

Internal Auditors and the Integrity Commissioner

An address to a meeting of the Institute of Internal Auditors held on 5 June 2002
by the Hon Alan Demack AO, Queensland Integrity Commissioner.

It is generally helpful to examine any issue from an historical perspective. This is particularly important in these times when we are so obsessed with change that we think the past has nothing to teach us.

Having decided that I should begin this address in this way, I searched my bookshelves for “The Twelve Caesars” written by the Roman historian, Suetonius. Unhappily, it must have been one of my books that has not survived, so I must rely on memory¹. When the emperor Augustus died, members of the Roman Senate approached Tiberius to find out if he was willing to be emperor. Tiberius acted as if he was reluctant to accept the office. Only when the Senate agreed to give him unfettered control of the revenues of the Roman Empire did he agree to being enthroned as emperor.

Your memory of English history will remind you of the often bitter struggle between Sovereign and Parliament over revenue. It took a long time for Parliament to gain control over the way the revenues of England were raised and spent.

¹ Upon rereading Suetonius I have found that my memory is unreliable and the story about Liberius is not to be found in Suetonius.

It is no accident that the *Constitution of Queensland 2001*, which commences tomorrow, contains these two principles. “A requirement to pay a tax, impost, rate or duty of the State must be authorised under an Act” (s.65). “The Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of an amount from the consolidated fund or an amount required to be paid to the consolidated fund that has not first been recommended by a message of the Governor” (s.68 (1)).

At the beginning of the twenty-first century we are concerned about how State revenue is spent and how Parliament oversees that expenditure. Although there is always vigorous debate about each annual budget and lengthy analysis by the estimates committee, our expectation is that the procedures that are in place will allow the issues to be resolved decently and in good order. However, it is important to recall the long and bloody struggle that the English Parliament had as it tried to control Executive (Crown) expenditure. This reminds us that citizens want to see that the money taken from them by taxation is spent in ways that they approve.

It is no surprise then, that one of the officials appointed within the first twelve months of Queensland’s existence was the Auditor General. The *Audit Act 1861* set out in detail the Treasurer’s responsibilities in respect of the keeping of the accounts of consolidated revenue, and the Auditor General’s responsibilities “for the effectual auditing of the public accounts”.

In 1861, the public accounts were appropriately modest so that the Auditor General and one assistant could effectually audit them. Income was mainly from customs duties imposed on spirits, tobacco, sugar and molasses, and from the sale of land.

Four ministers, the Colonial Secretary, the Treasurer, the Secretary for Lands and Public Works and the Attorney General, and their staff absorbed much of the expenditure.

Having absolute control of revenue allowed Tiberius to do as he pleased. In a representative democracy, political leaders have to appear to do as the electorate pleases. First and foremost they have to show responsible management of the revenue. It is no longer enough to have an annual auditing of public accounts. Public sector entities must have internal auditors and audit committees. In a sense, you are an assurance to the tax-paying public that its money is being well spent.

The *Financial Management Standard 1997* sets out the things that must be in your internal audit charter. You will be aware of these things which all promote integrity within public sector entities. How do you relate to the Integrity Commissioner whose purpose is to encourage confidence in public institutions? That sounds very like your role.

The office of Queensland Integrity Commissioner was established in 1999 when Part 7 was added to the *Public Sector Ethics Act 1994*. The Integrity Commissioner was given three functions: -

- ? to give advice to designated persons about conflict of interest issues as provided under division 5 of Part 7;
- ? 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 discussion of policy and practice relevant to the Integrity Commissioner's function.

I will concentrate on the first of these functions, the giving of advice to designated persons about conflict of interest issues. The Act identifies five groups of people who are designated persons.

? Government members of Parliament
–the Premier
– a Minister
– a Parliamentary Secretary
– a Government member

? Statutory office holders

? A chief executive officer of a department or a public service office or a government entity

? Senior officers employed in departments and public service offices (“senior officer” includes senior executive officer and senior executive equivalent)

? The staff of Ministers and Parliamentary Secretaries

Each of these people can seek advice about their own conflicts of interest. The Premier can also seek advice about a conflict of interest issue involving any designated person. A minister can seek advice about a conflict of interest issue that concerns designated persons within his/her portfolio, except senior officers. A

Parliamentary Secretary can seek advice about a conflict of interest issue involving staff. Chief executive officers can seek advice about designated persons employed in their department, public service office or government entity.

Advice cannot be sought by or about a person who has been, but is not presently, a designated person.

Advice must be sought in writing. In the case of senior officers, the request must be accompanied by a signed authority to seek the advice from the relevant chief executive officer. This is consistent with s.84 of the *Public Service Act 1994* which requires public service employees to disclose conflicts of interest to chief executive officers.

The Integrity Commissioner can ask for further information. If there is not enough information to give advice, the request may be refused. The Integrity Commissioner can also refuse to give advice in circumstances where the giving of the advice would not be in keeping with the purpose of Part 7 of the *Public Sector Ethics Act 1994*. For example, if a government member sought advice about an issue arising in the Legislative Assembly, I would generally refer the member to the Members Ethics and Parliamentary Privileges Committee. By s.90 of the *Parliament of Queensland Act 2001*, that committee has responsibility for the ethical conduct of members.

A conflict of interest issue means an issue about a conflict between the person's personal interests and the person's official duties. The purpose of Part 7 of the *Public Sector Ethics Act 1994* is to help members and others to avoid conflicts of interest

(s.25). This means that advice should be sought before the duty, with which a personal interest is in conflict, is performed. If a person sought advice after selling shares because confidential information obtained in the course of employment indicated that a pending government decision would reduce the value of the shares, the request would be refused.

Any conflict of interest should be resolved in favour of the public interest.

There are then three concepts that need some analysis: -

- ? official duties
- ? personal interests
- ? public interest

I have prepared an information sheet that offers some guidance about these three concepts. It should have reached you by now. If you have not seen it, copies are available.

Sometimes people speak as if conflict of interest issues provide difficult ethical dilemmas. This is not so if the primary concern a public official has is to perform the official duties the person has. For example a public service employee must carry out duties impartially (*Public Service Act 1996*, s.25 (f)). If this is kept in mind, clearly the offer of some financial benefit in return for a favourable report will be rejected without hesitation.

The more difficult decisions arise when there is a conflict between duties. For example, there will often be a tension between the obligation to show respect for persons and the obligation to show economy and efficiency. This kind of issue is not one about which a public official can seek advice from the Integrity Commissioner. It is part of the day to day management of conflicting duties.

Requests for advice, any additional information, advice which is given and any record of a refusal of advice are confidential and cannot be disclosed under the *Freedom of Information Act 1992*. However, those documents can be disclosed to a range of designated persons, generally, to those who could have sought advice about a particular conflict of interest. Of interest are the provisions which allow the Integrity Commissioner to disclose a document to the Premier. There are four steps.

1. The document must relate to a designated person other than a senior officer.
2. The Integrity Commissioner must reasonably believe that the person has an actual and significant conflict of interest.
3. The Integrity Commissioner must advise the designated person in writing of that belief and of the requirement to give a copy of the document to the Premier.
4. The designated person must fail to resolve the conflict to the Integrity Commissioner's satisfaction within 7 days after being given such advice.

It is significant that it is not enough that the conflict of interest involves a potential or perceived conflict. It must be an actual and significant conflict. That does not mean

that potential or perceived conflicts of interest are not significant. It only means that such matters are not required to be disclosed to the Premier.

So far as senior officers are concerned, documents relating to their conflicts of interest issues are to be disclosed to their chief executive officer if so requested by that officer. I would expect that a chief executive officer who authorises a request for advice by a senior officer would ask for a copy of the advice.

I understand that as internal auditors you are all senior officers. I have used that phrase as shorthand to include senior executive officers and senior executive equivalent, as is done in s.29 of the *Public Sector Ethics Act 1994*. Consequently, if you have the written authority of your chief executive officer, you can seek, in writing, advice on any conflict of interest issue. That would involve a conflict between your personal interest and your official duties.

While the advice is available only within a narrow band, the Integrity Commissioner plays an important preventative role in the overall integrity system in place in Queensland. I am ready to be of use to you. It is important that your oversight of the expenditure of public money is not marred by a conflict between your personal interests and your official duties.