

**An address to the  
Queensland Public Sector Ethics Network (QPSEN)  
Tuesday 3 August 2004  
by  
Gary Crooke QC, Queensland Integrity Commissioner**

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I have been asked to speak to you about my first impressions as to the role of the Queensland Integrity Commissioner.

I appreciate that my audience consists of those who have professed a dedicated interest in the field of ethics in the public sector and I will not trouble you with basic concepts with which you are well familiar.

Naturally my role is dictated by the provisions of the statute which sets up the office which I hold. Essentially it is to give advice on ethical matters to the Premier (if asked). Secondly it is to give advice to Ministers, Parliamentary Secretaries, Members of Government, Senior Public Officials and others in relation to conflicts of interest. Further, it calls upon the Integrity Commissioner to contribute to public understanding of public integrity standards.

I confess to being on a learning curve and endeavouring to digest the atmosphere in which public sector ethics is put into practice on a day to day basis. Naturally I qualify my impressions by acknowledgement of this limitation.

I hold the firm view that ethics must be implanted into the subconscious and be applied naturally as a reflex action rather than being practised through some fear of retribution or slavish and unthinking adherence to some code.

Going back to a past life, I think the analogy of the necessity for security in a law enforcement environment is a useful one. There, people coming fresh to the organisation might well have not experienced a need for close security. The way to

make them aware of that need, and to practise it, is not to rely upon mandatory directions. Rather it is to have the members appreciate the need for it and the underlying principles that apply, and then to react instinctively in their behaviour so that matters which relate to security are an inherent part of their being. I think this is very much what needs to be an approach to the successful embracing of ethical standards in any organisation.

Having an instinctive and intrinsic understanding of the need for ethics and the basic principles thereof, is an indispensable component of any organisation which acts ethically. On all too many occasions when some blunder is made that ignores questions of conflict of interest, the bald fact is the transgressor did not give even a passing thought to the possibility of such a conflict. Probably he or she was sidetracked, often in a well intentioned way, by other matters such as achieving a speedy or supposedly efficient result.

If there exists an intrinsic awareness of the need to cast an ethical eye over any decision there is likely to be this subconscious factor present of which I spoke. This will alert the person concerned to pitfalls and will promote careful consideration to be given to ethical issues surrounding the decision. It may even lead to seeking advice. Perhaps the first step is to ensure that this subconscious awareness is present. This is easier said than done. In my view it is simply unproductive and inappropriate to demand that people adhere to promulgated ethical standards without more. There needs to be an understanding of the need to do so, and awareness of the basic principles which underlie any specific rules. Further, to raise the subject of ethics with persons has its sensitivities. No person would like to think it is presumed that he or she has no appreciation of ethical standards or values. In fact it may be quite offensive to many people to lecture them on the basis that they are devoid of any such knowledge. Rather the approach must be a much more subtle one that builds upon a person's innate wish to do the right thing and focuses upon enhancing knowledge and skills in this area rather than imposing some new concept. Here I am sure I can benefit from input from members of this group who may well be able to assist with ideas that come from people in the field and as to how most effectively the message can be conveyed.

Another matter which has occurred to me in my initial considerations is a factor that may well be an indicator of danger signs in relation to ethical standards. It is my view that if a person or a group cannot do small things well and conscientiously, there is a very real danger that bigger and more significant things will suffer the same fate. If a person is prepared to be slapdash or take short cuts in relation to every day incidents of their work (that is, is not conscientious) it seems to me that such person would find it very difficult to give proper attention and have proper regard to matters of ethical requirements. I see this as a useful yardstick for supervisors as well as senior executives in any area. It may provide an opportunity to focus upon a particular area to give it more attention in the field of ethical training than would otherwise be the case.

I have been made aware of some recent developments where commercial activities are being contemplated by government departments through the skills and initiative of staff members. Although quite extensive discussion has taken place as to the commercial way forward, there seems to have been an absence of pausing to consider ethical issues that might obtain. I understand however that work is in progress to develop a whole of government approach to not only the complex legal issues but also the ethical issues which attend the use and ownership of intellectual property.

The question of whether an unacceptable conflict of interest exists is often not a straightforward one. Minds, including the most experienced legal minds, may differ as to what should be the proper course in a particular set of circumstances. For example, quite recently a matter was taken as far as the Australian High Court which raised the question of whether a person, who was a scribe in the course of a decision making process, brought unacceptable conflicts to that process. What occurred was that the scribe had an adult son who held some shares in an entity which was competing for a mining lease to which the decision making process related. This adult son had not lived at home for several years and his shareholding was not large. It so happened however that the shares which he held were shares in the ultimately successful company.

The scribe was not a decision maker in the process, but nevertheless it was argued that his presence and the situation of his son infected the process such that there was an unacceptable conflict of interest and the decision should be set aside.

This issue was taken through Appellate Courts ultimately to reach the High Court of Australia where seven Justices sat.

Six of these Justices rejected the contention advanced, but one of them was sufficiently troubled to rule that the process should be set aside.

Such happenings only serve to demonstrate the wisdom of the admonition that “you cannot be too careful”. However on the other hand, the machinery of Government and public administration must go on, and processes should not be disturbed by reason of objections which at the end of the day prove to be unfounded.

It was my impression when I considered the role which the Integrity Commissioner was asked to play that there was value in having such a resource in the context of daily need to progress with the making of decisions in a context where there could be difficulties of this nature.

What I regard as fundamental to the Integrity Commissioner’s place in the system is the statutory mandate of secrecy in relation to any inquiry that is made. To my mind, this encourages a person to make use of a confidential sounding board in relation to areas which may well prove difficult. The statute provides for the ability of the requester of the advice to make the advice known to whatever extent that person should feel appropriate. Of course, he or she may choose to keep it completely confidential.

At this early stage, it seems to me that the security that attaches to the statutory secrecy is a matter that must be carefully fostered. I have detected not infrequently a feeling from those entitled to apply for advice that to do so might be perceived as reflective of some shortcoming on their part. Certainly, this is not the intention of the legislation nor is it a proper understanding of the circumstances in which advice

should be sought. We all understand that there are some situations where the answer is not simple and indeed may be in a grey area where minds will differ.

It is not a shortcoming but rather a strength in such circumstances to seek the advice which the statute makes available. The alternative is to rely upon one's own judgment. But this is in an area which, by its very nature, brings into question the issue of whether self interest is likely either in reality or in perception to colour a decision to be made. The person with the putative self interest is undoubtedly not the best judge of his or her own circumstances.

The annual reports of the Integrity Commissioner have shown that in the first year of the existence of the Office some thirty requests for advice were received. Last year, it was more like fourteen.

Whether this is a healthy development or not is a moot question. On the one hand, I think impressive progress has been made in the giving of ethical training and the production of sophisticated, yet clearly enunciated, codes of conduct which in many respects go a long way to answering questions which are posed. On the other hand, the question still has to be asked as to whether there is a sufficient awareness of the facility provided by the Office or whether in some way there is inappropriate reluctance to make the confidential approach which the statute provides.