

EMPLOYMENT INSTRUCTION NUMBER 13

CODE OF CONDUCT

1. SCOPE AND PURPOSE

This Employment Instruction establishes the basic level of conduct expected of all employees. The Code cannot address all the possible challenges which individual employees may face in their Public Sector employment.

Where an employee is in doubt as to the applicability and scope of the provisions of this Code, or as to the appropriate course of action to be adopted in any given circumstance, the matter should be discussed with a more senior officer, the Chief Executive Officer or the Commissioner for Public Employment, as appropriate.

2. LEGISLATIVE BASIS

Section 16(2)(c) of the *Public Sector Employment and Management Act* (the Act).

Regulations 2, 3 and 4 of the Public Sector Employment and Management Regulations prescribe the Principles of Public Administration and Management, Human Resource Management, and Conduct.

3. OTHER SOURCES OF INFORMATION

The Northern Territory *Anti-Discrimination Act* and in particular section 20.

The Commonwealth *Sex Discrimination Act*

The Northern Territory Criminal Code, particularly sections 76 - 85, 92, 121, 122 and 222.

4. AGENCY ACTION REQUIRED

Chief Executive Officers may issue guidelines regarding acceptance of gifts and benefits by employees.

Chief Executive Officers may issue an agency-specific code of conduct which is consistent with the Act, Regulations, By-laws or Employment Instructions and any other legislation.

5. INTRODUCTION

5.1 Application of Code of Conduct

This Code of Conduct applies to all employees, including Chief Executive Officers and employees employed under an Executive Contract of Employment. Regulations 2, 3 and 4 (the Principles of Public Administration and Management, Human Resource Management, and Conduct) form part of the Code of Conduct applying to employees, Chief Executive Officers and Executive Contract employees.

5.2 Breach of Discipline

Disregarding the principles set out in this Employment Instruction, the principles of public administration and management, the principles of human resource management, or the principles of conduct as set out in Regulations 2, 3 and 4, or acting in a manner inconsistent with those principles is a breach of discipline under section 49(p) of the Act.

5.3 Familiarity With Principles

Chief Executive Officers and employees shall acquaint themselves with this Employment Instruction, and the Principles of Public Administration and Management, Human Resource Management, and Conduct.

5.4 Standards

In order to maintain public confidence in the integrity of the Public Sector, employees should exhibit, and be seen to exhibit, the highest ethical standards in carrying out their duties, and employees should pursue, and be seen to pursue, the best interests of the people of the Northern Territory.

5.5 Trust and Confidence

It is essential for the proper working of Government that employees retain the trust and confidence of their employer, colleagues and clients in the manner in which they discharge their official responsibilities.

6. PERSONAL AND PROFESSIONAL BEHAVIOUR

In the performance of their duties, employees shall:

- exercise their best possible technical or professional judgement;
- develop and maintain knowledge of their professional field;
- commit time and energy to furthering the agency's purpose and achievements;
- be familiar with and comply with the requirements of the Act, the *Financial Management Act* and other legislative, industrial or administrative requirements relevant to their official responsibilities;

- have regard to all official guidelines concerning the performance of their duties;
- provide all necessary and appropriate assistance to members of the public and other employees;
- seek to obtain value for public money spent and avoid waste or excessive use of public resources; and
- encourage other staff members by example to exercise similar qualities of personal and professional behaviour to those outlined above.

7. RELATIONSHIPS BETWEEN EMPLOYEES AND GOVERNMENT

7.1 Support to Government of the Day

Employees shall provide full support to the Government of the day regardless of which political party or parties are in office.

7.2 Advice to Government

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

7.3 Implementation of Government Policy

Employees are also responsible for carrying out decisions and implementing programs promptly, conscientiously and with full regard to Government policy. In implementing programs, an employee's own values should not supplant those explicit or implicit in Government policy. Obviously, it will be necessary both in providing advice and in implementing programs to exercise judgement as to which facts or courses of action are most relevant or important. Judgement must, however, always be exercised with due regard to legislative requirements, Government policy or a supervisor's directions together with considerations of equity and efficiency.

7.4 Contact with Minister and Ministerial Staff

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

8. RELATIONSHIPS BETWEEN EMPLOYEES AND MEMBERS OF THE LEGISLATIVE ASSEMBLY

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

8.1 Representations on Behalf of a Constituent

Constituent representations should be channelled to, and/or received by, an appropriately senior employee who has responsibility for the subject matter of the representation.

Written responses should, where possible, be cleared by the Chief Executive Officer prior to dispatch.

Where an oral response is given, employees should ensure that all due care is exercised in providing that response, particularly where the content of the information is likely to be sensitive or constitute other than factual material which is readily available elsewhere.

If an employee is in any doubt about releasing information, the advice of the Chief Executive Officer should be sought.

Representations by members of the Legislative Assembly do not confer any privilege or priority in dealings with agencies. In addition, employees responsible for providing responses should, when contemplating release of such material, be mindful of legislation concerning the security, confidentiality or protocol governing certain categories of information.

8.2 Representation from an Opposition Spokesperson

Opposition Spokespersons normally contact the Minister with portfolio responsibility.

In the absence of the Minister, the Spokesperson may contact the Chief Executive Officer. If a Spokesperson contacts an employee, any request must be referred back to the Chief Executive Officer for instructions prior to a written or oral response being provided.

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

9. PUBLIC COMMENT

9.1 Meaning of Public Comment

"Public comment" includes public speaking engagements (including comments on radio and television), expressing views in a letter to the press or in books or in notices or where it is reasonably foreseeable that publication or circulation of the comment will flow to the community at large.

9.2 Public Comment on Government Matters

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

9.3 Circumstances in which Public Comment is Inappropriate

While employees, as members of the community, have the right to make public comment and enter into public debate on political and social issues, there are some circumstances in which public comment is inappropriate. These include:

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

10. USE OF OFFICIAL INFORMATION

10.1 Disclosure of Official Information

An employee shall not disclose official information or documents acquired in the course of his or her employment, other than as required by law or where proper authority has been given.

10.2 Misuse of Official Information

Employees shall not misuse information gained in their official capacity. Misuse includes:

- speculation in shares on the basis of confidential information about the affairs of a business or of proposed Government action;
- seeking to take advantage for personal reasons or for another person on the basis of information about that person held in official records; and
- gossiping or rumour mongering on the basis of personal or other information held in official records.

10.3 Integrity and Security of Documents and Information

Employees shall take care to maintain the integrity and security of official documents or information for which they are responsible (see also Employment Instruction Number 10 - Employee Records).

10.4 Northern Territory Criminal Code

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

11. USE OF OFFICIAL FACILITIES AND EQUIPMENT

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

In granting such permission, Chief Executive Officers should have regard to the risk of exposing the agency to potential legal liabilities which could result from the private use of facilities or equipment by employees.

Employees shall not utilise the skills or working time of other employees for their personal benefit or gain.

12. FINANCIAL AND OTHER PRIVATE INTERESTS

12.1 Disclosure of Interests

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

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

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

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

The above interests are to be considered by employees not only in relation to themselves, but also in relation to their immediate families.

12.2 Ultimate Decision

The Chief Executive Officer will then decide whether:

- there is or could be conflict of interest;
- the employee should be authorised to continue his or her duties in the area;
- the employee should be requested to divest himself or herself of the interest; or
- a re-arrangement of duties amongst staff, or a transfer with duties involving no such actual or potential conflict, should be organised.

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

12.3 Bankruptcy

If an employee becomes bankrupt during their employment, he or she must inform the Chief Executive Officer who will determine if any action is required.

13. DISCLOSURE OF OFFENCES AGAINST THE LAW

Employees who have been charged, convicted or acquitted of an offence are required to advise the Chief Executive Officer, regardless of whether the offence relates directly to the employee's duties.

Chief Executive Officers should be aware of what constitutes an irrelevant criminal record under the Northern Territory *Anti-Discrimination Act*.

14. POLITICAL PARTICIPATION

14.1 Awareness of Potential Conflict of Interest

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

14.2 Likely Potential Conflict of Interest

When the employee becomes aware that a potential conflict, whether real or apparent, has arisen or is likely to arise, the employee must immediately inform the Chief Executive Officer. The matter should then be dealt with as outlined in section 12 of this Employment Instruction.

14.3 Withdrawal

The employee must be aware that if a conflict of interest exists, it may be necessary to withdraw from the political arena or from employment with the Public Sector.

14.4 Caretaker Periods

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

15. OUTSIDE EMPLOYMENT

15.1 Employment Outside Public Sector

Employees shall obtain written permission from the Chief Executive Officer before engaging in any employment (including employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward) outside the Public Sector. Such permission must be renewed by the employee annually unless otherwise determined by the Chief Executive Officer.

Section 61 of the Act details the legislative provisions regarding outside employment. Outside employment should not affect in any way the efficiency or performance of the employee in their Public Sector job.

15.2 Factors for Consideration by Chief Executive Officer

In approving applications to undertake outside employment, the Chief Executive Officer should consider whether conflict may arise between the employee's Public Sector responsibilities and the proposed private employment. In particular, consideration should be given as to whether the company or private organisation concerned is in, or is entering into, a contractual relationship with the Government, whether its primary purpose is to lobby Government agencies or members of Parliament, or whether it is in a regulatory relationship with any Government body.

15.3 Notice of Approval

Approval to engage in outside employment shall be in writing and shall state any restrictions which the Chief Executive Officer has placed on such employment.

15.4 Change in Circumstances

Employees are required to notify the Chief Executive Officer of any change in the nature or circumstance of approved outside employment and such notification shall be treated as a fresh application for approval.

15.5 Voluntary or Unpaid Activities

In general, it is not necessary for employees to obtain permission to involve themselves in voluntary or unpaid activities. Where a conflict of interest arises between these activities and official responsibilities, however, employees must raise the issue with the Chief Executive Officer and accept his or her decision on whether the employee can continue in that activity.

15.6 Outside Employment in Employee's Private Time

Any permitted outside employment or voluntary work shall be performed wholly in the employee's private time. Except in the case of voluntary work, private time does not include an employee's normal working hours during periods of paid leave.

16. ACCEPTANCE OF GIFTS AND BENEFITS

16.1 Judgement and Responsibility

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

16.2 Guiding Principles

In deciding whether to accept gifts or benefits, employees shall be guided by the following principles:

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

16.3 Permission of Chief Executive Officer

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

16.4 Agency Guidelines and Policies

Chief Executive Officers may establish their own guidelines on this subject, in addition to the requirements given here. Agency-specific policies should give consideration to the following points:

- the relationship of the agency to the donor;
- the primary business of the donor;
- the likelihood of further contact with the donor;

- whether the gift is being accepted as part of a formal exchange of gifts between official representatives of the Northern Territory and another Government;
- the possible adverse consequences to the Northern Territory's interests which may result from the acceptance or refusal of a gift; and
- the type of gift or benefit which in the context of the agency's operations can be seen as inconsequential or trivial.

17. FAIRNESS AND EQUITY

17.1 Principles of Equity

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

- procedural fairness; and
- social equity, which is concerned with the substance and the effect of administrative decisions on individuals and the community, particularly disadvantaged members of the community.

17.2 Basis for Decisions

Employees shall take all reasonable steps to ensure that the information upon which their decisions or actions are based is factually correct and relevant to the decisions or actions. Employees shall avoid acting in a way which could be seen as unreasonable or discriminatory.

17.3 Decisions Based on Statutory Power

Where an employee makes a decision based on a statutory power, the employee concerned shall ensure that:

- the legislation under which the decision is made authorises the making of that decision;
- he or she has the authority or the delegation to make the decision;
- any procedures which are required by law to be complied with in the making of a decision have been observed; and
- the decision, the evidence upon which it is based, and the reasons for the decision are properly documented.

17.4 Improper Exercise of Discretionary Powers

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

17.5 Unnecessary Delay

Employees should avoid unnecessary delay in making decisions or taking action.

17.6 Reports and Comment by Employees

When required to give references for, or make reports on, other Public Sector employees or on persons outside the Public Sector, employees have a duty to provide frank and accurate comment. Employees should also take care to avoid making statements which could be regarded as malicious. Situations in which a report potentially could be regarded as having been made with malice include:

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

Section 64A of the Act provides protection from legal proceedings for employees who provide reports in good faith.

18. DISCRIMINATION

18.1 Provisions of Northern Territory *Anti-Discrimination Act*

The Northern Territory *Anti-Discrimination Act* prohibits discrimination on the grounds of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association activity, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record, irrelevant criminal record or association with a person who has, or is believed to have, one of the above attributes. It is not unlawful to discriminate against another person on any of the attributes referred to above if an exemption under the *Anti-Discrimination Act* applies.

18.2 Compliance with Northern Territory *Anti-Discrimination Act*

Employees are required to comply with the provisions of the Northern Territory *Anti-Discrimination Act* in their dealings with other employees and members of the public.

19. EMPLOYEES TO EXERCISE DUE CARE

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

20. DISCLOSURE OF WRONGDOING

Employees have a duty to report to a supervisor, manager, Chief Executive Officer or the Commissioner for Public Employment, any unethical behaviour, corrupt act or wrongdoing by any other employee.

D J HAWKES
COMMISSIONER FOR PUBLIC EMPLOYMENT

7 October 1998