



Australian
Competition &
Consumer
Commission

Code of Conduct for Commission Members and Associate Members

2014

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Foreword

The Australian Competition and Consumer Commission is proud of its reputation as a high performing statutory agency, entrusted by the community to promote competition, fair trading and consumer protection for the benefit of all Australians. Preserving and enhancing that trust is a priority for all Commission members.

As statutory office holders, all members of the Commission (both full time and associate members) are held to high standards of conduct. These standards derive from legislation including the *Competition and Consumer Act 2010* (CCA), various codes of conduct and the common law, and are individually supplemented by members' appointments to ad hoc ACCC committees and delegations held under other related legislation.

Maintaining high standards of conduct is always important for any statutory agency, but the recent introduction of the *Public Governance, Performance and Accountability Act 2013* (PGPAA) reinforces the importance of ensuring that high standards of conduct are met by all members of the Commission.

This *Code of Conduct* has been prepared as a source of quick reference for members of the Commission, to provide information about expected standards of conduct and to clarify where the boundaries of such conduct lie. It sets out in summary form the main principles, conventions and laws governing the conduct of members of the Commission.

In this spirit, I commend this Code to all members.

Rod Sims
Chairperson

2014

Introduction

This Code is intended to assist members of the Commission to understand key obligations in relation to their conduct that arise from statutory and non-statutory sources, and to help members to identify situations where these obligations apply and the steps they should take to meet these obligations.

This Code applies to all members of the Commission, including the Chairperson, Deputy Chairs, members and associate members. References in the Code to 'Commissioners' or 'members' will, except where specifically provided otherwise, include associate members where they have received a direction from the Chairman pursuant to s. 8A(4) of the CCA deeming them to be a member of the Commission for the purposes of the exercise of the powers of the Commission in relation to a specified matter.

Members must exercise their statutory powers and functions in accordance with four key obligations:

1. to act honestly and lawfully
2. to act in good faith
3. to act with due care and skill, and
4. to avoid conflicts between personal and official interests.

Conduct not in accordance with relevant standards may, in certain circumstances, call into question the validity of any decisions made by the respective member, including the resolutions or outcomes of meetings or hearings in which that member was involved, and any procedural decisions made by the member in the course of arriving at the decision in question. It may also, in certain circumstances, constitute official 'misbehaviour' and provide grounds for the termination of members' appointments under s. 13 of the CCA.

If any doubt exists as to the propriety of any proposed course of action or involvement in any matter by a member, they should disclose the issue to the Chairperson at the earliest opportunity¹. Where the matter may involve or raise legal issues or consequences, members should also consult with the ACCC General Counsel.

Members are also encouraged to seek advice from the ACCC General Counsel or Deputy General Counsel – Corporate Law in relation to any questions they might have regarding their obligations under applicable law and codes of conduct.

Standards of conduct applicable to members are drawn from several enactments (including the CCA and the PGPAA, various codes of conduct (eg. the Bowen Code) and the common law. As statutory office holders, members are also legally bound by the APS Code of Conduct as set out in s.13 of the *Public Service Act 1999* (PSA) when acting in a supervisory capacity in relation to APS employees. Relevant provisions are contained in Attachments to this Code: s.17 of the CCA ([Attachment A](#)), the Bowen Code ([Attachment C](#)), the APS Code of Conduct ([Attachment D](#)) and ss.25 to 29 of the PGPAA ([Attachment E](#)).

¹ In the case of the Chairperson, section 17 of the CCA requires the Chairperson to consult with the Minister where appropriate. As a matter of practice, such consultation would take place after preliminary internal consultation.

General conduct

There are a number of requirements under legislation, applicable codes of conduct and the common law that apply to the general conduct of members. The information below is designed to outline these requirements, including the key 'triggers' for these requirements to apply, and to assist members to identify situations where these requirements may be relevant and the steps they should then take.

Conflicts of interest

Members should perform their official duties without fear or favour and regardless of any expectation that they (or persons associated with them) will benefit or suffer as a consequence.

The Bowen Code expressed the key principle regarding disclosure of interests by officeholders as follows:

Where an officeholder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with his public duty, or improperly to influence his conduct in the discharge of his responsibilities in respect of some matter with which he is concerned, he should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the officeholder should disclose the further information.

Conflicts of interest can take a variety of forms. An actual conflict of interest occurs where a member's interest in fact compromises, influences or affects the proper performance of their official duties. A perceived conflict of interest occurs where a member's interest gives rise to a reasonable apprehension of bias in relation to the proper performance of their official duties—even if the member would not in fact be biased. However, perceived conflicts do not arise where the interest is so insignificant that no reasonable person would think that it would give rise to bias or affect the proper performance of duties. For example, where a member's pecuniary interest is trivial and so could not reasonably be thought to affect their performance, it is unlikely that a perceived conflict of interest would arise.

Some examples of potential conflicts of interest include the following.

- A member holds another public office (at either the State or the Federal level) and a decision must be made that overlaps with the subject area of that other office about which the member has obtained confidential information that may be relevant to the ACCC's decision in their role with other public authority.
- A member must make a decision concerning a company or industry for which that member has previously acted. For example, in a previous role a member has had access to confidential information about a transaction, or an aspect or precursor of what is proposed, or has knowledge of the way in which the company operates and may deal with a particular issue. If this knowledge is recent, it may give rise to a reasonable apprehension of bias.
- A member has a personal relationship with a key office holder in a company under investigation or a professional adviser to the company. In this situation, it may be inappropriate for the member to continue to be involved in any aspect of the investigation due to a reasonable apprehension of bias.

Certain conflicts of interest are dealt with in applicable legislation:

- Section 17 of the CCA applies to any **pecuniary interest** that a member (other than the Chairperson²) has or acquires which **could conflict with the proper performance of the member's functions** in relation to the determination of a matter. In such a case, the member must disclose the interest to the Chairperson (failure to comply with obligations under s. 17 is a basis for the termination of the appointment of a member: s. 13(2)(b) for full time members and s. 14(2)(b) for associate members. Section 17 prescribes a procedure to be followed so that either the Chairperson determines the member should not take part in the matter or the interest is disclosed to the persons concerned in the matter and if they do not all consent, then the member must not take any further part in the matter.
- Section 29 of the PGPAA applies where an official of a Commonwealth entity has a **material personal interest** that relates to the affairs of the entity, and requires that the official must disclose details of the interest.

The trigger for disclosure under s. 17 of the CCA is any pecuniary interest of a member—it does not need to be a material interest. Under s. 29 of the PGPAA, the trigger is any material personal interest of a member. The PGPAA has a higher threshold for interests than the CCA as an interest needs to be material, but it is also broader in the sense that it captures personal interests (not just pecuniary interests) insofar as they relate to the ACCC's affairs. However, the general rule for members is to disclose any potential conflict of interest to the Chairperson and other Commissioners as soon as the conflict is identified, so that it can be considered and dealt with appropriately.

In assessing conflict of interest issues, members should have regard to their own financial and non-financial interests, personal and professional relationships (past or present) and the financial and non-financial interests of their immediate family to the extent that members know such interests. Commissioners should inform the Chairperson on an annual basis of all their relevant interests (Attachment B provides the relevant pro-forma). However, conflicts or perceived conflicts can arise at any time and members need to remain alert to the need for disclosure.

Full-time members should normally avoid holding shares directly. If a full-time member proposes to hold shares directly, they should consult the Chairperson and exercise careful personal judgement in respect of such transactions to ensure that any financial dealings do not raise an actual or perceived conflict with the functions of that member.

Proper behaviour

The Bowen Code also provides that:

An officeholder should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself or for any other person

An officeholder should not –

- *solicit or accept from any person any remuneration or benefit for the discharge of the duties of his office over and above the official remuneration;*
- *solicit or accept any benefit, advantage or promise of future advantage, whether for himself, his immediate family or any business concern or trust with which he is associated from persons who are in, or seek to be in, any contractual or special relationship with government;*

² Note: section 17(3) requires the Chairperson to give written notice to the Minister of all pecuniary interests in any Australian business.

- *except as may be permitted under the rules applicable to his office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of his office*

An officeholder should be scrupulous in his use of public property and services, and should not permit their misuse by other persons

Members should not seek to use their position, or information received in the course of their official duties with the Commission, in aid of any personal or professional interest.

Members (excluding associate members) are not permitted to engage in any paid employment outside the duties of their office without the consent of the Minister (s. 13 of the CCA). The Governor-General can terminate the appointment of a member who, without the consent of the Minister, engages in any paid employment outside the duties of the office.

Benefits in the form of gifts, sponsored travel or hospitality (including the promise or inference of future benefit for a member or their immediate family) should not be accepted where acceptance might give an appearance that the member may be subject to improper influence. This is a particular risk where the gift or other benefit is valuable. As a general rule, gifts, benefits or hospitality should be accepted only where they are of low value and are not provided by a party with any current matter before the Commission. Such gifts, benefits, travel or hospitality should be declared in writing in a timely manner to the Chairperson and placed on the ACCC's internal register. The *ACCC Acceptance of Gifts and Benefits Policy* includes more detailed requirements to be followed by both Commissioners and staff.

Members are provided with facilities at public expense in order that public business may be conducted effectively. Accordingly, members should avoid using ACCC facilities for private purposes or personal benefit.

Contact with interest groups

Members may become the target of interest groups seeking to influence the ACCC on a variety of issues.

Dealings with interest groups should be conducted in a manner that does not give rise to any appearance of improper influence or conflict of interest. It is advisable for members to ascertain what company or interests each interest group represents so that informed judgements may be made about the appropriateness of such dealings.

Where representations are being made on behalf of a foreign government or the agency of a foreign government, special care needs to be exercised as foreign policy or national security considerations may apply. In such cases, members should advise the Chairperson of the representation who may refer the matter to the Department of Foreign Affairs and Trade (DFAT). The Chairperson may of course refer matters in which he or she is directly involved to DFAT where appropriate.

Interaction with members of the Australian Public Service

Members interact with ACCC staff on a daily basis. In the main, ACCC staff are employed under the PSA by the Australian Public Service (APS), with the exception of consultants engaged by the ACCC. Unlike private employees, APS employees are governed by the PSA which requires them to adhere (as a matter of law) to the APS Values, APS Employment Principles and APS Code of Conduct.

The APS Values are as follows:

Committed to service

(1) The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Ethical

(2) The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

Respectful

(3) The APS respects all people, including their rights and their heritage.

Accountable

(4) The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Impartial

(5) The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Accordingly, members should be scrupulous in avoiding asking APS employees to do anything that the PSA does not permit and should not ask them to engage in activities which could call into question their political impartiality.

Further, as statutory office holders, members are bound by the APS Code of Conduct as set out in s.13 of the PSA **when acting in a supervisory capacity in relation to APS employees** and should be mindful to treat APS staff with respect and courtesy.

Confidentiality

Except in the course of official duties, members should not give or disclose, directly or indirectly, any information they acquire by virtue of their position³.

Decision-making

Members may have to account for the exercise of their statutory powers to the Parliament (or one of its committees), the Auditor-General, the Ombudsman and the courts.

The general grounds for challenging administrative decisions made under legislation are set out in the *Administrative Decisions (Judicial Review) Act 1977*. In essence the basic requirements for decision-making include:

- each decision needs to be within the scope of the power provided by the legislation
- the procedure for reaching the decision needs to meet basic standards of fairness, allowing all sides to present their cases, and must also comply with any special requirements set by the legislation
- each decision needs to be made on the merits of the case, with the decision-maker unbiased and acting in good faith, and

³ Section 70 of the *Crimes Act 1914* prohibits the publication or communication of such information; s.155AAA of the CCA prohibits the disclosure of certain 'protected' information except in limited circumstances; and there are other provisions of the CCA and other legislation that impose confidentiality obligations on the ACCC (see the ACCC/AER Information Policy for details).

- conclusions must be soundly based in reason, in particular they must reflect a proper understanding of the law, draw on reasonable evidence for findings of fact, take account of all relevant considerations and not take account of irrelevant considerations.

End of Appointment

Members who commence discussions with potential employers should be aware that this can give rise to real or perceived conflicts of interest. Members should inform the Chairperson of the fact and nature of the discussions. In the case of the Chairperson, the Minister should be informed.

In the interests of maintaining the confidence of the Government and the public in the ability of the Commission to conduct itself fairly and impartially on behalf of all sectors of the community, on cessation members will be required to give an undertaking in writing that they will:

- reaffirm the confidentiality undertaking entered into at the commencement of their appointment
- neither take, nor use, materials and data which are not ordinarily available to the public
- avoid direct involvement in matters with which they were concerned whilst they were still members.

A form of the required undertaking is at Attachment E.

Conclusion

The relationship between the CCA, the PGPAA, the APS Code of Conduct as set out in s. 13 of the PSA and the Bowen Code is one of concurrent obligations which circumscribe the boundaries of members' official duties. There is significant overlap in their requirements, which this Code seeks to summarise.

The key message for members is to be vigilant in avoiding situations in which their private interests, whether pecuniary or otherwise, might be thought to conflict or might reasonably be thought to conflict with their public duty. Any such potential conflict should be disclosed immediately.

Attachment A - Section 17 of the CCA

17 Disclosure of interests by members

- (1) Where a member of the Commission other than the Chairperson is taking part, or is to take part, in the determination of a matter before the Commission and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the determination of the matter:
 - (a) the member shall disclose the interest to the Chairperson; and
 - (b) the member shall not take part, or continue to take part, in the determination of the matter if:
 - (i) the Chairperson gives a direction under paragraph (2)(a) in relation to the matter; or
 - (ii) all of the persons concerned in the matter do not consent to the member taking part in the determination of the matter.
- (2) Where the Chairperson becomes aware that a member of the Commission is taking part, or is to take part, in the determination of a matter and that the member has in relation to the determination of the matter such an interest:
 - (a) if the Chairperson considers that the member should not take part, or should not continue to take part, in the determination of the matter - the Chairperson shall give a direction to the member accordingly; or
 - (b) in any other case - the Chairperson shall cause the interest of the member to be disclosed to the persons concerned in the matter.
- (3) The Chairperson shall give written notice to the Minister of all pecuniary interests that the Chairperson has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.
- (4) In this section, *member of the Commission* includes an associate member of the Commission.

Attachment B - Conflict of Interest: Commission member statement of private interests

Australian Competition AND Consumer Commission

Commission member statement of private interests (financial, non financial and personal)

To:

In August each year Commissioners are asked to provide an updated statement of private interests. The attached form will guide you in making your statement which may focus on financial interests, but you should also include personal associations that may conflict with the performance of your official duties. Please forward your statement to [TBC] by 1 October each year.

Your statement does not absolve your obligation to avoid a conflict, nor does it override the requirements of section 17 of the *Competition and Consumer Act 2010*, section 29 of the *Public Governance, Performance and Accountability Act 2013* or the ACCC Code of Conduct for Commission members and Associate Members.

You are required to disclose your interests to the Chairman. You are encouraged to share your interests with fellow Commission members in accordance with current practice.

In addition to the statement form, I attach a copy of the Australian Privacy Principles.

Jo Schumann
Executive General Manager
Corporate Division

[date]

Australian Competition and Consumer Commission

Commission member statement of private interests (financial, non financial and personal)

Chairman

Particulars of my private interests and those of my immediate family of which I am aware are set out in the attachment.

In preparing these details, I have had regard to the requirements of the government, the relevant provisions of the *Public Service Act 1999*, the *Competition and Consumer Act 2010* (CCA), the *Public Governance, Performance and Accountability Act 2013*, the Bowen Code and the ACCC Code of Conduct for Commission Members and Associate Members, particularly:

- the requirement to avoid financial and other conflicts of interests
- the requirement to register my private interests and those of my immediate family, and
- the provisions relating to the privacy of personal information.

In collecting and reporting information on the pecuniary and other private interests of my immediate family, I have had regard to relevant provisions of the *Privacy Act 1988*, in particular Australian Privacy Principles 3 and 6 and relevant guidelines on the collection of personal information.

Where I have collected and recorded information on the personal interests of a member or members of my immediate family, I have provided a copy of the information to them, and I have explained the reasons and authority for the collection and recording of the information, and the possibility that this information may be disclosed to other authorised persons.

The consent of my family member(s) to the release of personal information is shown below. (Delete as necessary)

It was not possible to obtain the consent in writing of one/some/all of my family members. (Delete as necessary)

I confirm that I shall advise you should a situation arise where an interest of mine or an interest of a member of my immediate family of which I am aware, whether pecuniary or otherwise, conflicts, or may reasonably be thought to conflict, with my public duty.

.....
Signature

.....
Position

.....
Date

Declaration by Commission member's spouse and/or family member(s)

I certify that I am aware of the requirements of the Australian Privacy Principles and I have consented to the providing of information regarding my personal and financial interests and am aware that there may be circumstances where this information is disclosed to other authorised persons.

.....
Signature Spouse/family member

.....
Date

.....
Signature Family member

.....
Date

Explanatory notes

The purpose of this return of private interests is to place on record any interests you may have that may conflict, or may be seen to conflict, with your public duty.

You should include under all headings the interests of immediate family members to the extent that you or they are aware of them (family includes spouse or de facto spouse, and dependent children). When interests are held jointly with spouse or dependants you should note such as 'jointly owned with spouse'.

Where interests could be included under more than one heading, they need be included only under the most specific heading, unless two aspects need to be disclosed (eg., real estate, plus a mortgage liability on that real estate).

This statement will need to cover financial, personal and other interests where these may have a potential to conflict with your official duties. These may include sporting, social or cultural activities as well as family, or other personal relationships. Because these are likely to include sensitive information, you should consult the Australian Privacy Principles (APPs) issued under the [Privacy Act 1988](#) and associated guidelines issued by the Privacy Commissioner.

When disclosing to the Chairman information concerning the private interests of immediate family, you should note particularly Australian Privacy Principles 3 and 6. These concern the manner and purpose of the collection of personal information and its use and disclosure. You should declare in your statements that you have provided details to your family members of any personal information you have collected about them and the possibility that the information may be released to the Minister or other authorised person in accordance with the law.

Returns will be made available to the Minister only on his or her request and you will be informed of any such request.

Any request for access from the Parliament or a committee of the Parliament, a Court or Tribunal or from a person pursuant to the FOI Act, will be dealt with according to law.

Please read the explanatory notes carefully before completing this form

1. Real Estate

I, or members of my family, have an interest in:

Location:

Owner:

Purpose for holding:

There is no need to specify street address - general location (eg. suburb or area, and State) is all that is required.

Specify whether property is used as a residence, a holiday home, a farm, or is held for investment or other business purposes.

2. Share holdings

Shares owned by:

Name of company:

Name of company should include holding companies (both public and private) and subsidiary companies if applicable.

Notify any interest in shares other than membership shares held with credit unions, building societies or other co-operative societies. Include equitable as well as legal interests, whether held directly or indirectly, that enable staff or members of their families to exercise control over the right to vote or dispose of those shares. This includes interests held on behalf of staff or their families by a nominee or by a nominee company.

3. Trusts/nominee companies

a) Beneficial interest held in a family or business trust or a nominee company
Trust or nominee company name:

Nature of interest:

Nature of operations:

Person holding interest:

Both beneficial interests and trusteeship responsibilities should be specified.

4. Directorships in companies (whether remunerated or not)

Name of director:

Name of company:

Activities of company: (whether public or private)

Under s. 13 of the CCA, the Governor-General can terminate the appointment of a Commission member who, without the consent of the Minister, engages in any paid employment outside the duties of the office. .

5. Partnerships etc.

Person holding interest:

Nature of operations:

Nature of business interest:

Under 'Nature of operations' specify purpose of operations of partnership or joint business undertaking (eg., investment, consultancy).

Under 'Nature of business interest' specify level of current involvement in partnership or joint business interest (eg., 'financial (sleeping) partner', 'consultant').

Under s. 13 of the CCA, the Governor-General can terminate the appointment of a Commission member who, without the consent of the Minister, engages in any paid employment outside the duties of the office.

6. Investments

Person holding investment:

Type of investment:

Agency in which investment is held:

'Investments' means any placement of moneys that attracts interest or other benefits.

Non interest-bearing accounts should not be included, but savings accounts, investment accounts, bonds, debentures, etc. should be included.

Where the cumulative amount held in savings accounts, portfolios and other investments does not exceed \$5000, disclosure is not required.

7. Other assets

Owner of asset:

Nature of asset:

Do not include items that might be listed under more specific headings (e.g. investments, gifts received).

Items need not be included unless they are of a nature that might be judged to represent a conflict of interests.

8. Other substantial sources of income

Person receiving income:

Nature of income:

Do not include your own Commonwealth salary

Include spouse's income from employment and any income by self, spouse, or dependants from investments, annuities, pensions or government sources. A reference to 'income from investments as set out above' is sufficient for investment income.

Income over \$5,000 per annum should be notified, but smaller amounts from sources that have potential to create a conflict of interests should be included.

Under s. 13 of the CCA, the Governor-General can terminate the appointment of a Commission member who, without the consent of the Minister, engages in any paid employment outside the duties of the office.

9. Any gifts, substantial sponsored travel or hospitality

Person receiving gift etc:

Nature of gift etc.

You need to comply with the Guidelines on Official Conduct of Commonwealth Public Servants in relation to the receipt of official gifts. Inclusions under this heading would normally relate only to gifts received by a spouse or dependants.

Gifts etc. received in a personal capacity during employment and up to 12 months prior to taking up Commonwealth employment should be declared. However, it is not necessary to declare gifts received by you and your families from family members or personal friends in a purely personal capacity unless an appearance of a conflict of interests might exist.

You also need to comply with the above guidelines on sponsored travel and acceptance of hospitality.

10. Liabilities

Person concerned:

Nature of liability:

Creditor:

Include all substantial and ongoing liabilities (eg., mortgages, hire purchase arrangements, personal loans and overdraft facilities), but not short-term credit arrangements (eg., credit cards or department store accounts).

Attachment C - Bowen Code⁴ summary

The Bowen Code proposed ten principles to avoid conflicts of interests (financial or otherwise) and to provide a basis for their resolution:-

- An officeholder should perform the duties of his office impartially, uninfluenced by fear or favour.
- An officeholder should be frank and honest in official dealings with colleagues.
- An officeholder should avoid situations in which his private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty.
- Where an officeholder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with his public duty, or improperly to influence his conduct in the discharge of his responsibilities in respect of some matter with which he is concerned, he should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the officeholder should disclose the further information.
- When the interests of members of his immediate family are involved, the officeholder should disclose those interests, to the extent that they are known to him.
- Where an officeholder (other than a Member of Parliament) possesses an interest which conflicts or might reasonably be seen to conflict with the duties of his office and such interest is not prescribed as a qualification for that office, he should forthwith divest himself of that interest, secure his removal from the duties in question, or obtain the authorisation of his superior or colleagues to continue to discharge the duties.
- An officeholder should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself or for any other person.
- An officeholder should not:
 - solicit or accept from any person any remuneration or benefit for the discharge of the duties of his office over and above the official remuneration
 - solicit or accept any benefit, advantage or promise of future advantage, whether for himself, his immediate family or any business concern or trust with which he is associated from persons who are in, or seek to be in, any contractual or special relationship with government

except as may be permitted under the rules applicable to his office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of his office.

- An officeholder should be scrupulous in his use of public property and services, and should not permit their misuse by other persons, and
- An officeholder should not allow the pursuit of his private interest to interfere with the proper discharge of his public duties.

⁴ In 1978 the Rt. Hon. Malcolm Fraser M.P., Prime Minister, announced the formation of a Committee of Inquiry to recommend a statement of principles regarding conflict of interest situations. The Committee was chaired by Sir Nigel Bowen, (then) Chief Judge of the Federal Court of Australia. The *Report of the Committee of Inquiry Concerning Public Duty and Private Interest* ('the Bowen Report') was released in 1979. It proposed a code of conduct ("the Bowen Code") which was endorsed by the then Government to apply to ministers of state and their staff, members of the Defence Forces, public servants and statutory office holders.

Attachment D - Sections 13 and 14 of the *Public Service Act 1999*

As statutory office holders, members are legally bound by the APS Code of Conduct as set out in s. 13 of the *Public Service Act 1999* (PSA) when acting in relation to the exercise of direct or indirect supervisory duties in relation to APS employees.

13 The APS Code of Conduct

1. An APS employee must behave honestly and with integrity in the course of APS employment.
2. An APS employee must act with care and diligence in the course of APS employment.
3. An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
4. An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws. For this purpose, **Australian law** means:
 5. any Act (including this Act), or any instrument made under an Act; or
 6. any law of a State or Territory, including any instrument made under such a law.
7. An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
8. An APS employee must maintain appropriate confidentiality about dealings the employee has with any Minister or Minister's member of staff.
9. An APS employee must:
 10. take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the employee's APS employment; and
 11. disclose details of any material personal interest of the employee in connection with the employee's APS employment.
12. An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.
13. An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
14. An APS employee must not improperly use inside information or the employee's duties, status, power or authority:
 15. to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
 16. to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person..
17. An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
18. An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
19. An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

14 Agency Heads bound by Code of Conduct

- (1) Agency Heads are bound by the Code of Conduct in the same way as APS employees.
- (2) Statutory office holders are bound by the Code of Conduct, subject to any regulations made under subsection (2A).
- (2A) The regulations may make provision in relation to the extent to which statutory office holders are bound by the Code of Conduct.
Note: The regulations may make different provision with respect to different statutory office holders or different classes of statutory office holders (see subsection 33(3A) of the *Acts Interpretation Act 1901*).
- (3) In this section:
statutory office holder means a person who holds any office or appointment under an Act, being an office or appointment that is prescribed by the regulations for the purposes of this definition.

Attachment E – Sections 25 to 29 of the *Public Governance, Performance and Accountability Act 2013*

25 Duty of care and diligence

- (1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:
 - (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
 - (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.
- (2) The rules may prescribe circumstances in which the requirements of subsection (1) are taken to be met.

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

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties honestly, in good faith and for a proper purpose.

27 Duty in relation to use of position

An official of a Commonwealth entity must not improperly use his or her position:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the entity, the Commonwealth or any other person.

28 Duty in relation to use of information

A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the Commonwealth entity, the Commonwealth or any other person.

29 Duty to disclose interests

- (1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.
- (2) The rules may do the following:
 - (a) prescribe circumstances in which subsection (1) does not apply;
 - (b) prescribe how and when an interest must be disclosed;
 - (c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).

Attachment F - Declaration upon cessation of a Commissioner

In preparation for the cessation of my appointment as a statutory office holder with the ACCC, I, [insert name] acknowledge and agree to the following confidentiality undertakings and requirements.

- I will continue to be bound by my obligation not to divulge information which was gained by virtue of my position and which it was my duty not to disclose at the time my term of office ended; nor use information of a confidential nature for personal gain.
- I confirm that I have neither taken, nor will use, materials or data from the ACCC that is not available to the public.
- In any future employment I will avoid direct involvement in specific matters with which I was concerned whilst a member of the Commission, if such involvement would result in actual or perceived detriment to public confidence in the Commission
- I acknowledge that I may have acquired certain airline frequent flyer and/or loyalty points as a result of travel on official Commonwealth business, and that I may not use them for personal benefit at any time.

Signed, sealed and delivered on

[date]

at

[address]

[Name and Title]