

# Memorandum

Date: 24 February 1998

To: All SES Officers

From: Michael Reid  
Director-General

Subject: Code of Conduct and Ethics for Public Sector Executives

I enclose a copy of the revised *Code of Conduct and Ethics for Public Sector Executives*, for your information.

The code replaces Section 1 of the Senior Executive Service Manual. All Executives whose positions are covered by schedule 3A and 3B of the Public Sector Management Act, 1998 are now required to comply with this Code as a condition of the Contract of Employment. A revised model contract is being finalised and will be distributed in the near future.

Additionally your attention is drawn to the NSW Health System Code of Conduct which should be read in conjunction with the above-mentioned document.

Any enquiries in regard to this matter may be directed to Ms Lee Edgar on (02)9391 9803.

Michael Reid  
**Director-General**

# Premier's Department New South Wales

## Code of Conduct and Ethics for

## Public Sector Executives

New South Wales Premier's Department. Public Sector Management Office

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2. Government executives -New South Wales
2. Conduct of life
1. Title

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### Acknowledgements

This document was prepared by Daphne Delliou of the Public Sector Management Office, New South Wales Premier's Department, in Consultation with colleagues in the Premier's Department and New South Wales government agencies.

The assistance of the Legal Branch, The Cabinet Office, the Independent Commission Against Corruption and the Auditor General is particularly acknowledged.

December 1997

The Government has embarked on a program of public sector reform which aims to create a world class public service that can cope with complexity and conflict and maintain the highest standards of ethics. As part of that program of review this Code of Conduct and Ethics for Public Sector Executives has been developed in recognition of the positions of leadership, high levels of decision making and accountability of executives. This document replaces Section 1 of the Senior Executive Service Manual and reflects the change in focus on ethics and recent findings of a number of enquiries, both in New South Wales and other states.

All NSW public executives whose positions are covered by Schedules 3A and 3B of the Public Sector Management Act 1988, are now required to comply with this Code as a condition of the Contract of Employment.

Your Code of Conduct and Ethics sets a framework for ethical decision making by establishing a common understanding of the standards of behaviour expected of you. As public sector executives, you are expected to act and be seen to act, in the "public interest". Moreover, you are expected to take responsibility for your own behaviour and to lead ethical behaviour in your organisations. I recognise that decisions are not always straightforward and there will be, on occasion, a need to balance competing values. I believe that active and open discussion of ethical issues and potential dilemmas, will foster a healthy organisation culture and integrity in the workplace.

I wish to acknowledge valuable input to this document of many individuals and agency officers and seek feedback from you to ensure that this Code remains relevant and meaningful. Please contact the Public Sector Management Office on 9228 55 10 (or facsimile 9228 3102) with any comments or suggestions.

Col Gellatly  
Director-General.

# Code of Conduct and Ethics

for

## Public Sector Executives

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Copy of Premier's Memorandum issued 19 November, 1984  
Guidelines for officers who are witnesses before Parliamentary  
Committees

## 1. Introduction

- 1.1 Executives holding positions covered by Schedules 3A and 3B of the *Public Sector Management Act 1988*, are required to acknowledge and agree to uphold the principles and practices described in this Code of Conduct and Ethics for Public Sector Executives, under the terms of their Contract of Employment. [Executives are also to comply with the requirements of their own agency's Code of Conduct.]
- 1.2 Public employment involves a position of trust. Public officials are expected to act in the public interest and to demonstrate ethical behaviour in carrying out their official duties. This Code has been developed because executives have special responsibilities by virtue of their positions of authority and their high levels of accountability for decision-making and leadership.
- 1.3 This Code illustrates the values and behaviours expected and the obligations of executives and is underpinned by the following ethical principles:~
- integrity
  - impartiality
  - responsiveness to the public interest
  - accountability
  - honesty
- 1.4 The Code is not intended to be read as a set of rules. It cannot address all possible ethical challenges which individuals may face in their public sector employment, but provides guidance in ethical decision making. It is recognised that there will be occasions where there is a need to balance competing interests or values. Executives are encouraged to discuss issues which they find difficult to resolve with their Chief Executive Officer, more senior officers, their peers, the Grievance Mediator, the Director-General, Premier's Department, the Board in the case of GTEs, or the Minister, as appropriate.
- 1.5 This Code does not stand alone, rather executives are to follow the law, including legislation specific to their responsibilities such as the *Public Sector Management Act 1988*, the *Anti-Discrimination Act 1977*, the *Independent Commission Against Corruption Act 1988*, the *Freedom of Information Act 1989*, annual reports legislation, the *Public Finance and Audit Act 1983*, and any other legislation or instruction relevant to their official responsibilities.
- 1.6 The successful development of an ethical environment relies upon individual executives taking responsibility for their own behaviour and Chief Executives and senior management leading ethical behaviour and ethical work practices in their organisations. Active discussion of ethical issues and potential dilemmas that are specific to each agency's environment will contribute to a positive organisation culture that will lead to ethical decisions and a healthy working environment.

\* The Grievance Mediator can be contacted through the Public Sector Management Office, Premier's Department. Matters which may be subject to Grievance Mediation include matters of dispute arising from the application of this code.

1.7 In this document, “agency” means any Government Department, public authority or other body whose staff include members of the Chief or Senior Executive Service, (that is, persons who hold positions referred to in Schedule 3A or 3B to the *Public Sector Management Act 1988*). “Executive” means a member of the Chief Executive Service or a member of the Senior Executive Service.

## 2. Personal and professional behaviour

2.1 To maintain public confidence in the integrity of the public sector, it is essential that public sector executives exhibit, and are seen to exhibit, the highest ethical standards in carrying out their duties. Executives must pursue, and be seen to pursue, the best interests of the people of New South Wales. It is also essential for the proper working of democratic Government that executives retain the trust and confidence of their Ministers and their colleagues and respect of staff in the manner in which they discharge their official responsibilities and that they recognise their accountability to the Government.

Accordingly, executives are expected to:

- (i) perform their duties impartially, with professionalism, objectivity and integrity;
- (ii) efficiently and effectively serve the Government of the day;
- (iii) observe fairness and honesty in all official dealings with the public and with other public sector employees;
- (iv) avoid real or apparent conflicts of interest and act in the best interests of the people of New South Wales.

2.2 In the performance of their duties, executives are expected to:

- (i) exercise their best possible technical or professional judgment;
- (ii) maintain and develop knowledge of their professional field and of public administration;
- (iii) maintain and develop their knowledge of the agency, its purpose and corporate plan;
- (iv) comply with any legislative, industrial or administrative requirements relevant to their position and any official guidelines concerning the performance of their duties (such as central agency directives and Premier’s Memoranda);
- (v) ensure equity in employment/selection processes, manage staff equitably, ensure the workplace is free from discrimination and harassment and promotes equal employment opportunity;

- (vi) treat members of the public and other staff members with respect and sensitivity to their rights, providing appropriate example, guidance and assistance;
  - (vii) ensure that public resources are used efficiently;
  - (viii) lead by example and encourage their staff members to exercise similar qualities of personal and professional behaviour to those outlined above. Staff and resources should be managed in a way that will, to the greatest extent possible, avoid the opportunity for unethical behaviour by others.
- 2.3 Executives have a responsibility to ensure fairness in decision making and equity in program administration. In managing programs or in making decisions concerning individual matters, executives are expected to consider:
- (i) fairness, for example dealing with like cases in a similar way to ensure fairness of outcome; and
  - (ii) social equity, which is concerned with the substance and the effect of administrative decisions on individuals and the community, particularly disadvantaged members of the community.
- 2.4 Executives should avoid acting in a way that is or could be seen to be unreasonable or could be construed as unlawful discrimination.
- 2.5 Executives should take all reasonable steps to ensure that the information upon which they base their decisions or actions is factually correct.
- 2.6 Where executives make decisions or take action based on a statutory power or are providing advice to guide the exercise of a statutory power (eg. by a Minister), they should ensure that they are aware of the scope of the power and any legal obligations with respect to the exercise of that power. In this context, administrative law principles may be relevant, such as the rules of procedural fairness and the requirement that decisions not be made on irrelevant or improper grounds. In general, the decisions, the evidence upon which they are based and the reasons for the decisions should be properly documented.
- 2.7 Executives should avoid unnecessary delay in making decisions or taking action.
- 2.8 When required to give references to, or make reports on other public sector employees or on persons outside the public sector, executives have a duty to provide frank and accurate comment and should also take care to avoid making statements that could be regarded as malicious. Situations in which a report potentially could be regarded as having been made with malice include:

- (i) where the report knowingly includes false allegations;
- (ii) where the language of the report is deliberately or unnecessarily strong and which might unreasonably harm the person being reported on;
- (iii) where extraneous material is deliberately introduced or where omissions are made so as to create a misleading impression.

### 3. Relationships between executives and Government

- 3.1 Executives are expected to be responsive to the Government of the day and support the Government of the day to implement decisions and policy, regardless of which political party or parties are in office.
- 3.2 Advice provided by executives to the Minister and Government should be frank, independent, based on an accurate representation of the facts and as comprehensive as possible. This includes setting out the advantages, disadvantages, costs and consequences of the available options and, where appropriate, recommending a particular course of action.
- 3.3 Executives are responsible for carrying out decisions and implementing programs promptly, conscientiously and with full regard for government policy. Obviously, it will be necessary, both in providing advice and in implementing programs, to exercise judgment as to which facts or courses of action are most relevant or important. Judgment must, however, always be exercised with due regard to legislative requirements, government policy, ministerial direction and considerations of equity, economy and efficiency. An executive's own values should not supplant those explicit or implicit in government policy.
- 3.4 It is important that executives seek an effective working relationship with Ministers and Ministerial staff. Also, executives should be able to identify and negotiate the boundaries between social policy and political objectives without intruding into the political arena.
- 3.5 There may be some circumstances in which an executive strongly disagrees with a direction or request received from the Minister. Such circumstances may fall into one of the following three categories:
  - (i) matters affecting the efficient and economical administration of the agency;
  - (ii) where to follow a Minister's instructions would appear to involve a breach of law; and
  - (iii) where to follow a Minister's instructions would appear to conflict with professional standards or impartial judgment in presenting facts or analyses to the public.

An executive must not knowingly follow a directive that is contrary to law and must not require subordinates to do so.

In any circumstance where an executive strongly disagrees with a direction or request received from the Minister, it may be preferable for the executive to obtain such a direction in writing. It is expected that executives would seek to resolve differences or concerns by open negotiation in the first instance. It may be appropriate for the matter to be raised initially with a more senior executive or with the Chief Executive Officer and in turn for the Chief Executive Officer to raise the matter, either orally or in writing, with the Minister. In instances where the Chief Executive Officer is still seriously concerned following an approach to the Minister, it may be appropriate for the Chief Executive Officer to discuss the matter with the Director-General, Premier's Department and/or, in certain circumstances to refer it to the appropriate investigative bodies as detailed in section 12.

- 3.6 The executive may approach the Grievance Mediator for assistance where the above steps have failed to resolve the ethical considerations involved. The executive may also approach the Grievance Mediator if he/she feels that taking a particular ethical position on an issue has resulted in unlawful discrimination against him or her.
- 3.7 In the case where the executive strongly disagrees with the Chief Executive Officer's direction, there is a number of available options which are outlined in sections 1.4, 12 and in the Conclusion.
- 3.8 **Caretaker Government**  
Executives should acquaint themselves with the conventions regarding "caretaker periods", that is, the period from the issuing of writs for an election to the declaration of the election result. When the government assumes a "caretaker" role in this period, it avoids taking major policy decisions, making appointments of significance or entering major undertakings or contracts.

#### 4. Public comment

- 4.1 "Public Comment" includes public speaking engagements (including comments on radio and television), expressing views in letters to the press or in books or notices or where it is reasonably foreseeable that publication or circulation of the comment will enter the public domain.
- 4.2 Except where required by law, or as authorised by the responsible Minister, Chief Executive Officer or controlling body of the executive's agency, as the case may be, an executive must confine discussion on government matters to material that is in the public domain. Only executives specifically authorised to do so would be expected to provide comment to the media.
- 4.3 Public sector executives, in their private capacity as members of the community, have the right to make public comment and enter into public debate on political and social issues. Executives nonetheless

need to be sensitive to the fact that because of their responsibility and status, there will tend to be the implication that the public comment, although clearly made in a private capacity, is in some way an official comment of the Government or of the executive's agency. Executives may need to state that discussion reflects personal opinions only.

- 4.4 Public comment is also inappropriate:
- (i) where an executive is directly involved in advising on or directing the administration or implementation of government policy and the public comment would compromise his or her ability to continue to do so in an efficient and professional manner;
  - (ii) where public comment, regardless of the connection (or lack of connection) with an executive's normal duties, amounts to criticism sufficiently strong or persistent to give rise to the public perception that the executive is not prepared to implement or administer the policies of the Government of the day as they relate to his or her duties.
- 4.5 Executives are expected, where legally possible, to try to resolve complaints about agency administration internally, without recourse to public comment or criticism.

## 5. Use of official information

- 5.1 Other than as required by law (for example, by the *Freedom of Information Act, 1989*), in the course of duty, when called to give evidence in court or when proper authority has been given, an executive should not disclose confidential information or documents acquired in the course of his or her employment.
- 5.2 Executives should not misuse information gained in their official capacity. Misuse includes:
- (i) speculation in shares or commodities on the basis of confidential information about the affairs of a business or of proposed Government actions;
  - (ii) seeking to take advantage for personal reasons of another person on the basis of information about that person held in official records;
  - (iii) gossiping on the basis of personal or other information held in official records.
- 5.3 Executives should take care to maintain the integrity and security of official documents or information for which they are responsible.
- 5.4 Any intellectual property developed, invented or created by the executive as a result of employment, is the property of the government, unless otherwise agreed in writing between executive and Chief

Executive Officer, responsible Minister or controlling body of the agency.

- 5.5 Executives should be familiar with guidelines on giving evidence or information to Committees of either the State or Commonwealth Parliaments. These guidelines, together with the Premier's Memorandum under which they issued, are at Appendix A.
  
6. Use of public funds
  - 6.1 Public funds should only be used for the purposes for which Parliament appropriated them and as authorised by the Government.
  - 6.2 Public funds should not be used for private purposes, including private purposes of a party political nature, unless authorised by law.
  - 6.3 Executives in authorising or certifying public expenditures or in establishing systems of control related to expenditure have a personal responsibility to ensure public funds expended by the Minister or the Department are validly and appropriately used.
  
7. Use of official facilities and equipment
  - 7.1 Executives must not use the services of other officers and official facilities must not be used for private purposes, unless official permission has been granted.
  
8. Financial and other private interests - disclosure and conflicts
  - 8.1 Financial interests (pecuniary interests) may include real estate, shares, debts, gifts, business interests and investments. Other interests include political ties, family relationships or involvement with organisations (commercial, political, religious or other).
  - 8.2 Executives must disclose in writing to the Chief Executive Officer or other appropriate senior officer, any financial or other interests held by them immediately upon becoming aware that a potential conflict between personal interest and official duty, whether real or apparent, has arisen or is likely to arise. The senior officer should then discuss the matter with the executive concerned to decide whether:
    - (i) the executive should be authorised to continue his or her duties in the area, because, for example, the potential for conflict is minimal or can be eliminated by disclosure;
    - (ii) the executive should be requested to divest him or herself of the interest; or

- (iv) a rearrangement of duties among staff, or a transfer to an equivalent position with duties involving no such actual or potential conflict, should be organised.

The ultimate decision concerning the appropriate course of action is one for the Chief Executive Officer. A Chief Executive Officer who becomes aware of his/her own conflict of interest should discuss the issue with the Director-General, Premier's Department.

- 8.3 A senior executive who becomes bankrupt, or makes a composition, arrangement or assignment for the benefit of the executive's creditors, should report this to his or her Chief Executive Officer. A Chief Executive Officer in these circumstances should make a report to his or her Minister. (Some executives will be required by law to report bankruptcy, for example, executives in the Public Service are required to do so under s.79 of the *Public Sector Management Act 1988*.)

## 9. Bribes, gifts, benefits, travel, hospitality

- 9.1 Gifts and benefits may include the transfer of money, or other property or benefits, without recompense or for a consideration substantially less than the full market consideration. They may also include a loan of money made on a permanent or indefinite basis.
- 9.2 Executives must not solicit or accept any bribe, or other improper inducement.
- 9.3 Where any substantial gift, offer or suggestion of such is made directly or indirectly to an executive, the executive must report the facts at the first opportunity to the Chief Executive Officer, the responsible Minister or the agency's controlling body. Only in exceptional circumstances should substantial gifts be accepted. (For example, where the gift is offered as part of a formal exchange of gifts between official representatives of the Government.) In such cases it would be appropriate for the gift to be treated as property of the Government, and if it is to be retained, for the executive to elect to pay for the item.
- 9.4 An executive may accept unsolicited gifts of a token kind or moderate acts of hospitality in some circumstances. Accepting such gifts or benefits is essentially a matter of judgment for the individual executive concerned, who must be satisfied that his or her position will not in any way be compromised or appear to be compromised by acceptance. Agency guidelines on the subject must be taken into account and the executive will bear personal responsibility for any decision to accept a gift or benefit.
- 9.5 In deciding whether to accept gifts or benefits, executives should be guided by the following principles:
  - (i) Executives must not accept any gifts or benefits, the receipt or expectation of which might in any way tend to influence, or appear to influence, the executive in his or her official capacity;
  - (ii) Executives should avoid all situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind is securing, or attempting to secure, the influence or favour of the executive;
  - (iii) Executives should take all reasonable steps to ensure that spouses, children and staff members are not the recipients of benefits that could give the appearance of an indirect attempt to secure the influence or favour of the executive.

- 9.6 Agencies that wish to establish their own guidelines on this subject, in addition to the requirements given here, should consider the following points:
- (i) the relationship of the agency to the donor
  - (ii) the primary business of the donor;
  - (iii) the likelihood of further contact with the donor;
  - (iv) whether the gift is being accepted as part of a formal exchange of gifts between official representatives of the New South Wales Government and another Government;
  - (v) the possible adverse consequences to New South Wales' interests which may result from the acceptance or refusal of a gift;
  - (vi) the type of gift or benefit, if any, which in the context of the agency's operations can be seen as inconsequential or trivial.

## **10. Political participation**

- 10.1 The use of a public office or public resources for political activity (eg. producing brochures) is not acceptable and is contrary to the conventions of a Westminster style of Government.
- 10.2 Executives should not, in their official role, participate in the political process (eg by attending or participating in a political activity sponsored by the executive's Minister or by preparing tendentious addresses or speeches). Similarly, executives should not place their subordinates in a position of conflict by inviting their participation in political events.
- 10.3 Executives involved in the political arena, whether as independent parliamentary candidates, as spokespersons, representatives, fundraisers or parliamentary candidates for a political party, cause or movement, should be aware of the potential for conflict of interest.
- 10.4 If the executive becomes aware that a potential conflict, whether real or apparent, has arisen or is likely to arise, the executive should immediately inform his or her Chief Executive Officer, responsible

Minister or agency's controlling body. The matter should then be dealt with as outlined in Section 8 above. If a conflict of interest exists, it may be necessary to withdraw from the public political arena or from the areas of the executive's duties giving rise to the conflict.

- 10.5 Executives who nominate as candidates in a State election should preferably take leave for election campaigning purposes, no later than the day of nomination, to avoid potential conflict between political interests and public employment. (refer to Premier's Department Circular No. 95-4).
- 10.6 Executives who intend to nominate as candidates to Commonwealth elections should resign before their nomination (refer to PEO Circular 96-7). The *Public Service (Commonwealth Elections) Act 1943* provides that a public servant who resigns to contest a Commonwealth election and fails to be elected, is entitled to be re-appointed to the position held at the day of resignation at the same salary and conditions as previously applied, provided:
- the resignation took effect within 3 months of the polling date;
  - the resignation stated an intention to contest the election; and
  - the public servant makes written application for re-appointment within 2 months of the declaration of the poll.

Section 98 of the *Teaching Services Act 1980* relates to the entitlement to re-appointment for certain other officers.

## 11. Outside employment

- 11.1 Executives must obtain the written consent of their "employer" before continuing in, or taking up, any other employment or private practice. The same applies to being appointed to or engaged in any significant position **whether or not remunerated**. Executives should be aware of section 42Y of the *Public Sector Management Act 1988*, which provides that an executive officer is not to engage in any paid employment outside the duties of the executive position without the consent of the officer's "employer" (as that term is defined in Part 2A of the *Act*).

In the case of a senior executive in the Public Service, the "employer" is the Department Head. In the case of a senior executive in the service of a public authority, the public authority or person nominated by the authority is the "employer". Finally, the Premier is the employer of Chief Executive Officers. As a matter of policy, Chief Executive Officers should seek the consent of their Minister to outside engagements before approaching the Premier on the matter.

- 11.2 In approving applications to engage in such activities, Chief Executive Officers should consider whether conflict may arise between these and an executive's public sector responsibilities. Chief Executives need to consider such issues as whether the company or organisation concerned is in, or is entering into, a contractual relationship with the Government, whether its primary purpose is to lobby Government agencies or

members of Parliament, or whether it is in a regulatory relationship with the agency.

- 11.3 Any outside activities should be performed wholly in an executive's private time and should not affect the efficiency or performance of executives in their public sector positions.
- 11.4 Executives should not, at any time, allow their decisions to be influenced by future employment prospects.

## **12. Reporting corrupt conduct, maladministration and waste.**

- 12.1 Corrupt conduct, maladministration and serious and substantial waste of public resources should be reported. The *Protected Disclosures Act 1994* provides certain protections against reprisals for employees who voluntarily report such matters either to the principal officer of a public authority, or to one of three investigative bodies: the ICAC, the Auditor General or the Ombudsman. (Such protections do not apply in the case of vexatious or malicious allegations.)

Disclosures may also be made to other officers of a public sector authority under its internal reporting procedures and, under circumstances specified under the *Act*, protected disclosures may also be made to a member of Parliament or a journalist. Where disclosures are made to an external investigating body, those concerning corrupt conduct should be made to the ICAC, disclosures concerning maladministration to the Ombudsman, and disclosures concerning substantial waste of public money should be made to the Auditor General.

- 12.2 Executives are expected to be supportive of staff who make or intend to make protected disclosures.
- 12.3 It should be noted that certain executives will have special obligations and responsibilities under their agency's internal reporting procedures in relation to allegations of corrupt conduct, maladministration and serious and substantial waste, and to those who make them.

## **13. Sanctions**

- 13.1 Clause 8 in the Contract of Employment requires executives to comply with this Code of Conduct and Ethics for Public Sector Executives. Any breach of the Code will represent a breach of Contract.
- 13.2 A serious breach of obligations under the Code by an executive could result in removal from his or her executive position, or, in the case of certain senior executive officers (for example, those in the public service) in disciplinary action.

#### **14. Responsibilities of Executives who leave the public sector.**

- 14.1 Executives must consider the ethical dimensions associated with transfer to private sector employment. Employment activities of executives who have left the public sector, should not reflect adversely on the effectiveness of public administration or call into question the partiality of their activities as public officials.
- 14.2 When an executive is considering accepting a job offer which bears any close or sensitive connection with current activities, the executive is expected to declare the conflict to his/her employer, in good faith.
- 14.3 Executives who leave the public sector are expected to return all documentation and any equipment provided or obtained as part of their work. During subsequent employment and activities, they are expected to respect the confidentiality of information gained in their official capacity. As indicated in section 5.4, intellectual property remains the property of the government unless there is agreement in writing to the contrary.
- 14.4 While not currently legally enforceable, former public executives who move to private employment are requested to abstain from working on or contributing to a matter that they had previously been responsible for or involved in.

#### **15. Conclusion**

This Code may be altered from time to time to take account of changed circumstances or new situations. Should you have any comments or suggestions relating to this document, please contact the Public Sector Management Office, Premier's Department.

As indicated earlier, if an executive is in doubt as to the appropriate course of action to be adopted in any circumstance, the matter should be discussed with a more senior officer, the responsible Minister, the Director-General Premier's Department or the agency's controlling body. The Ombudsman, the Independent Commission Against Corruption and the Auditor-General can also respond to issues of concern to public sector executives that fall within their respective legislation.

Other sources of advice and information include the Grievance Mediator, (who can be contacted through the Public Sector Management Office) and reports of the Independent Commission Against Corruption. The St. James Ethics Centre provides a counselling service, free of charge to members of the Institute of Public Administration Australia (NSW Division), who face an ethical dilemma. (Freecall 1800 672303).

While this Code is intended to provide practical assistance for executives faced with ethical challenges, it is ultimately up to executives themselves to recognise the ethical dimension in their work and to give proper attention to the values which should guide their actions or decisions. It is the role of executives to foster an atmosphere conducive to the promotion of integrity in the workplace.

## Appendix A

### COPY OF PREMIER'S MEMORANDUM ISSUED 19 NOVEMBER, 1984

Provision of Evidence and Information  
to Committees of Parliament

(Memo to all Ministers)

From time to time State Government departments and instrumentalities are asked to provide evidence or information to committees of either the State or the Commonwealth Parliament.

A committee of the State Parliament would normally approach the Minister concerned or if the matter was related to a broader issue of government, would approach the Premier in the first instance.

When a State parliamentary committee approaches the Premier, the request for assistance will be referred to the Ministers concerned for advice. All such advice should be provided promptly so that full account can be taken of the views of those Ministers when a response to the committee is being considered.

Subject to the views of Ministers in particular cases, the Government would expect to provide information sought by a committee and to agree to officers attending before the committee for the purpose of giving information or assisting the committee in regard to administrative arrangements relating to existing policies.

It is preferred that the committee be provided with a written statement on which any oral evidence should be based.

It must be made clear to the committee that because the advocacy of Government policy is a Ministerial responsibility, officers should not be asked to canvass, interpret or express opinions on policy issues. The evidence of officers should be limited to factual information related to their duties or responsibilities.

When a committee of the Commonwealth Parliament wishes to seek assistance from the State government, an approach is usually made to the Premier.

If a State Government submission to the committee is requested and/or considered appropriate, it is the practice to seek from Ministers concerned advice which may be incorporated in the submission. This advice should be provided in time to enable all the views expressed to be considered in the preparation of the submission.

If Ministers should be approached to provide information which relates entirely to their own portfolios, there is no objection to a written response being sent direct to a committee or to the attendance of officers before the committee. However, if a Minister proposes to canvass policy matters in a submission, the Minister should, if necessary, seek the concurrence of the Premier or of Cabinet, if appropriate, to the submission.

The position in regard to the provision of information sought by a committee of the Commonwealth Parliament and the role of officers who attend as witnesses is similar to that applicable to State parliamentary committees.

I am enclosing guidelines which have been prepared to assist officers who may be called upon to give evidence to parliamentary committees and I should be pleased if you would bring them to the notice of all departments and instrumentalities associated with your area of administration.

Yours sincerely

Premier

## **GUIDELINES FOR OFFICERS WHO ARE WITNESSES BEFORE PARLIAMENTARY COMMITTEES**

### **A State Parliamentary Committees**

Guidelines for officers of departments or Government instrumentalities who are required to attend as witnesses before State parliamentary committees have been prepared on the basis that the advocacy of Government policies is a Ministerial responsibility. Officers may provide information to assist parliamentary committees.

Requests for an officer to attend before a committee or to provide material to it are to be made through the relevant Minister.

2. In the normal course, the committee should be supplied with a written submission on which any subsequent oral evidence should be based. All such submissions should be cleared within the department and with the Minister, if appropriate.
3. A submission should not take policy positions; that is, it:
  - (a) should not advocate or canvass the merits of government policies;
  - (b) may describe Government policies and the administrative arrangements and procedures involved in implementing them;
  - (c) should not identify considerations which have led to a Government decision unless those considerations have already been made public or the release of the information is authorised by the Minister;
  - (d) may, with the concurrence of the Minister, set out policy options and list their advantages and disadvantages. Other matters of fact or background information may be included.

4. The role of an officer appearing as a witness before a committee is to speak to any submission provided and to assist the understanding of the issues involved.
5. Officers selected to provide information sought by a committee should have sufficient responsibility in the particular work area to be able to meet the committee's requirements. If necessary, the Minister should be consulted as to the attitude to be adopted in specific matters.
6. An officer who, when giving evidence, believes that circumstances have arisen to justify a claim of public interest immunity, should suggest a postponement of the evidence until the Minister can be consulted.
7. Officers should take care in giving evidence that they do not intrude into the responsibilities of other departments or instrumentalities. Where a question falls within the administration of another department or instrumentality, the officer concerned should request that it be directed to that department or instrumentality or deferred until the relevant department or instrumentality has been consulted.
8. If it is anticipated that it will be necessary to tender documents or give evidence which it may be desirable to tender or give in camera, the matter should be raised beforehand at departmental or Ministerial level to enable an official attitude to be determined.
9. Officers who are required to give evidence to parliamentary committees should make themselves aware of the relevant law and practice of parliamentary privilege. It should be noted that the powers of Select and Standing Committees derive from the resolutions establishing them, Standing Rules and Orders and legislation, including the *Parliamentary Evidence Act, 1981*. In the case of the Public Accounts Committee, reference should also be made to the provisions of the *Public Finance and Audit Act, 1983*.

**B Commonwealth Parliamentary Committees**

10. When a committee of the Commonwealth Parliament is inquiring into a matter which may affect the State it usually seeks the co-operation of the State and, in appropriate cases, asks the Premier to nominate officers in the departments concerned who would be able to act as contact officers.
11. If the committee should request a submission from the State Government, the Premier will seek from the Ministers concerned advice which may be incorporated in a State submission.
12. In the normal course, if it were considered appropriate, in light of the views of the Ministers concerned, that the State Government contribute information, the committee would be informed accordingly. The committee would also be advised that requests for State officers to attend would be favourably considered but it would be preferred that, in the first instance, information be provided by way of written statements on which oral evidence could be based.
13. The committee would be advised further that the evidence which could be given by State officers would be limited to factual information related to their duties and responsibilities and that they should not be expected to canvass or interpret policy or express opinions in matters of policy.
14. Officers who are nominated to attend and give evidence before Commonwealth committees should follow the guidelines set out for attendance before State parliamentary committees.