

The Public's Interest in Public Sector Ethics

The Hon Alan Demack AO, Queensland Integrity Commissioner
Annual Conference of the Judges of the Family Court, 12 July 2002

The Family Court of Australia began its life long on fond imaginings and short on planning. There was an expectation that once fault ceased to be an issue in divorce proceedings, parties would find no reason to attribute blame. Sweet reasonableness would become a daily experience.

The premises which the Court occupied in Brisbane consisted of three floors in an open space commercial building. Litigants, court staff, judges and other users of the building shared the lifts and the toilets. The walls of judge's chambers and of court rooms did not reach to ceiling height, not an issue when sweet reasonableness prevailed. More significantly, for the purposes of this address, it exposed the judges and staff to the public interest, or, at least, the interests of those members of the public who came to court.

If a judge entered a lift too soon after the court had adjourned, there was a chance that the judge could hear the part-heard case being discussed and the judicial performance being analysed. If a judge used the toilets before commencing court, there was a chance the judge would hear advice being given to a litigant about judicial expectations and how to meet them.

Nothing that was said added to the knowledge an experienced lawyer had acquired from clients and from court staff. The difference was that the identity of the judge had changed. It was me they were talking about.

Identifying the Public Interest

Since the 1970s, a common pattern has developed in the policies of the political parties in western democracies. While Australia is well to the east of most western democracies, it has shared their experience. There has generally been a convergence of the policies of the left and right of politics. In Australia this has produced two phenomena; the establishment of inquiries to tell governments what they ought to do and the growth of lobbyists who provide legislative innovations. Among the more skilful lobbyists are the entrepreneurial scholars from the entrepreneurial universities.

Over the same period, the established religions of the west have lost some of their hold on the hearts and minds of people. The ideas which raised the possibility of reasonably harmonious human interaction have lost much of their power. That is true whether the ideas were drawn from Christianity or humanism or Marxism. This has led to the idea that ethics is an academic discipline in its own right, rather than a subset of a theology or philosophy. Because ethics is the stuff of day to day human interaction, the ethics lobbyists have become a significant feature on the Australian political and commercial landscape. It is not unusual today to hear or read discussion about conflicts of interest. Identifying the problems which arise from conflicts of interest, and knowing how to deal with those problems, do not attract the same attention.

This academic interest in ethics has contributed to the passage of legislation which identifies public sector ethics. In Queensland this is found in the *Public Sector Ethics Act 1994* and the *Public Service Act 1996*. The Commonwealth has expressed this in the *Public Service Act 1999*. In a representative democracy it is a necessary assumption that legislation expresses the mind of at least the majority of the people. Consequently, the public sector ethics elaborated in legislation may be accepted as identifying the public's interest in public sector ethics. Because of the volume of legislation being passed by our several Parliaments, it is impossible for any of us to be familiar with every Act. Consequently, it did not seem to me to be impertinent to take some of your time by walking through these Acts.

Three areas of public interest can be identified: -

- ✍ how a public official treats a citizen
- ✍ how a public official performs his/her work
- ✍ how a public official relates to the elected government.

How does a public official relate to a citizen?

The *Public Service Act 1999* (Cwth) includes a statement of the Australian Public Service values (APS values) and an Australian Public Service Code of Conduct. The APS values includes: -

“(g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public”

The APS Code of Conduct includes: -

“(3) An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.”

The *Public Sector Ethics Act 1994* (Qld) declares 5 ethics principles: -

- ✍ respect for the law and the system of government
- ✍ respect for persons
- ✍ integrity
- ✍ diligence
- ✍ economy and efficiency

Regarding respect for persons it says: -

“8 (1) A public official should treat members of the public and other public officials –

- (a) honestly and fairly; and
- (b) with proper regard for their rights and obligations.

(2) A public official should act responsively in performing official duties.”

Thus both Acts, in different language, say that a citizen may expect to be treated fairly and courteously by public officials. May I express a preference for the language of the *Civil Service Regulations 1890* (Qld)?

“19. Officers are to ... behave, at all times, with courtesy to the public, giving ready attention to their requirements.”

Perhaps that is one reason why the public service was then called the civil service.

How does a public official perform his/her duties?

The APS values state that the APS has the highest ethical standards. The APS Code of Conduct says that an APS employee must behave honestly, and with integrity, care and diligence, complying with all applicable Australian laws. The APS employee must use Commonwealth resources in a proper manner. That employee must not make improper use of inside information, or of the employee’s duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person. An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.

The *Public Sector Ethics Act 1994* (Qld) requires a public official to uphold the laws of the State and Commonwealth, to exercise proper diligence, care and attention and seek to achieve high standards of public administration. The official should ensure that public resources are not wasted, abused or used improperly or extravagantly. The official should not improperly use his or her official powers or position or allow them to be improperly used and should ensure that any conflict that may arise between the official’s personal interests and official duties is resolved in favour of the public interest and should disclose fraud, corruption and maladministration of which the official becomes aware.

Both legislative regimes offer protection to whistleblowers. The Queensland Act encourages public officials to act as whistleblowers.

Back in 1890, Queensland civil servants were required to apply themselves “with zeal and assiduity to the performance of their several duties”. In case “assiduity” is no longer a word that features in your breakfast conversations, may I mention that it requires a devotion to, and perseverance in, hard work? Zeal calls for earnestness and fervour. It is a picture to cherish – the fervent civil servant!

How does a public official relate to the elected government?

The APS values include: -

- “(a) the APS is apolitical, performing its functions in an impartial and professional manner,
- (c) the APS is openly accountable for its actions, within the framework of ministerial responsibility to the government, the Parliament and the Australian public,
- (f) the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government’s policies and programs.”

The APS Code of Conduct requires an APS employee to comply with lawful and reasonable directions and to maintain appropriate confidentiality about dealings with any minister and minister’s member of staff.

The *Public Sector Ethics Act 1994* (Qld) requires a public official to carry out official public sector decisions and policies faithfully and impartially. The *Public Service Act 1996* (Qld) adds a duty to give effect to Government policies and priorities and a duty to provide sound and impartial advice to the Government.

Comment

The Queensland legislative regime has wisely used two statutes. The *Public Sector Ethics Act 1994* applies to a very broad band of public officials employed in public sector entities. That includes not only public servants, but university staff and local government employees. Judicial officers and local government councillors are not included. On the other hand, the obligation to give effect to government policies and priorities applies only to those who are employed under the *Public Service Act* (Qld). This includes court staff but not judges' associates. There are obviously sensitive issues here in respect of giving effect to government policies and priorities, although there would be no doubt about the important place that public sector ethics generally have in the Court systems.

The problem with stand alone ethics is how to encourage their acceptance. When ethics are an expression of a deeply held belief, there is a disposition to accept the need to apply them. This is so whether the belief has a theological and philosophical basis. If the principal reason for applying them is that non-compliance carries sanctions, there is a tendency to concentrate on avoiding the sanctions rather than to embrace ethics with zeal and assiduity. The Enron and Worldcom collapses have occurred in a country well endowed with ethics educators.

One of the interesting experiments to encourage compliance is with performance based awards or rewards. It is unlikely that the public will show much enthusiasm for this. The public's interest is in seeing that complying with public sector ethics is a public official's plain duty. Anything else destroys public trust. It may seem quaint, but there is a need to recover the idea that doing the right thing is its own reward. We should experience "*the satisfying feeling that our duty has been done*", if one can take the words of W. S. Gilbert and leach the irony from them.