

Queensland Integrity Commissioner

by the Hon. Alan Demack AO, Queensland Integrity Commissioner
Ecumenical Social Justice Day, Toowoomba - 3 April 2001

Thank you for your invitation to speak to you on this your Social Justice Day. One of the responsibilities I have as Integrity Commissioner is to contribute to public understanding of public integrity standards. This address allows me to look at the issues from a different perspective than I can do on most public occasions. Speaking to a church gathering, I can spend more time speaking of my experience as a Christian.

Indeed it was suggested to my executive assistant that I should give:

- ✍ a self introduction
- ✍ a description of my background and personal history
- ✍ background as to how I came to be appointed as Integrity Commissioner and
- ✍ the role and function of the Commissioner

Background

I was born in Caboolture in September 1934. My father's grandparents came to Queensland from England in the 1860's and 1870's. As his family had been, he was an active member of the Methodist Church. He decided as a young adult that he wanted to study dentistry and qualified in 1929. He commenced practice in Caboolture two years later at the beginning of the Depression. He married my mother in December 1933. In April 1934 he was diagnosed as suffering from Bright's Disease and he died in August 1934.

My mother went to live with her parents. Her father was a saw miller, the son of German migrants who came to Queensland in the 1860's. Her mother came to Queensland as a young child, part of a large family who also came from Germany. I never talked to my maternal Grandfather about his experiences as the son of German speaking parents. However, his conduct showed a determination to be staunchly Australian. During both World Wars the family was involved in patriotic activities, and he served two terms as

Chairman of the Caboolture Shire Council. So from an early age, I had the example of active involvement in community affairs.

In 1910, my mother's parents joined the Methodist Church in Caboolture, so both sources of my genetic material belonged to the Methodist Church. I grew up in that church and remained an active Methodist until the Uniting Church in Australia was formed in 1977 upon the union of the Congregational, Methodist and Presbyterian Churches. I became an accredited local preacher in the Methodist Church in 1957, and since union, have been a lay preacher in the Uniting Church. I lead worship services in Rockhampton on about 20 Sundays a year.

Education

I attended the Caboolture Rural School until I sat for the Scholarship Examination in 1948. My memories of primary school are all very positive. I commenced my secondary education in 1949, attending Brisbane Boys' College as a boarder. Again I enjoyed my secondary education.

In 1953, I commenced law studies at the University of Queensland. I became a resident of Kings College and remained there for twelve months after I graduated in 1957. While at University I became involved in the Australian Student Christian Movement. This gave me both a deep respect for theology and biblical studies, and a lasting commitment to the ecumenical movement.

Professional Life

In my fourth year as a law student I had the good fortune to read in the chambers of Arnold Bennett QC. Arnold was a Methodist layman living at Auchenflower, whom I came to know because of the interest he showed in senior students at Brisbane Boys' College. In my fifth year, I was further blessed by becoming the associate to Mr Justice Philp. Upon graduation in December 1957 I was admitted as a barrister, and commenced practice in Brisbane in February 1958.

I had no family connections with the law, but found that the barristers in Brisbane, a number of whom had lectured us in the law course, were most welcoming. In 1958, the Bar in Brisbane enjoyed none of the affluence people later associated with fashionable barristers. I acquired a modest practice sufficient to support a family that grew in numbers until, in 1968, our fifth child was born.

In May 1972, I was appointed as a Judge of District Courts. In January 1976, I resigned that commission and was appointed as a Senior Judge of the Family Court of Australia. In 1978, I resigned that commission and was appointed as a Judge of the Supreme Court of Queensland and Central Judge. As Central Judge I was stationed in Rockhampton, where we have lived since January 1978.

During my judicial years I served as chairperson of several commissions and committees;

- ✍ Commission of Inquiry into the status of women (1973-4)
- ✍ Commission of Inquiry into the nature and extent of the problems confronting youth (1974-5)
- ✍ Committee examining teacher education (1977)
- ✍ Committee examining in vitro fertilisation and related matters (1983)
- ✍ Committee considering granting of university status to the Capricornia Institute of Advanced Education (1989)

I retired as a Supreme Court Judge in May 2000.

Community Involvement

I was a member of the Brisbane Rotary Club from 1968 to 1976. I was chairperson of the Queensland Marriage Guidance Council from 1974 to 1978. From 1978 to 1985 I was President of the Rockhampton District Scout Committee. From 1981 to 1992, I chaired the Rockhampton Lifeline Committee. I have been a patron of both the Endeavour Foundation, Rockhampton Branch and the Rockhampton Blue Nursing Service (now Blue Care) since 1978, and of the Rockhampton Chamber Music Society for almost as long.

Church Involvement

One of the things I learned in the Student Christian Movement is that my major church commitment is to my local congregation, a discipline I have followed for almost fifty years. I have also served on various committees in the Methodist Church leading up to church union, and at presbytery or regional level in the Uniting Church. From 1993 to 1999, I was a member of the national Catholic/Uniting Church Dialogue. We produced the booklet, "Inter-Church Families".

Personal

I met Dorothy Alexander at an SCM Conference at Armidale in January 1957. She had completed her Arts Degree at Melbourne University with 2A Honours in English and French, and had topped her year in the Diploma of Education. We married in March 1959.

Dorothy is my best friend. In 1987 she became a lay pastor in the Uniting Church, serving for ten years in a parish settlement in Rockhampton and then for four years as a hospital chaplain. During her parish years, we lived in a manse, an experience which has been part of my formation. We are now both in retirement. Our five children are married and we have four grand-children, with a fifth eagerly awaited in July 2001.

Appointment as Integrity Commissioner

I hope it has been useful to give some detail to my curriculum vitae. Generally we listen to people without knowing much about them. I believe that I bring all the various experiences I have had to the role of Integrity Commissioner.

I do not know much detail of how I came to be appointed. The legislation establishing the office of Integrity Commissioner was enacted in November 1999. Advertisements were placed in newspapers calling for applications which closed early in 2000. I was then a Judge and so did not apply. I was, in fact, unaware of the advertisements and of the office. In early June 2000 I was approached by a member of the nominating committee to see if I was interested in the position. I met the committee in June 2000 and, shortly after,

Dorothy and I went overseas for seven weeks. It was her long service leave and my retirement holiday. After our return, my appointment was announced.

The Role of the Integrity Commissioner

The legislation which establishes the office of Integrity Commissioner was an amendment to the *Public Sector Ethics Act 1994*. The 1994 Act set out five ethics principles which are to apply to public officials. It expanded those principles into ethics obligations, and required each public sector entity to develop a code of conduct which expressed those ethics obligations, and which also developed conduct obligations. The concept was to ensure that the public sector employees behaved in a proper way.

Generally speaking, each government department has developed a code of conduct which describes the conduct obligations required of its employees, and which also gives advice on ethical decision making. The office of the Integrity Commissioner allows senior government decision makers to obtain advice about conflicts of interest they may have. In giving advice, the Commissioner works within the principles expressed in the *Public Sector Ethics Act 1994* and the codes of conduct.

The role is essentially to examine the facts of a particular case and apply the appropriate principle. There is no investigative role, and no enforcement powers are given to the Commissioner.

What Is A Conflict Of Interest?

A conflict of interest arises when there is a conflict between a person's personal interest and a person's official duty. It is important to begin by looking at the public official's official duty in a particular case. Generally speaking, that duty is found in the *Public Service Act 1996*, the *Public Sector Ethics Act 1994* and the *Financial Management Standard 1997*.

Once that duty is identified, the next question is whether the person with that duty has a conflict because of a personal interest.

Examples of a personal interest

It is difficult to give an all-inclusive definition of what amounts to a personal interest, but such an interest can arise if:

- ✍ A person has an interest in any kind of property, the value of which may be altered by a decision the person may be involved in making.
- ✍ A person accepts gifts and/or 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 unmeritorious advantages for relatives and friends.

Dealing With A Conflict Of Interest

There are many different ways in which a conflict of interest may be dealt with.

If a public official, who has been preparing an environmental impact study in respect of a development proposal, is invited to spend a weekend on the developer's yacht, the offer should be declined. The duty the official has is to prepare an unbiased report, something which is best done at arm's length. The weekend on the yacht would put the official in danger of losing objectivity.

If a government owned electricity supplier is considering reducing tariffs to all individual consumers, the members of the board, if they are consumers of electricity, should declare at the board meeting that they will benefit from the reduction. However, because the same benefit is available to all individual consumers, there is no reason why the members of the board should not vote for the proposal, if it is economically sound. Their duty is to make economically sound decisions, and they will receive no benefit which is different from that received by all consumers.

On the other hand, if a director of a government owned electricity supplier is also a director of a company that buys large amounts of electricity, and if that company is seeking a special reduced tariff, the director will have a conflict of interest, and must not only disclose it to the board of the electricity supplier, but should also take no part in

considering the request for a special tariff. This is because the director, who is a member of each board, has a duty to maintain the confidentiality of each board's business and the duty to act honestly in respect of each board. The conflict arises, not because of any benefit that will accrue to the director, but because he is employed as a director in two corporations which must deal at arm's length.

Who can seek the advice from the Integrity Commissioner?

The *Public Sector Ethics Act 1994* identifies the people who can seek my advice, and calls them "designated persons". There are broadly four categories of designated persons-

- ✍ some members of Parliament
- ✍ ministerial staff
- ✍ statutory office holders
- ✍ senior public officials

The members of Parliament who are designated persons are the Premier, Ministers, Parliamentary Secretaries and Government Members. There are presently 67 of them. There are about 2500 senior public officials and ministerial staff and about the same number of statutory office holders.

Statutory office holders are people who are appointed either by the Governor in Council or by a Minister to an office established under an Act. There is a very large variety of such offices, and the holders of those offices make decisions which affect a significant part of our lives.

How Is Advice Sought?

Any designated person may make a request for advice in writing. For many senior public officials, such requests must be certified by the departmental CEO. The request must state the facts which raise the issue of a conflict of interest. If the stated facts are not adequate, I can request more detail.

Advice is given in writing, and, if I decline to give advice, the explanation for that must also be in writing. An example of refusing advice would be if a government member of Parliament asked a question about the disclosure of interests that must be made. This is a matter for the Clerk of Parliament rather than for the Integrity Commissioner. Also, advice may be refused if the issue concerns some one who was, but is no longer, a designated person. The purpose of giving advice about conflict of interest is to assist people in making proper decisions. A person who is no longer a designated person is not, in any relevant sense, a decision maker.

What Happens To The Advice?

Generally speaking, the documents which request the advice and which express the advice are confidential and cannot be disclosed under the *Freedom of Information Act*. However, the person to whom the advice relates may disclose the documents, just as I can disclose the advice to that person. If the Premier, or a minister, or a CEO requests a copy of advice which relates to a person under their area of responsibility, I must disclose that advice. If I reasonably believe that a person has an actual and significant conflict of interest and has failed to resolve the conflict within seven days, I must give a copy of the relevant advice to the Premier.

Terms of Appointment

The *Public Sector Ethics Act 1994* provides that the Integrity Commissioner may be appointed for a term of five years. My appointment is for three years.

The position is an independent one, but for administrative purposes I am supported by the Department of Premier and Cabinet. I have a full-time executive assistant who works in an office in Federation House, William Street, Brisbane. My appointment is part-time for two days a week.

I have an office in Rockhampton, and most of my time is spent in that office. With contemporary means of communication I can handle most of the work I have to do from the Rockhampton Office. I also do some work at home.

I am required to make an annual report to the Premier. It must be in general terms and must not contain information likely to identify individuals who sought advice about a conflict of interest issue.

Other Aspects To The Role

The role of Integrity Commissioner is a limited one. Apart from giving advice to designated persons about conflict of interest issues, I am to give advice to the Premier, if the Premier asks, on issues concerning ethics and integrity standards.

We are establishing a web site which will be one way of contributing to public understanding. The site will include papers and speeches as well as general information.

Morals, Ethics And Law

One of the difficulties in contributing to public understanding arises from our love affair with the word “ethics”. It is used to identify the moral principles which shape our thinking, as well as the process by which we apply those principles in our day to day decision making. Moreover, we treat laws as if they are without a moral basis. I find it more helpful to retain the words “morals” and “morality” in respect of the principles which shape our thinking, and to use the word “ethics” to describe the process we use to apply those principles.

The use of the word “ethics” to describe both the underlying principle and the process of applying those principles, often leads to confusion. We rightly think that the principles are absolute and then assume that the application will result in only one answer. In fact, principles often interact, and the factual situation to which they are applied may not be clear. This means there may be genuine differences in respect of the correct answer.

Laws show us how to apply those principles in frequently occurring situations. Most of the decisions designated persons will have to make are in respect of frequently occurring situations. The *Public Sector Ethics Act 1994* and the codes of conduct produced in response to that Act have established a significant number of “conduct obligations”, as they are called. They are in fact laws that constrain decision making as well as behaviour.

This means that in most instances, the decision makers will be able to avoid conflicts of interest by carefully following the written word.

It is only in respect of the unusual cases that my advice will be needed. I expect that most of the requests I receive will come, not from members of Parliament or from senior public servants, but from statutory office holders. The reason for this is that we use an increasing number of boards, corporations and authorities to carry out community responsibilities. The people appointed to these bodies are frequently involved in the section of our community with which the body deals. For example, each cane production board has five members, two of whom are nominated by the mill owners and two by the mill suppliers' committee. The *Sugar Industry Act* provides that, if a member of the board has a "material personal interest" in a matter before the board, the member must not vote on the matter. There may be occasions when it will not be clear whether a particular interest is a "material personal interest". If this happens there may be a need to seek advice. In other instances, the issue will be dealt with by the member acting cautiously and not voting.

Conclusion

The office of the Queensland Integrity Commissioner provides advice, when asked, to a large number of decision makers in the public sector. There is no investigative role and no supervisory role. The essential task is to give advice in respect of conflicts of interest. This is, in a sense, a pastoral role designed to promote integrity in decision making through a personal, rather than an institutional approach.