

## NOTES FOR TUTORIAL IN ENVIRONMENTAL ETHICS

These hypothetical situations depict the kinds of ethical dilemmas which public officers can face. All are based on real cases, but names, circumstances and details have been changed to protect confidentiality.

The subjects are mostly focused on land administration and land management in a hypothetical State Department.

### CASE 1 - CAN A PUBLIC SERVANT HAVE A PRIVATE LIFE?

Public servant Geoff Edwards was working quietly at his desk when Professor John Smith telephoned to invite him to deliver a lecture on environmental ethics to the town planning students at a Queensland university. After Edwards had accepted, Professor Smith advised of the fees payable to visiting lecturers.

Is Edwards entitled to accept the fees? In other words, is he delivering the lecture in an official capacity for which he is already paid a salary; or is he delivering it as a professional in a private capacity for which he is entitled to accept a fee?

It would be legitimate for him to regard occasional lecturing as official duty, as it is an accepted function of his Department to contribute to the development of the planning profession and to extend community knowledge of natural resource management. (As an aside, it is community services education and training like these that are culled when departments downsize, retreat to “core business” or contract out their operations).

If Edwards attends in a private capacity, is he entitled to use departmental typist, photocopiers, paper, and departmental time to prepare his address?

Edwards consults the Public Service Board’s Code of Ethics. It says that public servants are not prevented from taking on private employment outside working hours, “provided that there is no conflict with their official duties”. Which isn’t much help.

Which of the following options should he choose:

- attend in departmental time, pocket the fee and say nothing about it to anybody;
- attend in departmental time, and remit the fee to Consolidated Revenue;
- attend in a private capacity, take leave and pocket the fee?

If he offers to do all the preparation work in his own time on the preceding weekends, does that entitle him to follow the third option?

Does the difference between departmental and private roles affect the content of his presentation – that is, the frankness with which he can speak to the students about policy?

## CASE 2 - WATERCOURSE FRONTAGES

In this example, Sharon is a hypothetical land officer in a regional office. Frank is a hypothetical Manager of Land Policy in the head office of the Department of Land and Water Management (DLWM). Sharon is responsible to a Regional Director and contentious cases usually finish up on his desk.

Sharon enjoys extensive delegations under the *Land Tenure Act* to offer leases, cancel reserves and issue freehold deeds. In those actions Sharon stands in the shoes of the Minister and the Minister cannot make decisions in these cases unless he or she withdraws the delegated power. They can, of course, exercise pressure.

Sharon has been reading the material on Integrated Catchment Management and Landcare and notes that the Great Barrier Reef inshore is dying as a result of silt and nutrients flushed out from the river systems. She notes that 13 million tonnes of sediment, for example, flow out in the Fitzroy River each year, 10 million tonnes more than the background level.

Sharon has received an application from the lessee of a property which straddles a major tributary of the Black Stump River to freehold his perpetual lease. She inspects and notes that the frontage is not fenced off and the river is heavily laden with silt and faecal material from the cattle wallowing in the pools. Sharon's inclination is to allow freeholding of the bulk of the property but to retain a strip along each side of the river in State ownership. This will allow a lease over the frontage to be issued to the landholder and therefore allow conditions of occupation to be set. Such conditions might include fencing, installation of off-stream watering points or preparation of a property management plan. She notes that Victoria had reserved the frontages along all of its significant streams in 1881 for public purposes.

Frank, the Manager of Land Policy in CHQ, gives Sharon policy advice. He states that the subject is sensitive in rural industry. When he had previously tried to seek a departmental policy ruling on the matter, he was advised that the subject was "not just dynamite, but nuclear". He points out that there is no political groundswell of support for river frontage protection in Queensland. He says, "Rome wasn't built in a day", and that such far-reaching reforms will have to wait until there is more political support and the community is ready. He says that she risks being labelled by her senior officers as a greenie and so reducing the influence she will have in future dealings.

There is an old saying that the nail which sticks up is the one that gets hammered down. What should Sharon do? Her judgement (= her professional conscience) and the advice from her policy adviser tell her different things.

### **CASE 3 - HOW PASSIVE IS THE PUBLIC SERVICE?**

Frank, the Manager of Land Policy in CHQ, has an idea. It is for an annual precept on council rates in all councils in his State to fund a new attack upon feral cats. He mentioned the idea to his Director-General who comments that the Minister is unlikely to support it as he has expressed his opposition to any form of new taxes.

Frank understands, but is keen to have an opportunity to at least have the matter considered. Should he press the point and insist that the Director General arrange a briefing with the Minister? Suppose that the Director General agrees and arranges a briefing. The Minister notes the merits of the idea but states that in the absence of any expressions of public support for the idea, he cannot lend his own support.

Frank is now in a dilemma. How actively should he as a public servant lobby for his idea amongst his network of local government and rural industry contacts, before finding himself in a conflict of interest? Does canvassing a few councils and pointing out the merits of a new scheme amount to 'political activity'; or is this kind of advocacy acceptable so long as it does not result in outright partisan support for one political party over another?

#### CASE 4 - WHO MAKES GOVERNMENT POLICY?

It is a widely held view nowadays among members of Parliament that the role of the public service is to carry out the decisions which the Government makes; in other words to *implement* government policy; but that *formulating* government policy is the role of the Government itself. In other words the public service has the passive role of carrying out programs which the government and its lobby groups decide should be done; but has little role in setting the policy agenda. By this interpretation, the Minister determines what is in the public interest. Prime Minister Scott Morrison [articulated this view](#) unambiguously in 2019.

A pet land development scheme has been proposed by one of the Minister's chief political supporters. There is no suggestion that the scheme is being promoted corruptly, but it is being promoted by people who are convinced that what this country needs is more economic development, can-do governments and less navel-gazing by protest groups.

However, the local community doesn't think like this at all. They do not want their nearby bushland sold for development and they point out that the scheme will cost ratepayers heavily, for service connections.

Clearly there are two interpretations of the public interest: on the one hand, that it is in the public interest to create jobs and development; on the other that houses can go anywhere, bush is irreplaceable, the public interest is better served by protecting the bush as a park. Both are legitimate conceptions of the public interest, informed by different ethical views about the rights of animals to survive, the nature of human progress, materialism and so on.

Frank consults two different senior officers about it. They give him conflicting advice:

- Frank is to be a dutiful public servant, to carry out the Minister's wishes, to accept the political nature of decisions of this type, to accept that in terms of environmental planning, Rome wasn't built in a day; you win some, you lose some, if you expect to have an influential career in this Department, don't gain a reputation for not being a team player;
- Frank has a duty as a public servant to put the best possible advice to the Minister, to bring warnings to the Minister's attention, and to explore every avenue within the Department to convince the Minister that this scheme is against the public interest, (although ultimately he must accept the Minister's final decision).

Which of their two conflicting approaches should Frank adopt?

How heavily is your answer by your personal views about the relative desirability of economic development and environmental conservation? Can you strip those personal views out of your answer? Should Frank strip those personal views out of his answer?

## **CASE 5 - GRAZING ON STATE RESERVES**

There are some twenty-three thousand State reserves in Queensland, set aside for a range of public purposes such as parks and recreation, public hall, cemetery and environmental purposes. Most are under the control of trustees appointed by the State – commonly local governments.

Cash-starved trustees frequently lease their reserves for grazing in order to earn sufficient income to pay for basic maintenance. Unfortunately, however, grazing is one of the most effective ways of destroying the natural vegetation and habitat on a bushland reserve and often, trustees are obliged to spend the revenue they have earned on repairing the damage caused by the activity which generates the revenue.

Legally the trustees may not permit any activity which is detrimental to the purposes of the reserve. However, the trustees will often find it difficult to make dispassionate decisions about applications from neighbours and friends to graze their stock on the reserve.

Please suggest a suitable policy for guidance of trustees in considering applications to graze stock on their reserve.

## **CASE 6 - GRAZING ON STOCK ROUTES**

Queensland has an extensive network of stock routes which are set aside for the purpose of allowing drovers to move stock. In the mid-1960s, at the height of a serious drought, the Minister at the time heeded pressure from drought-stricken landholders to allow permits over the stock routes for agistment. Although these permits can be readily terminated by the Department, most have remained in force ever since they were issued. Any moves to terminate them now would meet with great hostility from the occupiers.

Frank, Manager of Land Policy in CHQ, has recently produced a policy paper which demonstrates that, any way that it is examined, static grazing (agistment) on a stock route impairs its value for travelling stock. It reduces biomass which of necessity reduces the pasturage available for travelling stock. It bares the ground and allows weeds to invade. It makes it inconvenient for drovers who have to open gates and who must keep their own mobs separate from the agisting stock. It increases the risk of transfer of disease between mobs. It compacts the ground and places the wear and tear upon the water facilities. Frank's paper suggests progressive termination of permits for static grazing.

Frank is unable to get his policy paper submitted to the Minister because of the Department's desire not to dump the Minister in a political controversy.

Frank is a candidate for promotion to a vacant position. He knows that he has been accused before of "not being a team player" because of his outspoken conservation views. He cannot at this stage of his candidature risk being seen as radical or activist or a disturber of the orderly bureaucratic life. Frank knows that if he recommends termination of permits he will be accused of "not contributing to good relations within the Department or with rural industry".

Apparently a drover has complained about four permits over the stock routes. Frank is asked by the district office for advice. What advice should Frank provide?

## CASE STUDY 7: INTIMIDATION OR JUST NORMAL MALE EGOS?

Denis is a policy officer of the Department of Natural Resources working on a proposal for new legislation to re-define the boundaries of watercourses, following a court case which highlighted some confusions. Fred, who is expert in this field, is Principal Adviser to their division's Executive Director. They are both sidelined by a more senior officer, Len, Acting Executive Director in a different division, who sees this subject as his own pet baby. Len instructs Paul, one of his staff, to prepare a discussion paper which is sent around for comment. Denis and Fred consider the paper is deeply flawed. Before the discussion paper has been through sufficient internal peer review to resolve these conflicting opinions, it is distributed to other departments.

Please note the following extracts from email exchanges:

*Denis to Paul, 23 Feb. 1999*

"Paul

Attached are some comments by Fred and myself in relation to the consultation paper on watercourses.

I am very concerned that if the paper continues in any way in its present format that the proposal will not get off the ground. I believe it is essential that a meeting between us and Land Boundaries [Len's division] be convened in the very immediate future.

Regards

Denis."

Att.

*Fred to Paul, 24 Feb. 1999*

"Paul

I am of the view that the paper should be withdrawn from the other departments before they have a chance to comment. It sends ambiguous messages which will take a lot of work to remedy. It is not consistent with the Minister's views as he expressed them when he publicly announced that watercourse boundary legislation would be introduced.

Fred."

*Paul to Len, 24 Feb. 1999*

"Len

Can we talk about this whole watercourse issue? Fred has raised a range of issues, many of which appear sound about the perception of watercourse boundaries and the ambiguity of the paper.

Paul."

*Len to Paul, 24 Feb. 1999*

*Copies to Executive Director [Fred's boss] and Margaret [Denis' boss]*

"Paul

We can talk any time you wish. The paper is what the other departments and myself want with regard to watercourse boundaries.

It obviously does not give Fred or Denis what they want. However, what they want is not supported by either ourselves or most people I have talked to.

It appears the only people who would be an impediment to watercourse boundaries ‘getting off the ground’ are a couple of our own staff. It would be a shame that all the good work we have done might possibly be white-anted by anyone within our own Department.

Len.”

Upon receipt of this message, the Executive Director forwarded the message to Fred and Denis. They both took umbrage at what they saw as an implication of disloyalty. Fred and Denis consulted the Code of Conduct. They read:

*Ethics Obligation 2 – Respect for Persons:*

“You must treat your co-workers with dignity and respect at all times. The department will not countenance harassing or intimidating behaviour, threats or unsubstantiated derogatory allegations against colleagues.”

*Ethics Obligation 5 – Use of Departmental Email System:*

“The email system must not be used for any purposes deemed by the department to be unacceptable use, including any unlawful, inappropriate or obscene purposes. Inappropriate use includes deliberate distribution of malicious software or the distribution of messages which are likely to cause offence to recipients.”

Every morning, when a staff member logs on to the network, they are required to press “I accept” to a this question: “A knowledge of departmental standards and ethical work practices, Information Management Standards and the Code of Conduct is required for you to use the department’s email system. Do you accept these standards?”

What next? In considering how you would advise Denis and Fred to proceed (if at all), the following questions are relevant:

1. Is it important to find out the merits of the technical arguments? Obviously there is a difference of opinion about what the other departments and the Minister will accept, and whether the discussion paper is really flawed or not.
2. Does it matter that Len’s email didn’t actually name Fred or Denis as doing the white-anting? Does it matter that he didn’t actually say that white-anting had happened, only that it was a risk? Evaluate Len’s email and the way it was addressed.
3. How serious is the offence? Does it rank against downloading pornography or viruses (perhaps the real intent of the Ethics Obligation 5)? Is it just Denis’ and Fred’s pride that has been hurt?
4. The Code of Conduct provided in case of a breach that an official complaint can be lodged. What good would that do? What would Len’s response be? What form of apology or other remedy would be appropriate? If you knew that Len was an applicant for a promotion to Executive Director of his division, would you let that affect the decision on whether to lodge an official complaint?