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Queensland
Government

Mr Robert Needham
Chairperson
Crime and Misconduct Commission
GPO Box 3123
BRISBANE Q 4001

Integrity Commissioner CRIME AND MISCONDUCT
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COMMISSION


Dear Mr Needham

This is a response to your call for submissions regarding ministerial office/public service interaction. I propose to deal with both the principles that should apply and the mechanism that should be adopted to try to ensure that they are honoured.

Strangely enough, the Code of Conduct for Ministerial Staff does not appear to deal with this matter at all – certainly not in any direct fashion. This may be contrasted with the situation at the Commonwealth level. There the Code of Conduct for Ministerial Staff issued by Senator Joe Ludwig includes the following:

11. *Acknowledge that ministerial staff do not have the power to direct APS employees in their own right and that APS employees are not subject to their direction.*
12. *Recognise that executive decisions are the preserve of Ministers and public servants and not ministerial staff acting in their own right.*
13. *Facilitate direct and effective communication between their Minister's department and their Minister.*

The Commonwealth Public Service Commission has been concerned for some time with the way the relationship between ministerial officers and public servants has not always accorded with proper practice. This emerged in a number of surveys conducted by the APSC and reported in its State of the Service publication over a number of years.

The latest such report noted

There has been considerable improvement over time in perceptions of the relationship between APS employees and ministers and their offices. This year, the employee survey asked SES and EL employees whether, in the past 12 months, they had faced a challenge in balancing the need to be apolitical, impartial and professional, responsive to government and openly accountable in dealing with Ministers and/or Ministers' offices. Twenty-four per cent of SES and EL employees admitted being faced with this challenge – around the same level as last yr but considerably lower than the 41% agreement in the 2003-04 and 2004-05 surveys.

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The percentage of agencies that reported having agreed written procedures in place for resolving employees' concerns that may arise about the nature of requests from ministerial offices declined from 22% in 2007-08 to 19% this year. Agencies need to ensure employees are aware of the frameworks that govern contact with Ministers' offices and ensure procedures are in place that support employees in maintaining the correct relationship with Ministers and their offices.

For completeness I attach the latest circular of the APSC dealing with Code of Conduct for Ministerial Staff.

As you are also aware, the Government, following the green paper on integrity and accountability, has decided to introduce legislation to govern ministerial staff and electorate officer employment and disciplinary processes. This is intended to be similar to the *Commonwealth Members of Parliament (Staff) Act 1984*.

The Commonwealth MoPS Act is a sparse document: it merely makes provision for the employment of staff, leaving the detail of the terms of employment to ministers etc and to the Prime Minister.

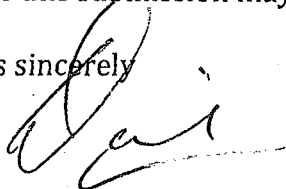
I would hope that the Queensland MoPS Act will be somewhat different and will go into detail about the terms and conditions of employment.

I believe it should also deal with the relationship of Ministerial advisors to public servants. I think this is the place to spell out that advisors cannot direct public servants in their own right and cannot use their Minister's name if they do not have the Minister's specific approval.

It is also desirable that the Public Service Commission should issue instructions to public servants likely to have contact with ministerial staff about the relationship that should exist and how they should deal with any problems that arise.

I hope this submission may be of some use.

Yours sincerely



Dr David Solomon AM
Queensland Integrity Commissioner



Last updated: 1 December 2008

AUSTRALIAN PUBLIC

Circular 2008/7: Code of Conduct for Ministerial Staff

This circular provides information on the *Code of Conduct for Ministerial Staff* (the Code) tabled in the Senate by the Special Minister of State, Senator Faulkner, on 26 June 2008. A copy is at Attachment A.

Background

2. Advice and guidance on relationships between APS employees and ministerial staff is contained in Commission publications: *APS Values and Code of Conduct in Practice: Guide to official conduct for APS employees and Agency Heads* (Chapter 2); and *Supporting Ministers, Upholding the Values: a good practice guide* (Part 1.2.4). These guidelines emphasise the importance of an effective working relationship between APS employees and ministerial staff.
3. Chapter 2 of the *APS Values and Code of Conduct in Practice* has been revised to take account of the introduction of the new Code (available electronically at <http://www.apsc.gov.au/values/conductguidelines.htm>).

The content of the Code

4. The Code applies to ministerial staff employed under the *Members of Parliament (Staff) Act 1984*. It covers all ministerial employees, including the personal and electorate office staff of ministers as well as consultants engaged by ministers.
5. The Code sets out the standards of personal integrity, professionalism and behavior that are expected of ministerial staff, including a requirement to treat with respect and courtesy all those with whom they have contact in the course of their employment. It includes provisions covering working relationships between ministerial staff and APS employees recognising the distinct role of ministerial staff in providing advice and assistance to ministers but making it clear that they do not have the power to direct APS employees in their own right and that executive decisions are the preserve of ministers and public servants.

The operation of the Code

6. The Code came into operation on 1 July 2008. Copies of the Code are provided to ministerial staff in their 'Welcome Kits' sent out by the Department of Finance and Deregulation.
7. Together with the APS Values and Code of Conduct, the Code of Conduct for ministerial staff helps set the framework for the working relationship between agencies and ministerial offices. APS agencies should therefore ensure that all employees who are likely to have communications with ministerial staff, including those employed in electorate offices, are aware of the existence of the Code and where it can be accessed. In their dealings with ministerial staff, APS employees should also be mindful of their responsibilities under the APS Values and Code of Conduct to maintain appropriate confidentiality as well as remaining apolitical and impartial. References to the Code should be incorporated into internal agency guidelines.
8. Relations between APS employees and ministerial staff are usually carried out in a professional, productive and courteous manner, based on mutual respect. As suggested in Chapter 2 of *APS Values and Code of Conduct in Practice*, agencies and ministers should agree on ways of managing the relationship in an effective and professional way, with any difficulty that might arise in the relationship being resolved, if possible, through discussion and consultation at the level judged most appropriate to the issue. It is

envisaged that only in the event that a matter cannot be resolved in this way, would it be necessary for an agency head (with the knowledge of his or her minister) to draw the issue to the attention of the Secretary of the Department of the Prime Minister and Cabinet.

9. Agencies' corporate areas can obtain further information on the matters raised in this and other circulars from the Commission's Employment Policy Adviceline—by phone on (02) 6202 3859 or e-mail employmentadvice@apsc.gov.au. It may be appropriate for more complex or sensitive queries to be dealt with in writing. Individual APS employees should contact the HR area in their own agency in the first instance.

Lynelle Briggs

27 November 2008

Attachment A: Code of Conduct for Ministerial Staff

The importance of the role of Ministerial staff in providing advice and assistance to Ministers in the performance of their functions is well recognised and accepted. Their closeness to the most significant decisions of government is a privilege that carries with it an obligation to act at all times with integrity and awareness of the expectation of the Australian community that the highest standards of conduct will be observed.

The Code of Conduct for Ministerial Staff sets out the standards that Ministerial staff are expected to meet in the performance of their duties.

Ministerial staff and consultants and Ministers' electorate officers employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act) must:

1. Behave honestly and with integrity in the course of their employment.
2. Act with care and diligence in the performance of their duties.
3. Disclose, and take reasonable steps to avoid, any conflict of interests (real or apparent) in connection with their employment, noting that staff are required to provide their employer with a statement of private interests.
4. Divest themselves, or relinquish control, of interests in any private company or business and/or direct interest in any public company involved in the area of their Ministers' portfolio responsibilities.
5. Declare to their employing Minister in writing, within a reasonable time, all hospitality, gifts and sponsored travel received in association with their employment.
6. Have no involvement in outside employment or in the daily work of any business, or retain a directorship of a company, without the written agreement of their Minister.
7. Treat with respect and courtesy all those with whom they have contact in the course of their employment.
8. Make themselves aware of the Values and Code of Conduct which bind Australian Public Service (APS) and Parliamentary Service employees.
9. When travelling overseas on official business, behave in a manner consistent with the APS Values and Code of Conduct, to the extent they apply to officials on duty overseas.
10. Not knowingly or intentionally encourage or induce a public official by their decisions, directions or conduct to breach the law or parliamentary obligations or fail to comply with an applicable code of ethical conduct.
11. Acknowledge that ministerial staff do not have the power to direct APS employees in their own right and that APS employees are not subject to their direction.
12. Recognise that executive decisions are the preserve of Ministers and public servants and not ministerial staff acting in their own right.
13. Facilitate direct and effective communication between their Minister's department and their Minister.
14. Use Commonwealth resources for the effective conduct of public business in a proper manner. Commonwealth resources are not to be subject to wasteful or extravagant use, and due economy is to be observed at all times. Ministerial staff must be scrupulous in ensuring the legitimacy and accuracy of any claim for entitlements.
15. Maintain appropriate confidentiality about their dealings with their Minister, other Ministers, other Ministerial staff, and APS and Parliamentary Service employees.
16. Not knowingly or intentionally provide false or misleading information in response to a request for information that is made for official purposes in connection with their employment.
17. Not make improper use of their position or access to information to gain or seek to gain a benefit or