

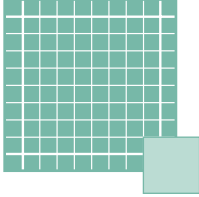
Building Integrity in the Queensland Public Sector
A Handbook for Queensland Public Officials

The Honourable Alan Demack AO
Queensland Integrity Commissioner



Queensland
Government

Foreword



The 144th anniversary of the opening of the first Queensland Parliament will fall on Saturday 22 May, 2004. Over those years, the building of integrity in the Queensland public sector has been both the vision and the life's work of thousands of people. The task is never complete because integrity is tested everyday in the myriad decisions, fleeting or careworn, minor or momentous, which public officials make.

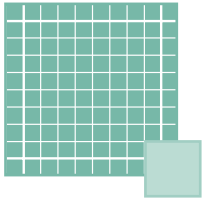
This handbook is offered to public officials in the hope that the ethics which undergird our laws will find full expression in the integrity they build in today's public sector.

One word of caution, the discussion of s.89 of the *Criminal Code 1899* on pp.35-36 refers to a part of the law which has not been tested in Queensland and has been the subject of differing opinions.

I could not have completed this handbook without the able assistance of my Executive Coordinator, Katherine Navin, to whom my thanks are due. I also thank the officers of the Queensland Audit Office, the Crime and Misconduct Commission, the Ombudsman's Office and the Office of Public Service Merit and Equity whose comments upon my draft have made this a more reliable text.

Alan Demack
Rockhampton
April 2004

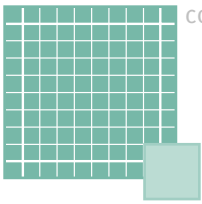
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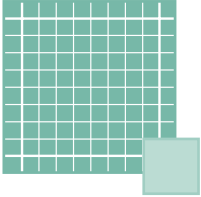
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Introduction

The purpose of this handbook is to explain how public sector ethics are expressed and practised in Queensland. Public sector ethics require four things:

- a clear set of basic values;
- a system which expresses those values in serving the government and the public;
- a system which allows those values to be expressed within the public sector;
- oversight of the workings of the system.

In Queensland the basic values are expressed in the *Public Sector Ethics Act 1994* and the *Public Service Act 1996*.

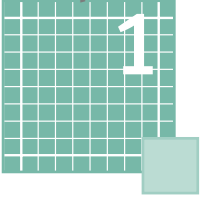
The system which expresses those values in serving the government and the public is found in the *Constitution of Queensland 2001*, *Parliament of Queensland Act 2001*, *Public Service Act 1996* and *Public Sector Ethics Act 1994*.

The system which expresses those values within the public sector is found in the *Public Service Act 1996*, *Equal Opportunity in Public Employment Act 1992*, *Crown Employees Act 1958* and *Whistleblowers Protection Act 1994*.

Oversight is provided in three ways. Firstly, the Office of the Public Service Commissioner (Office of Public Service Merit and Equity) and the Office of the Integrity Commissioner provide advice. Secondly, the Auditor-General, the Crime and Misconduct Commission (CMC), the Ombudsman and a number of other statutory bodies investigate failures in the system and encourage systemic change. Thirdly, public scrutiny is provided by members of Parliament, the news media, community organisations and individuals.

It is not the purpose of this handbook to discuss all these matters in detail. Neither is this handbook written for people who are students of law and/or ethics. The reason for adding this handbook to the voluminous literature about public sector management is to give senior managers and officers responsible for the public business of Queensland an overview of the way law and ethics interact in their daily work.

This book has been prepared as a contribution to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Integrity Commissioner's functions (*Public Sector Ethics Act 1994*, s.28(c)).



A Brief Introduction to Ethics and Law

Basic Values

Every day we make decisions. Sometimes we put considerable effort into making the decision: for example, when buying a house or a car. Sometimes the decision is so much a part of daily living that we may not realise that what we have done involved making a decision: for example, when we find a way to stop an annoying conversation.

The decisions we make, which involve our interaction with people and our use of resources, expose the basic values in our lives. In many instances those basic values will dominate our minds to the point where our decisions will follow a constant pattern of behaviour. They will hardly seem to be conscious decisions at all. For example, in times past, men holding a particular set of social values would always raise their hats to ladies and offer them a seat in a tram. Those particular basic values had become so embedded that the actions appeared to be automatic. Such social etiquette has all but disappeared, but it serves to illustrate the point.

The basic values that we hold may vary from time to time. The way we apply them in our daily activities may also vary. However, if we are to live within communities, it is necessary for us to have a set of basic values which are generally accepted by people in the community.

We use the word ethics to embrace four different, but closely related concepts:

- the basic values we express in our behaviour;
- the study of the effect of those basic values on human existence;
- the obligations and expectations those values create;
- the application of all these three concepts in our decision making.

We can identify the basic values that we express in our behaviour through reflection and discussion. In doing this we are looking for the basic values that allow a community to function with reasonable harmony. We may settle upon what was called the golden rule: “Do for others what you want them to do for you” (Jesus of Nazareth). We may prefer the older negative form: “What you do not want done to yourself, do not do to others” (Confucius). Both express the idea or principle of reciprocity.

What effect does that basic value have upon our daily lives? Suppose you work in a high rise office building that is serviced with lifts which become overcrowded at peak hours and which have doors which close quickly and violently. You want to enter the lift, but as you try, others begin to alight. People are jostled and some are struck by the closing door. But if you stand back while others alight there is a strong possibility that the lift door will close and the lift will leave without you. Using the principle of reciprocity, what would you want a person entering the lift to do if you were alighting from the lift? You would want that person to let you alight.

But what happens, if, having allowed the exiting passengers to alight, the door closes before you enter? Does the situation create obligations and expectations in others in the lift? Often enough someone in the lift will press the open button to allow both an orderly exit and a timely entry.

Consequently, when those using the lift are functioning as an ethical community with shared basic values, people wanting to enter the lift will stand back to allow the passengers to alight, expecting someone in the lift to keep the door open until they can safely enter.

In this little story, we have used all four aspects of the word ethics. The decision is based on the obligations and expectations created by a reflection upon the effect of the principle of reciprocity on the daily concerns of a lift traveller.

The Purpose of Law

Sometimes the same set of facts keeps recurring. If the standards of behaviour are constant, then the decisions concerning those same facts will be the same, and will become a custom which most people observe. If it becomes desirable that all people make the same decision, a law to that effect will be made. Try to imagine the first time two vehicles, being driven on the left hand side of the carriage way by a driver sitting on the right hand side of the vehicle, approach a right angled intersection at approximately the same speed, one travelling north, and the other travelling west. There is a likelihood of collision. One or both must slow down or stop. The driver travelling north can see the vehicle on the right more easily than the northbound vehicle can be seen by the other driver. To avoid a collision the north bound driver gives way, doing what could be expected of the other driver if that driver had the same advantage. As traffic increases, this decision becomes a custom, and then a law.

This helps to identify the purpose of law. It provides a basis for consistent decision-making within the web of relationships which give shape to community life. Within the traditions that have influenced our community, three concepts are central to the purpose of law:

- providing some certainty to the relationships which exist in a community, between individuals, between Government and individuals, and with or between commercial entities;
- providing restraints upon behaviour which is damaging to relationships in the community;
- educating people in their community obligations.

If these three concepts are analysed, it will be seen that our ethics, in every sense of the word, provide both the foundation for law, and also the vision which allows the application of law to be just.

Assume that you have agreed to sell your car to a friend for \$10,000. The friend has arranged finance and comes to you with a bank cheque for \$10,000, expecting to receive the car. You say, "I know I agreed to sell my car to you for \$10,000, but Joe Dealer has offered me \$12,000 and I am going to sell to him." Your decision will cost you a friend. It breaks the principle of reciprocity, and denies your responsibility to complete the bargain which you have made. In other words, it is unethical conduct. But the bargain is also a contract, and the law of contract requires you to keep your bargain. Our laws relating to the sale of goods provide some certainty to the commercial relationships that exist between people, and between people and trading entities.

Suppose that, instead of speaking of a better deal, you take the cheque, saying you want to cash it before you hand over the car. You then cash the cheque, but keep the car and the cash. You can expect to be charged with stealing. Your conduct has gone beyond merely breaking a contract. It not only breaks the principle of reciprocity, but is clearly dishonest. It is unethical. It also merits punishment, because theft is one of the activities which damage relationships within a community.

There is, hopefully, the possibility that when you tell your friend of your better deal, the friend will tell you that she understands that the law will hold you to your bargain. You may then realise that what you have been contemplating is ethically indefensible. You admit your error, complete the bargain, retain your friendship and wake next morning a happier and wiser person. The law of contract has taught you, or perhaps reminded you, of the need to act ethically.

These three little stories, well removed from public sector ethics, illustrate that, within the threefold purpose of law, ethics has an essential place.

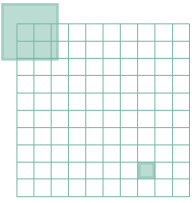
The Extra Mile

Ethics provides standards of behaviour that influence our relationship with others, so that laws which provide some certainty to the relationships which exist in the community will be based on the values which the community, by and large, accepts. Similarly, laws which restrain behaviour which is damaging to relationships in the community will be shaped by the basic values which the community, by and large, accepts. Such laws will be part of the process of community education which sustains a common set of basic values.

Yet it requires only one other addition to the story to show how good ethical behaviour goes beyond what the law requires. You know that your friend has had to struggle very hard to raise the \$10,000, so that, applying the positive formulation of the principle of reciprocity, you go beyond anything you have agreed about the condition of the vehicle, and have it serviced and the tank filled with petrol. Compassion, or mercy, or altruism have a significant place in a healthy community, but these values go beyond what law can demand.

Blending Ethics and Law

For public officials, the blending of ethics and law has a significance which does not necessarily apply to other citizens. Public officials are part of the system of government. Their essential function is to accord to citizens the rights which Parliament has given. They derive their daily work from the laws Parliament has passed. They perform their daily work partly by complying with that legislation and partly from the basic values that they hold.



For example, s.114 of the *Education (General Provisions) Act 1989* provides for compulsory schooling which obliges every parent of a child to cause that child to be enrolled at a school and to attend that school “for the educational program in which the child is enrolled”. The child’s educational program is found within the curriculum framework decided upon by the Minister (s.19). The child receives its schooling when teachers give substance to the program using their knowledge and their basic values as educators. While not all teachers are employed by the State, all are engaged in providing the educational programs in which children are enrolled. Those teaching in non-state schools offer those programs within the particular ethos of their school.

Since Queensland became a self-governing colony in 1859, the Queensland Parliament has passed laws which give some certainty to the relationships which exist between individuals, between commercial entities, and between individuals and commercial entities. Those employed as public officials have, in a variety of ways, given substance to the rights found in those laws. In order that the public could have confidence in the way public officials act, Parliament included among the laws that were passed, ones which describe the basic values of public officials. Laws which provide oversight of the work of public officials were also enacted.

An Overview of Ethics and Law in the Queensland Public Sector

Establishing a System of Government

Sir George Bowen arrived in Brisbane in late 1859 bearing letters patent under the great seal of the United Kingdom of Great Britain and Ireland which erected Moreton Bay into a colony under the name of Queensland. On 10 December 1859, he took the prescribed oaths before Mr Justice Lutwyche, a Judge of the Supreme Court, and then assumed the Office of Captain-General and Governor-in-Chief of the colony of Queensland.

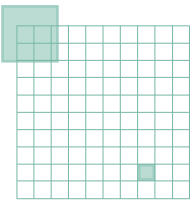
As Governor of the new colony, Sir George Bowen had the “power, by and with the advice and consent of the Legislative Council and the Legislative Assembly, to make laws for the peace, welfare and good government of the colony in all cases whatsoever”. Some bills had to be reserved for Her Majesty’s consent, but to all intents and purposes Queensland became a self-governing colony of the British Empire.

The letters patent, which had been signed in London on 6 June 1859, authorised the Governor of New South Wales to begin the process of nominating members of the Legislative Council and preparing for the election of members of the Legislative Assembly. Sixteen electoral districts were delineated across the colony of Queensland. Each district was to be represented by one or two or three members, a total of 26 members. The polling was completed on 21 May 1860 and members of the Legislative Council and of the Legislative Assembly were summoned to a sitting of the Parliament commencing on 22 May 1860.

The first sittings of the Queensland Parliament continued until 16 September 1860, when Parliament was prorogued until November. The legislation passed during the sittings showed that, in some instances, the laws would follow the pattern established in New South Wales, and which had applied in what had been the Moreton Bay District. In other instances, particularly in respect of waste and unsettled lands, the Queensland Parliament introduced change.

An illustration of continuity is found in the *Education Act 1860*. That *Act* established a Board of General Education which was to hold land and assets already used for schools. It was empowered to make rules which “shall be in all respects in accordance with the spirit of the National System of Education as hitherto carried on in the Colony of New South Wales”.

Governor Bowen was authorised to appoint a Colonial Secretary, a Colonial Treasurer and an Attorney General, and also to sit with them as an Executive Council. There was also provision for the payment of both the Colonial Secretary and the Colonial Treasurer. These appointments were made in December 1859. When the elections for the Legislative Assembly were held, all three appointees were elected. In those times, members of Parliament were not paid, and a person holding an office of profit from the Crown was disqualified from sitting in Parliament. So that the members of the Executive Council (or Cabinet) could be members of Parliament in accordance with the English practice, legislation was passed to allow the Colonial Secretary, Colonial Treasurer and Attorney General to sit as members of the Legislative Assembly. In 1862, the same privilege was extended to the Secretary for Lands and Public Works.



Providing Sound Administration

On 21 January 1860, the Governor took to a meeting of the Executive Council his proposal for the organisation of the Civil Service. The Council accepted these proposals which were to the following effect:

- individual merit, not patronage or connection, should procure the first admission into Her Majesty's Service of candidates for public employment, and also their subsequent promotion;
- there should be a system of competitive examination "calculated to secure for the public service men of good character, sound information, ability and efficiency";
- there should be a system of grading with appropriate salary levels and incremental payments;
- promotion to a higher grade should happen only if a person is "faithful and diligent in the discharge of his duties and deserves this mark of favour and approval of the government";
- the competitive examination is to be open to all natural-born or naturalised subjects of the Queen;
- every candidate must show:
 1. That he is above 16 and under 25 years of age.
 2. That he is free from any physical defect or disease that would be likely to interfere with the proper discharge of his duties by producing certificates by two legally recognised medical practitioners.
 3. That his moral character is such as to qualify him for public employment by producing either a certificate from a legally qualified Minister of Religion or from a Master or Tutor under whom the candidate may have been educated.
 4. In a competitive examination held over two days, that he can write in a clear, bold hand and that he can spell correctly from dictation as well as passing examinations in arithmetic, geography, outline of English history, English composition, and one elective subject.

The language used was gender specific in accordance with contemporary usage which treated references to men as including women.

Although some words have changed, the principles which Governor Bowen identified still apply in Queensland at the beginning of the twenty-first century:

- appointment and promotion are based on merit;
- good character, sound information, ability and efficiency, are necessary personal qualities;
- faithful and diligent discharge of duties is required.

Exposing Maladministration

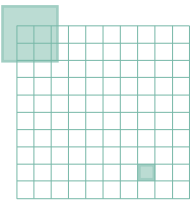
Any system of management of the civil or public service should encourage sound administration and expose poor administration and maladministration. Governor Bowen's proposals were designed to encourage sound administration. The passing of the *Audit Act 1861* and appointment of the first Auditor-General was the first step in exposing both poor administration and maladministration.

In 1863, the Queensland Parliament passed the *Civil Service Act 1863*. Section 14 provided:

“When any officer is officially reported as guilty of a breach of his duty,
or of any conduct rendering it unfit that he should remain in the civil service,
or of any pecuniary embarrassment,
or of any incompetency,
he shall therefore be suspended...”

The section then set out the procedures to be followed to deal with the issues. This provision was also designed to expose poor administration and maladministration. As the civil service grew, further legislation became necessary. Of particular significance are the following provisions in the *Public Service Regulations 1890*:

- ...monetary transactions between officers should be avoided and all officers are strictly forbidden to come under pecuniary obligation to their subordinates, (reg.17);
- Every officer shall obey with readiness all instructions that may be given to him by the officer under whose immediate control or supervision he is placed, (reg.18);
- Officers are to apply themselves with zeal and assiduity to the performance of their several duties and behave, at all times, with courtesy to the public, giving ready attention to their requirements, (reg.19);
- No information concerning public business shall be given directly or indirectly, by any officer without the express permission of the Minister except in the performance of his official duties, and no officer shall reveal information which has come to his knowledge in his official capacity, (reg.20);
- No officer, without the sanction of the Governor in Council, shall do paid work of any kind for any person, or in any manner enter into competition with persons not in the Service who are engaged in professional or other employment, (reg.37);
- No officer shall hold any paid office in connection with any banking, insurance or mining company, a building society, or any similar public body whatsoever, (reg.38);
- Officers of all ranks are to refrain from taking any part in political affairs otherwise than by exercise of the franchise, (reg.39).



Moving towards Contemporary Practice

The *Public Service Act of 1922*, which was amended many times, served until 1988 when the *Public Employment and Management Act 1988* was passed. The latter *Act*, which commenced on 18 July 1988, described the objectives of public service in contemporary language as follows:

The management and administration of the public service shall be directed towards:

- (a) maintaining excellence, objectivity, impartiality and integrity in the formulation and delivery to the Government of information and advice to assist in the processes of making decisions by the Government;
- (b) maintaining standards of excellence in service to the community;
- (c) implementing the policies and priorities of the Government responsively and responsibly;
- (d) reviewing and improving the efficiency and effectiveness with which services are provided to the community;
- (e) maintaining a proper nexus between responsibility and the authority required to discharge the responsibility and accountability for the proper discharge of responsibility;
- (f) deploying and utilising resources to the maximum of their effectiveness. (s.6)

These objectives were clearly designed to encourage sound administration. The difficulty in implementing these objectives is well illustrated by clause (e) which recognises the need to balance responsibility, authority and accountability.

By the 1980s additional legislative steps had been taken to expose poor administration and maladministration.

In 1974, the Parliamentary Commissioner for Administrative Investigations (Ombudsman) began to investigate complaints about administrative actions taken by agencies (*Parliamentary Commissioner Act 1974*). Agencies included all departments, all local governments, all statutory bodies and any controlled entities of one of those bodies. The *Financial Administration and Audit Act 1977* gave the Auditor-General the responsibility for auditing the funds of all public sector entities - essentially the same bodies over whom the Ombudsman had authority.

Apart from the disciplinary proceedings which could be taken against a member of the public service, there were provisions in the *Criminal Code 1899* which made certain conduct by such officers criminal.

The Fundamentals of Good Public Administration

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. There are reasons why this is so, and the *Act* can be better appreciated if some of the reasons are considered.

Firstly, some ethicists tend to see law as creating two quite different problems. On the one hand, it increases regulation and inhibits initiative. On the other hand, it encourages the idea that compliance with the law can be equated with meeting all ethical demands. Consequently, to reduce ethics to law or legislation is undesirable.

Secondly, some ethicists tend to equate ethical principles with personal characteristics which are often called virtues. For example, the Nolan Committee which reported on standards in British public life identified the following seven principles of public life:

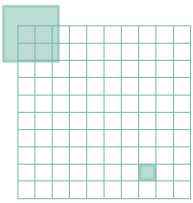
- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

In contrast, 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 (s.4)

Those who want to identify as ethics principles those personal characteristics which inspire noble deeds may be tempted to dismiss most of the so-called ethics principles without further thought.

The *Public Sector Ethics Act 1994* deals with this issue by careful drafting. 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 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 ethics obligations. These indicate in some depth how these basic values are expressed in the public sector. 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. 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 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 Government Owned Corporations (GOCs) and corporatised corporations, and certain entities under the *Education (General Provisions) Act 1989*, such as parents and citizens associations.

This is a much broader band of people than those to whom the *Public Service Act 1996* applies. The latter *Act* establishes the provisions under which departments are created. It not only mirrors the basic values of the *Public Sector Ethics Act 1994*, but also establishes the principles of work performance and personal conduct as follows:

In recognition that public service employment involves a public trust, a public service employee's work performance and personal conduct must be directed towards–

- (a) achieving excellence in service delivery;
- (b) ensuring the effective, efficient, economical and appropriate use of public resources;
- (c) giving effect to Government policies and priorities;
- (d) providing sound and impartial advice to the Government;
- (e) improving all aspects of the employee's work performance;
- (f) carrying out duties impartially and with integrity;
- (g) observing all laws relevant to the employment;
- (h) ensuring that the employee's personal conduct does not reflect adversely on the reputation of the public service.

(s.25)

It also provides that selection decisions are to be based on merit (s.24(a)). While the combined effect of these two *Acts* is to state more clearly the duties of public service employees, the basic concepts are those in Governor Bowen's proposal in 1860.

The *Public Service Act 1996* also contains disciplinary procedures for officers (part 6). It also contains provisions requiring a declaration of interests (ss.55, 83) and concerning conflicts of interest (ss.56, 84).

These two *Acts* encourage sound administration in the public service.

Exposing Poor Administration and Maladministration

1. Auditor-General

Various entities are equipped to expose poor administration and maladministration. The first of these is the Auditor-General and the Queensland Audit Office. The Auditor-General must, in relation to each financial year, audit the consolidated fund and all public sector entities, except the Audit Office (*Financial Administration and Audit Act 1977*, s.73). The results of these audits are reported to the Legislative Assembly (s.99). The Legislative Assembly may request the Auditor-General to conduct an audit (s.100). The Auditor-General may prepare other reports to the Legislative Assembly on matters arising out of an audit, if the Auditor-General considers it desirable for reasons of urgency, or because it is in the public interest, or is otherwise appropriate (s.102).

An example of a report prepared under these powers is found in the Auditor-General's Report No.1 2000-2001, 6.2. This report covers an audit of the management of reportable gifts, a matter of importance in the public sector.

2. Ombudsman

The *Parliamentary Commissioner Act 1974* established the Office of the Parliamentary Commissioner for Administrative Investigations. The person appointed to this office was known as the Ombudsman, and the *Ombudsman Act 2001* uses this preferred title. The objects of this *Act* are:

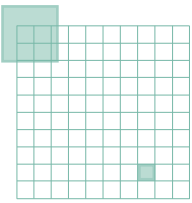
- to give people a timely, effective, independent and just way of having administrative actions of agencies investigated;
- to improve the quality of decision-making and administrative practice in agencies. (s.5)

There are two key concepts in these objects, administrative actions and agencies.

“Administrative action,” is defined as “any action about a matter of administration” (s.7). It includes:

- a decision and an act;
- a failure to make a decision or do an act including a failure to provide a written statement of reasons for a decision;
- the formulation of a proposal or intention;
- the making of a recommendation, including a recommendation made by a Minister;
- an action taken because of a recommendation made to a Minister.

It does not include an operational action of a police officer or an officer of the Crime and Misconduct Commission (s.7(2)).



An “agency” is a department or a local government or a public authority (s.8(1)). This includes an entity, other than an incorporated entity or an individual, established under an Act for helping or for performing functions connected with the agency (s.8(2)).

A “public authority” includes most public sector entities established under Acts or declared under a regulation to be a public authority, except courts, judicial officers and court registries carrying out judicial functions (s.9).

The Ombudsman may investigate administrative actions of agencies on reference from the Legislative Assembly or a Statutory Committee of the Assembly, or on complaint, or on the Ombudsman’s own initiative (s.12(1)).

The Ombudsman must not question the merits of a decision, including a policy decision, made by a Minister or Cabinet, or a decision taken for implementing a decision of Cabinet (s.16(1)).

The Ombudsman must not investigate administrative action taken by:

- a tribunal in the performance of the tribunal’s deliberative functions;
- a person acting as legal advisor to the State or as counsel for the State in legal proceedings;
- a member of the police service, if the action may be, or has been, investigated under the *Crime and Misconduct Act 2001*;
- a police officer, if the officer is liable to disciplinary action, or has been disciplined, under the *Police Service Administration Act 1990*, Part 7 because of the action;
- the Auditor-General;
- a mediator at a mediation session under the *Dispute Resolution Centres Act 1990*;
- a person in a capacity as a conciliator under the *Health Rights Commission Act 1991*. (s.16(2))

As a result of investigating an agency’s actions or considering the practices and procedures of agencies generally, the Ombudsman may make recommendations to improve administrative practices and procedures.

3. Judicial Review

A person whose interests are adversely affected by a decision of an administrative character may apply to the Supreme Court for a statutory order of review in relation to the decision (*Judicial Review Act 1991*, ss.4, 5, 7, 20).

An applicant for a statutory order of review must demonstrate some error in the decision. The Court reaches a decision on the material placed before it. It does not carry out any independent inquiry as the Ombudsman does.

4. Information Commissioner

The office of Information Commissioner was created by the *Freedom of Information Act 1992*. The functions of the Information Commissioner are to investigate and review decisions of agencies and Ministers made under the *Act*. These decisions include ones refusing access to documents, deferring access to documents and giving access subject to the deletion of exempt matter. Decisions about charges made are also reviewable, as are decisions made to disclose documents contrary to the views of a person substantially concerned about the disclosure. The Information Commissioner's decisions are binding on the parties to the review.

5. The Crime and Misconduct Commission

The *Crime and Misconduct Act 2001*, which established the Crime and Misconduct Commission, has two main purposes:

- to combat and reduce the incidence of major crime;
- to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector. (s.4(1))

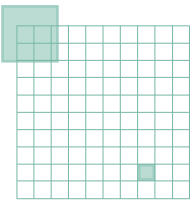
Only the second purpose is of interest in this handbook. To achieve that purpose:

The Commission is to help units of public administration to deal effectively, and appropriately, with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly more serious cases of misconduct. (s.5(3))

This emphasis upon building up the capacity of units of public administration is consistent with the principles in the *Public Service Act 1996* and the *Financial Administration and Audit Act 1977*, which place the responsibility for the proper operation of such units upon each chief executive officer. The difference is that the definition of "unit of public administration" is wider than the comparable definitions in the *Public Service Act 1996*, *Financial Administration and Audit Act 1977*, *Ombudsman Act 2001* and *Public Sector Ethics Act 1994*. It includes the Legislative Assembly, the Executive Council, the police service and a State court of whatever jurisdiction (s.20).

The breadth of the Commission's investigative responsibilities is found in the definition of "conduct" (s.14). That definition may be summarised:

- conduct, regardless of whether the perpetrator is employed in a unit of public administration, which tends adversely to affect the honest and impartial performance of functions or exercise of powers of a unit of public administration or of a person employed in such a unit;
- conduct by an employee of a unit of public administration which involves:
 - the dishonest or partial performance of the employee's duties;
 - the breach of the trust placed in the employee;
 - the misuse of confidential information for anyone's benefit.



If such conduct, when proved, could be a criminal offence or a disciplinary breach providing grounds for dismissal, the conduct is “official misconduct”.

6. *Anti-Discrimination Commission*

One of the purposes of the *Anti-Discrimination Act 1991* is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation (s.6(1)).

One of the ways in which this purpose is achieved is by a complaint made against the person who has unlawfully discriminated (s.6(2)). Because the *Act* binds the Crown in right of the State of Queensland (s.3(a)), complaints about unlawful discrimination can be made both by and against public officials. The *Act* applies generally across Queensland so that every part of the broad public sector is within the jurisdiction of the Commission.

Complaints are investigated and, if accepted, are allocated to a conciliator. If the complaint is resolved by conciliation, the agreement which has been reached is registered at the Anti-Discrimination Tribunal. If no agreement is reached, the complaint is heard and determined by the Anti-Discrimination Tribunal.

7. *Health Rights Commission*

One of the objectives of the *Health Rights Commission Act 1991* is to provide for oversight, review and improvement of health services by establishing an accessible, independent facility that will receive and resolve health service complaints (s.4). This facility is the Health Rights Commission. Its responsibilities are broadly similar to those of the Anti-Discrimination Commission, except that its area of responsibility is health services, not unfair discrimination.

The *Act* binds the Crown in right of the State of Queensland (s.5) which means that complaints about health services can be made both by and against public officials. Complaints are assessed and, if accepted, may be dealt with by conciliation. If the physical or psychological welfare of a health service user is at imminent risk, or where it is in the public interest to do so, the complaint is referred to the relevant Health Practitioner Registration Board (ss.77, 68).

8. *Commission for Children and Young People*

The object of the *Commission for Children and Young People Act 2000* is to establish the Commission for Children and Young People to promote and protect the rights, interests and wellbeing of children in Queensland (s.5).

The Commission’s responsibilities include the receiving of complaints about the service provided to children who are subject to orders under the *Child Protection Act 1999* or the *Juvenile Justice Act 1992* or the *Bail Act 1980*. The Commissioner has wide powers in responding to a complaint, including the investigation of the complaint. Other procedures open to the Commissioner include making representations to officers of the Department of Child Safety, to the Ombudsman and to the Children Services Tribunal.

9. Children Services Tribunal

The *Children Services Tribunal Act 2000* created the Children Services Tribunal to provide merit reviews of decisions about services for children and young people. The *Act* does not identify which decisions may be reviewed. It is necessary to read particular Acts which deal with children to find if an Act gives a person the right to apply for the review of a decision. Such Acts include *Child Protection Act 1999*, *Adoption of Children Act 1964*, and *Child Care Act 2002*. While the concept is similar to judicial review, there are significant differences which are appropriate because children are involved. These include conducting proceedings in a way that promotes the interests, rights and wellbeing of the child involved in the proceedings and uses adversarial and inquisitorial proceedings, as appropriate, to arrive at the best possible decision in the circumstances (s.6(c)).

10. Whistleblower's Protection

Each of the agencies which have been established to expose poor administration and maladministration should receive some information and complaints from public officials. The *Public Sector Ethics Act 1994* expects public officials to disclose fraud, corruption and maladministration of which they become aware (s.9(2)). If such disclosures are to be encouraged, there needs to be a clear process for making disclosures, and adequate procedures to protect those who make disclosures from reprisals.

The *Whistleblowers Protection Act 1994* identifies the kind of disclosures that should be encouraged (public interest disclosures), establishes a disclosure process, and provides for protection and compensation if reprisals occur. This is an important part of the integrity regime.

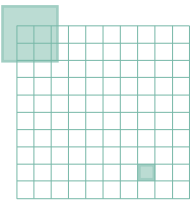
11. Adult Guardian

The office of Adult Guardian was continued by the *Guardianship and Administration Act 2000*. It had been created by the *Powers of Attorney Act 1998*. The Adult Guardian may investigate any complaint or allegation that an adult with impaired capacity for a matter is being or has been neglected or exploited or abused, or has inappropriate or inadequate decision-making arrangements.

Because such allegations may be made about a person in a State-owned institution, the Adult Guardian also has a place within the entities which expose poor administration or maladministration.

12. Liaison with Complaints Entities

The various entities whose purpose has been examined in this chapter each have a particular investigative mandate. However, there will often be an overlap. This was recognised in the *Ombudsman Act 2001*. The Ombudsman is allowed to liaise with a complaints entity about the exercise by the Ombudsman and the complaints entity of their respective functions investigating administrative actions and to enter into an arrangement with the complaints entity aimed at avoiding inappropriate duplication of investigative activity (s.15).



Because the Crime and Misconduct Commission has the responsibility of building the capacity of units of public administration to deal with misconduct, it is required to work co-operatively with such units to achieve optimal use of available resources (*Crime and Misconduct Act 2001*, s.59)

13. Queensland Integrity Commissioner

Unlike the other agencies mentioned above, the Integrity Commissioner neither investigates issues nor conducts hearings. Part 7 of the *Public Sector Ethics Act 1994* created the office of the Integrity Commissioner to help Ministers and others to avoid conflicts of interest and in so doing to encourage confidence in public institutions (s.25).

To do this the Integrity Commissioner has three functions:

- 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. (s.28)

14. Public Advocate

The office of Public Advocate was created by the *Guardianship and Administration Act 2000*. The Public Advocate has the function of providing systemic advocacy for persons with impaired capacity.

15. State Coroner

The *Coroner's Act 2003* provides that the Coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to:

- (a) public health and safety;
- (b) the administration of justice;
- (c) ways to prevent deaths from occurring in similar circumstances in the future. (s.45(1))

If the comments relate to matters with which a government entity deals, a copy of the comments are to be given to the Minister administering the entity and the chief executive officer of the entity (s.45(2)(d)).

Summary

The Queensland integrity system for the public sector consists of:

- legislation which identifies the duties and responsibilities of public officials;
- agencies which establish policies and procedures to implement this legislation;
- agencies which can investigate complaints about:
 - o administrative decisions;
 - o maladministration;
- remedies which allow people to challenge administrative decisions;
- agencies which advocate or recommend systemic change;
- agencies which offer advice to public officials to enhance public confidence in government.

The First Ethics Principle Respect for the Law and the System of Government

Why is this a basic value?

The first ethics principle stated in the *Public Sector Ethics Act 1994* is respect for the law and the system of government. Why should this be a basic value expressed in the behaviour of officials employed in the public sector in Queensland?

It is convenient to look first at what is involved in the law and the system of government. In our complex society, the law consists of a complex set of rules which allow the community to function purposefully. Our system of government determines the content of these rules, and oversees their application. The system of government in Queensland is now a little more clearly defined since the *Constitution of Queensland 2001* came into operation on 6 June 2002. The Parliament of Queensland consists of the Legislative Assembly which has the law-making power in Queensland. The public business of Queensland is distributed among the Premier and Ministers who constitute the Cabinet. There is also a court system and local government. The three arms of government, the legislative, the executive and the judicial, together with local government, constitute our system of government.

The public business of Queensland is distributed among the Premier and Ministers by the Governor in Council. This is done by publishing administrative arrangements which declare which administrative units are to be administered by each Minister, and which Acts are to be administered by each Minister. In this way, all of the laws passed by Parliament are administered by departments which are also established by the Governor in Council.

Laws are made by Parliament and local government. They are administered by public officials and enforced by the courts. It is this combination of institutions and laws to which respect is due.

It would be unrealistic to ignore the fact that across the community there is widespread disrespect for some aspects of these institutions and laws. However, people working in the public sector are a part of the system of government and intimately involved with both the institutions and the laws, so that respect correctly identifies the appropriate attitude of mind. Part of any difficulty we may feel arises from the fact that the word respect has shades of meaning. For example, when we show respect for our elders, we show them deference. When we respect the traffic regulations we heed them, or have regard to them. It is in this latter sense that public officials are required to respect the law and the system of government.

Why should respect for the law and the system of government be an ethics principle for public officials? Public officials are an integral part of the system of government. The words “public official” are taken from the *Public Sector Ethics Act 1994*. In that Act they mean an officer or employee of a “public sector entity” which is defined to include a department and a commission, authority, office, corporation or instrumentality established under an Act or under State or local government authorisation for a public, State or local government purpose. It is through these public sector entities that the public business of the State is carried out. This business is defined and supported by legislation. The employees of such entities are carrying out the business of the State. In so doing, they apply the law that relates to their task. Respect for the law and the system of government is fundamental to their work.

This is an appropriate basic value to be expressed in the behaviour of public officials, because they perform part of the public business of Queensland in accordance with the laws Parliament has passed. *The Public Service Act 1996* shows how public service management guides that performance:

Public service management is to be directed towards:

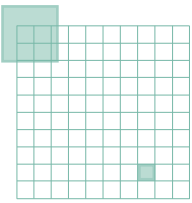
- (a) providing responsive, effective and efficient services to the community and Government;
 - (b) continuously improving performance in delivering services with a client focus;
 - (c) implementing Government policies and priorities responsively and responsibly;
 - (d) maintaining impartiality and integrity in informing, advising and assisting the Government;
 - (e) continuously improving public service administration and management;
 - (f) adopting and maintaining systems and processes that are practical, and without excessive formality or likelihood of delay, and can be adapted quickly to changing demands;
 - (g) acknowledging the importance and value of public service employees through training and ongoing development;
 - (h) managing public resources efficiently, responsibly and in a fully accountable way;
 - (i) maintaining proper standards in creating, keeping and managing public records.
- (s.23)

Section 7 of the *Public Sector Ethics Act 1994*, which defines the ethics obligations arising from this ethics principle, shows its effect on the work of a public official:

- (1) A public official should:
 - (a) uphold the laws of the State and Commonwealth;
 - (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.

Uphold the laws of the State and Commonwealth

This is the way in which respect for the system of law is expressed in the day to day business of the State. Public officials should faithfully administer the laws that apply to the issues with which they deal. This is so whether the laws are those of the State or those of the Commonwealth. An example of a Commonwealth law which must be upheld is the goods and services tax.



There is, of course, a very large number of Acts of Parliament and it is quite impractical for individual public officials to study them all. Every official should know the obligations created by a number of Acts which apply generally to the public sector, and should have a working knowledge of the legislation administered by the entity which employs him or her. It is not practical to deal with the laws which are administered by individual departments, but reference should be made to the Acts of general application, particularly to the basic values which encourage sound administration and to the procedures which expose poor administration and maladministration.

1. *Financial Administration and Audit Act 1977*

This *Act* requires the Auditor-General to audit the consolidated fund and all public sector entities each year. This has been referred to at p.12. It also requires the Treasurer to prepare a charter of social and fiscal responsibility for the State based on the following principles:

- (a) there must be transparency and accountability in developing, implementing and reporting on the Government's social and fiscal objectives;
- (b) there must be efficient and effective allocation and use of resources in achieving the objectives;
- (c) there must be equity relating to the raising of revenue, delivery of government-funded services and allocation of resources, and between present and future generations;
- (d) there must be prudent management of risk. (s.6C)

These principles are similar to the requirement in the *Public Service Act 1996* that "a public service employee's work performance and personal conduct be directed towards ensuring the effective, efficient, economical and appropriate use of public resources" (s.25(b)). Respect for these concepts will encourage compliance with the detailed provisions in the *Financial Administration and Audit Act 1977*.

2. *Freedom of Information Act 1992*

In this *Act* Parliament recognised that, "in a free and democratic society:

- (a) the public interest is served by promoting open discussion of public affairs and enhancing government's accountability;
- (b) the community should be kept informed of government's operations including, in particular, the rules and practices followed by government in its dealings with members of the community;
- (c) members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading." (s.5(1))

These concepts emphasise openness and accountability, just as the *Financial Administration and Audit Act 1977* emphasises transparency and accountability. When the competing interests which limit the disclosure of some documents are considered, openness and accountability should not be lost sight of.

Parliament recognised that “the disclosure of particular information could be contrary to the public interest because its disclosure in some instances would have a prejudicial effect on:

- (a) essential public interests;
- (b) the private or business affairs of members of the community in respect of whom information is collected and held by government.” (s.5(2))

The detailed provisions of the *Act* attempt to strike a balance between these competing interests “by giving members of the community a right of access to information held by government to the greatest extent possible with limited exceptions for the purpose of preventing a prejudicial effect to the public interest of a kind previously mentioned” (s.5(3)).

These limited exceptions are set out in detail in the *Act*, whereas the need for openness and accountability are stated only once. This imbalance is needed so that the limited exceptions can be clearly identified. However, “the object of the *Act* is to extend as far as possible the right of the community to have access to information held by the Queensland government” (s.4).

3. Public Records Act 2002

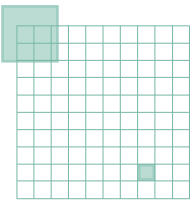
This *Act* ensures that “the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations; public access to records under this *Act* is consistent with the principles of the *Freedom of Information Act 1992*” (s.3). A public authority, which includes a department, must make and keep full and accurate records of its activities (s.7(1)(a)). In respect of Ministers, this does not include “a record related to the Minister’s personal or party political activities or a record the Minister holds in the Minister’s capacity as a member of the Legislative Assembly” (s.6, Schedule 2).

The *Act* defines a “restricted access period” for documents which are exempt from disclosure under the *Freedom of Information Act 1992*. Generally the period is 30 years.

4. Ombudsman Act 2001

“The objects of this *Act* are to give people a timely, effective, independent and just way of having administrative actions of agencies investigated and to improve the quality of decision-making and administrative practice in agencies” (s.5). An “agency” includes a department, a local government and a public authority, a concept which includes a broad band of entities (s.8). An “administrative action” is an action about a matter of administration, other than an operational action of a police officer or an officer of the Crime and Misconduct Commission (s.7).

The way in which these responsibilities are discharged is discussed on pp.12 and 13.



5. *Judicial Review Act 1991*

A person whose interests are adversely affected by a decision of an administrative character may apply to the Supreme Court for a statutory order of review in relation to the decision. The grounds upon which a review may be sought are a useful guide to the way decisions should be made. The grounds are:

- (a) that a breach of the rules of natural justice happened in relation to the making of the decision;
- (b) that procedures that were required by law to be observed in relation to the making of the decision were not observed;
- (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
- (d) that the decision was not authorised by the enactment under which it was purported to be made;
- (e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;
- (f) that the decision involved an error of law (whether or not the error appears on the record of the decision);
- (g) that the decision was induced or affected by fraud;
- (h) that there was no evidence or other material to justify the making of the decision;
- (i) that the decision was otherwise contrary to law. (s.20(2))

A person affected by a decision may request the decision maker to provide a written statement in relation to the decision (s.35(1)). The statement must include findings on material questions of fact, and reference to the evidence or other material on which the findings are based, as well as the reasons for the decision (s.3, definition of “reasons”). Information of a confidential nature relating to the personal affairs or business affairs of a person other than the person making the request need not be included (ss.35, 37). Neither is it necessary to include information which would disclose the deliberations of a decision of Cabinet or a Committee of Cabinet, or information protected by legal professional privilege (ss.36, 37).

6. *Anti-Discrimination Act 1991*

This *Act* prohibits discrimination on the basis of the following attributes:

- (a) sex;
- (b) marital status;
- (c) pregnancy;
- (d) parental status;
- (e) breastfeeding;
- (f) age;
- (g) race;
- (h) impairment;

- (i) religion;
- (j) political belief or activity;
- (k) trade union activity;
- (l) lawful sexual activity;
- (m) association with, or relation to, a person identified on the basis of any of the above attributes. (s.7)

The *Act* also identifies areas of activity in which discrimination is prohibited (Chapter 2, Part 4). These areas include:

- work and work related (div.2);
- educational (div.3);
- goods and services (div.4);
- superannuation (div.5);
- insurance (div.6);
- disposition of land (div.7);
- accommodation (div.8);
- club membership and affairs (div.9);
- administration of State laws and programs (div.10);
- local government (div.11).

7. Crime and Misconduct Act 2001

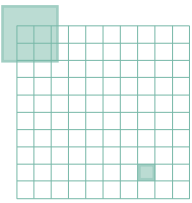
One of the purposes of this *Act* is “to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector” (s.4). The Crime and Misconduct Commission’s functions which deal with misconduct and which are designed to raise standards of integrity and conduct in units of public administration are based on four principles:

- 1) cooperation;
- 2) capacity building;
- 3) devolution;
- 4) public interest.

“Official misconduct” means “conduct which could, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or was the holder of an appointment” (s.15) (see also pp.14 and 15).

8. Whistleblowers Protection Act 1994

“This *Act* provides a scheme that, in the public interest, gives special protection to disclosures about unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment” (s.7(1)). Only a “public interest disclosure” is protected, a concept “defined by reference to the person who makes the disclosure, the type of information disclosed, and the entity to which disclosure is made” (s.7(3)).



“A public officer may make a public interest disclosure about someone else’s conduct if this officer had information about the conduct and the conduct is official misconduct” (as defined in the *Crime and Misconduct Act 2001*) or “is maladministration that adversely affects anybody’s interests in a substantial and specific way” (ss.15, 16). “A public officer may also make a public interest disclosure about the conduct of another public officer, a public sector entity or a public sector contractor if the officer has information about the conduct, and the conduct is negligent or improper management directly or indirectly resulting, or likely to result, in a substantial waste of public funds” (s.17). A public officer may also make a public interest disclosure of information “if the officer has information about a substantial and specific danger to public health or safety or to the environment” (s.18).

Generally “any public sector entity is an appropriate entity to receive a public interest disclosure about its own conduct or the conduct of any of its officers or made to it about anything it has a power to investigate or remedy” (s.26(1(a)(b))).

The *Public Sector Ethics Act 1994* encourages public officials to disclose fraud, corruption and maladministration of which the official becomes aware (s.9(2(c))). The *Whistleblowers Protection Act 1994* offers protection to whistleblowers who are threatened with or suffer reprisals (Part 5).

9. *Public Service Act 1996*

The objects of this *Act* include:

- (a) to establish the public service as an apolitical entity responsive to Government needs and competent to provide services in a professional and non-partisan way;
 - (d) to promote among public service employees a spirit of service to the community;
 - (f) to maintain integrity and appropriate standards of conduct for public service employees.
- (s.3)

10. *Equal Opportunity in Public Employment Act 1992*

This *Act* requires an agency to develop an EEO management plan to promote equal employment opportunity for and to eliminate unlawful discrimination by it against members of target groups (s.6). The target groups include:

- (a) people of the Aboriginal race of Australia or people who are descendants of the indigenous inhabitants of the Torres Strait Islands;
 - (b) people who have migrated to Australia and whose first language is a language other than English, and the children of those people;
 - (c) people with a physical, sensory, intellectual or psychiatric disability (whether the disability presently exists or previously existed but no longer exists);
 - (d) women.
- (s.3)

11. *Crown Employees Act 1958*

This *Act* enables a person who resigned from the public service to become a candidate for an election, but who was unsuccessful, to apply for reappointment to the public service.

These Acts provide the basic values which encourage sound administration in the public sector, and establish the procedures which expose poor administration and maladministration.

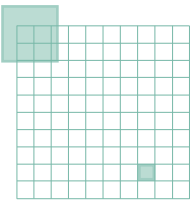
Conflicts between Laws

But what is to be done if laws appear to conflict? This issue is raised in some of the codes of conduct as if it involves an ethical issue. However, it does not involve a choice between two courses of action which are equally good or which are equally bad, so it does not raise an ethical dilemma. It is an intellectual issue about the meaning of words which can be resolved by the application of well established rules, many of which are stated in the *Acts Interpretation Act 1954*. If you have a concern about an apparent conflict between laws, it is best to obtain legal advice. However, some familiarity with the *Acts Interpretation Act 1954* will provide mind calming information.

For instance, it is now common for legislation to include examples of how a particular section in an Act is to be applied. What happens if it appears that the example contradicts some part of the section it is supposed to illustrate? First, “an example in an Act of the operation of a provision of the Act is part of the Act” (*Acts Interpretation Act 1954*, s.14(3)). However, “the example and the provision are to be read in the context of each other and the other provisions of the Act, but, if the example and the provision so read are inconsistent, the provision prevails” (s.14D(c)). This emphasises that the provision in the Act is dominant, and the example merely an aid in interpreting the Act.

Suppose you have not been familiar with the *Acts Interpretation Act 1954*, and this handbook stirs a thirst for knowledge, what happens if you find a definition of a word in that *Act* which is inconsistent with the definition of the same word in the legislation under which you habitually work? In such a case, the definition in the *Acts Interpretation Act 1954* is displaced (s.32AB). You continue to use the definition in the Act with which you are familiar. I have abbreviated the steps set out in s.32AB, so, if this situation arises, that section should be followed in detail.

The drafters of legislation and the courts have dealt with inconsistencies between laws for centuries, and every conceivable issue has been made the subject of a rule that resolves the conflict. The application of these rules may involve difficult intellectual issues and, on occasions, equally informed minds may disagree. It is a case of following the advice that has been obtained.



Carry out Official Public Sector Decisions and Policies Faithfully and Impartially

These words are echoed in s.25 of the *Public Service Act 1996*, which requires a public service employee to give effect to Government policies, provide sound and impartial advice to the Government, and to carry out duties impartially and with integrity.

Two difficult issues can arise in carrying out these obligations. Firstly, an officer may find that carrying out the decisions or policies may conflict with a strongly held personal belief. Secondly, the decisions or policies may conflict with each other or with legislation.

As to the first issue, all reasonable steps should be taken to respect the strongly held belief an officer has. To require an officer to act in a way that is contrary to that officer's religious or political beliefs may involve discrimination within the terms of the *Anti-Discrimination Act 1991*. Other directions may involve discrimination on the basis of sex. If such an issue arises, the officer should raise the matter with the person issuing the instruction. If the situation can be resolved by assigning the task to another officer, this should be done. If the instruction is lawful, and no other officer can perform it, the officer to whom the direction is given should carry out the direction. Any ongoing issue should be dealt with using the department's internal grievance mechanism.

By far the most difficult situation arises if there is an apparent conflict between the provisions of an Act and a stated Government policy. A public official who detects such a conflict may feel some reluctance about raising the issue. After all, the *Public Service Act 1996* requires a public service employee to give effect to Government policies (s.25(c)). But there is also an obligation to provide sound and impartial advice (s.25(d)).

It is important that policies conform to legislation. Policy cannot override legislation. Legislation can be amended if it does not accurately reflect policy. The Bills presented to each sittings of Parliament include ones which indicate that policy and legislation have not been congruent.

For example, the *Environment Protection And Another Act Amendment Bill 2002* followed the receipt of a legal opinion that some mining and petroleum environmental authorities may be invalid because they did not have a development approval under the *Integrated Planning Act 1997*. The Bill was passed and became *Act 10 of 2002*. It amends the *Integrated Planning Act 1997* to make a mining activity and a petroleum activity an exempt development. Legislation and policy are now congruent.

Public Official's Duty to Act Independently

Section 7(2) of the *Public Sector Ethics Act 1994* recognizes that some public officials have a duty to act independently of government. This can arise in three ways:

- by legislation;
- through government policy;
- as a customary feature of the official's work.

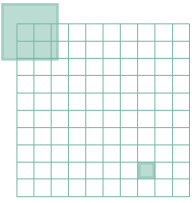
1. Legislation

Within the framework of government, it is essential that certain public officials act independently of government, for example:

- The Ombudsman
 - o *Ombudsman Act 2001* s.13
- The Auditor-General
 - o *Financial Administration and Audit Act 1977* s.49
- The Public Service Commissioner
 - o *Public Service Act 1996* s.35
- The Public Advocate
 - o *Guardianship and Administration Act 2000* s.211
- The Commissioner for Children and Young People
 - o *Commission for Children and Young People Act 2000* s.17
- The Health Rights Commissioner
 - o *Health Rights Commission Act 1991* s.11
- The Crime and Misconduct Commission
 - o *Crime and Misconduct Act 2001* s.57
- The President of the Guardianship and Administration Tribunal
 - o *Guardianship and Administration Act 2000* s.87
- The Director of Public Prosecutions has the duty to act independently in respect of the preparation, institution and conduct of proceedings, but is otherwise responsible to the Minister and, in some respects, subject to the direction of the Minister.
 - o *Director of Public Prosecutions Act 1984* s.10
- The Commissioner of the Police Service may be given directions by the Police Minister about matters of overall administration, policy and priorities to be pursued in performing the functions of the police service and the deployment of officers, but otherwise is responsible for the efficient and proper administration, management and functioning of the police service in accordance with law. The Commissioner keeps a record of any directions given by the Minister. This record is tabled in the Legislative Assembly.
 - o *Police Service Administration Act 1990* s.4.6,4.7,4.8

2. Government Policy

If it is government policy that a public official may act independently of government, that policy should be expressed unambiguously in writing. Every public official is required to give sound and impartial advice to the government (*Public Service Act 1996*, s.25(d)). Such advice may be critical of aspects of government policy. However, giving such advice is not the same as acting independently, the way the statutory office holders referred to above are required to act. Advice may be rejected or accepted, and giving advice is part of a public official's duty. It is not an independent course of conduct.



3. *Customary Feature of an Official's Work*

Certain professional people have traditionally carried out their duties free from direction, relying on their professional skill and judgment. Examples are a surgeon performing an operation, a barrister cross examining a witness and a ship's captain commanding a ship. However, it would be unusual if the performance of such actions involved activity which was independent of government policy. An indication of the kind of duties which allow this freedom of action is also found in the list of administrative actions which the Ombudsman cannot investigate (see p.13).

The Second Ethics Principle Respect for Persons

The second ethics principle stated in the *Public Sector Ethics Act 1994* is respect for persons. Again it is necessary to ask why this is a core value expressed in the behaviour of public officials employed in the public sector in Queensland?

The *Public Service Regulations 1890* required officers to apply themselves with zeal and assiduity to the performance of their several duties and to behave, at all times, with courtesy to the public, giving ready attention to their requirements. Is this what is involved in the concept of respect for persons?

The answer is found in the ethics obligations derived from this ethics principle. These are stated in s.8 of the *Public Sector Ethics Act 1994*:

- (1) A public official should treat members of the public and other public officials:
 - (a) honestly and fairly;
 - (b) with proper regard for their rights and obligations.
- (2) A public official should act responsively in performing official duties.

There are three obligations here which are not mentioned in the *Public Service Regulations 1890*, namely:

- the obligations extend to other public officials;
- there is express reference to rights and obligations;
- the word responsively includes an obligation to give effect to government policy.

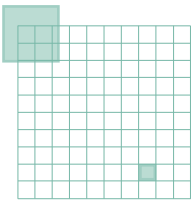
With these things in mind it becomes clear why respect for persons is a basic value for the public sector.

The rights and obligations of members of the public are generally defined by legislation. Public officials administer that legislation. In doing this, they inform the members of the public of their rights and obligations.

How does respect for persons achieve this goal?

Honesty

A public official should treat members of the public and other public officials honestly. This includes truthfulness, and this raises the question whether that means the truth, the whole truth and nothing but the truth. There will be occasions when a public official cannot tell a member of the public the whole truth. This may happen because the official has confidential information about an imminent government decision, or commercial information about tender documents, or personal information about a client.



In cases such as these, the broad principles expressed in the *Freedom of Information Act 1992* provide the most useful guide. Particular information should not be disclosed if it would have a prejudicial effect on essential public interests, or on the private or business affairs of a member of the community in respect of whom information is collected and held by the government.

With these limits, relevant information should be disclosed. In particular instances it will be necessary to consider the detailed provisions of the *Freedom of Information Act 1992*. It is pointless to withhold information which can be obtained through an application made under that *Act*.

There must also be honesty in dealings with other public officials. This requires a positive effort on the part of each official, because it is easy enough to allow cliques and power groups to develop amongst any group of people. The destructiveness of such activities should be recognised and avoided.

Fairness

This needs no further comment, because the need for fairness is universally recognised in Australia. Again, the fairness must extend both to members of the public and to other public officials.

Rights and Obligations of Members of the Public

These begin with the rights and obligations arising from the task in hand. The public official must be very clear about these issues, because members of the public should be able to receive accurate and reliable information about their rights and obligations.

Rights and obligations also arise from other pieces of legislation which are of general application, particularly:

- *Anti-Discrimination Act 1991*
- *Health Rights Commission Act 1991*
- *Judicial Review Act 1991*
- *Whistleblowers Protection Act 1994*

The place of these Acts within the Queensland Integrity Regime is discussed in Chapter 3, and their functions are briefly described in Chapter 4.

Rights and Obligations of Other Public Officials

Many public officials will be public service employees, and their rights and obligations are set out in the *Public Service Act 1996*. In broad terms, the rights are stated in s.24 and the obligations in s.25 as follows:

Public service employment is to be directed towards:

- (a) basing selection decisions on merit;
- (b) treating public service employees fairly and reasonably;
- (c) providing equal employment opportunity;
- (d) giving public service employees a reasonable avenue of redress against unfair or unreasonable administrative decisions;
- (e) providing public service employees with safe and healthy working conditions;
- (f) giving public service employees reasonable access to appropriate training and development;
- (g) remunerating public service employees at rates appropriate to the responsibilities undertaken by public service employees;
- (h) avoiding nepotism and patronage. (s.24)

In recognition that public service employment involves a public trust, a public service employee's work performance and personal conduct must be directed towards:

- (a) achieving excellence in service delivery;
- (b) ensuring the effective, efficient, economical and appropriate use of public resources;
- (c) giving effect to Government policies and priorities;
- (d) providing sound and impartial advice to the Government;
- (e) improving all aspects of the employee's work performance;
- (f) carrying out duties impartially and with integrity;
- (g) observing all laws relevant to the employment;
- (h) ensuring that the employee's personal conduct does not reflect adversely on the reputation of the public service. (s. 25)

Responsive to the Government

Section 25 of the *Public Service Act 1996*, mentions some of the issues involved in this obligation. A public service employee's work performance and personal conduct must be directed towards giving effect to Government policies and priorities. This must be supported by, and indeed complemented by, providing sound and impartial advice to the Government. This obligation is important if there is a clash between the requirements found in legislation and a particular government policy or priority (see p.27). However, this is not the only circumstance in which sound professional advice may conflict with a particular policy or priority. For example, a proposed policy in health care may involve a significant risk to the well being of some people. If this is so, sound impartial advice should be given. Responsiveness does not imply docility.

Responsive to Members of the Public

The *1890 Regulations* (see p.8) expressed this well, requiring courtesy, and "ready attention to their requirements". Although ready attention is not a frequently used phrase, it emphasises an obligation to listen to all that the member of the public is saying. It is easy enough for a person answering frequently asked questions to offer the answer before the entire question is asked. This is likely to produce confusion and probably frustration.

The Third Ethics Principle Integrity

The word integrity is used in a variety of ways. It may be used of a work of art or a business plan. It may be used to describe a person's moral excellence. This is because it is derived from the Latin word "integritas", which means "wholeness, entireness, completeness" (Oxford English Dictionary, Volume 7).

It is important that a public official should display moral excellence. In addition, as a basic value for public administration, the word integrity describes that harmonious integration of the factors that influence public sector decision making. This is made clear in the ethics obligation which is drawn from this ethics principle.

- (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;
 - (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;
 - (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;
 - (c) should disclose fraud, corruption and maladministration of which the official becomes aware.

(Public Sector Ethics Act 1994, s. 9)

A Public Trust

A public trust involves reciprocal obligations. The members of the public support the State to which they belong by obeying its laws and paying its imposts. The State is administered in a way that ensures that the members of the public enjoy the rights that the laws recognise. This is achieved in part through good public administration provided by public officials. The same point is made in s.25 of the *Public Service Act 1996* (see p.32).

When this is stated in s.9, it reminds public officials of their broad duty to serve all members of the public. The detailed obligations that are involved in this are found in the other four ethics obligations. This ethics obligation brings all the others into harmonious integration.

Maintain and Enhance Public Confidence

While surveys of public opinion may give some indication of the attitudes of members of the public to the public sector, it must be kept in mind that the opinions expressed will be shaped by the personal experiences of the interviewees and by the general perception created within the community. This means that the actions of every public official make an important contribution towards public attitudes.

Consequently, if a telephone inquiry provokes a rude response, or if a service complaint is not dealt with promptly, members of the public may lose confidence.

The Integrity of Public Administration

The public official's obligation is to maintain and enhance public confidence in the integrity of public administration. Certainly the integrity of public administration requires moral excellence on the part of each public official, but the emphasis here is on the way in which the State discharges its obligations to the public.

This involves truthfulness, fairness and honesty, the characteristics which enable an organisation to function harmoniously, both within itself and in its interaction with others. This means that each official will be truthful, fair and honest in every dealing, both with members of the public and with other public officials and with public entities. Each public entity will deal truthfully, fairly and honestly with its employees, other public sector entities and the public.

The Common Good of the Community

Various words and phrases have their season of fruitfulness. Common good is not used nearly as much as public interest, although both phrases raise similar issues. The *Public Sector Ethics Act 1994* uses both phrases, and this encourages the thought that each has its own particular emphasis.

The word common speaks of something that is known and shared by all citizens. The word good speaks of desirable aims and lofty values. The common good may be partly equated to "the general well-being of the whole community and of all classes of which it is composed". This phrase was used in *Stephen's History of the Criminal Law of England*, ((1883) Vol. 3, p.193) to describe the duty of King and Parliament in medieval England. In medieval England, society was stratified so that classes had a significance that is now lost. Today classes can be used to describe the many groups of people in our multicultural society whose well-being is included in the common good. Also, today it is necessary to add the words "and of the individuals in the community".

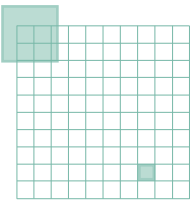
This emphasis on the common good of the community is closely linked with the concept of a public trust. Public officials do not serve sectional interests within the community. They serve the whole community and seek to advance its common good.

Improper use of Official Powers

The *Criminal Code 1899* defines a number of offences that involve the improper use of official powers.

1. Disclosure of Official Secrets

Section 85 of the *Criminal Code 1899* defines the offence of disclosure of official secrets, which occurs if a public official unlawfully publishes or communicates any information that comes into his or her knowledge or any document that comes into his or her possession by virtue of the person's office and that it was his or her duty to keep secret. The maximum sentence is two years.



Unless there is some specific instruction to keep information secret, the best guide as to the kind of information and documents which should not be disclosed is found in the *Freedom of Information Act 1992*. Section 11 of that *Act* identifies a number of bodies to which the *Act* does not apply. Information and documents held by such bodies should not be disclosed. Sections 36 to 50 identify documents and information that are exempt from disclosure under the *Freedom of Information Act 1992*. Generally such information and documents should not be disclosed.

However, these restrictions on disclosure must be balanced by the provisions of the *Whistleblowers Protection Act 1992* which protects public interest disclosures. Also, s.343 of the *Crime and Misconduct Act 2001* protects disclosures to the Crime and Misconduct Commission notwithstanding any other restriction on the disclosure of information.

2. Official Corruption

Section 87 of the *Criminal Code 1899* defines the offence of official corruption.

This offence is committed if a public official charged with a particular duty corruptly asks for, receives or obtains a benefit of any kind on account of anything done or omitted to be done or to be done afterwards, in the discharge of the person's duties. This happens if a public official asks for or accepts a bribe. The maximum sentence is seven years.

3. Interest in Contracts

Section 89 of the *Criminal Code 1899* defines an offence which is committed if a person employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a company with more than twenty members, a private interest in any contract or agreement which is made on account of the public service with respect to any matter concerning the department of the service in which the person is employed. The maximum sentence is three years.

This provision is designed to prevent public officials from receiving additional benefits from the department by which they are employed over and above those contained in their contract of employment. In other words, it is designed to protect two of Governor Bowen's proposals – public servants will be appointed on merit, not by patronage or protection, and they will receive appropriate salaries. There shall be no additional benefits or favours.

However, since 1890, there have been significant changes in patterns of employment, and it is possible that in some circumstances a public official may receive additional payment for performing tasks that are not part of his or her basic duties. If these tasks are among the duties the department may ask of the official, then the payments are properly made as part of the person's public service employment, and so do not constitute a private interest within s.89.

It is also significant that the private interest which the public official must not acquire or hold, directly or indirectly, is in a contract. This means that the interest must arise from the contract. This happens if the public official is a party to the contract either directly or indirectly. A direct interest would arise if the public official is a party to a contract with his or her department which is not concerned with the official's public service employment. An indirect interest would arise if the public official guarantees the performance of the contract, or if the public official has a right to receive money from the payments due under the contract. An indirect interest may also arise where a relative or friend of a public official has a contract with the department in which the public official is employed, and the relative or friend gives the public official some of the benefit received from the contract. Legal advice should be obtained before any such arrangement is considered.

If a public official is a share holder in a company with less than 20 shareholders, and the company enters into a contract with the department which employs the public official, the public official may well have committed an offence under s.89. Legal advice should always be sought before a public official becomes a shareholder or director in a company with less than 20 shareholders which has dealings with the government.

4. False Claims

Section 91 of the *Criminal Code 1899* defines an offence which is committed if a public official who is able to furnish returns about remuneration payable to himself or herself or any other person makes a return which he or she knows to be false in any material particular. It carries a maximum sentence of three years.

5. Abuse of Office

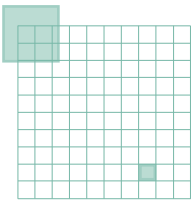
It is an offence punishable by imprisonment for two years for a public official to abuse his or her office by performing an arbitrary act prejudicial to the rights of any person. If the act is done for the purposes of gain, the maximum sentence is three years (*Criminal Code 1899*, s.92).

6. False Certificates

A public official, who is authorised to give certificates touching any matter by virtue whereof the rights of any person may be prejudicially affected, commits an offence carrying a maximum sentence of three years, by knowingly giving a certificate which is false in any material particular (*Criminal Code 1899*, s.94).

7. Other Offences

The *Criminal Code 1899* also contains provisions concerning corrupt practices by persons charged with judicial or administrative duties in respect of property, and corrupt practices by surveyors and valuers (s.90 and s.93).



These offences in the *Criminal Code 1899* identify serious instances of improper use of power by a public official. However, acts which amount to discrimination under the *Anti-Discrimination Act 1991* may also be an improper use of power. Acts which constitute workplace bullying are also an abuse of power. Acts performed out of malice towards another official or a member of the public also involve an improper use of power. Because public service management is directed towards maintaining impartiality in assisting the Government (*Public Service Act 1996*, s.23(d)), actions intended to advance the interests of a particular political party or to embarrass the Government involve an improper use of power.

Conflict of Interest

This concept is discussed in Chapter 13.

Disclosure of Fraud, Corruption and Maladministration

If the public is to have confidence in the integrity of public administration, it is important that public officials not only use their position and powers properly, but also disclose misconduct of which they become aware. If this is not done, their efforts to maintain public confidence will be of less value, because of the corrupt actions of a few. The Auditor-General, the Crime and Misconduct Commission and the Ombudsman have responsibilities which are best discharged if there is active cooperation from the whole public sector.

The *Crime and Misconduct Act 2001* requires the public official who suspects that a complaint or information or matter involves official misconduct to notify the Crime and Misconduct Commission (s.38). In this Act, “public official” means the Ombudsman or the chief executive officer of a unit of public administration or a person who constitutes a corporate entity which is a unit of public administration. This is a reminder that it is always necessary to check the definition of words used in a particular Act. This duty is paramount and must be complied with despite any obligation the person has to maintain confidentiality about a matter to which the complaint relates (s.39). Such an obligation could arise because of the provisions of the *Freedom of Information Act 1992*. Also, s.343 of the *Crime and Misconduct Act 2001* protects disclosures to the Crime and Misconduct Commission notwithstanding any other restriction on the disclosure of information.

Although the Act uses the phrase official misconduct, rather than fraud, corruption and maladministration, the conduct included in the definition of misconduct covers conduct that would involve fraud, corruption and maladministration. Fraud generally involves deception used to gain an unjust advantage, usually a financial advantage. Corrupt conduct is conduct which involves the criminal offences previously discussed. Maladministration involves conduct which breaches the obligations found in the *Financial Administration and Audit Act 1997*, *Public Sector Ethics Act 1994*, *Public Service Act 1996*, *Public Records Act 2002*, *Freedom of Information Act 1992*, and *Financial Management Standard 1997*.

The Fourth Ethics Principle Diligence

The fourth ethics principle stated in the *Public Sector Ethics Act 1994* is diligence. This word carries the same emphasis that zeal and assiduity provided in the *Public Service Regulations 1890*.

The ethics obligation drawn from this principle reads:

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

- (a) exercise proper diligence, care and attention;
- (b) seek to achieve high standards of public administration. (s.10)

While it may not seem to add much to the meaning of the word diligence to include in the ethics obligation proper diligence, the word proper is significant. It reminds us that the kind of diligence which leaves no stone unturned can be counter productive. Proper diligence involves a balance between confident haste and overzealous rectitude.

In recent times, the legal phrase - duty of care - has come into popular use. In its legal sense it means a duty to avoid doing some foreseeable harm to another person. In its popular sense, it seems to mean a desire to show compassion. In its context here, care has the third meaning in the Australian Pocket Oxford Dictionary, which is serious attention. It blends with attention.

The phrase - exercise proper diligence, care and attention - carries an obligation to do one's very best. The reason for doing this is to seek to achieve high standards of public administration.

Diligence also includes one of the principles of public service management expressed in s.23 of the *Public Service Act 1996*:

“adopting and maintaining systems and processes that are practical, and without excessive formality or likelihood of delay, and can be adapted quickly to changing demands;”

This expresses the characteristics of proper diligence. It also contains in the phrase - without...likelihood of delay - a reminder that proper diligence produces timely outcomes. The adage - justice delayed is justice denied - can be adapted to apply to administration. If tardy administration causes delays in processing applications or claims made by citizens, the people who are affected by that can fairly claim that they are being denied just claims.

The Fifth Ethics Principle Economy & Efficiency

The fifth ethics principle stated in the *Public Sector Ethics Act 1994* is economy and efficiency. These two words sound more like management tools than ethical values. However, within the public sector, they have to be accepted as basic values. The public sector is funded by the public, either through taxes and levies or through fees for services. Public confidence in the public sector depends to a very significant degree upon the economy and efficiency of public officials. It is significant that the first of the officials appointed to scrutinise public sector performance was the Auditor-General. He was appointed under the provisions of the *Audit Act 1861*.

The ethics obligation drawn from this principle reads:

In performing his or her official duties, a public official should ensure that public resources are not wasted, abused, or used improperly or extravagantly. (s.11)

Public resources include:

- buildings
- land
- equipment
- finances
- intellectual property
- internet access
- personal skills and abilities of public officials
- capacity of individuals to improve skills

This means that the inefficient use of resources includes underuse of the personal skills of public officials as well as overuse of government vehicles.

None of these resources must be wasted, abused or used improperly or extravagantly. The principles of work performance and personal conduct in the *Public Service Act 1996* expressed in s.25 include the words effective and appropriate in respect of the use of public resources. These words should also be understood as being included within the basic values of economy and efficiency.

The obligations in the *Financial Management Standard 1997* are basic duties which fall within this ethics obligation. It is not the purpose of this handbook to repeat those. However, a brief reference to division 7 of part 5 of the *Financial Management Standard 1997* is desirable.

Reportable Gifts

That division deals with reportable gifts, which are gifts of a current market value exceeding \$250. Division 7 sets out the procedures to be followed if reportable gifts are given or received. It does not deal with the issues that arise because gifts are given or received. Gifts may express courtesy or esteem, or thanks for services rendered, or hopes for favours yet to be received. Because gifts have such varied purposes, each offer of a gift must be carefully considered. It does not matter whether the gift is worth more or less than \$250. The purpose behind each gift must be considered.

To do this it is not necessary to ask the donor of the gift what is intended. Rather, all of the circumstances need to be evaluated by the standard of the fair-minded person. If such a person could conclude that the gift appears to be intended to reward a past favour or to seek a future one, the gift should be rejected. Such a gift would create an appearance of bias in favour of the donor of the gift. That creates an impression which damages the impartiality which is required by s.25 (a) and (f) of the *Public Service Act 1996*. Those clauses require a public service employee's work performance and personal conduct to be directed towards:

- (d) providing sound and impartial advice to the Government;
- (f) carrying out duties impartially and with integrity.

Intellectual Property

One of the public resources which must not be used improperly is intellectual property. Intellectual property can be:

- original literary
- dramatic
- musical or artistic works
- cinematographic films
- inventions and the results of scientific research and development

Intellectual property is protected by a number of Acts of the Commonwealth Parliament, including *Copyright Act 1968*, *Circuit Layouts Act 1989*, *Designs Act 1906*, *Designs Act 2003*(when proclaimed), *Patents Act 1990* and *Plant Breeder's Rights Act 1994* as well as by common law.

The basic rule is that the rights to all intellectual property produced in the course of employment in the public sector belong to the State. However, agreements can be made to recognize the rights of officials who contribute to the development of intellectual property which is capable of commercial exploitation. Generally, such agreements should be reached before the relevant work that is likely to produce the intellectual property is begun. This is particularly important if a public official is working in conjunction with a university or private sector entity which provides funding.

The *Copyright Act 1968* protects the moral rights of authors of literary, dramatic, musical or artistic works and cinematographic films. The moral rights protected in this way are:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship.

Only individuals have these moral rights.

Internet access should not be used to harass either members of the public or other public officials or for pornographic purposes.

Departments and their CEOs

The Governor in Council, by order published in the Government Gazette, may make administrative arrangements distributing the public business of the State among Ministers, and declare which administrative units and Acts each Minister is to administer (*Constitution of Queensland 2001*, s.44).

The Governor in Council may, by Government Gazette notice, establish departments and declare what their function is (*Public Service Act 1996*, ss.12, 13, 14, 15).

Each department is to have a chief executive officer who is appointed by the Governor in Council by Government Gazette notice.

The chief executive of a department has responsibilities which are stated in the *Public Service Act 1996*, s.51. These include:

- defining departmental goals and objectives in accordance with Government policies and priorities;
- managing the department in a way that promotes the effective, efficient, economical and appropriate management of public resources;
- implementing policies and practices about access and equity to ensure maximum access by members of the community to Government programs and to appropriate avenues for review;
- duties of departmental employees, and qualifications required to be held by departmental employees to undertake particular duties;
- training and development, promotion and discipline of departmental employees;
- development of ways to ensure all departmental employees are treated fairly.

This is not a complete list of responsibilities of a chief executive officer of a department. However, the responsibilities listed express the emphasis in this handbook. They require the creation of a system which puts government policies into effect in appropriate ways which ensure maximum access by members of the community to government programs, and fairness to public sector employees.

Chief executive officers also have the responsibility under the *Public Sector Ethics Act 1994* for the preparation of a code of conduct for their department. The *Financial Administration and Audit Act 1977* ss.34 to 36 also makes them accountable officers who are responsible for the financial administration of the department. Those duties include efficient, effective and economic management of assets and finances.

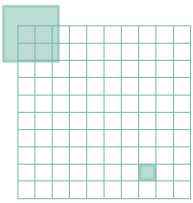
The Public Service Commissioner

The Governor in Council, by order published in the Government Gazette, may make administrative arrangements distributing the public business of the State among the Ministers (*Constitution of Queensland 2001*, s.44). Under the present administrative arrangements, the overall public service management, and employment conditions for senior executives, senior officers, and officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer, are part of the ministerial responsibilities of the Premier and Minister for Trade. This is in keeping with the Premier's duties in the *Public Service Act 1996*, ss.27, 28, 29, 30 and 31.

The administrative unit which discharges those responsibilities is the Office of the Public Service Commissioner, which is a public service office (*Public Service Act 1996*, s.17 and Schedule 1). The head of that public service office is the Public Service Commissioner (*Public Service Act 1996*, s.18 and Schedule 1 of the Act). Both the Public Service Commissioner and the Office of the Public Service Commissioner are established by the *Public Service Act 1996*, s.32.

The functions of the Public Service Commissioner are to:

- (a) promote the principles of public service management and employment stated in part 3 of the *Public Service Act 1996*;
- (b) promote public service management and workforce practices improvement initiatives;
- (c) monitor the performance of public sector units, and conduct management reviews required by the Premier;
- (d) support departmental initiatives to further enhance client service delivery;
- (e) provide a best practice advisory role on public service management and workforce practices;
- (f) ensure that the interests of the Government as public service employer are protected in accordance with the other functions mentioned in this section;
- (g) consider and decide overall employment conditions for persons employed as:
 - (i) senior executives and senior officers;
 - (ii) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer;and
- (h) together with the departments responsible for public sector industrial relations and public sector financial policy, consider improvements in the performance of departments through remuneration and conditions of employment;
- (i) consider and decide issues affecting the recruitment, selection, deployment, training and development of public service employees;
- (j) provide advice to Ministers and chief executives about public service employee and organisational management;
- (k) hear and decide appeals under this Act;
- (l) ensure the transfer or redeployment of public service employees surplus to the needs of departments;
- (m) establish policies and programs for the management of workforce practices of public service employees;
- (n) undertake, or participate in, negotiations on issues affecting public service employees in accordance with the other functions mentioned in this section;



- o) perform another function given to the Commissioner under this or another Act or by the Premier;
 - (p) perform functions incidental to a function under another paragraph of this section.
- (s.33)

Both the Industrial Relations Minister and the Public Service Commissioner can issue directives and guidelines about industrial relations. A directive is issued by Government Gazette notice, and is binding on the public service employees, and other employees of public sector units to whom the directive applies. A guideline is for the guidance of the public service employees and other employees of public sector units to whom the guideline applies (s.34).

The Industrial Relations Minister may issue directives and guidelines only about the remuneration and conditions of employment of public service employees other than senior executives or senior officers or public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer (s.34(2)).

The Public Service Commissioner may issue directives and guidelines only about a matter relating to a function of the Commissioner under s.33, or the overall employment conditions of persons employed as senior executives or senior officers or public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer, or a matter as required elsewhere in the Act (s.34(1)).

The Public Service Commissioner must act independently, impartially, fairly and in the public interest (s.35). The Public Service Commissioner reports annually to the Premier, and the report is tabled in the Legislative Assembly (s.36). In addition, the Commissioner may report to the Premier at any time about an issue relevant to the Commissioner's functions, and the Premier may also ask for such a report (s.37).

The Public Service Commissioner may delegate the Commissioner's powers in respect of hearing appeals to any person. The Commissioner may not delegate the power to issue directives and guidelines, but may delegate other powers to a public service employee (s.40).

The Office of the Public Service Commissioner is also called the Office of Public Service Merit and Equity.

Under the existing administrative arrangements, the Public Service Commissioner is responsible to the Premier for the administration of the:

- *Equal Opportunity in Public Employment Act 1992;*
- *Public Sector Ethics Act 1994;*
- *Public Service Act 1996;*
- *Whistleblowers Protection Act 1994.*

Part of this responsibility involves giving advice about codes of conduct and on ethical issues. To assist departments and public service offices in dealing with these issues, an official of the Office of Public Service Merit and Equity convenes the quarterly meetings of the Queensland Public Service Ethics Network (QPSEN).



Codes of Conduct

The *Public Sector Ethics Act 1994*, (the *Act*) requires each public sector entity to provide a code of conduct for its public officials while performing their official functions (ss.12, 13). The purpose of a code of conduct is to provide standards of conduct for public officials consistent with the ethics obligations in the *Act* (s.12(2)).

While the codes of conduct apply to public officials in performing their official functions (s.12(1)), it is not possible to draw a fixed line to indicate where official functions cease. For example, if an official has been dealing courteously with a difficult client up to knock off time, it would not be acceptable for that official to berate the client while both were waiting to catch a bus away from the office. The personal conduct of a public service employee must be directed towards ensuring that the employee's personal conduct does not reflect adversely on the reputation of the public service (*Public Service Act 1996*, s.25(h)).

A code of conduct must relate to a particular public sector entity, and must apply to all public officials of the entity (s.13(1)). However, a code of conduct may make different provision, consistent with the ethics obligations, for different types of public officials (s.13(2)). This is necessary because of the diversity of tasks performed in each public sector entity.

Public Sector Entity

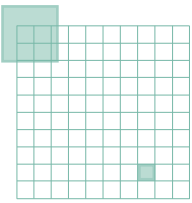
The *Public Sector Ethics Act 1994* defines “public sector entity” to mean any of the following:

- the Parliamentary Service;
- the administrative office of a court or tribunal;
- a department;
- a local government;
- a university, university college, TAFE institute or agricultural college;
- a commission, authority, office, corporation or instrumentality established under an Act or under State or local government authorization for a public, State or local government purpose;
- an entity, prescribed by regulation, that is assisted by public funds.

(Schedule)

The sixth of these categories is very broad, and some entities which would fall within that category are excluded from the definition. That means that the following entities are not public sector entities:

- a GOC (government owned corporation);
- a corporatised corporation;
- the following entities under, or within the meaning of, the *Education (General Provisions) Act 1989*:
 - o a parents and citizens association;
 - o a school that is not a State school;
 - o an advisory committee established under s.12 of that Act;



- o an international educational institution established under s.144 of that Act;
- o an entity prescribed by regulation.

(Schedule)

This list of entities which are public sector entities does not refer to public service offices, which are the entities in the first Schedule of the *Public Service Act 1996*. The people who can seek advice on conflicts of interest issues from the Integrity Commissioner include the chief executive officers of public service offices. The omission of any reference to public service office in the list of public sector entities does not mean that public service offices do not have to have codes of conduct. Most of the public service offices are included in the sixth of the categories of public sector entities, being commissions, authorities, or offices established under an Act. The ones that do not fall within that category fall within the second category, being the administrative offices of a court or tribunal.

Public Officials

The codes of conduct prepared for public sector entities apply to public officials. The Act defines “public official” to mean:

- An officer or employee of a public sector entity;
- A constituent member of a public sector entity, whether holding office by election or selection.

(Schedule)

Judicial officers and local government councillors are specifically excluded from the definition. This means that a code of conduct prepared for a local government applies to the employees of that local government, but not to the councillors of that local government. Similarly, a code of conduct prepared for the administrative office of a court or tribunal applies to the staff of that office, but not to the judges, magistrates or tribunal members.

On the other hand, if a commission or authority is established under an Act, and it is constituted by several members who may be elected or appointed, the code of conduct for the commission or authority would apply to those members, as well as to their staff.

Responsible Authority

The responsible authority for an entity has discretion to include anything in a code of conduct which that authority considers necessary or useful for achieving the purpose of the code (s.14(1)).

The Act defines “responsible authority” for a public sector entity as:

- for the Parliamentary Service - the Speaker;
- for the administrative office of a court or tribunal - the Minister responsible for administering the Act under which the court or tribunal is established;
- for the department - the Minister administering the department;

- for a university or university college – the council of the university or university college;
- for a local government – the local government;
- for another public sector entity established under an Act – the Minister administering the Act;
- for another public sector entity – the Minister administering the entity.

(Schedule)

Contents of Codes

A code of conduct may provide obligations with which public officials must comply (s.14(2)). Section 14(3) refers to things which may be included in a code of conduct. They are:

- Information explaining the purpose of:
 - ethics obligations generally or a particular ethics obligation;
 - conduct obligations generally or a particular conduct obligation.
- Information explaining the object intended to be achieved by the application of:
 - ethics obligations generally or a particular ethics obligation;
 - conduct obligations generally or a particular conduct obligation.
- guidelines about the application of an ethics or conduct obligation;
- examples of the operation of an ethics or conduct obligation;
- explanatory notes about an ethics or conduct obligation;
- references to Acts applying to public officials in performing their official functions.

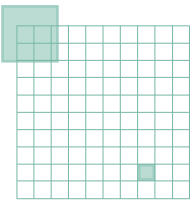
A public official of a public sector entity must comply with the conduct obligations stated in the entity’s code of conduct that apply to the official (s.18).

Preparation and Approval of Codes of Conduct

The chief executive officer of a public sector entity must ensure that a code of conduct is prepared for the entity (s.15). In practice some smaller entities have chosen to use the code of conduct approved for the department which administers the Act under which the entity is established. This practice is encouraged by the fact that the Minister administering the department is the responsible authority for the smaller entity. For strict compliance with the Act, the Minister should approve that procedure.

The “chief executive officer” of a public sector entity is defined by the *Act* to mean:

- for the Parliamentary Service—the clerk of the Parliament;
- for the administrative office of a court or tribunal—the chief executive officer of the department which administers the Act under which the court or tribunal is established;
- for a department—the chief executive officer of the department;
- for a local government—the local government’s chief executive officer;
- for a university or university college—the vice-chancellor of the university or university college;



- for another public sector entity—the person prescribed by regulation or, if no person is prescribed, the person responsible to the Minister for the management of the entity. (Schedule)

When a code of conduct is being prepared for a public sector entity, the chief executive officer must ensure that consultation about the code takes place, or that reasonable steps are taken to consult about the code, with:

- the public officials to whom the code is to apply;
- industrial organisations representing the interests of any of the officials;
- other appropriate entities representing the interests of any of the officials. (s.16)

When the code of conduct has been completed, the chief executive officer must submit the code to the responsible authority accompanied by a written statement outlining:

- the nature and extent of the consultations that took place during the preparation of the code;
- the outcome of the consultations.

Having had regard to that statement, the responsible authority may approve the code of conduct (s.17).

Access to Codes of Conduct

The chief executive officer of a public sector entity must ensure that each public official of the entity has reasonable access to a copy of the ethics principles and obligations for public officials in the *Act*, and the conduct obligations stated in the entity's code of conduct that apply to that official (s.19).

The chief executive officer of a public sector entity must keep available for inspection by any person, including a member of the public, an appropriate number of copies of the entity's approved code of conduct. Such person may inspect the code of conduct and take extracts from the code without fee. The chief executive officer must keep available copies of the code for purchase by any person, at a price prescribed by regulation. The copies must be available during office hours on business days at:

- the entity's head office;
- each regional office (if any) of the entity;
- any other places the chief executive officer considers appropriate. (s.20)

The chief executive officer of a public sector entity must ensure that public officials of the entity are given appropriate education and training about public sector ethics. Such education and training must relate to:

- the operation of this *Act*;
- the application of ethics principles and obligations to the public officials;

- the contents of the entity's approved code of conduct;
- the rights and obligations of the officials in relation to contraventions of the approved code of conduct. (s.21)

The chief executive officer of a public sector entity must ensure that the administrative procedures and management practices of the entity have proper regard to:

- The *Act* and, in particular, the ethics obligations of public officials;
- the entity's approved code of conduct. (s.22)

Each annual report prepared by the chief executive officer of a public sector entity must include an implementation statement giving details of the action taken during the reporting period to comply with the following:

- preparation of codes of conduct;
- access to ethics principles and obligations and codes of conduct;
- inspection of codes of conduct;
- education and training;
- procedures and practices of public sector entities. (s.23)

Disciplinary Action

Disciplinary action for contravention of an approved code of conduct by a public official of a public sector entity is dealt with as follows:

- if the official is a public service officer - the *Public Service Act 1996*;
- if the official is a local government employee - the local government legislation applying to the local government, whether *City of Brisbane Act 1924*, *Community Services (Aborigines) Act 1984*, *Community Services (Torres Strait) Act 1984* or *Local Government Act 1993*;
- if the official is not a public service officer or a local government employee but there are disciplinary processes applying to the official - the disciplinary processes;
- if there are no disciplinary processes applying to the official - the regulations [to this time no regulations have been prescribed]. (s.24)

The Misconduct Tribunal may deal with serious cases of breaches of the code of conduct where the Crime and Misconduct Commission charges official misconduct.

The Queensland Integrity Commissioner

In 1999, the *Public Sector Ethics Act 1994* (the *Act*) was amended to help Ministers and others to avoid conflicts of interest, and in so doing to encourage confidence in public institutions. This was to be achieved by appointing an Integrity Commissioner whose functions are (s.28):

- (a) to give advice to designated persons about conflict of interest issues as provided under division 5;
- (b) 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;
- (c) to contribute to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Integrity Commissioner's functions.

The *Act* defines a “conflict of interest issue” involving a person as an “issue about a conflict between the person’s personal interest and the person’s official duties” (Schedule). That definition was added in 1999. The concept of a conflict between an official’s personal interests and official duties had been in s.9(2)(b) of the *Act* since 1994. In that section any such conflict must be resolved in favour of the public interest.

Who may seek advice?

Although the purpose of part 7 was to help Ministers and others to avoid conflicts of interest, 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*

This group comprises the Premier, Ministers, Parliamentary Secretaries and government members. “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 (Schedule).

During the passage of the Legislation in 1999, the Members’ Ethics and Parliamentary Privileges Committee (MEPPC) raised concerns about possible conflicts between the rulings given by the Clerk of Parliament and the MEPPC, and those of the Integrity Commissioner. The Premier referred the MEPPC to s.31(3) of the *Act* 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 in relation to the Members' 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 MEPPC (*Parliament of Queensland Act 2001*, s.91(c)).

Generally it is appropriate that government members seek advice on conflicts of interest issues from the Clerk of Parliament or the MEPPC.

2. Statutory Office Holders

The *Act* uses the definition of "statutory office" in s.108 of the *Public Service Act 1996*. Using this definition, a statutory office holder is a person appointed by the Governor in Council or a Minister to an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister. It is immaterial whether an appointment may only be made after a recommendation or other process.

There are many Acts which establish offices to which a person can only be appointed by the Governor in Council or a Minister. For example, Members of Boards of Trustees of Grammar Schools are appointed by the Governor in Council to offices established under the *Grammar Schools Act 1975*, to which members can only be appointed by the Governor in Council.

There are Acts which establish offices to which a person may be appointed by the Governor in Council or a Minister after the person has been elected or nominated. For example, Cane Production Boards appointed by the Minister include members elected by growers and others nominated by mill owners. They are appointed to an office established under the *Sugar Industry Act 1999* to which a person can only be appointed by a Minister.

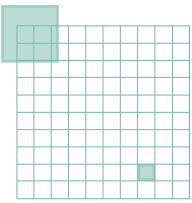
On the other hand, there are people who are appointed by a Minister to an office established under an Act who are not statutory office holders. For example, the directors of a company established for a State purpose under the *Corporations Act 2001* are appointed to an office which is not one to which a person can only be appointed by the Governor in Council or a Minister.

3. Chief Executive Officers

Three categories of chief executive officers are included in the definition of designated persons:

- a chief executive officer of a department of government;
- a chief executive officer of a public service office;
- a chief executive officer of a government entity.

A department of government can be readily identified.



A public service office refers to the 17 entities in Schedule 1 of the *Public Service Act 1996*. Their respective chief executive officers are specified in that Schedule (*Public Service Act 1996*, ss.17, 18, 19). Each of these chief executive officers is also a statutory office holder who has been appointed by the Governor in Council to an office established under an Act to which a person can only be appointed by the Governor in Council.

The definition of “government entity” is extracted from s.21 of the *Public Service Act 1996*. It means:

an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose, or a part of such an entity, as well as a registry or other administrative office of a court of the State of any jurisdiction.

A number of entities are excluded from this definition of government entity, including a local government or a corporatised corporation, the Parliamentary Service, Government House, the Executive Council, the Legislative Assembly, a court of the State of any jurisdiction, the police service except for public service officers, a school council, university or university college, and a primary producer cooperative association or commodity board not in receipt of financial assistance from the Crown.

4. Senior Officers

The definition of designated persons includes:

- a senior executive officer or senior officer employed in a department of government;
- a senior executive officer or senior officer employed in a public service office;
- a senior executive equivalent employed in a government entity who is nominated by the Minister responsible for administering the entity.

5. Ministerial Staff

The definition of designated persons includes:

- a person employed in the office of a minister, or engaged, to give advice to the minister;
- a person employed in the office of a parliamentary secretary, or engaged, to give advice to the parliamentary secretary;
- a person or a person within a class of person nominated by a minister or parliamentary secretary.

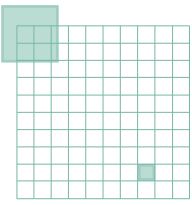
This means that not all staff employed by a Minister or Parliamentary Secretary are designated persons. Only those who are employed, or engaged, to give advice are within the definition.

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. If the person seeking advice is a senior executive officer, senior officer or senior executive equivalent, the request for advice must be accompanied by a signed authority to seek the advice from the chief executive officer of the department, public service office or government entity (s.29).

Persons about Whom Advice may be Sought

Section 30 of the *Act* sets out the designated persons about whom advice may be sought:

- (1) A designated person may seek advice about a conflict of interest issue involving the person.
- (2) The Premier may seek advice about a conflict of interest issue involving any designated person.
- (3) A Minister may seek advice about a conflict of interest issue involving a designated person who is—
 - (a) a statutory office holder whose office is established under an Act administered by the Minister;
 - (b) the chief executive of a department administered by the Minister or a senior executive officer or senior officer employed in the department;
 - (c) a chief executive officer of a government entity or a senior executive equivalent employed in the entity nominated by the Minister under s.27(1)(h);
 - (d) mentioned in s.27(1)(i) (employed or engaged to give advice);
 - (e) nominated by the Minister under s.27(1)(k).
- (4) A Parliamentary Secretary may seek advice about a conflict of interest issue involving a designated person who is—
 - (a) mentioned in s.27(1)(j) (employed or engaged to give advice);
 - (b) nominated by the Parliamentary Secretary under s.27(1)(k).
- (5) The chief executive officer of a department or public service office may seek advice about a conflict of interest issue involving a designated person employed in the department or office.
- (6) The chief executive officer of a government entity who is nominated by the Minister under s.27(1)(h) may seek advice about a conflict of interest issue involving a senior executive equivalent who is—
 - (a) nominated by the Minister under s.27(1)(h);
 - (b) employed in the entity managed by the chief executive officer.
- (7) To remove any doubt, it is declared that advice must not be sought by or about a person who has been, but is not presently, a designated person.



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

The second category of persons about whom a Minister may seek advice refers to the chief executive, senior executive officers and senior officers employed in the department, but not to such persons employed in a public service office. All of these heads of public service offices are statutory office holders, so the Minister could seek advice about any conflict of interest issue involving them. A Minister is not able to seek advice about senior executive officers and senior officers employed in a public service office administered by the Minister.

Giving Advice

A request for advice about a conflict of interest issue must disclose all relevant information (s.31(1)). 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 (s.31(4)). If advice is refused, the reasons for refusing to give the advice must be recorded in writing (s.31(5)).

When giving advice about a conflict of interest issue to a designated person, the Integrity Commissioner must have regard to:

- 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;
 - may have regard to other ethical standards the Integrity Commissioner considers appropriate.
- (s.32)

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. The only obvious professional rule which would not fit comfortably within those values is the journalist's obligation to protect confidential sources. However, it is difficult to imagine that a journalist employed by the State and aware of the duties that that entails would offer the protection of confidentiality to any source of information.

Disclosure of Information

A person must not record, use or disclose information about a conflict of interest issue about anyone which came to the person's knowledge because of the person's involvement in the administration of Part 7 of the *Act*. A person who is or has been involved in the administration of Part 7 is not, in any proceeding, compellable to disclose information about a conflict of interest issue about anyone that came to the person's knowledge because of that person's involvement in the administration of Part 7. (s.33)

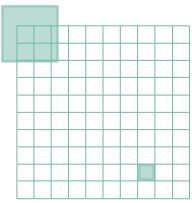
Disclosure of Advice

Section 34 of the *Public Sector Ethics Act 1994* authorises the disclosure of "relevant documents" which 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;
- the record of the Integrity Commissioner's refusal to give advice.

The following people may disclose relevant documents:

- A person who is or has been the designated person involved in the conflict of interest and to whom a relevant document relates may disclose the document.
- The Integrity Commissioner may disclose a relevant document to the person who is or has been the designated person to whom the relevant document relates.
- The Integrity Commissioner must give a copy of a relevant document relating to a particular designated person involved in a conflict of interest issue, other than a senior executive officer, senior officer or senior executive equivalent, to the Premier, if—
 - o the Premier asks for a copy of the document;
 - o the Integrity Commissioner reasonably believes that the person has an actual and significant conflict of interest, and, the Integrity Commissioner advises the person in writing of that belief, and the designated person fails to resolve the conflict to the Integrity Commissioner's satisfaction within 7 days after being given that advice.
- The Integrity Commissioner must give a copy of a relevant document relating to a particular designated person involved in a conflict of interest issue, other than a senior executive officer, senior officer or senior executive equivalent, to a Minister or a Parliamentary Secretary if the Minister or Parliamentary Secretary asks for a copy of the document and the person is a person about whom the Minister or Parliamentary Secretary may seek advice.
- The Integrity Commissioner must give a copy of a relevant document relating to a particular designated person involved in a conflict of interest issue to the chief executive officer of a department or public service office if the chief executive officer asks for a copy of the document and the person is a person about whom the chief executive officer may seek advice.



- The Integrity Commissioner must give a copy of a relevant document relating to a particular designated person involved in a conflict of interest issue to the chief executive officer of a government entity who is nominated by the Minister if the chief executive officer asks for a copy and the person is a person about whom the chief executive officer may seek advice. (s.34)

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 (s.34(8)).

From these detailed provisions two important principles appear:

- 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.
- The chief executive officers of departments, public service offices and government entities are responsible for the management of conflicts of interest that involve senior executive officers and senior officers. Although the Premier can seek advice about a conflict of interest issue involving any designated person, the disclosure of documents relating to senior executive officers and senior officers employed in a department, public service office or government entity is made only to the chief executive officer of that department, public service office or government entity, if that person asks for the document.

Limited Protection

If a designated person,

- asks for advice about a conflict of interest issue involving that designated person;
- discloses all relevant information about the issue to the Integrity Commissioner when seeking advice;
- 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

The phrase, conflict of interest, is used to cover a range of circumstances. In 2003, the Organisation for Economic and Cooperative Development (OECD) published the following definition of conflict of interest which has been accepted for publication in documentation to public sector agencies by the Independent Commission Against Corruption (NSW) and the Crime and Misconduct Commission:

“A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private ...interests which could improperly influence the performance of their official duties and responsibilities”.

Some years earlier the *Public Sector Ethics Act 1994* provided a similar definition. This is found first in s.9 where the obligations which arise from the ethics principle integrity are expressed. Section 9(2(b)) provides that a public official should ensure that any conflict between the person’s personal interests and official duties is resolved in favour of the public interest.

When the *Public Sector Ethics Act 1994* was amended in 1999 to include Part 7, which created and empowered the office of the Queensland Integrity Commissioner, 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. As those responsibilities involve giving advice to people in the public sector, the definition of “conflict of interest issue” is concerned with such issues when they involve such a person. In such a case the issue is about a conflict between the person’s personal interests and person’s official duties (Schedule).

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:

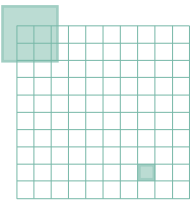
- official duties
- personal interests
- public interest

Official Duties

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

Usually, every task will involve these obligations, and every decision involved in the task will require that all the relevant obligations are met. That does not mean that every task will involve every single one of the obligations the person has. It only means that the ones which touch on the task being performed should be discharged.



1. Administrative Obligations

The *Public Service Act 1996* in ss.23, 24 and 25 sets out principles of public service management and employment. Some of these can be described as creating administrative obligations, while others create ethics obligations. The administrative obligations include:

- providing responsive, effective and efficient services to the community and government;
- continuously improving performance in delivering services with a client focus;
- continuously improving public service administration and management;
- adopting and maintaining systems and processes that are practical and without excessive formality or likelihood of delay, and can be adapted quickly to changing demands;
- acknowledging the importance and value of public service employees through training and ongoing development;
- maintaining proper standards in creating, keeping and managing public records;
- basing selection decisions on merit;
- providing equal employment opportunity.

Although these obligations may fall more clearly on senior management, many of them also fall on public officials across the public sector. For example, maintaining systems that are practical and without excessive formality or likelihood of delay is an obligation that falls very broadly across the public sector.

The obligations in the *Public Service Act 1996* fall on public service employees. The *Act* identifies these people as being employed in departments or public service offices. However, not all people employed in departments are employed under the *Public Service Act 1996*. For example, a health services employee is not a public service employee (*Health Services Act 1991*, s.25). Each person working in the public sector should be aware of the legislation which provides the terms of their employment.

The Financial Administration and Audit Act 1977 imposes obligations on every accountable officer, generally the head of the department or of the public service office. The discharge of these obligations places the following obligations on all employees with the department or public sector entity:

- to ensure that the procedures within the department or entity are such as will at all times afford proper control over expenditure;
- to ensure that expenditure is incurred for lawful purposes and is made in compliance with the prescribed requirements. (s.36)

Part 3 of the *Financial Management Standard 1997* creates detailed obligations in respect of the management of resources. It is beyond the scope of this handbook to refer to those obligations at length. It is enough to say that the following areas of responsibility are included:

- revenue management;
- user charging;
- expense management including credit card use;
- asset management;
- cash management;
- liability management;
- financial information management.

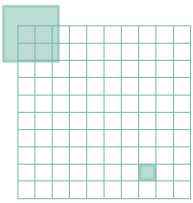
The *Public Records Act 2002* creates the obligation on every public authority to make and keep full and accurate records of its activities (s.7). The definition of “public authority” is very broad. It includes the Governor, the Executive Council and a Minister, who are not included in the definition of “government entity” in the *Public Service Act 1996*. It also includes departments, local governments and entities established under an Act. This obligation to keep records is consistent with the obligations in the *Financial Management Standard 1997* in respect of financial records, and with the obligation in the *Public Service Act 1996* to maintain proper standards in creating, keeping, and managing public records.

The Freedom of Information Act 1992 gives to every person a legally enforceable right to be given access under that *Act* to documents of an agency and official documents of a Minister, subject to the provisions of the *Act* (s.21). In dealing with a request for access, there is an obligation on the official to refuse access only in accordance with the terms of the *Act*.

The Crime and Misconduct Act 2001 creates an obligation on a public official to notify the Crime and Misconduct Commission of a complaint of official misconduct (s.38). However, the definition of public official in the *Crime and Misconduct Act 2001* is very different from the definition of public official in the *Public Sector Ethics Act 1994*. In the *Crime and Misconduct Act 2001*, “public official” means the Ombudsman or the chief executive officer of a unit of public administration or a person who constitutes a corporate entity that is a unit of public administration. This is a reminder that it is always necessary to check the definition of words used in a particular Act.

The *Judicial Review Act 1991* gives to a person who is not satisfied with a decision of an administrative character the right to have the decision reviewed by the Supreme Court. The grounds upon which such a review can be sought indicate a series of obligations which a person making a relevant administrative decision should follow. It is not within the scope of this handbook to describe all of those decisions, but the obligations should be applied generally. They are:

- to apply the rules of natural justice;
- to follow the procedures that are to be applied in making the decision;



- that only the person authorised to make the decision should make the decision;
- to make only a decision which is authorised by the legislation being applied;
- not to be influenced by improper considerations;
- to observe all legal requirements;
- not to accept bribes or inducements;
- to make certain that the evidence justifies making the decision. (s.20)

Many public sector entities are created by legislation which imposes obligations on the employees of the entity. Many entities administer legislation which imposes obligations on those who are administering the legislation. These obligations should be discharged.

The State Purchasing Policy creates a number of obligations on public officials responsible for purchasing goods and services. Again the details are beyond the scope of this handbook.

It is possible that some public officials will be employed under a contract which contains additional obligations which should also be discharged.

The code of conduct which applies to a public official may provide conduct obligations which must be complied with (*Public Sector Ethics Act 1994*, s.14(2) and (3)).

2. Ethics Obligations

The ethics obligations in the *Public Sector Ethics Act 1994* have been discussed in chapters 4, 5, 6, 7 and 8.

The *Public Service Act 1996* casts the following ethics obligations on public service employees:

- to provide sound and impartial advice to the government;
- to carry out duties impartially and with integrity. (s.25(d) and (f))

The code of conduct which applies to a public official may provide ethics obligations which must be complied with (*Public Sector Ethics Act 1994*, s.14 (2) and (3)).

3. Performance Obligations

Every decision that is made within the public sector arises from the task in hand. This means that the official concerned with making the decision, which may involve no more than giving information over the telephone, must understand the issues involved in making the decision. For example, if the task is to answer a telephone enquiry, the official should make every reasonable effort to understand the precise nature of the inquiry before deciding how to answer.

When considering whether there is a conflict between a public official's personal interest and the public official's official duties, it is important that the public official understands exactly what duty he or she is performing. For example, a person who is asked only to make a record of a decision being made by others does not make that decision and is not relevantly involved in making the decision.

Personal Interests

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

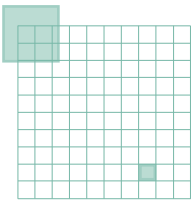
- (1) A person's interest in property of any kind, including money, the value of which may be altered by a decision, recommendation or advice that person may make or be a party to making.
- (2) A person's commercial or business interest of any kind, including a future interest, which could be advanced 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.

Exceptions

There can be exceptions: 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 Industry Act 1999*, s.172(5); *Water Act 2000*, s.610(7).

Different Kinds of Conflicts of Interest

- **Actual Conflict**
This 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 giver will be made.
- **Apparent Conflict**
This 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.



- Potential Conflict

This 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.

Public Interest

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.

Conflict of Duty

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 (*Public Sector Ethics Act 1994*, ss.8, 11).

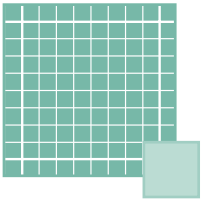
The ethics obligations in the *Public Sector Ethics Act 1994* are not arranged in order of importance, but should all be held in balance. This may mean that on some occasions the persistent inquirer can be given more time than on other occasions. This is a matter of judgement in each case.

On the other hand, if a public official is asked to provide advice, there is no alternative to giving sound and impartial advice, even if the instructions for the task hint at the preferred answer. In most cases, the preponderant duty will be quite clear.

Personal Opinions

To be human is to hold opinions on a wide range of topics. Some of these opinions are properly based. Others may be the product of prejudice or misinformation. These opinions are not the kind of strongly held personal convictions referred to previously as personal interests. Nonetheless, they can intrude into decision making.

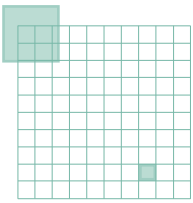
A public official needs to be aware of the opinions he or she holds which may, even subconsciously, influence a decision the official makes. Such opinions should be firmly put aside and the decision made on proper grounds.



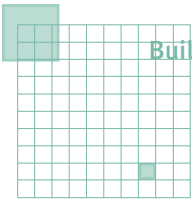
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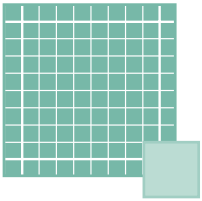


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A Handbook for Queensland Public Officials

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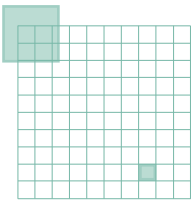
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