

# **Integrity, Transparency & Conflicts of Interest**

*The Hon. Alan Demack AO, Queensland Integrity Commissioner  
St Andrews Centre for Ethics and Spirituality, Brisbane 15 November 2000*

---

Many conflicts of interest involve criminal conduct. The obvious example is where an official accepts a bribe and in response makes a decision that favours the person paying the bribe. Other conflicts are not so readily identified. An obvious example is the difficulty in drawing the line between acceptable and unacceptable offers of hospitality made to ministers and public servants as the Olympic Games demonstrated. While there may be adequate guidelines in the codes of conduct prepared by departments, the application of those guidelines may be difficult on some occasions.

The position of Queensland Integrity Commissioner has been created so that independent advice may be available to people who are aware they may have a conflict of interest. This is a preventative measure designed to raise the integrity of one aspect of government.

## **Who may seek advice?**

There are four groups of people who fall within the definition of designated persons who can seek advice about their own possible conflicts of interest or about possible conflicts of interest of their subordinate designated persons.

1. Some members of Parliament
  - ✍ the Premier;
  - ✍ Ministers;
  - ✍ Parliamentary Secretaries; and
  - ✍ government members.

2. Statutory Office Holders
3. Senior Public Officials
  - ✍ CEOs of departments or government entities; and
  - ✍ the senior executive officers; or
  - ✍ senior officers employed in departments.
4. The staff of Ministers and Parliamentary Secretaries

Senior executive officers and senior officers can only seek advice if the request is authorised by the departmental CEO. The other designated persons can seek advice about their own possible conflicts of interest. The Premier can seek advice about any designated person. Ministers and Parliamentary Secretaries can seek advice about designated persons under their administration. CEOs can seek advice about designated persons in their departments or government entities.

### **The Advice is Confidential**

The purpose behind the creation of the office of the Integrity Commissioner was to give advice on how conflicts of interest could be dealt with. If advice is given and accepted, the matter should end there. Thus the issues upon which the Integrity Commissioner gives advice are protected from the provisions of the *Freedom of Information Act 1992*.

If, on the other hand, the facts which a senior public servant discloses to the Integrity Commissioner constitute official misconduct and some criminal offence, the CEO of the department is obliged to refer the matter to the CJC (now the CMC – 12/11/03).

The designated person about whom advice has been given may disclose the advice. If I reasonably believe a person, other than a senior executive officer, senior officer or senior executive equivalent, has an actual and significant conflict of interest, and advise the person of my belief, and the person does not within seven days resolve the conflict, I may disclose the advice to the Premier. If a senior executive officer, senior

officer or senior executive equivalent seeks advice, the request must be authorised by the relevant chief executive officer who would ordinarily ask for a copy of my advice. If I advise that there is an actual and significant conflict of interest and the officer does not resolve it within seven days, the chief executive officer is left to deal with the issue usually under the disciplinary provisions of the *Public Service Act 1996*.

### **The “designated person” is Protected**

There is limited protection in a civil court proceeding if a designated person has sought advice about a conflict of interest and acted on it. If that person has disclosed all relevant information to me, the person is not liable in a civil proceeding or under an administrative process for an act taken by the person to resolve the conflict.

### **Conflicts of Interest**

Conflicts of interest which involve criminal conduct will usually be investigated by the Police and Criminal Justice Commission. I have no investigative responsibilities. A conflict of interest arises when there is a conflict between the person's personal interests and person's official duties. This can happen if:-

- ? a person has an interest in property, the value of which may be altered by a decision the person may be involved in making;
- ? a person accepts gifts and entertainment which may influence decision making;
- ? a person has or seeks employment outside the public sector which could compromise decision making;
- ? a person uses an official position to gain favours for relatives and friends.

There may be an actual conflict of interest, for example, the value of property may be enhanced if a decision is made in a particular way. In such a case the person should not be involved in making the decision. There may also be circumstances when it appears that there is a conflict of interest, for example, where a purchasing officer

purchases equipment from a business operated by a relative. There may in fact be no advantage given to the relative because the proper process has been followed and the purchase has been justified on the grounds of economy and efficiency. Nonetheless, such an apparent conflict of interest can cast doubts on the integrity of the purchasing process. In such a case all of the issues must be carefully and openly assessed.

When referring to the circumstances in which I am required to give the Premier my advice about a conflict of interest which has not been resolved I mentioned the fact that I had reasonably to believe that the person has an actual and significant conflict of interest. In that case an apparent conflict of interest is not enough.