

PUBLIC SECTOR ETHICS BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the Public Sector Ethics Act are to:

- declare particular ethics principles as the basis of good public administration in the Queensland public sector generally, and to identify specific ethics obligations as the framework for agency-based codes of conduct for public officials;
- require each public sector agency to develop a code of conduct under the Act, setting out the agency's requirements for the application of the ethics obligations in that agency;
- require chief executive officers of included public sector agencies to implement the agency's code effectively, in particular by ensuring consultation on the code's content, by requiring that administrative practices and procedures are consistent with the agency's code, and by providing training for staff on ethics standards and the application of the code; and
- provide a statutory basis for a chief executive officer to encourage exemplary conduct by officials, and to take disciplinary action against an employee for failure to comply with a relevant code of conduct.

Reasons for the Bill

Present Code of Conduct Arrangements in Queensland

In 1989 the Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the Fitzgerald Report)

recommended that codes of conduct for officials be further developed. The Fitzgerald Report proposed that the Electoral and Administrative Review Commission undertake the formulation of codes of conduct for public officials, and review related public sector ethics issues.

EARC presented its report (no. 92/R1) in May 1992. The Parliamentary Committee for Electoral and Administrative Review generally endorsed the EARC recommendations in May 1993.

EARC found in 1991 that codes of conduct in the Queensland public sector were not well developed or effectively implemented: while the 1988 Code of Conduct for Officers of the Queensland Public Service had been circulated among at least the major Departments, and its provisions had also been adopted voluntarily by some agencies outside the Public Service, there was little if any training activity, and little awareness of the code's provisions among the generality of staff.

Two Models of Codification

EARC recommended that the same basic ethics standards should apply to all appointed and employed officials in the Queensland public sector. EARC considered that such standards should be based on a small number of general principles declared in legislation, with specific requirements and local interpretations of the principles being set down to the minimum extent necessary in individual agency-based codes of conduct, following consultation with affected staff, clients, and other interest groups.

The alternative model for code development, namely specific and exhaustive regulation for all foreseeable eventualities, was rejected as likely to be ineffective in developing individual ethical competence and "ownership" of the provisions of a code.

EARC considered that the enactment of public sector ethics legislation would emphasise the Government's commitment to achieving high standards of professional ethics for public officials, on the basis that such standards, effectively implemented, are central to good public administration.

The Act would also enable each agency to apply its existing disciplinary powers and procedures to breaches of a code prepared in accordance with the Act, irrespective of the source of those powers, without the need to amend other legislation.

EARC's approach emphasised the position of trust occupied by public officials, and recommended what amounts to a "professional ethics" code for public officials based on the core features of "Westminster" conventions of democratic parliamentary government—elected Ministers who are accountable to Parliament and the electorate for the administration of their portfolios, and a partnership between Ministers and appointed officials in which the Minister has the ultimate right to decide on policy and priorities.

General Description of the Proposed Public Sector Ethics Scheme

The Public Sector Ethics Bill (the Bill) declares five specific public sector ethics principles as the basis of good public administration in a "Westminster"-style system of government. The Bill defines those principles in general terms, in the form of "ethics obligations" which are to apply to public officials, through agency-specific codes of conduct.

The Bill requires the chief executive officer of each included public sector agency to develop and implement a code of conduct for that agency, consistent with the ethics obligations.

The ethics obligations form the framework for agency-specific codes only, and are not directly actionable: in recognition of submissions to the Parliamentary Committee for Electoral and Administrative Review, disciplinary or other sanctions are available only against a specific breach of, or specific failure to comply with, the requirements of an authorised agency code.

The ethics obligations are not ordered hierarchically, reflecting the fact that ethical decision-making often involves the exercise of judgement between competing principles.

The Bill also reflects EARC's emphasis on the need for adequate consultation with staff and others in developing codes, and on the importance of appropriate training, by making these matters the responsibility of chief executive officers.

Agency codes are to be approved by a "responsible authority". This is usually the relevant Minister, although there are some exceptions, such as Local Government and Aboriginal and Torres Strait Islander Councils.

The Bill establishes that contraventions of codes of conduct approved under the Public Sector Ethics Act will be dealt with under existing

disciplinary provisions in legislation concerning the management of appointed public officials (e.g. *Parliamentary Service Act 1988*, *Public Service Management and Employment Act 1988*, *Police Service Administration Act 1990* and *Local Government Act 1994*).

The Bill does not create any new criminal offences for wrongdoing by public officials. Existing offences, such as those contained in the Criminal Code, will be referred to in agency codes.

Allegations of official misconduct will continued to be referred by principal officers to the CJC for investigation under the *Criminal Justice Act 1988*. The Ombudsman will continue to have jurisdiction to investigate public complaints of maladministration by public officials (e.g. unfair or unlawful decision making affecting the rights of citizens) as defined in the *Parliamentary Commissioner Act 1974*.

The Public Sector Ethics Principles

The Bill declares five “ethics principles” to be the basis of good public administration, namely:

- Respect for the law and system of government;
- Respect for persons;
- Integrity;
- Diligence; and
- Economy and efficiency;

The Ethics Obligations

As drafted, the ethics obligations reflect the role of the public official in a “Westminster”-style system of government recognised by EARC and the Parliamentary Committee. The central features of this role are the conventions that public office involves a position of trust, and that public officials will have regard to “the public interest” to the exclusion of any personal interest.

The Bill states the ethical obligations of appointed officials in terms which follow the recommendations of EARC and the PCEAR closely.

(i) Respect for the law and system of government

Clause 7 of the Bill defines the first ethics principle, ***Respect for the law and system of government***.

In practice, this obligation requires that officials should, for example, exercise powers lawfully, obey lawful instructions, be responsive to the mandate of the government of the day, and provide information and assistance to a Parliamentary Committee, where authorised to do so by a Minister.

The exception provided for in the second section of the obligation statement recognises that independence from the dictates of government policy may be, in our society, a characteristic feature of the function of some classes of public official, for example, some Commissioners and statutory office-holders, independent Tribunals, and academic members of a university.

(ii) Respect for persons

Clause 8 of the Bill defines the second ethics principle, ***Respect for persons***.

In practice, this obligation requires that officials should, for example, avoid patronage and favouritism in employment matters, exercise powers fairly and equitably, seek to ensure that members of the public receive their proper entitlements and know their rights, avoid sexual harassment, recognise that other officials are also bound by obligations in their capacity as public officials, and respond to requests in a timely way.

(iii) Integrity

Clause 9 of the Bill defines the third ethics principle, ***Integrity***.

In practice, this obligation requires that officials should, for example, not disclose official information improperly, not abuse the powers or resources available to them as officials, avoid any conflict between personal interests and official duties, or resolve such conflict in favour of the public interest. The obligation also requires officials to avoid conduct which could undermine public confidence in the government or the system of public administration, for example, failure to disclose to a relevant authority known fraudulent or corrupt conduct, or “maladministration” by another official.

(This latter requirement complements the disclosure provisions in the Criminal Justice Act which place a duty of disclosure on principal officers, but not public officials generally. The requirement to disclose “maladministration” relies on the same restricted definition as that in the Whistleblowers Protection Bill.)

(iv) Diligence

Clause 10 of the Bill defines the fourth ethics principle, *Diligence*.

In practice, this obligation requires that officials should, for example, return “a fair day’s work for a fair day’s pay”, observe the procedural fairness (“natural justice”) requirements of good administrative decision-making, make all reasonable efforts to provide high standards of service to clients, act in accordance with relevant “duty of care” requirements, avoid negligent conduct, provide expert and comprehensive advice to Ministers, and seek to maintain high standards of public administration.

(v) Economy and efficiency

Clause 11 of the Bill defines the fifth ethics principle, *Economy and efficiency*.

In practice, this obligation requires that officials should manage all forms of public resources (for example human, material, and financial resources, intellectual property and information) in the interests of safeguarding public assets and revenues and ensuring efficient programs and service-delivery.

Coverage of Public Sector Agencies

Part 1 outlines the categories of public sector unit that would be covered by the requirements of the Act. Because of the difficulties of providing exhaustive definition of public sector entities, there is provision in the Bill for particular public bodies to be excluded from, or included under, the coverage of the Bill by Regulation: for example, the Government has decided that statutory and company Government-Owned Corporations are to be excluded from coverage. Public sector entities covered by the Bill include:

- the Parliamentary Service;
- Public Service Departments;
- administrative offices of a Court or Tribunal (but not judicial officers);

- Commissions, authorities, offices, corporations, and instrumentalities established under an Act or government authorisation for a public purpose;
- universities, State Colleges and agricultural colleges; and
- local governments (in relation to employees).

Agency Codes of Conduct

Part 4 imposes an obligation on chief executive officers of public sector entities to develop a code of conduct specific to that organisation. A code may make different provision for different groups of official in an organisation, consistent with the obligations, dependent on the duties and functions performed by those officials.

Chief executive officers are to be responsible for ensuring that adequate consultation is undertaken in the development of codes, to maximise “ownership” and understanding of a code’s provisions by those to whom the code applies, and to ensure that the code is relevant to the working circumstances of the organisation to which it relates.

Approval of Codes

Codes are to be approved by a “responsible authority”. The responsible authority is prescribed in clause 17 of the Bill. In general, the authority is the responsible Minister, or the body ultimately responsible for the management and direction of the organisation, for example, the Parliamentary Service Commission in respect of the Parliamentary Service, and the Council in respect of Local Government and Aboriginal and Torres Strait Islander Councils.

Responsibilities of Chief Executive Officers

The responsibilities of chief executive officers are set out in Part 4, Division 2, and Part 5 of the Bill. The responsibilities of a chief executive officer include ensuring that the organisation’s code is reasonably available to staff and the public, providing education and training in public sector ethics, ensuring that the agency’s administrative procedures have proper regard to the ethics obligations set out in the Act, and with the organisation’s code of conduct requirements, and reporting on

implementation of the provisions of the legislation in the agency's Annual Report.

Provision of Training

EARC and PCEAR considered that adequate training and education in public sector ethics must be provided at all levels in an organisation, over time, if the organisation's code is to be accepted, understood and competently applied in the workplace. The Bill requires all chief executive officers to provide such training and education.

This requirement on chief executive officers complements the traditional duty on employees to ensure that they are aware of and comply with the code of conduct's requirements. This duty is re-affirmed in clause 18 of the Bill.

Availability of Sanctions

Part 6 provides that a failure to comply with the requirements of a code may be dealt with under the disciplinary provisions applicable to the official concerned. For example, a public servant would be disciplined under provisions of the *Public Service Management and Employment Act 1988*, while a Police Officer would be disciplined under the *Police Service Administration Act 1990*.

Relationship to Whistleblower Protection Bill

The Public Sector Ethics Act will complement the proposed Whistleblowers Protection Act by placing an ethical obligation on public officials to expose fraud and corruption of which they are aware. Agency codes will also enable chief executive officers to provide procedures to allow employees to challenge directions that appear improper or unlawful.

Estimated Cost of Government Implementation

It is difficult to estimate the long-term financial impact of the scheme on the public sector.

The Public Sector Management Commission has budgeted \$135,000 for 1994-95 to provide central training and advice on public sector ethics

matters. There will be additional direct costs over time for the printing of agency codes, information leaflets and training materials. There may also be indirect costs arising from the training activities undertaken by agencies. In both cases, it is reasonable to expect that these costs will be offset by a likely reduction in the incidence of conduct which would have led to costly investigations and prosecution, compensation claims, and lost productivity, in addition to any direct costs arising from the conduct itself.

Consultation

In the course of their reviews, EARC and the Parliamentary Committee consulted widely among the public sector, Local Government, the professions, unions, the community and academic contributors. The Parliamentary Committee additionally consulted departmental chief executive officers and the universities. EARC received 39 submissions which are listed in Appendix B of its Report. PCEAR received 36 submissions which are listed in Appendix B of its Report.

In considering EARC's recommendations, the Government consulted the following agencies: the Public Sector Management Commission, Office of the Cabinet; Department of Housing, Local Government and Planning; Police Department; Department of Justice and Attorney-General (including the CJC); Department of Environment and Heritage; Department of Employment, Vocational Education, Training and Industrial Relations; Treasury Department; Department of the Premier, Economic and Trade Development; Queensland Health; and Department of Transport (including Queensland Rail).

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides the Act's short title.

Clause 2 provides definitions of significant terms including chief executive officer and responsible authority for the purposes of preparation and approval of agency codes of conduct.

Clause 3 indicates that the Act binds all persons, including the State.

PART 2—ETHICS PRINCIPLES FOR PUBLIC OFFICIALS

Clause 4 identifies the ethics principles for public officials and declares them to be the basis of good public administration. The ethics principles form the framework for the ethics obligations set out in Part 3 of the Bill.

PART 3—ETHICS OBLIGATIONS FOR PUBLIC OFFICIALS

General

This Part generally defines the ethics principles set out in Part 2 in the form of obligations which are intended to provide the basis of codes of conduct for public officials covered by the Act. The ethics obligations set out in Part 3 are not of themselves legally enforceable.

Division 1—Nature, purpose and application of ethics obligations

Clause 5 sets out generally the nature and purpose of the ethics obligations.

Clause 6 provides that the ethics obligations of the Act apply to all public officials.

Division 2—The obligations

Clause 7(1) sets out the first of the ethics obligations “*Respect for the law and system of government*”.

Clause 7(2) provides for an exception to the application of the obligation in the case of public officials whose duty to act independently of government is a requirement or a customary feature of that official’s work—for example, commissioners, tribunals and academics.

Clause 8 sets out generally the ethics obligation “*Respect for persons*”.

Clause 9 sets out generally the ethics obligation “*Integrity*”.

Clause 10 sets out generally the ethics obligation “*Diligence*”.

Clause 11 sets out generally the ethics obligation “*Economy and efficiency*”.

PART 4—CODES OF CONDUCT FOR PUBLIC OFFICIALS

Division 1—Codes of conduct

Clause 12 sets out the nature and purpose of codes of conduct that are to apply to public officials in performing their official functions.

Clause 12(2) requires that codes of conduct provide for standards of conduct consistent with the ethics obligations of the Act.

Clause 13 requires that a code of conduct relate to a particular public sector agency (“entity”) and allows for a code to provide differently in relation to the standards of conduct which are to apply to different types of officials.

Clause 14 specifies the range of subject matter which may be dealt with by a code of conduct and the form in which such matters may be treated.

Division 2—Preparation and approval of codes of conduct

Clause 15 requires the chief executive officer of an agency to ensure that a code of conduct is prepared for that agency.

Clause 16 requires consultation be undertaken with public officials and others to whom the code is to apply or to who have a relevant interest.

Clause 17 provides for approval of codes to be the responsibility of a specified authority. Generally the responsible authority is defined in Clause 2 as the Minister responsible for administering the agency. In the case

where an agency is not subject to a Minister, the peak body or council responsible for the overall management of the agency may authorise a code. The responsible authority is also required to have regard to a statement provided by the chief executive officer specifying the consultations which have taken place and their outcomes.

Division 3—Public officials to comply with codes

Clause 18 provides that public officials must comply with the conduct obligations, as set down in a code of conduct, which apply to them. Disciplinary and other sanctions applicable in the case of failure to comply with the agency's code are dealt with in clause 24.

PART 5—ADDITIONAL RESPONSIBILITIES OF CHIEF EXECUTIVE OFFICERS

Clause 19 provides that a chief executive officer is responsible for ensuring that each official and employee has reasonable access to the ethics principles and obligations and the conduct obligations relevant to an official.

Clause 20 requires that access be provided to the ethics obligations and the agency's code. It also provides for the copying and purchase of agency codes and puts beyond doubt the question of whether a member of the public is entitled to access to an agency code.

Clause 21 requires that a chief executive officer ensure that appropriate training and education about public sector ethics is provided to officials for whom they are responsible.

Clause 21(2) defines a number of categories of education and training which must be provided.

Clause 22 requires that chief executive officers ensure that their agency's practices and procedures have proper regard to the Act, the ethics obligations, and the agency's code.

Clause 23 requires a chief executive officer to report annually by way of an implementation statement about specified matters undertaken in relation to the implementation of an agency's codes of conduct.

**PART 6—DISCIPLINARY ACTION FOR
CONTRAVENTION OF APPROVED CODES OF
CONDUCT**

Clause 24 provides for disciplinary action to be taken in relation to officials in accordance with the head of power under which the relevant official is employed.

PART 7—MISCELLANEOUS

Clause 25 empowers the Governor in Council to make regulations.