

**Presentation to New Members of the Legislative Assembly**  
**Wednesday 25 February 2004**  
**The *Public Sector Ethics Act 1994*, the role of the**  
**Integrity Commissioner and “Conflicts of Interest”**

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**Introduction - Parliamentarians as Lawyers**

As a member of the legislative assembly it is your role to make laws, which implies that you are lawyers - revising, refining and voting on the acts which become law in Queensland. The purpose of law is that it provides a basis for consistent decision-making within community life, part of which is by educating people in their community obligations.

Your predecessors have made many laws, and one which we will be discussing here today is the *Public Sector Ethics Act 1994*. Its purpose is to provide a basis for consistent decision making and guidance for public servants where there are no specific rules, or where matters are unclear, but where the ultimate objective is to serve the public interest. It is not only about what is legal, but what is right.

**The *Public Sector Ethics Act 1994***

The *Public Sector Ethics Act 1994* came into operation on 1 December 1994. It represented a fresh approach to public sector ethics, and it remains unique, certainly in Australia. The *Public Sector Ethics Act 1994* lists the following ethics principles:-

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

The structure of the *Act* follows the four concepts embodied in the word “ethics”.

Firstly, it identifies the basic values needed in the public sector. It does this by declaring that the five ethics principles quoted above are fundamental to good public administration. That is to say, these ethics principles are not intended to be the high ideals to which public

officials may aspire. They are indeed, the foundations upon which the work of public officials must be built. Respect for the law and the system of government is essential for public officials as is respect for persons. No one would argue against integrity, or perhaps diligence. Both of these basic values need to be part of the day to day work of public officials. Economy and efficiency may not be seen as traditional virtues, but the public which provides the financial resources that support the public sector expects those resources to be used economically and efficiently.

Secondly, the *Act* expands these five ethics principles into ethic obligations. These indicate in some depth how these basic values are expressed in the public sector.

### **7 Respect for the law and system of government**

(1) A public official should—

- (a) uphold the laws of the State and Commonwealth; and
- (b) carry out official public sector decisions and policies faithfully and impartially.

(2) Subsection (1)(b) 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.

### **8 Respect for persons**

(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.

### **9 Integrity**

(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.

## **10 Diligence**

In performing his or her official duties, a public official should—

(a) exercise proper diligence, care and attention; and

(b) seek to achieve high standards of public administration.

## **11 Economy and efficiency**

In performing his or her official duties, a public official should ensure that public resources are not wasted, abused, or used improperly or extravagantly.

Thirdly, the *Act* then requires public sector entities to prepare codes of conduct which express both the ethics obligations and the conduct obligations expected of public officials. In other words, the obligations and expectations which are created by the basic values are to be clearly stated. For example:-

### **7 Respect for the law and system of government**

? *comply with all reasonable, lawful instruction relating to your work;*

? *exercise your role lawfully;*

? *act in the public interest;*

? *be responsive;*

? *implement decisions and policies faithfully and impartially.*

### **8 Respect for persons**

? *treat the public and colleagues fairly, reasonably, courteously and equitably;*

? *do not act with bias, favouritism and discrimination;*

? *do not harass, abuse nor distract officers from their work;*

? *encourage contributions, aspirations, and professional development;*

? *recognise personal and family obligations.*

### **9 Integrity**

- ? *provide comprehensive and rigorous advice;*
- ? *base decisions and actions on thorough and dispassionate analyses;*
- ? *ensure that personal or professional interests do not improperly affect your official capacity and declare conflicting private interests;*
- ? *disclose fraud, corruption and maladministration;*
- ? *resolve all conflicts of interest in favour of the public interest.*

### **10 Diligence**

- ? *carry out your job competently and professionally;*
- ? *strive for high standards in public administration;*
- ? *apply appropriate standards, eg. health and safety conditions;*
- ? *act responsibly and justify decisions and actions appropriately;*
- ? *seek and enhance professional development.*

### **11 Economy and efficiency**

- ? *utilise human and material resources efficiently and effectively;*
- ? *conserve and safeguard public assets;*
- ? *budget honestly;*
- ? *do not misuse agency equipment or vehicles;*

Fourthly, the codes are to give guidelines about the application of an ethics or conduct obligation as well as examples of the operation of an ethics or code of conduct obligation. In other words, the basic values and the concepts which flow from them are to be applied in public sector decision making.

The ethics obligations apply to all public officials (s.6). This effectively means everyone employed within the public sector except judicial officers, local government councillors, the staff of GOC's and corporatised corporations and certain entities under the *Education (General Provisions) Act 1989* such as parents and citizens associations.

### **The Role of the Integrity Commissioner**

In 1999, the *Public Sector Ethics Act 1994* (the *Act*) was amended to include Part 7, which created and empowered the Office of the Queensland Integrity Commissioner. The Integrity Commissioner's functions are (s.28):-

- ? to give advice to designated persons about conflict of interest issues as provided in the *Act*;
- ? to give advice to the Premier, if the Premier asks, on issues concerning ethics and integrity, including standard-setting for issues concerning ethics and integrity;
- ? to contribute to public understanding of public integrity standards by contributing to public discussions of policy and practice relevant to the Integrity Commissioner's functions.

Although the purpose of part 7 was to help Ministers and others to avoid conflicts of interest and in so doing to encourage confidence in public institutions, the definition of "designated persons" who may seek advice from the Integrity Commissioner means that the "others" are far more numerous than the "Ministers". The people described by s.27 as "designated persons" can be grouped in five categories:-

1. Members of Parliament
2. Statutory Office Holders
3. Chief Executive Officers
4. Senior Officers
5. Ministerial Staff

The most important group to the audience here today is the **Members of Parliament**. This group comprises the Premier, Minister, a Parliamentary Secretary and a Government member. Government member means a member of the Legislative Assembly who is a member of the political party recognised in the Legislative Assembly as being in government or a member of the Legislative Assembly other than a member of such political party who is a member of a parliamentary committee on the nomination of a member of a political party recognised in the Legislative Assembly as being in Government.

During the passage of the Legislation in 1999, the Member's Ethics and Parliamentary Privileges Committee (MEPPC) raised concerns about possible conflicts between the rulings given by the Clerk of Parliament and the Member's Ethics and Parliamentary Privileges Committee (MEPPC) and those of the Integrity Commissioner. The Premier referred the Committee to s.31 (3) of the *Public Sector Ethics Act 1994* which permits the Integrity Commissioner to refuse to give advice where the giving of advice would not be in keeping with the purpose of part 7 of the *Act*.

The resolution of the Legislative Assembly dated 25 May 1999, which contains the current provisions relevant to the Member's and Related Persons Registers of Interests, gives the Clerk of Parliament the responsibility of keeping the Registers and of answering questions raised by Members about matters to be included in a statement of interests. Complaints about a failure by a member to disclose a matter are dealt with by the Member's Ethics and Parliamentary Privileges Committee (s. 91 (c) of the *Parliament of Queensland Act 2001*).

Generally it is appropriate that Government members seek advice on conflicts of interest issues from the Clerk of Parliament or the Member's Ethics and Parliamentary Privileges Committee (MEPPC).

### **Seeking Advice**

The Integrity Commissioner may give advice about a conflict of interest issue if the person seeking the advice is a "designated person" and the person makes a written request for advice.

Advice cannot be sought by or about a person who has been, but is not presently, a "designated person" (s. 30 (7)). The request for advice about a conflict of interest issue can only be made in respect of a serving official whose personal interest is in conflict with his or her official duties.

A request for advice about a conflict of interest issue must disclose all relevant information. The Integrity Commissioner may ask the "designated person" for further information for the purpose of giving advice (s. 31 (2)).

The Integrity Commissioner may refuse to give advice if he or she reasonably believes that there is not enough information about the conflict of interest issue to give the advice or if the advice is asked for in circumstances where the giving of the advice would not be in keeping with the purpose of Part 7 of the *Act* (s. 31(3)). Advice given must be in writing. If advice is refused, the reasons for refusing to give the advice must be recorded in writing.

When giving advice about a conflict of interest issue to a "designated person", the Integrity Commissioner must have regard to (s. 32):-

- ? approved codes of conduct;
- ? ethical standards or codes of conduct adopted by the Legislative Assembly by resolution;
- ? ethical standards or codes of conduct approved by the Premier for Ministers; and
- ? may have regard to other ethical standards the Integrity Commissioner considers appropriate.

No examples are given of what “other ethical standards” might be appropriate. The *Public Sector Ethics Act 1994* and the *Public Service Act 1996*, the *Financial Administration and Audit Act 1977* and the *Financial Management Standard 1997* together provide a comprehensive statement of the basic values in public sector ethics. Generally speaking the ethical standards adopted by professional bodies fall within these basic values.

### **Disclosure of Relevant Documents**

The Integrity Commissioner must not disclose a relevant document relating to a person who has been, but is not presently, a “designated person” except to disclose that document to the particular “designated person” involved in the conflict of interest issue to whom the document relates.

Under section 34, the Integrity Commissioner must give a copy of a relevant document relating to a particular “designated person”:-

- ? to the Premier, if the Premier asks for a copy of the document;
- ? to the Premier, if the Integrity Commissioner reasonably believes that the person has an actual and significant conflict of interest.

Ministers and chief executive officers may ask for and be given a copy of the advice about a designated person about whom they may seek advice.

Only two people are authorized to disclose documents – the Integrity Commissioner and the “designated person”. Only the “designated person” can disclose documents publicly in order to receive the limited protection offered by s.35.

“Relevant documents” are:-

- ? the request for advice;
- ? any further information requested by the Integrity Commissioner and given to the Integrity Commissioner;
- ? the advice given by the Integrity Commissioner about the issue; and
- ? the record of the Integrity Commissioner's refusal to give advice.

If a "designated person":-

- ? Asks for advice about a conflict of interest issue involving that "designated person"; and
- ? Discloses all relevant information about the issue to the Integrity Commissioner when seeking advice; and
- ? Does an act to resolve the conflict substantially in accordance with the Integrity Commissioner's advice.

The "designated person" is not liable in a civil proceeding or under an administrative process for the act taken by the person to resolve the conflict. However, this protection does not affect the "designated person's" liability for an act or omission done or made in connection with the conflict of interest issue before the person received the advice (s.35).

The Integrity Commissioner is not liable in a civil proceeding or under an administrative process for an act or omission done or made by the Integrity Commissioner acting in good faith, and without negligence, when giving advice. If this protection prevents a civil liability attaching to the Integrity Commissioner, this liability attaches instead to the State (s.36).

### **"Conflicts of Interest"**

When the *Public Sector Ethics Act 1994* was amended in 1999 to include Part 7, a definition of "conflict of interest issue" was added. This definition was necessary to indicate the extent of the Integrity Commissioner's powers and responsibilities.

Within the scope of Queensland public sector ethics, a conflict of interest arises when a person's personal interests come into conflict with that person's official duties. If such a conflict arises it must be resolved in favour of the public interest. This means that three concepts are involved:-

1. official duties

2. personal interest
3. public interest

The **official duties** that a person employed in the public sector may have can be identified as:-

1. administrative obligations
2. ethics obligations
3. performance obligations

In the public sector, the kind of **personal interests** which may conflict with official duties include:-

1. A person's interest in property of any kind, including money, the value of which may be altered by a decision, recommendation or advice that person may make or be a party to making.
2. A person's commercial or business interest of any kind, including a future interest, which could be advanced or harmed by a decision, recommendation or advice that that person may make or be a party to making.
3. A person seeks or accepts gifts and/or hospitality which may influence or appear to influence decision making.
4. A person's relationships influence or appear to influence a decision, recommendation or advice that person may make or be a party to making.
5. A person's strongly held personal convictions which may make it difficult or appear to make it difficult for the person to make an impartial decision, recommendation or advice.
6. A person's capacity to make a financial gain or to prevent a financial loss by using confidential information.

There can be an exception, for example, when people are appointed as statutory office holders because they have a financial interest in the industry in respect of which they may make decisions. Usually in such a case, the Act which establishes the statutory office will describe the extent to which they can properly benefit from their decisions (eg sugar/ water).

Public officials serve the **public interest** when they faithfully perform their official duties. This means that where a conflict arises because of some of the interests described above, the personal interest will not be pursued: for example, a bribe to make a particular decision will

be rejected, decisions will not be influenced by the hope of an offer of employment, confidential information will not be used for private gain and Government property will not be used for private purposes.

Generally, three different kinds of conflict of interest can be identified:-

- ? actual
- ? apparent
- ? potential

An **actual** conflict of interest arises when personal interest and official duty meet head on, and duty loses out. An example is where a public official accepts a bribe on the understanding that a decision favourable to the person offering the bribe will be made.

An **apparent** conflict arises when it would appear to a fair minded person in possession of all the facts that the decision maker has compromised his or her impartiality. An example is where a public official accepts hospitality from a person whose application or request is being handled by the official.

A **potential** conflict occurs if a public official has an interest in property which could be caught up in the process upon which the official is beginning. An example is where a surveyor, who is asked to identify possible routes for a bypass road around a town, owns land in the town.

On some occasions when the term "conflict of interest" is used, the situation being discussed would be more correctly described as a **conflict of duty**. A public official may have no personal interest in the decision he or she is making, but nonetheless the decision will require the resolution of a conflict between the duties which fall upon the official, for example, when the official is required to ensure that public resources are not wasted and also to show respect for the person who frequently complains about issues which appear to be very minor.

## **Conclusion**

If you would like to peruse any further information written by the Integrity Commissioner the Honourable Alan Demack AO, or published by the Office of the Queensland Integrity Commissioner, please do not hesitate to navigate our website [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au)

And from the Office of the Queensland Integrity Commissioner, we wish you well in contributing to the Parliament, and communities of our great state.