

Exploring Trust in Government

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Our structures of government have evolved over that long period of history that began when the Roman Empire collapsed. In the centuries that followed, government in England lacked most of the principles of corporate governance before which we bow today.

About a thousand years ago, a more purposeful model of government evolved with enforceable laws and the possibility for trade. It was a time when kings ruled and government was divided into military and civil areas of responsibility. For a time those working in the civil area of responsibility were called civil servants. We have stopped talking about the civil service, although the division between military and civil or general is still observed in our awards system. Underlying the feudal system of government and its offspring was a need for the King to be able to trust those to whom he gave power, and a commitment by those people to use that power to uphold the power of the King.

At the beginning of the third millennium, government has become much more concerned with meeting the needs of the community. Those employed within government can no longer assume that service of the Crown is enough. As rights are given to citizens, the expectation that these rights will be met increases. As more rights are recognised, the possibility that there will be dissatisfaction because of unfulfilled rights increases. The conduct of those responsible for rights delivery then comes under closer scrutiny.

The public in Queensland can discover the kind of conduct it can expect from public officials by reading two statutes, *Public Service Act, 1999* (“the Commonwealth Act”) and *Public Sector Ethics Act 1994* (“the Queensland Act”). Although there are significant differences in the legislative structure of those two statutes, the obligations imposed upon public officials are similar.

The Commonwealth Act states the Australian Public Service values (“APS values”) (s.10) and provides a Code of Conduct (“APS Code of Conduct”). In addition, there are other sections (ss.14, 15, 16, 17, 18 and 30) which deal with issues similar to those in the Queensland Act.

The Queensland Act identifies five ethics principles which are then expanded into ethics obligations. It then requires each public sector entity to develop a code of conduct consistent with the ethics obligations. As local authorities fall within the definition of public sector entity, the ethics obligations found in the Queensland Act apply to both State and local authority employees.

I understand that those of you who have come to this session belong to each of the three levels of government. It is therefore appropriate to use the structure of the Queensland Act for the purposes of this address, as it applies to two of the three levels of government.

A. Ethics principles

The Queensland Act declares that the following ethics principles are fundamental to good public administration:

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

The APS values stated in the Commonwealth Act include:

- (a) The APS is apolitical, performing its functions in an impartial and professional manner;
- (d) the APS has the highest ethical standards;
- (e) 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;
- (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public, and is sensitive to the diversity of the Australian public;
- (k) the APS focuses on achieving results and managing performance.”

I have not quoted all of the fifteen APS values. The others are broadly concerned with conditions of employment within the APS.

The Queensland Act has obviously tried to use a few words which may be conveniently memorised. However, they raise the same issues that are found in the APS values I have quoted.

The Queensland Act then expands the ethics principles into ethics obligations which apply to all public officials. The discussion of these ethics obligations will allow for a comparison with the APS values and the APS Code of Conduct.

B. Respect for the law and the system of government

The Queensland Act requires a public official to uphold the laws of the State and Commonwealth (s.7(1)(a)). The APS Code of Conduct requires an APS employee to comply with all applicable Australian laws, which include laws of a State or Territory (s.13, cl.4). This is what we expect because our society is founded on the rule of law. Public officials are required to uphold the laws.

The Queensland Act also requires a public official to carry out official public sector decisions and policies faithfully and impartially (s.7(1)(b)). The Commonwealth Act contains more detailed provisions which are to the same effect. The APS values, as I have previously mentioned, include:

- ? “the APS is apolitical, performing its functions in an impartial and professional manner;
- ? 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.”

(s.10(I) (a) and (f)).

To these, the APS Code of Conduct adds:

- ? “An APS employee must comply with any lawful and reasonable direction given by someone in the employee’s agency who has authority to give that direction.
- ? An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister’s member of staff.”

(s.13(5), (6)).

These provisions combine to make it very clear that there are two sources of a public official’s duty. First, there is the law, now primarily found in legislation but still with areas where the common law remains. This whole body of law lays down

duties which fall on all public officials in the three levels of government. Second, there are the policies which the government or local authority adopts.

Sometimes public officials may find there is some tension or conflict between the duty which legislation imposes on them and the policies they are required to follow. The Queensland Act recognises this and states that the requirement to carry out official public sector decisions and policies faithfully “...does not detract from a public official’s duty to act independently of government if the official’s independence is required by legislation or government policy, or is a customary feature of the official’s work.” (s.7(2)).

If the independence is protected by legislation, the public official has a firm base from which to display robust initiatives. Government policy is a more fragile base, as it can change. “Customary” features are not always so readily identified. Fortunately, today, because our Parliaments pass many Acts which confer responsibilities and discretions on administrators, there is much scope for independence.

The Commonwealth Act does not use the word “independence” or its derivatives. But the words “apolitical” and “impartial and professional”, used in the APS values that I have already quoted, imply independence.

C. Respect for persons

The Queensland Act requires a public official to “...treat members of the public and other officials, honestly and fairly and with proper regard for their rights and obligations”. (s.8(1)).

The APS values include:

“the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public.” (s.10(g)).

There are very heavy obligations here. People’s rights and obligations are often expressed in lengthy and complex legislation. There is no simple way of making these rights and obligations known to the general public. I was not directly concerned with the implementation of the GST, but attended a number of seminars the Uniting Church organised to explain the impact of the tax on Church activities. Sometimes things seemed to be clear until someone asked a question that approached an issue from a different direction. Then it was back to square one. There is still a good deal of fine-tuning being done.

While the New Tax System is perhaps an extreme example of a complex bundle of rights and obligations, it does not stand alone. For many members of the public, their understanding of their rights and obligations will come from public officials. The effectiveness of this interaction will depend on the quality of training available to public officials. Often this is the neglected aspect of the implementation of legislation which defines rights and obligations.

One interesting word has come into the legislation which imposes the duties which public officials have. It is the word “responsive”. The Queensland Act says that “a public official should act responsively in performing official duties.” (s.8(2)). The APS values speak of being “responsive to government” (s.10(1)(f), courteous to the Australian public (s.10(1)(g)) and “sensitive to the diversity of the Australian public” (s.10(1)(g)). This is a reminder that there were practices and attitudes in the past which treated the public as an unwelcome intrusion into the busy round of administrative duties. It is good to treat others courteously. However, as the explanation of complex rights and duties occupies more and more time, courtesy becomes essential. Only people in full control of their own emotions can explain difficult issues to difficult people.

D. Integrity

Up to this point it has been relatively simple to draw attention to the parallels between the Commonwealth Act and the Queensland Act. Under the heading of “Integrity” the Queensland Act draws together concepts found not only in the APS values and the APS Code of Conduct, but also in other sections of the Commonwealth Act. It is convenient to quote the whole of s.9 of the Queensland Act and then break it down into comparable concepts.

- 9.(1) In recognition that public office involves a public trust, a public official should seek—
- (a) to maintain and enhance public confidence in the integrity of public administration; and
 - (b) to advance the common good of the community the official serves.
- (2) Having regard to the obligation mentioned in subsection (1), a public official—
- (a) should not improperly use his or her official powers or position, or allow them to be improperly used; and
 - (b) 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
 - (c) should disclose fraud, corruption and maladministration of which the official becomes aware.”

1. Public trust

The phrase “public office involves a public trust” is very significant. It also appears in a slightly different form in s.25 of the *Queensland Public Service Act 1996*. I have not previously referred to this Act because its relevant provisions reflect the concepts

in the Queensland Act (*Public Sector Ethics Act 1994*) and those concepts apply to a broader band of public officials.

While the phrase does not appear in the Commonwealth Act, one of the main purposes of the Act is:

“...to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public.” (s.3(a)).

The words “efficient and effective in serving...the Australian public” cover the same issues as the words “public trust”. A public official is required to apply the relevant law and the relevant policies determined by our elected representatives in Parliament and local government in a manner that serves the public.

I have already referred to the APS values which require service delivery to the Australian public to be fair, effective, impartial and courteous (s.10(1)(g)). Also the APS Code of Conduct includes “an APS employee must at all times behave in a way that upholds APS values and the integrity and good reputation of the APS”. (s.13(11)).

The recognition of the importance of being trustworthy does much to maintain and enhance public confidence in the integrity of public administration, and to enhance the common good. There may be times when public officials feel that the way Parliaments work through the political process does much to undermine their attempt to maintain public confidence in the integrity of public administration. However, that is essentially a side issue. The issue for public officials is to display the integrity that is proper in the office they hold.

2. Misuse of Power

The Queensland Act states that “...a public official should not improperly use his or her official powers or position or allow them to be improperly used” (s.9(2)(a)).

The APS Code of Conduct requires that:

“An APS employee must not make improper use of:

- (a) inside information; or
- (b) 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” (s.13(10)).

The Commonwealth Act also includes:

“A person exercising powers under the Act or the regulations:

- (a) in relation to the engagement of APS employees; or
- (b) otherwise in relation to APS employees;

must do so without patronage or favouritism.” (s.17(1)).

These provisions cover a wide range of actions which betray public trust. They include misuse of equipment, funds and employment procedures. Such misuse of power often involves criminal offences as well as being a matter for discipline within the public sector.

3. Conflict of interest

The Queensland Act provides that a public official “...should ensure that any conflict of interest that may arise between the official’s personal interests and official duties is resolved in favour of the public interest.” (s.9(2)(b)).

The APS Code of Conduct provides that “an APS employee must disclose, and take reasonable steps to avoid any conflict of interest (real or apparent), in connection with APS employment.” (s.13(7)). In Queensland, the obligation to disclose a conflict of interest is found in s.84 of the *Public Service Act 1996*.

The Queensland Act raises the three issues that need to be considered when a conflict of interest is involved:

- ? official duty
- ? personal interests
- ? public interest

The full extent of a public official's official duty will depend on the task in which the official is engaged. It begins with the legislative standards, which state the values that must be upheld. These are the standards found in the Commonwealth and Queensland Acts. There are also duties of financial accounting, and, as some public officials are employed under contract, there may be some duties in such contracts. Finally there are the instructions given in respect of the specific task.

Similarly, the personal interests which may come in conflict with the performance of those duties are very broad. At present, the list I use is:

Such a personal interest can arise if:

- (i) a person has an interest in property of any kind, the value of which may be altered by a decision the person may be involved in making;
- (ii) a person seeks and/or accepts gifts and/or hospitality which may influence or appear to influence decision making;
- (iii) a person has or seeks employment outside the public sector which would compromise decision making;
- (iv) a person uses an official position to gain unmeritorious advantages for relatives and friends;
- (v) a person has a strongly held personal conviction.
- (vi) a person has an interest in any kind of property, the value of which may be altered by the use of confidential information obtained in the discharge of official duties.

Generally, the resolution of the conflict is found in the strict performance of the official duty. That is where the public interest lies.

However, there are occasions when the personal interest has bearing on one part of the official's duty, but not on all of the duties. So in a remote area, a purchasing officer may find that the only efficient and economic way to purchase a particular item or service is from a business operated by a relative. Such a conflict of interest can only be resolved by a careful analysis of all the relevant data and with advice from senior officials. It is for cases such as this that the obligation to disclose a conflict of interest becomes very important.

4. Disclosure of fraud, corruption and maladministration

When these abuses occur, they are most likely to be seen first by other officials. Mr Butler will deal with strategies to deal with this. I simply want to emphasise that the disclosure of these abuses is a duty cast on public officials. It is an unpleasant but necessary one which can have significant consequences for the whistleblower, even when there is statutory protection, eg the Commonwealth Act s.16 and the *Whistleblowers Protection Act 1994* (Qld).

E. Diligence

The Queensland Act requires a public official to exercise proper diligence, care and attention and to seek to achieve high standards of public administration in the performance of official duties. (s.10).

The APS Code of Conduct requires an APS employee to act with care and diligence in the course of APS employment. One of the main objects of the Commonwealth Act is to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public. (s.3). The APS values assert that the APS is openly accountable for its actions (s.10(1)(e)), and focuses on achieving results and managing performance (s.10(1)(k)).

Together these provisions commit public officials to performing their official duties in the best possible manner. There is a need to recognise the limitations upon what can be achieved even when best practice is followed. Consequently, there does need to be procedures in place to manage such a risk.

However, it is easy to appreciate public disquiet when administrative errors of significant proportions occur. The system has to go beyond talking about high standards. These must be demonstrated if public trust is to be gained.

F. Economy and efficiency

The Queensland Act finally says that in performing official duties, a public official should ensure that public resources are not wasted, abused or used improperly or extravagantly (s.11).

The APS values speak of accountability (s.10(1)(e)), timely advice (s.10(1)(f)) and effective service delivery (s.10(1)(g)), concepts which touch on the Queensland list of values.

Among the issues of public concern raised in the news media, waste and abuse of public money is most likely to create anger. The fact that this is the last in the list of ethics principles in the Queensland Act does not mean that it is the least in public estimation.

This serves to remind that the five ethics principles and the fifteen APS values are not listed as a hierarchy of values. They interact in day to day administration. They need to be balanced so that the public interest is served.

G. Conclusion

I have not referred to the directions the Public Service Commissioner must give about the APS values (s.11(1)) or to any of the codes of conduct which public sector entities are required to develop under the Queensland Act. Rather, my purpose has been to look at the two Acts which assert the values which the public can expect from its public officials engaged in any of the three levels of government.

While we have moved a long way from many aspects of life in feudal England, some things remain. As I said at the beginning of this address, underlying that system of government was a need for the King to be able to trust those to whom he gave power, and a commitment by those people to use that power to uphold the power of the King.

Today, underlying our system of government is a need for the people to be able to trust those to whom they give power, and a commitment by those people to use that power to serve the public interest. To you falls the privilege of earning and maintaining that trust and the joy of serving the public interest.