

# ETHICS AND PUBLIC INTEGRITY IN CONTRACTING WITH GOVERNMENTS AND PUBLIC AUTHORITIES

by

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## 1. Introduction

In the United States in 1922, Albert B. Fall, the Secretary for the Interior, leased U.S. Navy oil reserves to Edward L. Doheny and Harry F. Sinclair without holding a competitive bidding. The previous year, Doheny had given Fall a \$100,000 interest-free loan. Sinclair also "loaned" him a large sum of money. The Senate investigated these transactions during 1922 and 1923 and Fall resigned in March 1923. He was subsequently convicted of accepting bribes.<sup>2</sup>

In Queensland in 1930, a Royal Commission concluded that two former Premiers, Ted Theodore and Bill McCormack, were guilty of fraud and dishonesty in procuring the State to purchase the Mungana Mines for 40,000 Pounds.<sup>3</sup>

Another Royal Commission, in Queensland in 1956, found that Labor Lands Minister, Tom Foley, extorted money from graziers as the price for renewing their leases.<sup>4</sup>

It is instructive to note that as well as suspending Foley, the then Premier, Vince Gair, suspended the public servant who disclosed the extortion. Premier Gair was supported by the Country Party Leader and future Premier, Frank Nicklin. It was apparently regarded as a breach of trust to reveal a crime.<sup>5</sup>

In 1989, the Fitzgerald Inquiry identified instances where high level conflict of interest arose and were not avoided. Although making no finding of misconduct, Fitzgerald observed that there were occasions:

"... when persons or organisations engaged in business with the Government or seeking business from it made substantial donations to its political party, which the processes adopted allowed to remain hidden.

Those with whom dealings took place may have neither sought nor received preferential treatment and no conclusions of impropriety have been drawn however on the evidence before this Inquiry, including Cabinet records, there were a number of occasions when persons and organisations who were involved with transactions with the Government were also involved in personal dealings with one of its members, who nonetheless participated in and sometimes dominated the decision-making process."<sup>6</sup>

This situation appears to have arisen, either because of the absence of any formal code of conduct, or because of a failure by Ministers and others involved to be sufficiently scrupulous in identifying a conflict when it arose.

1. M.P. Irwin, LL.B., General Counsel, Criminal Justice Commission Queensland. This is the text of a paper delivered at a Seminar on Government Contracts hosted by the Centre in Commercial and Property Law, Q.U.T., at Brisbane on 17 September 1991.

2. E. Whitton, *The Hillbilly Dictator - Australia's Police State* ABC Books Sydney 1989 at viii.

3. *Ibid.* at ix.

4. *Ibid* at ix and 6.

5. *Ibid* at 6-7.

6. Report of Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, 1989, (The Fitzgerald Inquiry) at page 91.

As is well known, while the Fitzgerald Inquiry initially concerned police corruption, it soon became clear that this was part of a wider malaise to do with attitudes to public office and public duty and associated lack of standards, which afflicted the public sector generally.

“In the wake of the Inquiry, Queensland resembled someone arising in the morning after a long and dissolute night of self-indulgence intent on behavioural improvement. But the self-indulgence had not been a random, once only celebration, it was the accretion of bad habits acquired over several decades and with the tacit and implicit encouragement of different governments”.<sup>7</sup>

Had the appropriately named Mr Fall been aware of the situation in Queensland and some of the activities in the trade of authority, he might have said, as did former Prime Minister Whitlam in another context, “When I realise the resources available to Government, I stand, like Lord Clive, amazed at my own moderation”.<sup>8</sup>

This is why it is essential that when public funds are involved in the awarding of contracts, the integrity of the process is assured. Against this background, the topic of this paper is a timely one for consideration.

The Fitzgerald Report was concerned with making recommendations to reduce public maladministration and misconduct such as misuse of public resources. To this end, the Fitzgerald reforms are directed to making the public sector better managed and more accountable.

The Fitzgerald Report called for the establishment of two Commissions to be the agents of these reforms — the Criminal Justice Commission and the Electoral and Administrative Review Commission.

As history shows, both of these Commissions were established in 1989. They have been joined in their work by the Public Sector Management Commission (PSMC). The object of the PSMC is to “achieve efficiency, effectiveness, economy and impartiality in the management of the public sector of Queensland by providing leadership, oversight and direction”.<sup>9</sup> It has already released three Public Sector Management Standards.

The Electoral and Administrative Review Commission has as an object the recommendation of necessary electoral and administrative laws and guidelines and procedures. It has recently issued a paper on “Codes of Conduct for Public Officials”.<sup>10</sup>

The Criminal Justice Commission is an independent and accountable body with a wide range of functions. These include the investigation of complaints and information of “official misconduct” in the public sector. It has introduced, for the first time, a real independence in the investigation of complaints against officers in the public sector.

What is perhaps even more important is the fact that the Commission has an educative role. It is not only concerned with corruption investigation but also corruption prevention.

Thus, one of the statutory functions of the Criminal Justice Commission is the responsibility to render advice and assistance to the community concerning official misconduct. In this regard, section 2.20(2)(f) of the *Criminal Justice Act 1989 (Qld)* makes it a function of the Official Misconduct Division:

“to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct”.

7. E. O'Neill, program notes to “Popular Front” Brisbane Theatre Company production, 1989.

8. *Supra* n.1 at 9.

9. s.2.13 *Public Sector Management Commission Act 1990 (Qld)*.

10. EARC Report 15.

The Commission is mindful of the significance of this role and hopes that, by educating the community and units of public administration as to appropriate work practices and ethics, the incidence of official misconduct and corruption in the public sector of this State can be significantly reduced. It has already embarked on public hearings and issued public reports for this purpose.

It has recently followed in the footsteps of the Independent Commission Against Corruption of New South Wales (the ICAC) by appointing a Corruption Prevention Officer. The overall approach of the Commission is to promote corruption prevention as an integral aspect of good management.

It is important to define what is meant by “public authority” and “integrity” for the purposes of this discussion.

### **Governments and Public Authorities**

In the *Criminal Justice Act 1989 (Qld)* there is a definition of the term “unit of public administration”.<sup>11</sup> The exact limits of this definition have yet to be fully realised. However, it is clear that the vast majority of persons who hold any office, place or position (whether by way of election or selection)<sup>12</sup> in the Queensland public sector, including various statutory corporations of the State, are brought within this definition and, therefore, within the scope of the Commission’s operations. The term includes the Legislative Assembly, Executive Council, the Courts and Local Authorities.

For the purpose of this paper, I equate the term “public authority” with “unit of public administration” as it is used in the *Criminal Justice Act 1989 (Qld)*. The ethics and integrity principles of contracting with governments and public authorities are identical. For convenience, I address my remarks in this paper to contracting with public authorities. For the reasons given, these remarks are equally applicable to contracting with governments.

### **Ethics and Public Integrity**

Integrity is defined in the Macquarie Dictionary (second revised edition) as including:

“soundness of moral principle and character; uprightness; honesty; the state of being whole, entire, or undiminished”.

In my view, integrity is very much concerned with ethical conduct. I hasten to add that I do not subscribe to the jaundiced view that ethics is determined by what you can get away with,<sup>13</sup> although this may have been true of certain persons in the Queensland public sector in the past. I prefer to relate integrity to the guiding principle in relation to “United States Code of Ethics for Government Service” as it existed in 1983. This included:

“ . . .

*Never* discriminate unfairly by the dispensing of special favours or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favours or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

“ . . .

*Never* use any information coming to him confidentially in the performance of governmental duties as a means for making private profit. . . .”<sup>14</sup>

11. s.1.4(1) *Criminal Justice Act 1989 (Qld)*.

12. s.1.4(2) *Ibid.*

13. Bruce, Pieter “Black Hole of Building Rorts”, *Australian Financial Review*, 7 August 1991. In this article, the author isolates the themes of the New South Wales Royal Commission into Productivity in the Building Industry in New South Wales. He states that this was one of the themes.

14. *Supra* n.9 at 31, para. 4.40 where the Code is set out in more detail.

I also subscribe to the Code, promulgated by Presidential Order in 1989 to replace it. This Code includes a statement on the "Principles of Ethical Conduct". This includes the following:

"... To ensure that every citizen can have complete confidence in the *integrity* of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) *Public service is a public trust*, requiring employees to place . . . the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using non-public Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.

- ...
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organisation or individual.

...<sup>15</sup>

Although the Code and Principles are generally expressions of what an employee must not do, if they are interpreted in more positive terms, they constitute a statement of broad ethical principles which should be followed by officers in public authorities.

They emphasise that public officials are trustees of the people and ethical standards are those "*standards of behaviour* which, over and above considerations of legal obligations, or the dictates of self-interest, are recognised as applicable to professional conduct."<sup>16</sup>

This is also recognised in the newly issued Queensland Police Service Code of Conduct. Paragraph 5.1.2 of the Code states:

"Officers have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law".

Further, paragraph 5.2.1 states:

"Officers will act, and be seen to act, properly and in accordance with both the spirit and the letter of the law and the terms of this Code of Conduct".

Hence, Queensland police officers have a positive duty to obey not only the letter of the law but also the spirit of any relevant law. This recognises that the community is entitled to expect that police officers walk that extra mile when necessary in the performance of their duties.

Therefore, any reference to ethics and public integrity must be to a standard of behaviour which transcends the strict requirements of the law and the dictates of self-interest.

It is thus disappointing that 21% of respondents to the EARC Ethics Survey (May 1991) agreed or strongly agreed with the proposition — "In my job I am not concerned with

15. *Ibid.* at 32, para. 4.41 where the principles are set out in more detail.

16. *Ibid.* at 16, para. 3.23 quoting Mr Justice Gleeson (1989).

ethics but only about whether something is legal or in accordance with Government policy". It is to be observed that 65% of the respondents to this survey identified themselves as "middle" or "top" management or professionals.<sup>17</sup> However, in fairness to the respondents, it would be interesting to ask this question of a similar cross-sample from the private sector. One suspects that there would not be a great difference in the result.

The concepts of ethics and public integrity are also to be found in the definition of "official misconduct" in section 2.23(1) of the *Criminal Justice Act 1989 (Qld)*. This is broadly described in terms which include behaviour which:

- directly or indirectly adversely affects or could adversely affect the honest or impartial discharge of public functions;  
or
- which constitutes or involves the discharge of such functions in a manner which is not honest or impartial;  
or
- which constitutes a breach of trust placed in an individual by reason of this appointment to a public office;  
or
- which involves a misuse of official information.

In addition, it must either be conduct which constitutes or could constitute a criminal offence or a disciplinary breach that provides reasonable grounds for the termination of employment. It is therefore not limited to a breach of the criminal law.

The clear intention is to define "official misconduct" widely. In short, the Commission has the power to investigate conduct within or concerning the public sector which affects the honest or impartial performance of official functions.

The Commission is concerned to ensure that public servants act as *servants* of the public — and not in pursuit of personal interests.<sup>18</sup>

More specifically, in respect to ethics and public integrity in the contracting process, I subscribe to the view in the ICAC "Report on Investigation into Tendering for Vinyl Floor Products" (July 1991) that the essential characteristics of a proper tendering process are "equity" and "economy".<sup>19</sup>

In fact, the Criminal Justice Commission has taken a similar approach to the duty of Local Authorities in its report on "Complaints against Local Government Authorities in Queensland — Six Case Studies (July 1991)" wherein it is stated that the responsibilities of employees of Local Authorities are "not limited solely by or under the *Local Government Act 1936* and attendant regulations, but include a duty to the Authority and its rate payers to ensure that the Authority is run fairly and efficiently".<sup>20</sup>

## **2. Ethics and Public Integrity in Contracting with Governments and Public Authorities**

The fact that this issue is currently one of real concern is reflected by the reports of the Criminal Justice Commission and the ICAC, to which reference has been made.

The extent of the problem is shown by the fact that, for the period from 22 April 1990 to 7 May 1991, of the 2,084 complaints received by the Official Misconduct Division of the Criminal Justice Commission, approximately 8.7% related to Local Authorities; 7.8% related to corporate and non-corporate entities, Courts and registries, Corrective Services Commission, Legislative Assembly and Parliamentary Service Commission; and 7.3%

17. *Ibid.* at 13, para. 311.

18. Temby, I., *Tackling Corruption in New South Wales* (1990) 13 U.N.S.W.L.J. 137 at 143.

19. Page iii of the Report.

20. *Ibid.* at 31.

related to public service departments.

Although not all these complaints will either be established or relate to contracting issues, it is clear that an all too significant number do relate to these issues and raise cause for concern.

This is illustrated by the recent Criminal Justice Commission Report on "Complaints against Local Government Authorities in Queensland — Six Case Studies". As appears from this Report, the figures concerning Local Government Authorities can be further broken down. As at 31 May 1991, 198 complaints detailing some 370 allegations had been received.

From the tenor of many of the complaints, it is apparent that high levels of concern and overt cynicism with regard to the administration of these Authorities are shared by many members of the public. It seems that a broad cross-section of the community has unfortunately come to expect a lack of accountability, favouritism and bias as an inevitable by-product of dealings with many Council officers and elected officials.<sup>21</sup>

This public attitude is a matter of real concern because public confidence in the personal impartiality and probity of public servants and elected officials, and the systematic integrity of public institutions is crucial to the proper functioning of our system of government. Significant conflicts of interest, whether real or apparent, actual or apparent, can seriously damage that confidence.<sup>22</sup>

Ultimately, what is at issue is the development of an effective regime whereby an actual or apparent conflict of loyalties may be managed so as to avoid damage to the public's confidence in that official's integrity, or the integrity of the official's organisation.<sup>23</sup>

Not only must officers in public authorities act with integrity in contracting on behalf of their agency, but they must avoid any conduct which may be seen by the public as involving some form of favouritism.

An analysis of the results of the Criminal Justice Commission's investigations into local authorities identified areas of real concern in need of immediate redress. It issued its report on "Complaints Against Local Government Authorities in Queensland — Six Case Studies" as part of its role in educating local authorities to appropriate work practices and ethics with a view to achieving a significant reduction in the incidence of official misconduct and corruption.

A number of case studies which reveal common problems are in relation to contracting issues. The problems and the recommended remedies are instructive and applicable to all public authorities. Accordingly, I refer to some of the studies.

### **Case Study [A]**

The Council in question was a large local authority of a primarily urban coastal community.

The substantive complaint was that the Council in question had dealt exclusively with a certain car maintenance company as a result of gifts of liquor made to the Council employee responsible for fleet maintenance and repairs. This employee, who we will refer to as Mr A. had been purchasing officer for 12 years. He was responsible for the organisation of repairs of Council plant and equipment on reference from the workshop foreman. His authority was limited to \$1,000.

The company concerned had commenced exclusive dealings with the Council five years before Mr A.'s appointment.

21. *Ibid.* at 1.

22. *Supra* n.9 at 49, para. 5.67.

23. *Ibid* at 49, para. 5.68.

From his appointment, Mr A. attended the company in a social capacity at least once each week. Alcohol was consumed on these occasions. His vehicle was serviced by the company at a reduced rate, if not without charge.

Mr A. was responsible for 50% of all orders processed by the Council, although he was one of 17 purchasing officers. He was spoken of by his superiors as a diligent and efficient officer. The orders of the company accounted for more than \$100,000 per year.

In fact, in a two year period to November 1990, the Council did \$280,000 worth of business with the company and 98% of the invoices were for less than \$1,000.

There was no attempt by the Council to investigate any other supplier, even after approaches by competitors offering their services.

Complaints regarding the monopoly situation by competitors of the company went unheeded by the Council administration, which appears not to have investigated the claims raised or have queried the pattern of expenditure. None of the reasons advanced for exclusively preferring the company, e.g. its size, supply of stock and its ability to provide quick service at competitive prices, could be sustained.

In fact, there were mark ups of between 100% to almost 500% on parts supplied by the company. The company also increased invoices by sums of either \$100 or \$300 without explanation.

There was no check upon the competitiveness of the total job costs.

Under the Council system, the workshop foreman was required to decide whether vehicles in need of service were to be serviced within the workshop or externally. It appears this was never enforced as approximately 50% of vehicles were delivered to the company for repair without reference to the foreman or Mr A.

Orders were never completed or submitted by the Council to the company prior to repairs being carried out. Estimates or quotes were not provided. All order forms were clearly stamped as confirmation orders, signifying that the service had been required without documentation being completed.

Mr A. not only ensured that business was directed to the company but administered the necessary paper work in a way that facilitated the relationship, whilst giving the appearance of abiding by the necessary procedures.

It was clear that the Council's administrative system had broken down. This system was not properly administered and internal controls proved inadequate. Controls in the accounting system were not triggered by the usually high number of confirmation orders or anomalies between other orders written by Mr A., and administrative procedures proved ineffective in addressing concerns raised with the Council regarding the monopoly situation.

The Commission recommended that the Council review its administrative and internal auditing systems. In particular it was to ensure that adequate controls were in place so abnormal patterns of ordering, authorisation and purchasing would be detected and investigated at an early stage.

The Commission would have recommended that the position of purchasing officer be prescribed as subject to the jurisdiction of the Misconduct Tribunals and that he be charged with official misconduct, if he had not in fact resigned.

### **Case Study [B]**

The Council in question administered a small rural shire with a country town situated in its geographical centre.

It was alleged that, over a number of years, the Shire Chairman and two other Councillors had used their official positions to obtain grass slashing work from the Council for their private contracting businesses.

The Chairman had extensive experience in local government having been a Councillor since the late 1950's. The other Councillors had also served for considerable periods.

In the five year period in question, a total of \$153,850.75 was paid to private contractors by the Council for slashing work. By far the majority of the payments were made to the Shire Chairman and a person who is referred to as Mr A.

A total of \$68,468.00 [44.5%] was made payable to the Shire Chairman's unregistered business. A total of \$59,704.00 [38.8%] was made out directly to Mr A. The next highest sum for slashing work was paid to another Councillor [\$7,832.50]. The sum of \$7,140.00 was paid to Mr B.

The Commission's investigation revealed that the Chairman and Mr A. were in fact co-directors of a private company. A total of \$44,214.00 paid to Mr A. was deposited into bank accounts operated by either the Chairman or the Shire Chairman and his wife. A further \$9,200 was deposited into the private company.

All of the payments to Mr B. were deposited into an account held jointly by the Chairman and his wife.

As the system operated, there would appear to be no connection between the Chairman, Mr A. and Mr B. on the face of Council documentation as all invoices had been submitted in the name and on behalf of each individual. There was no pecuniary interest declaration by the Chairman in the businesses of Messrs A. and B. Accordingly, there was no objective evidence available by way of Council records from which members of the Council or any interested parties could conclude that these persons were connected in any way.

The pecuniary interest register held by the Council disclosed that the Chairman had made only one declaration of a pecuniary interest in slashing work for the Shire in March 1984. This declaration was made in respect of himself and his unregistered interest.

He not only made no declaration of his interest in the work of Messrs A. and B., but he was also present at Council meetings where slashing work was discussed.

To make matters worse, 79 of 103 cheques drawn in favour of the Chairman for slashing and other work and deposited into his account, were co-signed by him as a member of the Shire Council. Further, 39 of the 49 cheques drawn in favour of Messrs A. and B. and deposited into the Shire Chairman's account were signed by the Chairman.

The Shire Clerk expressed the view that the integrity of the internal auditing system was not weakened by the co-signatory being the same person as the payee on the cheque. In fact, the procedure accords with the requirements of Regulation 9 of the *Local Government Audit Regulations* 1962 (Qld).

There was only one recorded occasion in which quotations were called for grass slashing work during the period with which the investigation was concerned. As a result, only Mr B. received work for the first time.

The records systems operating within the Council were clearly deficient in that they failed to record the methods by which private contractors were selected, what areas they were responsible for, or the direction given by the overseer in relation to slashing work. There were no records kept of work completed by contractors, nor any proof obtained that work claimed for by the contractors had actually been performed. As a consequence, officers of the Commission experienced considerable difficulty in locating any relevant Council records.

The normal checks and balances within the internal auditing system were necessarily compromised by the co-signatory of the cheques also being the payee.

It was recommended that the Regulation that permitted this, be amended to prevent this in future.

A brief of evidence was to be forwarded to the Director of Prosecutions requesting advice



as to possible criminal offences committed by the Shire Chairman in failing to sufficiently disclose his interest in the work performed by Messrs A. and B.

### **Case Study [C]**

This related to a medium sized coastal authority situated in a coastal area.

The allegations related to possible corruption and favouritism in the tendering process concerning the maintenance of refuse tips.

The successful tender was Mr B. His tender was accepted although it was not the lowest submitted. A recommendation was made at a Council meeting to investigate the ability of the lowest tenderer to perform the task. However, no formal investigation was conducted because of time constraints. Alderman S. consequently successfully proposed that Mr B.'s tender be accepted.

Subsequently, the terms and conditions of the contract were drastically altered to the benefit of Mr B., by the Town Clerk after consulting Alderman S. and the Mayor. The City Engineer and the Health Surveyor were not consulted although the altered contract went outside the original tender advertisement.

It was estimated that the cost to the Council increased from \$72,000 to \$161,700. As a result, the contract was entirely different to the contract for which tenders had been called. Notwithstanding the requirements of the *Local Government Act 1936*, the contract was not offered for re-tender. The explanation given for this failure was that those involved were anxious for the situation relating to the dumps to be addressed as soon as possible.

It was considered that there was prima facie evidence of breaches of the *Local Government Act 1936* both in relation to this contract and another for the supply of furniture.

The Commission would have recommended that the position of Town Clerk be prescribed as subject to the jurisdiction of the Misconduct Tribunal and that he be charged with official misconduct had he not retired from that position.

### **Case Study [F]**

This involved a large urban local authority.

The complaint alleged corruption and misconduct on the part of employees of the Council's Works Department and the demonstration of favouritism in the employment of certain truck owner/drivers hired by the Council.

It was also alleged that conflicts of interest existed on the part of nominated Council employees who had interests in plant and machinery hired by the Council.

The investigation revealed that systems and procedures relating to the allocation of work to truck owners/drivers and hire of plant and equipment were inadequate and open to manipulation. While no corrupt behaviour had been proved, the systems relied upon the integrity of the officers involved and the systems permitted exploitation by unscrupulous persons acting alone or in concert. No mechanisms were in place to ensure that such procedures as were in place, were followed.

As a direct consequence, conflict of interest necessarily arose as employees were permitted to contract with the local authority.

The lack of special controls relating to the hire of equipment in which Council employees had interests was considered to be likely to result in favouritism and bias in the hire and allocation of this equipment. The Commission stated that:

“unless adequate system with appropriate control mechanisms are introduced, conflicts of interest are likely to continue to arise with concomitant allegations of partiality.”<sup>24</sup>

24. *Supra* n.18 at page 63.

Furthermore, the policy of the Council regarding conflicts of interest was not complied with.

It was recommended that systems and procedures should be introduced to ensure that all interests of Council officers and employees which relate to contractual and trading relationships with the Council are known to officers responsible for the administration of those contractual and trading arrangements on the Council's behalf and that adequate controls exist to ensure that the potential for conflicts of interest is minimised.

It was also recommended that two Council employees be prosecuted for breaches of the conflict of interest provisions of the relevant Act in failing to fully declare their interests as required by the legislation. A brief of evidence alleging possible breaches of Section 89 of the *Criminal Code* (Qld) with respect to failure of public officers to declare private interests in contracts should be forwarded to the Director of Prosecutions for his consideration and any necessary action.

### **Conclusion**

It was clear from the Commission's investigations that the issues raised in the case studies were not isolated.

General problems identified included:

- Lack of adequate financial controls and poor financial and operational systems and procedures;
- Lack of any system for comprehensive review of financial or operational system and activities, even in the largest local authorities;
- Short-sighted audit procedures which concentrated upon checking only required financial documentation and accounts, leading to a narrow and strictly "financial and accounting" focus which failed to take in the greater picture and the wider public interest;
- Lack of adequate records other than the required financial records, and poor record systems;
- Lack of checks and balances within the system to ensure abnormal patterns in financial transactions are identified, and/or to assist in identifying areas of risk;
- Administrative arrangements which resulted in senior council officers identifying closely with the elected council of the day and being dependent upon the good will of influential members of the council for continuation of employment and advancement. Consequently, decisions and advice offered by senior officers had on occasions been perceived as being focused upon furthering the interests of council members, in preference to the interests of ratepayers and electors;
- Lack of awareness amongst council employees and elected council members of matters constituting conflict of interest, reinforced by the unwillingness of council administrations to enforce admittedly inadequate legislative provisions relating to conflict of interest situations and by the failure of the relevant department to enforce these provisions.

It is the Commission's experience that these problems are not isolated to the local government arena but are generally applicable to other public authorities, particularly in the area of contracting.

I have observed that there is an indication of a gradual change in attitude by local authorities. It was recently reported that a local shire council had voted to sever their 9 year association with certain contractors. The report said that "Councillors were reluctant . . . but many said they felt compelled to honour the tender system". The contractor's tender was more than \$120,000 higher than the successful bidder. One councillor who voted against the recommendation to accept this tender was reported to have said that it was

impossible to turn his back on the loyalty of the previous contractors.

However, another councillor, made the startling revelation that it was the Council's duty to safeguard the ratepayer's money. Perhaps the winds of change were generated by the Commission's investigation of the previous year's tender.<sup>25</sup>

It emerges from the Commission's investigations that the maintenance of integrity in contracting by public authorities is dependent upon management introducing and enforcing appropriate internal controls that will detect possible misconduct as an early stage and ensure that the potential for conflicts of interest is minimised.

Ultimately, the performance of public duty with integrity, competence and independence requires professionalism by public officers in the performance of those duties.

Necessary professional standards will be reinforced by the development and issue of a code of conduct for public officials. Although it may well be that different codes of conduct may be required for different components of the public sector, e.g. there is much to be said for a specific code of conduct in respect of local authorities.

In addition, public authorities of all types must be encouraged to develop comprehensive policies relating to conflicts of interest which are published and enforced.

There can be no higher ideal than for public sector officers than making fair and impartial decisions on the basis of merit and seeking no favour, personal aggrandisement or profit by misuse of their public position.

The Criminal Justice Commission will do more in the future by way of corruption prevention and education of public officials. It will promote professionalism, accountability and corruption prevention as an integral aspect of good management.

An accountable system which involves the clear devolution of responsibility and authority; effective communications [both upwards and downwards]; well defined duties and lines of command; and commitment of top management to react to information reaching them:

- identifies potential problems and changing circumstances early and economically;
- maintains management control of resources;
- identifies good work at all levels [bad work is self-revealing];
- inculcates a sense of self-discipline at all levels.<sup>26</sup>

However, the Commission cannot tackle this task alone. It requires the co-operation of the public sector and the active support of the public community. If each of these components work together, benefits will be achieved in the form of improved standards of integrity and proper administration in the public sector.

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25. *Sunshine Coast Citizen*, 26 June 1991, page 2.

26. ICAC [Hong Kong], "Corruption Prevention" booklet 90(1) at 7 and 9.

