

Australian Capital Territory

# Public Sector Management (Office of the Legislative Assembly) Code of Conduct 2018\*

Notifiable Instrument NI2018–704

made under the

*Public Sector Management Standards 2016*, section 107 (Codes of conduct)

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## 1 Name of instrument

This instrument is the *Public Sector Management (Office of the Legislative Assembly) Code of Conduct 2018*.

## 2 Commencement

This instrument commences on 14 December 2018.

## 3 Determination

The Clerk determines the Code of the Code for the Office of the Legislative Assembly in Schedule 1.

Tom Duncan  
Clerk  
Legislative Assembly for the ACT

13 December 2018

\*Name amended under Legislation Act, s 60



**LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

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OFFICE OF THE LEGISLATIVE ASSEMBLY

SCHEDULE 1



**OFFICE OF THE LEGISLATIVE ASSEMBLY**  
**CODE OF CONDUCT 2018**

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# 1. INTRODUCTION AND OVERVIEW

- 1.1 The Office of the Legislative Assembly is, in many respects, unlike any other public sector agency in the ACT. It is responsible for delivering a wide range of functions, pursuant to the [Legislative Assembly \(Office of the Legislative Assembly\) Act 2012](#) (OLA Act), to support the legislative branch of government in the Territory.
- 1.2 Although the Office is not part of the ACT Public Service,<sup>1</sup> it is a part of the ACT public sector and its staff are employed under the [Public Sector Management Act 1994](#) (PSM Act). Office staff are bound by s 9 of the Act, which establishes legal obligations in relation to standards of conduct that must be observed by staff employed in the ACT public sector.<sup>2</sup> The Clerk may exercise certain management powers in respect of Office staff in the same way that the Head of Service may exercise management powers in relation to the ACT Public Service.<sup>3</sup>
- 1.3 Office staff need to pay special attention to the Assembly's standing orders and resolutions of continuing effect as well as relevant parliamentary law, practice and procedure to be sure that the powers and immunities of the Assembly are upheld and that the democratic functions of the legislature are able to be performed unhindered.
- 1.4 The Office's code of conduct—this document—supplements information contained in the Public Sector Management Act in relation to:
- obligations under the standing orders, continuing resolutions and procedures of the Assembly;
  - impartiality, improper influence and conflict of interest;
  - use of Territory resources and disclosure of information;
  - public comment;
  - discrimination, bullying and harassment;
  - reasonable care and diligence;
  - lawful direction; and
  - the legal obligation to disclose maladministration or corrupt or fraudulent conduct.
- 1.5 All staff must read and understand their obligations under s 9 of the Public Sector Management Act and this supplementary code. Staff should contact their immediate supervisor or the Office's HR staff where they have a question about the code of conduct or their obligations under applicable laws. All staff should also be familiar with relevant standing orders and resolutions of continuing effect, which are [available via the Assembly website](#).
- 1.6 More detailed advice can also be provided by the Office of the Clerk and the HR and Entitlements area of the Office.

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<sup>1</sup> Office staff are 'public sector members' pursuant to s 150 of the PSM Act. Staff of MLAS are employed under the *Legislative Assembly (Members' Staff) Act 1989* and are not covered by this code.

<sup>2</sup> However, section 151 of the PSM Act provides that the public sector standards, including the provisions relating to conduct embodied in s 9, apply to the extent that the application is consistent with the exercise of the public sector member's functions. The Office's functions are established in s 6 of the OLA Act.

<sup>3</sup> See s 152 of the Public Sector Management Act.

- 1.7 Breaches of the Office’s Code of Conduct or section 9 of the PSM Act could result in disciplinary action. It is also important to note that some misconduct on the part of an OLA staff member could, if proven, be a criminal offence punishable by imprisonment and/or a fine (for example, conduct that results in physical or psychological harm to other people or conduct involving dishonest or fraudulent behaviour (false and misleading statements, bribery, forgery, abuse of public office)).

## 2. VALUES

2.1 Section 7 of the PSM Act establishes four values that apply across the ACT public sector. They are:

- respect;
- integrity;
- collaboration; and
- innovation.<sup>4</sup>

2.2 The values that have been codified in statute by the Assembly are supplemented by the Office's own values, established through the development of its strategic plan. Two of these values—integrity and respect—correspond with the s 7 values but the Office has also taken the opportunity to include specific values that reflect its unique democratic role in supporting the legislative arm of government. These are set out below.

### **Professionalism**

- We value our professional relationships with members, their staff, members of the ACT community, the public sector and the wider community of parliaments.
- We show respect—having due regard for people, their viewpoints and their aspirations—in all of our professional relationships.
- We are conscientious, knowledgeable and prudent in the way that we go about doing our work.

### **Independence**

- We value our independence from the Executive.
- We value the checks and balances embodied by the ACT's form of government, established in the [Australian Capital Territory \(Self-Government\) Act 1988](#), in which there are three separate and distinct branches of government (the Legislature, the Executive and the Judiciary).
- We value the principles and guidelines embodied by the Latimer House Principles as a clear statement of the best practice operation of, and relationship between, the three branches of government.

### **Honesty and Integrity**

- We are honest and stand up for our values in all of our dealings.

### **Impartiality**

- We provide advice and support to members and the Assembly without fear, favour or bias.

### **Transparency**

- We are open about how we perform our roles and the decisions we make.

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<sup>4</sup> The Office's Capabilities Framework provides that 'building effective relationships and working collaboratively' and 'improving outcomes and innovation' are core capabilities expected of Office staff.

### 3. STANDING ORDERS AND CONTINUING RESOLUTIONS

- 3.1 The Assembly's Standing Orders and continuing resolutions set out the rules that apply to the conduct of Assembly proceedings. While not all of the standing orders or continuing resolutions are applicable to Office staff, there are a number of specific requirements that Office staff should be aware of and which do apply.
- 3.2 Staff should be aware that the Assembly has the power to punish a contempt of the Assembly and through standing order 277, the Assembly has established for general guidance<sup>5</sup> matters which may be treated as a contempt. Office staff should be particularly mindful of the following prohibitions provided for in standing order 277:
- Interference with the Assembly—A person shall not improperly interfere with the free exercise by the Assembly or a committee of its authority, or with the free performance by a Member of the Member's duties as a Member.
  - Improper influence of Member—A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a Member in the Member's conduct as a Member or induce a Member to be absent from the Assembly or a committee.
  - Molestation of Members—A person shall not inflict any punishment, penalty or injury upon, or deprive of any benefit, on a Member on account of the Member's conduct as a Member.
  - Disturbance of the Assembly—A person shall not wilfully disturb the Assembly or a committee while it is meeting, or wilfully engage in any disorderly conduct in the precincts of the Assembly or a committee tending to disturb its proceedings.
  - False reports of proceedings—A person shall not wilfully publish any false or misleading report of the proceedings of the Assembly or of a committee.
  - Disobedience of orders—A person shall not, without reasonable excuse, disobey a lawful order of the Assembly or of a committee.
  - Interference with witnesses—A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Assembly or a committee, or induce another person to refrain from giving such evidence.
  - A witness before the Assembly or a committee shall not:
    - (i) without reasonable excuse, refuse to make an oath or affirmation or give some similar undertaking to tell the truth when required to do so;
    - (ii) without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so; or
    - (iii) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.
  - A person shall not, without reasonable excuse:
    - (i) refuse or fail to attend before the Assembly or a committee when ordered to do so;
    - or

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<sup>5</sup> Without derogating from the Assembly's power to determine that particular acts constitute a contempt.



(ii) refuse or fail to produce documents, or to allow the inspection of documents, in accordance with an order of the Assembly or of a committee.

- A person shall not wilfully avoid service of an order of the Assembly or of a committee.
- A person shall not destroy, damage, forge or falsify any document required to be produced by the Assembly or by a committee.
- Unauthorised disclosure of evidence etc—A person shall not, without the authority of the Assembly or a committee, publish or disclose:

(i) a document that has been prepared for the purpose of submission, and submitted, to the Assembly or a committee and has been directed by the Assembly or a committee to be treated as evidence taken in private session or as a document confidential to the Assembly or the committee;

(ii) any oral evidence taken by the Assembly or a committee in private session, or a report of any such oral evidence; or

(iii) any proceedings in private session of the Assembly or a committee or any report of such proceedings;

unless the Assembly or a committee has published, or authorised the publication of, that document, that oral evidence or a report of those proceedings.

## 4. IMPARTIALITY, IMPROPER INFLUENCE AND CONFLICTS OF INTEREST

### PSM Act references

- Section 9(1) of the PSM Act provides that a public servant must: a) take all reasonable steps to avoid a conflict of interest; and b) declare or manage a conflict of interest that cannot reasonably be avoided.
- Section 9(1)(d) includes a requirement that a public servant must do their job with impartiality and honesty.
- Section 9(2) requires that a public servant must not, when doing their job, apply improper influence, favouritism or patronage.
- Section 244(1) requires that a public servant must have the approval of the Head of Service (the Clerk exercises a number of Head of Service functions in relation to the Office) for any of the following activities, other than in the exercise of the public servant's functions: a) employment; b) business activities; c) membership of a board or committee.
- Section 244(2) provides that a public servant does not need approval to be a member or shareholder of, or hold an unpaid position in, an incorporated company, a political party or a body registered under a law of the Territory, a State or the Commonwealth.

- 4.1 Section 9 of the PSM Act contains a number of provisions relating to the separate but related matters of impartiality, improper influence and conflicts of interest.
- 4.2 Irrespective of personal beliefs and preferences, as employees of the ACT public sector, Office staff are required to act impartially—that is, to put aside any personal interests, biases and views that might affect the performance of their official duties.
- 4.3 A conflict of interest arises when a staff member's private interests are, or may be, in conflict with their official duties. A conflict of interest can be actual, potential or apparent and can arise where a financial, personal or other private interest affects, or is seen to affect, the performance of a staff member's official duties.
- 4.4 An actual conflict of interest occurs when a staff member's private interests influence the performance of their duties. A potential conflict of interest exists when a staff member's private interests *may* influence the performance of their official duties. An apparent conflict of interest may exist if a staff member's private interests *may appear*, on reasonable grounds, to influence the performance of their official duties—even if there is no actual or potential influence.
- 4.5 Interests that result in a real or apparent conflict of interest can be financial or personal, and can sometimes extend to interests of a staff member's immediate family or close associates.
- 4.6 Office staff have a responsibility to ensure that their personal interests (financial and non-financial), associations and activities do not conflict with their duties as a staff member of the Office.
- 4.7 The following are some examples of conflicts of interest:

- A committee secretary is involved, in a private capacity, with the activities of a lobby group and a matter with which the lobby group is concerned comes to be referred to the committee of which the staff member is secretary.
- The personal beliefs or attitudes of an Office staff member influence, or are seen to influence, the impartiality of the advice that is given to an MLA.
- An Office staff member is involved in arranging a tender to procure goods or services on behalf of the Territory and a close friend, family member or close associate comes to submit a proposal to provide the goods/services.

4.8 A member of the Office's staff may be the only person aware of the potential for a conflict; however, as public employees, staff have a legal obligation to declare any conflicts of interest that emerge in the course of their official duties so that they can be effectively managed.

4.9 Staff must discuss with their manager any actual, potential or apparent conflict of interest as soon as they become aware of it, so that an informed decision can be made about any action that might need to be taken.

## GIFTS AND BENEFITS

4.10 Gifts and benefits are items or services that are provided to a staff member, their family or close personal associates that have been given in the course of, or in connection with, the staff member's employment; for example, the provision of hospitality, travel, money or other valuable items.

4.11 Accepting a gift or benefit from a person, including from an MLA, who could benefit from influencing how a staff member performs his or her official duties potentially places a staff member in a difficult position and could give rise to a conflict of interest. Even the appearance of influence may damage a staff member's reputation or affect the community's or members' trust in the independence and integrity of OLA.

4.12 Strict rules apply to Office staff about accepting gifts or other benefits that are offered in the course of their official duties. Office staff must not accept gifts or benefits without the written approval of the Clerk (or the Clerk's delegate), unless the gift is of little financial value (under \$25) and there is no reasonable possibility that it could cause a real, potential or apparent conflict of interest.

4.13 Staff must report to their manager the receipt of all gifts in order to provide an opportunity for OLA to assess the value of particular gifts and to weigh any conflict of interest issues that might exist. Managers may direct staff not to accept a gift where that manager considers that the gift may give rise to a conflict of interest situation (whether potential, actual or apparent).

4.14 Staff must be mindful that repeated offers of gifts, particularly from one source—even should they fall under the \$25 threshold—will likely give rise to perceptions of conflict of interest. Managers will direct staff not to accept gifts where they detect an emerging pattern of gifts being repeatedly offered to particular staff members.

- 4.15 All 'official gifts' (those gifts from official sources such as from other parliaments or parliamentary delegations) must be submitted to the Office of the Clerk along with a completed official gift register form (available on the intranet). A decision as to whether the item will be accepted as an official gift or whether it can be retained by the individual staff member that received it will be made on a case by case basis by the Director, Office of the Clerk.
- 4.16 Staff should be aware that bribery—the dishonest receipt of a benefit to provide a favour—is a serious criminal offence (see s 356 of the [Criminal Code 2002](#)), which is punishable by a fine and/or up to 10 years imprisonment.
- 4.17 If, at any time, a staff member is unsure about what to do in relation to the offer of a gift or benefit, they must discuss the matter immediately with their manager.

## WORK OUTSIDE THE SERVICE

- 4.18 Section 244 of the PSM Act sets out the conditions relating to performing work outside the service.
- 4.19 Because of the risk of a conflict of interest or any effect work outside the service may have on a staff member's work performance in their official capacity, staff are required to receive the written approval of the Clerk, or delegate, before engaging in any outside employment.

## POLITICAL AND COMMUNITY PARTICIPATION

- 4.20 Staff of the Office are free to participate in voluntary community organisations, charities, professional associations and union activities and generally enjoy freedom of association.
- 4.21 However, staff are obliged to ensure that their involvement does not give rise to a conflict of interest or to a perception, reasonably formed, that a conflict of interest exists.
- 4.22 Where a staff member's participation in an external organisation has the potential to conflict with impartial exercise of the Office's functions or where the apprehension of a conflict of interest potentially arises, the Office may direct that steps be taken to remedy the conflict.

## 5. USE OF TERRITORY RESOURCES AND DISCLOSURE OF INFORMATION

### PSM Act and other references

- Section 9(2) of the PSM Act provides that public servants must not:
  - take improper advantage of the public servant's job (or information gained through the public servant's job);
  - improperly use a Territory resource, including information, accessed through the public servant's job; or
  - without lawful authority, improperly disclose confidential information gained through the public servant's job.
- Section 109 of the Public Sector Management Standards 2016 provides that a public servant who stops being a public servant must not disclose confidential information without the written approval of the head of service.
- Section 19 of the Public Sector Management Standards 2006 (repealed)<sup>6</sup> makes provision in relation to the personal use of IT resources.
- Section 153 of the *Crimes Act 1900* makes it an offence for an officer of the Territory to disclose information that they are not authorised to disclose.

## USE OF RESOURCES

5.1 Office staff will have access to different Territory resources in the course of their employment. Territory resources include:

- Territory funds;
- various goods and services administered by the Office on behalf of the Territory;
- official records;
- Assembly precincts;
- the time spent by a staff member at work; and
- telecommunications devices, including mobile phones, computers and network systems.

5.2 Office staff are obligated to use Territory resources in an efficient and effective manner in performing their official duties.

5.3 While non-official use of a Territory resource may be permissible in certain narrowly confined circumstances (such as the incidental and limited use of a phone to make a private call or the use of office premises to host a social club activity), Territory resources must not be used to gain a private benefit for a staff member or any other person. In certain circumstances, the improper

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<sup>6</sup> Section 113 of the Public Sector Management Standards 2016 provides that certain standards contained within the repealed 2006 standards continue to apply.

use of a Territory resource could constitute a criminal offence (for example, theft, fraud or general dishonesty, each of which is punishable by fine and/or imprisonment).<sup>7</sup>

- 5.4 Staff should discuss with their manager any uncertainty about whether the proposed use of a Territory resource is appropriate.

## UNAUTHORISED DISCLOSURE OF INFORMATION

- 5.5 Information that an OLA staff member has gained in the course of their official duties must not be disclosed without lawful authority and must not be used to gain a private benefit for the staff member or another person.
- 5.6 Staff working in areas that deal with personal information, such as information about OLA staff, members and members' staff, must be aware of obligations that arise under the [Information Privacy Act 2014](#) and not disclose personal information without lawful authority.
- 5.7 Under the standing orders of the Assembly, certain information is confidential. Release of such information could result in a contempt of the Assembly, which can result in serious consequences. For instance, [standing order 277\(p\)](#) provides that the unauthorised disclosure of evidence may be treated by the Assembly as a contempt.
- 5.8 The Office has issued a privacy policy and a more specific Human Resources Privacy Policy, which contains specific requirements in relation to the handling of personnel information. Both policies are available on the intranet.
- 5.9 Staff must make sure that all confidential information (including computer files) cannot be accessed by unauthorised people and that sensitive information is only discussed with people who are authorised to have access to it.
- 5.10 Examples of confidential information include payroll information, personnel files, bills that are under embargo, committee reports that are under embargo, embargoed papers and *in-camera* evidence.
- 5.11 Should a staff member leave the Office for other employment, the staff member must not use confidential information gained while a staff member of the Office without lawful authority.

## MAKING A REPRESENTATION TO AN MLA

- 5.12 Like other citizens, staff of the Office are free to seek to gain access to a member or to contact a minister in relation to a particular issue of concern. However, Office staff must not use their proximity to, and professional interactions with, MLAs to advance a private or non-official matter (i.e. a matter that is unrelated to the staff member's official duties).
- 5.13 Where a member of the Office's staff wishes to make a representation to an MLA about a private matter or a matter not connected with the staff member's official role, the staff member must make it clear to the MLA that he or she is making the representation as a constituent and not in any official capacity.

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<sup>7</sup> See [Criminal Code 2002](#).

5.14 Any approach to an MLA by a member of the Office's staff must be done through the relevant member's office in the same way that any member of the public might make contact (i.e. by making an inquiry through the member's generic office email address or through the member's inquiries telephone number). Office staff must not use their official email account (i.e. [firstname.surname@parliament.act.gov.au](mailto:firstname.surname@parliament.act.gov.au)) to approach a member about non-official or private matters because this potentially creates the impression that the matter at hand is, in some way, connected with the staff member's official duties.

## 6. PUBLIC COMMENT

### PSM Act reference

- Section 9(2)(d) requires that a public servant must not make a comment that reasonably appears to be an official comment.

- 6.1 Public comment includes public speaking engagements, comments to journalists, statements on radio and television or letters to newspapers, as well as expressing your views in books, journals and notices where it is expected that the comments will be published to the wider community, including via social media such as Facebook or Twitter.
- 6.2 Office staff must not make public comments on any aspect of the operation of the Assembly or the Office without the express authorisation of the Clerk.
- 6.3 While Office staff are free to enter into community debate on issues, staff must ensure any comment cannot reasonably be mistaken for an official view or give the impression that the staff member is unable to perform his or her role in an impartial manner. The same principle applies in relation to:
- staff members' use of various social media platforms;
  - letters to the editor; and
  - comments on news websites.
- 6.4 For more information on the Office's requirements in relation to the use of social media, staff should refer to the Social Media Policy available on the intranet.



## 7. DISCRIMINATION, BULLYING AND HARASSMENT

### PSM Act reference

- Section 9(1)(c)(iv) requires that a public servant, when acting in connection with the public servant's job, must treat all people with courtesy and sensitivity to their rights and aspirations.
- Section 9(2)(a) requires that a public servant must not behave in a way that is inconsistent with the public sector values; or undermines the integrity and reputation of the service.
- Section 9(2)(e) of the Act requires that a public servant must not, when acting in connection with the public servant's job, bully, harass or intimidate anyone.

- 7.1 Office staff are required to interact with members, members' staff, the public and colleagues respectfully and with due consideration to people's rights and dignity.

### DISCRIMINATION

- 7.2 The [Discrimination Act 1991](#) makes it unlawful to discriminate against a person on the basis of one or more 'protected attributes'.

- 7.3 Protected attributes include:

- a) accommodation status;
- b) age;
- c) association (whether as a relative or otherwise) with a person who is identified by reference to another protected attribute;
- d) breastfeeding;
- e) disability;
- f) employment status;
- g) gender identity;
- h) genetic information;
- i) immigration status;
- j) industrial activity;
- k) intersex status;
- l) irrelevant criminal record;
- m) parent, family, carer or kinship responsibilities;
- n) physical features;
- o) political conviction;
- p) pregnancy;
- q) profession, trade, occupation or calling;
- r) race;
- s) record of a person's sex having been altered under the *Births, Deaths and Marriages Registration Act 1997* or a law of another jurisdiction that corresponds, or substantially corresponds, to the Act, s 26 (Alteration of register);
- t) relationship status;
- u) religious conviction;
- v) sex;

- w) sexuality;
- x) subjection to domestic or family violence.

- 7.4 Discrimination can be direct: that is where a person treats, or proposes to treat, another person unfavourably because the person has one or more protected attributes (see s 8(2) of the Act). Discrimination can also be indirect: that is where a person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the person has one or more protected attributes (see s 8(3) of the Act).
- 7.5 Office staff exercise a range of different functions and services which can affect employees, applicants for employment with the Office, members of the public, MLAs and their staff and, in delivering these functions and services, individual staff members must be sure not to directly or indirectly discriminate against a person on the basis of a protected attribute.
- 7.6 As an example, it would be unlawful for an Office staff member to refuse to grant a job interview to a person on the basis of their race or gender. Similarly, it would be unlawful to refuse building access to a person, or to propose not to grant access to a person on the basis of that person having a disability, a particular religious affiliation or a particular political conviction.
- 7.7 More information about discrimination is available from the [ACT Human Rights Commission website](#).

## BULLYING AND HARASSMENT

- 7.8 Harassment or bullying<sup>8</sup> can be defined as repeated, unreasonable behaviour that belittles and humiliates a person, often escalating over time. Examples include: the spreading of malicious rumours, persistent and unfounded criticism of work, shouting, abusive language, belittling comments. Harassment or bullying can be directed at an individual or a group.
- 7.9 Sexual harassment is any unwanted or unwelcome behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include: physical contact, sending offensive material electronically, sexually explicit jokes, intrusive questions about a person's personal life, repeated requests to go out on a date, display of offensive material, or other behaviour which creates a sexually hostile working environment.
- 7.10 Such behaviour makes the workplace unpleasant, humiliating and intimidating for the people or group targeted by the behaviour and is unlawful.
- 7.11 Workplace harassment should not be confused with advice or counselling on the work performance or work related behaviour of an individual or group, which may include negative feedback. Feedback should always be carried out in a constructive way that is not humiliating or threatening. Lawful and reasonable management direction is not harassment or bullying.
- 7.12 All Office staff are provided with access to the Office's Respect in the Workplace policy as part of their induction arrangements and should familiarise themselves with that policy.

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<sup>8</sup> Section 789FD(1) of the [Fair Work Act 2009](#) provides that a worker is bullied at work if, while at work, an individual or group of individuals repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member, and the behaviour creates a risk to health and safety. Section 789FD(2) provides that bullying at work is not reasonable management action carried out in a reasonable manner.

7.13 Where a staff member wishes to learn more about the processes for addressing bullying or harassment they should contact the Office's Respect, Equity and Diversity (RED)<sup>9</sup> contact officers or the HR and Entitlements area of the Office.

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<sup>9</sup> The Office participates in the ACT public sector's Respect, Equity and Diversity framework. More information on the framework is available via the CMTEDD website.

## 8. REASONABLE CARE AND DILIGENCE

### PSM Act reference

- Section 9(1)d provides that a public servant must do their work with reasonable care and diligence.

### REASONABLE CARE AND DILIGENCE

- 8.1 All Office staff are required to perform their duties with reasonable care and diligence. This means that staff must provide accurate and impartial advice, use any powers granted to them judiciously and only for the purposes for which they are granted, and make decisions in accordance with principles of natural justice and procedural fairness.
- 8.2 It also means that Office staff must act in good faith when performing their work. That is, staff must not act dishonestly or arbitrarily in the performance of their duties and must perform tasks in a conscientious manner and to the best of their abilities.
- 8.3 It is also important that staff, particularly in providing advice—whether procedural or administrative—have undertaken reasonable steps to inform the development of that advice. This will sometimes include consultation with senior managers or, in some cases, the Clerk.
- 8.4 As the principal adviser to the Assembly, its committees and its members in relation to parliamentary practice and procedure, the Clerk determines the Office’s official position on questions of parliamentary law and the practices and procedures of the Assembly.

### REASONABLE CARE AND WORKPLACE SAFETY

- 8.5 Office staff are required to take reasonable care to maintain a safe workplace. Section 28 of the [Work Health and Safety Act 2011](#) provides that a worker must:
- take reasonable care for his or her health and safety;
  - take reasonable care that his or her actions or omission do not adversely affect the health and safety of other persons;
  - comply, so far as the worker is reasonably able, with any reasonable instruction to comply with the Act; and
  - cooperate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to workers.
- 8.6 The Office has a workplace safety committee and workplace safety representatives that can be contacted to provide further advice about workplace health and safety matters.

## 9. LAWFUL DIRECTION

### PSM Act reference

- Section 9(1)(c) provides that, when acting in connection with the public servant’s job, the public servant must comply with any lawful and reasonable direction given by a person with the authority to give the direction.

- 9.1 Office staff are required to comply with all lawful and reasonable directions given to them in the course of their work.
- 9.2 Under common law, employees have an implicit duty of obedience and cooperation in their contract of employment. In particular, employees are obliged to comply with a direction that ‘relates to the subject matter of the employment’, ‘involves no illegality’ and is ‘reasonable’.<sup>10</sup> In the context of the public service, a somewhat broader test for the lawfulness of directions is likely to apply.<sup>11</sup>
- 9.3 There are many different ways an employee could unreasonably refuse a lawful and reasonable direction. This behaviour can be blatant or subtle and can occur for a variety of reasons, including where:
- an employee fails to perform their inherent role and responsibilities as stated in their position description;
  - an employee refuses to comply with all or part of the Office’s policies or procedures;<sup>12</sup>
  - an employee deliberately ignores or refuses to comply with their manager’s instructions;<sup>13</sup>
  - an employee refuses to participate in an independent medical assessment where it is reasonable to do so;<sup>14</sup>
  - the employer introduces a change or changes to the workplace following appropriate consultation and an employee refuses to accept the change; and
  - an employee continues to act in an unreasonable way when told not to by a person authorised to give a direction (e.g. repeatedly arriving late for work or back from lunch after having been told to be punctual).

<sup>10</sup> See *R v Darling Island Stevedoring & Lighthouse Co Ltd; Ex parte Halliday* (1938) 60 CLR 601, 621–622.

<sup>11</sup> See P Vermeesch, *Leal Briefina No 80: Misconduct in the Australian Public Service* (2006) Australian Government Solicitor. The AGS has advised that a direction to an APS employee can be lawful if it involves no illegality; is reasonably adapted to protect the legitimate interests of the Commonwealth; and is reasonable in all the circumstances.

<sup>12</sup> See *O’Connell v Wesfarmers Kleenheat Gas P/I t/a Kleenheat Gas* [2015] FWC 7011—employee refused to comply with company policy or procedure and refused to accept a reasonable and lawful direction.

<sup>13</sup> See *Powell v Hunter Water Corporation* [2012] FWA 6938—employee deliberately ignored or refused to comply with his supervisor’s instructions.

<sup>14</sup> See *Burns v Sacred Heart Mission Inc.* [2014] FWC 3188—employee failed to attend a medical assessment without reasonable explanation.

## 10. LEGAL OBLIGATION TO DISCLOSE MALADMINISTRATION OR CORRUPT OR FRAUDULENT CONDUCT

### PSM Reference

- A public servant (a **discloser**) must tell the head of service (the Clerk) about any maladministration or corrupt or fraudulent conduct by a public servant or a public sector member of which the discloser becomes aware (s 9(4)).

- 10.1 Staff of the Office must be aware of, and understand, their responsibilities under the Office's [Fraud and Corruption Prevention Plan](#), the Clerk's Financial Instructions and the [Public Interest Disclosure Act 2012](#) (PID Act) and [associated procedures](#).
- 10.2 Office staff have a responsibility to report evidence of suspected maladministration, corruption, fraud or misuse of Assembly or Territory resources by a public sector member.
- 10.3 Allegations about members and their staff should be directed to the Clerk in the first instance.
- 10.4 In addition, the Public Interest Disclosure Act 2012 provides a vehicle for people to report wrongdoing in the public sector—this is called making a public interest disclosure (also known as 'whistleblowing'). The Act also provides protection for people who make disclosures. Reports must be made to Government agencies to attract the protection. To make such a report you can phone the Clerk or the Director of the Office of the Clerk. The Office's complete procedures are available on the Assembly's website.

# APPENDIX A—RELEVANT LEGISLATION, POLICIES AND PROCEDURES

## LEGISLATION

10.5 Office staff should be aware of and understand the general obligations that arise from the following legislation:

- [Criminal Code 2002](#) (in particular, see Division 3.7.2);
- [Discrimination Act 1991](#);
- [Financial Management Act 1996](#);
- [Government Procurement Act 2001](#);
- [Freedom of Information Act 1989](#) and [Freedom of Information Act 2016](#) (commences 1 July 2017);
- [Human Rights Act 2004](#);
- [Information Privacy Act 2014](#);
- [Public Interest Disclosure Act 2012](#);
- [Public Sector Management Act 1994](#);
- [Public Sector Management Standards 2006 \(repealed\)](#)<sup>15</sup>
- [Public Sector Management Standards 2016](#);
- [Territory Records Act 2002](#); and
- [Work Health and Safety Act 2011](#).

## POLICIES AND PROCEDURES

10.6 The Office's code of conduct should be read in conjunction with the organisation's other policy statements, including:

- the acceptable use of IT policy;
- the Clerk's Financial Instructions;
- the Fraud and Corruption Prevention Framework;
- Respect in the Workplace policy;
- Public Interest Disclosure Procedures;
- Social Media Policy;
- The Office of the Legislative Assembly Privacy Policy;
- Human Resources Privacy Policy; and
- the relevant enterprise agreement.

10.7 The latest version of each of these documents is available through the intranet.

## PARLIAMENTARY PROCEDURE

10.8 Staff of the Office must also be aware of the requirements and obligations that arise by virtue of the [Assembly's standing orders and continuing resolutions](#).

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<sup>15</sup> Certain provisions of the 2006 standards continue to operate by virtue of section 113 of the 2016 Standards.