including making public comment. (See also Chapter 15: APS employees as citizens.)

When considering making comment in an unofficial capacity, employees might wish to reflect on the following questions:

- Could the comments reasonably be expected to cause the agency's clients and other stakeholders, including members of Parliament—whether members of the Government, the Opposition, independents, or other parties—to lose confidence in the employee's ability to work in an impartial and professional manner?
- Would comment of this kind, without proper justification, be likely to lower or undermine the reputation of the individual agency or of the APS as a whole?
- Are these comments in line with how the community in general expects the public service to operate and behave?
- Are these comments lawful? For example, do they comply with anti-discrimination legislation and laws relating to defamation?

Inappropriate public comment by APS employees may result in sanctions under the PS Act.

Participating online

General principles

In May 2010 the Government provided its response to the Final Report of the Gov 2.0 Taskforce, *Engage: Getting on with Government 2.0*. The Government agreed to the report's central recommendation—a 'declaration of open government'—which stated, in part:

online engagement by public servants, involving robust professional discussion as part of their duties or as private citizens, benefits their agencies, their professional development, those with whom they are engaged and the Australian public. This engagement should be enabled and encouraged.

Making public comment online is becoming increasingly common for APS employees—in official, professional, and private capacities. Employees may make public comment on, for example, blogs, social networking sites, microblogging sites, and online news sites. The same principles apply to online comment as to any other kind of public comment—as do the APS Values and Code of Conduct.

However, there are some additional considerations that apply to online participation. The speed and reach of online communication means that comments posted online are available immediately to a wide audience. Material online effectively lasts forever, may be replicated endlessly, and may be sent to recipients who were never expected to see it, or who may view it out of context.

The APS Values and Code of Conduct, including Public Service Regulation 2.1, apply to using online media in the same way as when participating in any other public forum. The requirements include:

- behaving with respect and courtesy, and without harassment
- dealing appropriately with information, recognising that some information needs to remain confidential
- delivering services fairly, effectively, impartially and courteously to the Australian public
- being sensitive to the diversity of the Australian public
- taking reasonable steps to avoid conflicts of interest
- making proper use of Commonwealth resources
- upholding the APS Values and the integrity and good reputation of the APS
- not acting in a way that would call into question the APS employee's ability to be apolitical, impartial and professional in the performance of their duties.

APS employees need to ensure that they fully understand the APS Values and Code of Conduct and how they apply to official and unofficial communications. If in doubt, they should consider carefully whether to comment and what to say; consult their agency's policies; seek advice from someone in authority in their agency; or consult the Ethics Advisory Service in the Australian Public Service Commission (www.apsc.gov.au/ethics).

Commenting online in an official capacity

Web 2.0 provides public servants with unprecedented opportunities to assist the Government to open up government decision making and implementation to contributions from the community.

Many agencies use social media to engage with the communities they serve. Agencies may wish to provide guidance, training and support for employees on how to communicate appropriately in such forums, including any rules or policies about representing their agency online (for example, whether employees must identify themselves and their agency when participating online in the course of their work).

Participating online in an official capacity may generate Commonwealth records which must be managed appropriately. Advice from the National Archives of Australia on social media and records management is available at <http://www.naa.gov.au/records-management/create-capture-describe/socialmedia/index.aspx>.

Commenting online in an unofficial capacity

From time to time, APS employees may seek to participate robustly, like other members of the Australian community, in policy conversations.

The principles that apply to employees making any unofficial public comment also apply to such comment made online. There are some additional considerations, though, to bear in mind.

Any information an APS employee posts online relating to their employment (such as naming their employer or describing their role) is able to be located easily and quickly by a search engine, and this information may be taken out of context.

APS employees must still uphold the APS Values and Code of Conduct even when material is posted anonymously, or using an 'alias' or pseudonym, and should bear in mind that even if they do not identify themselves online as an APS employee or an employee of their agency, they could nonetheless be recognised as such.

Employees should not rely on a site's security settings for a guarantee of privacy, as material posted in a relatively secure setting can still be copied and reproduced elsewhere. Further, comments posted on one site can also be used on others under the terms and conditions of many social media sites.

As a rule of thumb, irrespective of the forum, anyone who posts material online should make an assumption that at some point their identity and the nature of their employment will be revealed.

Social media websites are public forums. Inappropriate public comment on such sites could put employees at risk of breaching the Code of Conduct. If employees have concerns relating to an agency, they can seek advice within the agency or from the Ethics Advisory Service (www.apsc.gov.au/ethics) about appropriate avenues for raising these.

Agency guidance

Agencies may wish to develop policies, guidance, or training on:

- appropriate use of ICT resources in the workplace (including appropriate use of work email, and appropriate use of personal technology, such as smartphones, in work time)
- how to represent the agency online in an official capacity. The Australian Government Information Management Office (AGIMO) Web Publishing Guide (available at <http://webpublishing.agimo.gov.au/>) helps Australian Government agencies to manage their websites and to identify their legal and policy obligations. The Guide includes a 'Government 2.0 Primer' which provides advice on using Web 2.0 technologies.

Agencies may wish to review their induction programmes to include guidance on appropriate use of social media in discussion of the broader topic of conflict of interest.

Agencies may also wish to consider how they gather and use publicly available information about their employees and prospective employees, and reflect this in their policies, including recruitment policies—consistent with the requirements of the PS Act framework.

It may be particularly helpful for agencies to workshop scenarios around some of the areas of uncertainty that arise for employees in deciding whether and how to participate online, in the performance of their duties or otherwise, consistent with the PS Act framework and these guidelines. The Commission's 'REFLECT' decision making model

(<http://www.apsc.gov.au/ethics/reflect.html>) is a useful tool for assisting public servants to resolve these 'grey' areas.

Providing information to Parliamentary Committees of Inquiry and Royal Commissions in a private capacity

The Department of the Prime Minister and Cabinet's Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters may assist APS employees providing information to Members of Parliament. These guidelines highlight the requirement for officials to provide full and accurate information to the Parliament and the factual and technical background to policies and their administration.

APS employees may choose to submit information to, or appear as a witness before, a parliamentary committee of inquiry or a royal commission in a private capacity. Agencies cannot restrict employees from doing this. The above guidelines note the possible impact of any comment made by APS employees in a personal rather than an official capacity.

An APS employee who is providing information in a private capacity should make it clear that they are not speaking on behalf of the Government or any agency. The APS employee must not communicate information in a way that implies their private views are those of the agency, such as using official letterhead.

Before submitting information in a private capacity, APS employees should be aware of the legislation that restricts the disclosure and use of official information. The restrictions may provide grounds for the employee not to disclose certain information.