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1 August 2008

To The Joint Committee on Ethical Conduct

Parliament of Tasmania

Hobart

By email to: [shane.donnelly@parliament.tas.gov.au](mailto:shane.donnelly@parliament.tas.gov.au)

Dear Sirs and Madam

The Environment Association Inc is a voluntary, not for profit, regional; community based incorporated association with a focus on conservation and care for the environment. We act in the public interest.

The issue of ethical conduct is central to the wellbeing of the environment and the public interest issues surrounding that subject. Ethical conduct of the public sector is a matter in the public interest.

We are critical of the current ethical conduct of the public sector in Tasmania. We are dismayed by the lack of ethics used on a daily basis, the lack of probity, the lack of honesty, the lack of trustworthiness, the blatant avoidance of serving the public interest but rather serving sectoral interests.

We advocate that the public sector requires reform to address this lack of ethical conduct, including in legislation, in codes of conduct, by ensuring adequate rights for the general public, including the right to take legal redress and the right of access to information.

Our submission will not provide evidence of all these problems however in the event that you establish a Royal Commission into corruption we can make extensive submission and provide evidence to the best of our volunteer capacity.

Our submission focus is on how to address the ethical deficit prevalent in Tasmania's public sector.

We consider that this Parliamentary inquiry into ethical conduct should include scrutiny of the following relevant groups of people:

1. Parliamentarians and the interests of their families
2. State Public Servants and the interests of their families, including those in Government business enterprises.
3. Local Government Councillors and the interests of their families
4. Local Government employees and the interests of their families

We believe that any inquiry into ethical conduct should consider all the underpinning legislation. The enquiry should propose legislative change where it is obviously required. It is clear that more explicit legislation to establish the rights of society is required at this stage in our development. Reliance on codes of conduct and the like is a less desirable

option with lesser power to the people and leaves more room for unethical conduct to go unchecked.

Further the inquiry needs to look at the way Parliament operates and whether its rules are fair and reasonable at the ethical level of serving the public interest or whether they are simply adversarial. Our view is that many of the rules of Parliament are adversarial, not ethical. If a rule is designed to confer advantage or disadvantage then we argue it is not ethical.

The issue of what constitutes ethics and adequate ethical standards needs to be resolved for the purposes of the inquiry. We advocate it should include the following issues:

- Determining the Ethical values
- **Justice and the denial of justice:** A good example locally is the Meander Valley Council Planning Scheme and the Land Use of Forestry, which was changed from the draft without notice. Mr Hall will be aware of this situation. Council has never acted on the matter even though they have received numerous complaints from the public. Another example was Gunns Limited withdrawing from the RPDC process in order to avoid scrutiny, an act we believe fostered by Government.
- Responsibility and its avoidance
- Competence and its avoidance
- Probity
- Honesty and Truth
- Transparency
- Conflicts of Interest
- Bigotry and parochialism
- Bias, including perceptions of bias
- Standards of proof over Probity issues and where the onus of proof lies
- Areas where Ethics deficits are obviously rampant
- Cabals and clandestine sectoral relationships (theses need to be defined and documented). A register of cabals should be made public. The LGAT has one with forestry state agencies for example.
- Independence of decision-making and the desirability or otherwise of the mechanisms and processes of influence.
- Amazingly some Legislative Councillors view themselves as Independent when they are obviously politically aligned.

An aim to achieve best practice ethics for the whole of the public sector should be a goal of the enquiry.

## **Sectoral Proclivities**

There are particular sectors, which seem more prone to unethical conduct than others. In particular we mention the forestry system of Tasmania, which we consider demonstrates unethical behaviour. Indeed we regard that it could reasonably be challenged as corrupt. We have a large volume of documentation to support such an allegation. Please advise whether your inquiry is intended to pursue such matters in great depth.

One of the ways in which Government can strangle an issue is to reduce funding. Where a section of government is unfavoured, regardless of its public interest benefit, by the simple means of reducing funding its work diminishes. The best example I can give is the Threatened Species Unit of DPIW. Funding cuts have reduced the role of this section to almost zero. It has become a token department. Consequently forestry arranges the *care* of threatened species in this state. That is an ethical issue that must be fixed. It now requires legislative change as well as the development of an understanding of the ethical importance and duty we have to the survival of other species. It fascinates us that Government has the Thylacine on its letterhead but abrogates its responsibilities to other species that may yet become extinct under its *care*.

## **Legislation Issues**

The following changes are of elemental importance in addressing the ethics of Tasmania's public sector. We propose as a matter of urgency:

- To amend the State Service Act to allow the general public to make complaints against members of the state public service and have them legitimately considered.
- To amend the State Service Act to include local government employees.
- To ensure in the legislation that complaints against public servants and local government employees can be heard independently and that there are legally binding remedies for misconduct.
- The Anti-discrimination Act needs to be expanded in its gamut. Legislative discrimination needs to be included. For example the Local Government Act provides a rates exemption to Forestry Tasmania for its formal reserves (and fair enough too) but the Act does not provide a rates exemption for private landowners who have a gazetted Private Nature Reserve. Such a reserve is at least as secure and at least as great an imposition on the private landowner as the Forestry Tasmania reserve is to that government business enterprise. This is blatant discrimination but the Anti-discrimination Act does not cover it. There are other areas where the powers of the Commission could be expanded. This is an area of ethical concern.
- Currently there are several legislations where a review of an administrative decision is limited to the Judicial Review Act (JRA). This is inadequate ethically. Where that decision has been a poor one in the eyes of the beholder or the stakeholder or affected party there should be a mechanism for review other than under the JRA. We advocate a legislative reform in this area. It is reasonable ethically for a party to have recourse to appeal a poor decision and seek a review on the merits.

- The issue of the definition of Bias needs to be underpinned by legislation. For Local Government this matter requires vast education.
- A definition of the public interest should be developed and expressed with full public participation. For Local Government this matter requires vast education and the Act should be amended to include a definition.
- The rights and future of threatened species are currently at the behest of the Forest Practices Authority. Such a fundamental conflict of interest is a crime against nature and clearly unethical.
- We propose an Environmental Crimes Commission be established to deal with the ethics of crimes against nature. This requires legislation and is an urgent issue of ethics. Currently such matters are in their infancy but as the spectre of global climate warming becomes fully known Government will need an environmental crimes commission and means of prosecution with underpinning legislation.
- Exemptions within the Freedom of Information Act need to be reviewed and abolished, especially the legal one and the threatened species one. Such exemptions are unethical and unreasonable or simply based on fee rather than the public interest rights of citizens of the state.

### **Government Decision-making and Probity**

Government departments receive advice, reports, legal briefings and so forth but fail to act on them. There is currently have no legal or ethical remedy for such deficiencies. This matter should be addressed more explicitly in the State Services Act.

An excellent example is the solicitor General's advice to Graham Wilkinson of the Forest Practices Board in 1997 regarding Threatened Species and the public interest. We attach this document for your reference.

The probity of the relationship between the Valuer Generals Office, the State Revenue Office and local governments should be closely investigated. We maintain it fails the arms length test.

### **Greater Public Access and Rights to Documentation.**

A frequent unethical ploy of state public servants and local government is to deny access to relevant documentation. The excuses for not providing documents are many. This situation is ethically bankrupt. We propose:

- If more information were simply available without recourse to the FOI Act it would be far simpler and more ethical.
- The Forest Practices Act should be amended to ensure that under legislation the public have access to forestry plans including Forest Practices Plans, Private Timber Reserve applications and Three Year Plans.
- LUPAA and the RMPS should be amended to for clarity and to establish the right of the public in regards to accessing documentation especially in regards to Forest Practices Plans, Private Timber Reserve Applications, Board Meeting Minutes.

- LUPAA and the RMPS should be amended for clarity and to establish the right of the public in regards to accessing documentation including Development Application Plans and so forth. These are regularly denied. If you require proof to support the need for this amendment, we can provide documentation.
- All documented delegated authorities should be on websites and freely available as published documents.

### **Conflict of Interest and Pecuniary Interest**

We see these as two distinct issues that need to be better defined. Often a person is in a 'conflict of interest' situation but the conflict doesn't involve an obvious or direct financial benefit. The view that conflict of interest and pecuniary interest are synonymous is erroneous and a better definition of both needs to be developed to ensure that decision makers are in no doubt as to their positions and obligations.

### **Local Government Issues**

- All Local Governments should be compelled under legislation to electronically record their meetings and those recordings must be publicly freely available documents underpinned by legislation. This would include committee meetings and workshops, which effectively have the status of a committee meeting. Without such fundamental systems and obligations in place one cannot even challenge the minutes of a local government meeting. The validity of the minutes cannot be proved. This gross deficiency is subject to abuse and corruption. Recently Meander Valley Council declined to record its meetings for example.
- All registers of pecuniary interest should be public and should be created for each class of the public sector.
- The issue of bias is of fundamental concern and needs a lot more work. Councillors interpret that they meet the criteria simply when they do not disclose to a constituent that they have formed a conclusion. This is totally inadequate.
- We favour removing local government from being responsible for planning matters under LUPAA. Local Government shows no ability to understand sustainable development or to act in the public interest. This is a matter of urgency and considerable ethical relevance.
- A process of useful and practical way of pursuing a complaint against a local government entity, including meaningful remedies, needs to be developed. The current local government office is a farce. We advocate an independent commission be established.
- The partisan way in which Councils interact with certain sectors of the community requires solid scrutiny and a guide that ensures all sectors are treated equally.
- There are agreements, Partnership Agreements between State and Local Governments but if they do not suit either party they are simply amended next time around or the issue simply does not get implemented. An excellent example of the latter is Meander Valley Council and landscape protection. It spent many tens of thousands of dollars doing a study only to throw it away, acting against the public interest.

- There is a weak link and little recourse over the Local Government Council's Strategic Plan yet this is and should be an important area of public involvement.

### **The Forest Practices Authority and Private Forests Tasmania**

The meetings of the Board of the Forest Practices Authority (FPA) should be recorded and those recordings should be publicly available documents underpinned by legislation.

We favour removing this industry-controlled entity entirely. It works against the public interest. This probably requires a separate inquiry to determine all the probity issues at stake.

That the FPA re-establish the register of Private Timber Reserves that Private Forests Tasmania (PFT) previously maintained on its website but which disappeared late in 2007 or in 2008.

The delegation between the FPA and PFT should be considered in terms of its poor ethics and in relation to the rubber stamp role of the FPA. We maintain the FPA is merely an apparition of decision-making.

With PFT where no role exists to promote the public interest as set out in the legislation and where the promotional activities predominate, this review should recommend that its decision making powers delegated by the FPA that involve public interest matters be curtailed permanently.

Currently the Forest Practices Act precludes the right of appeal by the general public both against a Forest Practices Plan application and a Private Timber Reserve application. Further the restricted classes of appellants have restricted grounds of appeal. We argue this is unjust; it has been acknowledged as unjust. It is unethical that the situation is not legislatively addressed and remedied to the satisfaction of the community, in the public interest.

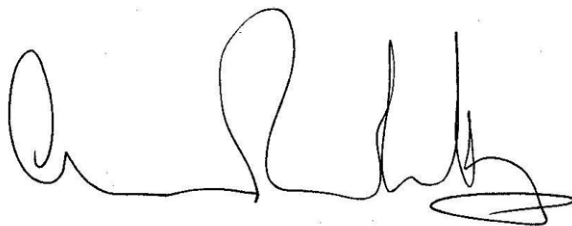
### **In conclusion**

I seek permission to release our submission and make it public.

We favour much more work on ethical conduct of the Tasmanian public sector. If that means establishing a commission on ethics, then we favour it. However we should be clear it needs adequate resources and must be free of Ministerial influence.

We believe that society will benefit greatly though the public sector having an increased understanding, commitment and obligation to behave in an ethical manner.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Ricketts', with a large, stylized initial 'A' and a flourish at the end.

Andrew Ricketts

Public Officer and Convenor