



Australian Government
Australian Public Service
Commission

MAKING PUBLIC COMMENT ON SOCIAL MEDIA

A GUIDE FOR APS EMPLOYEES

As members of the Australian community, Australian Public Service (APS) employees have the right to participate in public and political debate.

But this is not an unlimited right. APS employees have particular responsibilities under the *Public Service Act 1999* that come with being employed as a public servant by the Commonwealth of Australia. In some cases, these responsibilities limit their ability to participate fully in public discussions, including on social media.

In general, APS employees must not make public comment that may lead a reasonable person to conclude that they cannot serve the government of the day impartially and professionally.

While this applies both to comments made online as well as elsewhere, some additional considerations apply to online participation. The speed and reach of online communication means that material posted online is available immediately to a wide audience. It can be difficult to delete and may be replicated endlessly. It may be sent to, or seen by, people the author never intended or expected would see it.

Deciding whether to make a particular comment or post certain material online is a matter of careful judgement rather than a simple formula. This guidance sets out factors for employees to consider in making decisions about whether and what to post.

Many agencies have public comment or social media policies. This guidance should be read in conjunction with those policies.

What does the Code of Conduct require?

The Code of Conduct is set out in section 13 of the *Public Service Act 1999* (the Act). The Code's behavioural standards are directed at securing public confidence in the integrity of the APS. The Code creates binding obligations on all APS employees about how they conduct themselves at work and, to some extent, in their private lives.

For example, section 13(11) requires APS employees to behave **at all times** in a way that upholds:

- a. the APS Values and Employment Principles; and
- b. the integrity and good reputation of the employee's agency and the APS.

The APS Values are set out in section 10 of the Act. One of the Values is:

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

This means that APS employees must:

- a. ensure their actions don't provide grounds for a reasonable person to conclude that they can't serve the government of the day impartially, and
- b. implement government policies professionally in a way that is impartial and free from bias.

Section 13(5) requires APS employees to comply with lawful and reasonable directions. These can include agency policies on the use of social media for work or personal purposes.

Taken together, the Code, APS Values and the Act impose expectations and obligations on employees. Employees must act in a way that does not undermine the public's confidence in them and the ability of their agency to act impartially and to deliver government services

professionally and without bias. This clearly applies to activities at work and can capture conduct during non-work hours.

What does this mean for me?

At their most basic, Code of Conduct inquiries answer just two questions:

1. did the employee, as a matter of fact, engage in particular conduct, and
2. if so, did that amount to a breach of the Code?

What the employee meant to do, or how serious any breach was, is not relevant. Factors of that kind may be relevant to what the appropriate sanction is if the employee is found to have breached the Code. They don't affect the decision about *whether* the employee breached the Code.

This guidance will help you to consider your own actions and draw an informed conclusion about whether you are at risk of breaching the Code—and, if so, how seriously—by making public comments.

Risk factors

A number of factors can affect a decision about whether material you have posted or published is in breach of the Code of Conduct.

Does it criticise the work of your current agency?

Criticising the work, or the administration, of your agency is almost always going to be seen as a breach of the Code. The closer your criticism is to your area of work, the more likely this will be.

As an employee of your agency, people will assume that you have a high level of knowledge about what your agency does, and that you may have access to sensitive information. They will think that you know 'what's really going on'.

As an employee of your agency, your comments have a strong capacity to affect your agency's reputation.

If you have serious concerns about the way in which your agency is being run there are proper ways to report these. Posting on social media is not the answer.

This doesn't stop you making a positive comment on social media about your agency or using social media to explain the policy and services that it delivers. Agencies have their own policies about how they engage with the community on social media; read yours and talk to your manager about your options. Make sure you're on safe ground before you post.

Does it criticise your Minister?

As an APS employee you are required to serve the government of the day professionally and impartially, including through your agency or portfolio Minister.

As an employee in your agency the public may assume that you have access to your Minister and will have an insider's perspective on their policy, their personal conduct, and their performance.

Criticising your Minister, or the Prime Minister, is just as risky as criticising your agency. Equally, criticising your shadow Minister, the leader of the Opposition, or the relevant spokesperson from

minor parties, is also likely to raise concerns about your impartiality and to undermine the integrity and reputation of your agency and the APS generally.

Does it criticise the work of your previous agency(s)?

Your work in previous agencies has a lingering effect. For a period of time after you leave an agency you will take with you sensitive knowledge and an association in the minds of others between you and that agency's work. People will continue to assume that you have special insight to that agency and the policies it administers.

Because of that, your capacity to affect the reputation of that agency and the APS continues.

By the way, it is also worth bearing in mind that comments you make about an agency you've never worked in might be made public and taken into account if you apply for a job there later. Perhaps you haven't breached the Code, but you might have ruled yourself out for that job if the comment could reasonably call into question your capacity to work there impartially.

Your seniority

As a general guide, the more senior you are in the APS the more likely it is that people will believe you are privy to the real workings of government. Your opinions will carry more weight and have a greater capacity to affect the reputation of an agency or the APS.

Senior APS employees, or employees with a particularly high-profile or specialist role, need to be especially careful in considering the impact of any comments they might make.

Senior Executive Service (SES) employees have a particular responsibility because they:

- can influence with the relationship between stakeholders and government
- are likely to be required to advise on, or lead, the implementation of government policies and programs within agencies and across agency and portfolio boundaries, and
- are required by personal example to promote the APS Values and compliance with the Code.

Language and tone

Think about the language you use when making public comments about sensitive issues. Is it consistent with the kind of language that people would expect public servants to use? Is it nuanced and thoughtful, or blunt and inflammatory? Does it recognise that there may be alternative points of view?

Be moderate in your language and focus on the facts. Picking fights on the internet is not behaviour consistent with the Code of Conduct.

Personal criticism, or policy debate?

Public servants may participate in public debates about important public issues, subject to the restrictions explained in this guidance. This does not equate to a right to attack other people personally.

If you make personal comments about the character or ability of other people, including members of the Parliament, you immediately raise the risk that you have breached the Code as well as opening the door to those people taking legal action against you.

A right to participate in policy debate is not the same as a right to insult people. People who read those insulting comments will form views about whether you can in fact act impartially in your work. They may also ask themselves whether it is appropriate for a person who makes comments like that to be working for the Government, lowering the reputation of your agency and the APS.

Criticism of any person, including current or former colleagues, may also amount to a failure to treat them with respect and courtesy. It may even amount to harassment.

Confidential or sensitive information

Confidential or sensitive information held by your agency may not be disclosed publicly without prior authorisation from your agency.

Frequently Asked Questions

Can I post anything I like if I make it clear that I am posting only in a private capacity?

It's a good idea to include a statement on your social media platforms, or in individual posts if necessary, to the effect that your views don't represent those of your employer. However, this won't always protect you from a finding that you have breached the Code.

For example, if you choose to publish material that is vehemently anti-government, a disclaimer of this kind will not make you immune to a Code investigation. People who read that material will, rightly, wonder whether someone with opinions like these can genuinely serve the public and the government as an impartial and professional public servant. It may even affect the reputation of your agency and the APS.

Why can't I say what I want if I post anonymously?

Are you sure you're anonymous?

You may not have identified yourself as a public servant but many of us now have a digital footprint that makes it easy to find out who we are and, often, where we work. Posting material anonymously or using a pseudonym doesn't guarantee your identity will stay hidden. Even if you don't identify yourself you can still be identified by someone else.

It's a simple fact: agencies often receive dob-ins about comments made by their employees. Often those employees are shocked to find they've been linked back to their employer so easily.

It is simply common sense to assume that anything you write or post can be linked to you and your employer—whether you intend it or not.

What if I've posted after hours?

Your capacity to affect the reputation of your agency and the APS does not stop when you leave the office. The comments you make after hours can make people question your ability to be impartial, respectful and professional when you are at work. APS employees are required by law to uphold the APS Values at all times.

But what if I posted material from my private computer/tablet/phone?

Posting material from your private equipment means that you don't have to worry about whether you've used Commonwealth ICT resources properly. However, it doesn't affect whether what you've said is OK or not. In the same way that posting material after hours won't always protect you, neither will using your own equipment.

Having said that, if you do post material from a work computer, remember that:

- a. your employer has access to everything you post and every email you send, and
- b. you will be immediately identifiable as an employee of your agency.

Any use that you make of your agency's ICT equipment must be in line with your agency's own policies.

What about my right to freedom of speech?

The common law recognises an individual right to freedom of expression. This right is subject to limitations such as those imposed by the Public Service Act. In effect, the Code of Conduct operates to limit this right.

What about the Constitutional freedom of political communication?

The implied Constitutional freedom of political communication is not a protection of free speech for individuals. It operates as a limit on the power of the Parliament to make laws unduly restricting speech.

None of the litigation brought before various courts has successfully argued that the Public Service Act, or the Code of Conduct, amounts to an undue limitation of the freedom of political communication.

But I know that I'm impartial at work...

An important thing to remember is that your obligation under the Code is to act at all times in a way that upholds the APS Value of impartiality and maintains your capacity to serve the Government of the day impartially.

It doesn't matter, ultimately, whether you think that you are still impartial at work. The question is whether the people you work with, the government you serve, and the clients you assist—from the Minister's Office to the people on the other side of the counter—are just as confident that you will treat them professionally and impartially. What you say in your own time on social media can affect that confidence and the reputation of your agency and of the APS.

Why can't I rely on privacy settings on my social media platforms?

It's prudent to restrict the publication of your comments to those people who you actually want to see the comments. You can set the privacy settings as high as you like.

But it's not a complete protection, and it's a bad idea to rely on it. It won't stop a friend of yours deciding that something you wrote is particularly funny or insightful, taking a screenshot, and making it available for everyone to see.

What about 'liking', sharing and reposting?

If you 'like' something on a social media platform, it will generally be taken to be an endorsement of that material as though you'd created that material yourself.

'Sharing' a post has much the same effect. If, however, you're sharing something because you disagree with it and want to draw it someone else's attention, make sure that you make that clear at the time in a way that doesn't breach the Code itself. It may not be enough to select the 'angry face' icon, especially if you're one of thousands that have done so.

If my social media pages are locked to friends only but one of my friends reposts one of my posts, could this be a breach?

Yes. The breach of the Code occurs at the time you made your post. The fact that one of your friends chose to repost it doesn't create the breach—it just makes it easier to identify and investigate.

Public comment includes anything that you say in public or which ends up in public. This can include something you've said or written to one person. If your comment has an audience, or a recipient, it's a public comment.

Can I breach the Code through material in a private email that I send to a friend?

Yes. There's nothing to stop your friend taking a screenshot of that email, including your personal details, and sending it to other people or posting it all over the internet. Again, the breach of the Code is not in their subsequent publication of your material, but in your emailing that material in the first place.

In fact, there's nothing to stop your friend from forwarding your email directly to your employer and reporting your behaviour.

Am I responsible for nasty comments made by someone else on my social media pages?

Doing nothing about objectionable material that someone else has posted on your page can reasonably be seen in some circumstances as your endorsement of that material.

If someone does post material of this kind, it may be sensible to delete it or make it plain that you don't agree with it or support it.

Any breach of the Code would not come from the person making the post. It would come from how you reacted to it.

Is it OK to share a petition about a political topic?

It depends.

The factors affecting this judgment might include your own classification, your role in the APS, the subject of the petition, or the terms in which it's expressed. The principles set out elsewhere in this guidance may help you come to a view in each case.

What if someone else posts a picture of me handing out how-to-vote cards? What if the picture was taken without my consent, or posted without my knowledge?

As a generality, public servants are not required to be politically neutral in their private lives, and handing out how-to-vote cards at an election is not a problem.

In most cases, the simple act of handing out how-to-votes is not going to be enough for a reasonable observer to conclude that you cannot serve the government of the day impartially.

However, it depends on your personal circumstances. SES employees need to be particularly careful to ensure that their impartiality is not called into question. Employees of the Australian Electoral Commission also have special responsibilities.

Is posting to a closed mailing list making a public comment?

Yes. The same principles apply in this case as posting to locked social media pages or sending private emails.

What about when an employee is also a client of the agency? Can they post about the way they have been dealt with?

This will always be a matter for very careful consideration, and the principles set out in this guidance will be helpful.

It may be important to remember that if an employee of an agency is not happy with the way that they have been dealt with as a client of that agency they have a number of options available to them. If they can't resolve the issue within their agency, they could seek help from the Ombudsman, or go to the Administrative Appeals Tribunal, or approach their local Member of Parliament, for example.

What about just joining a Facebook group (or similar)?

People will draw conclusions about you and your ability to work impartially from a range of factors. This can include the nature of any online communities that you join.

For example, if you work as a Customer Service Officer in Centrelink while being a member of a Facebook group that is opposed to current laws about the payment of welfare benefits to migrants. This might raise a concern about whether you would deal with all of your clients fairly and professionally in your APS role. People would reasonably be concerned about your ability to implement Government policies in a way that is free from bias and in accordance with the law.

Can I post comments about politics, issues and events in other countries?

Usually, yes, but the same concerns still apply. For example, some public servants work in roles that involve them in day-to-day relations between Australia and other countries and need to think carefully about whether it's appropriate for them to comment on international affairs. Other public servants, senior employees especially, may be seen to be commenting on behalf of the Government and need to exercise sensible care in their comments.

If you are on duty overseas you are required at all times to behave in a way that upholds the good reputation of Australia. You should think carefully before making comments about politics, issues and events in other countries that might lead others to think less of Australia and its Government.