



**THE FOURTH REPORT OF  
THE COMMISSION FOR STANDARDS IN PUBLIC LIFE**

**17 FEBRUARY, 2012**

# CONTENTS

SECTION ONE		
Introduction		3
SECTION TWO		
Codes of Conduct – The Seven Principles of Public Life		4
SECTION THREE		
Appointments to Statutory Boards and Use of Declaration Form		6
SECTION FOUR		
Draft Standards in Public Life Legislation		7
SECTION FIVE		
Ongoing Review of Procurement Framework		8
SECTION SIX		
Meetings and Consultations with Stakeholders		12
SECTION SEVEN		
Public Relations		13
SECTION EIGHT		
Moving Forward		14

## **SECTION ONE**

### **INTRODUCTION**

1. The Commission is mandated under section 117(9)(g) of the Cayman Islands Constitution Order 2009 to report to the Legislative Assembly at regular intervals and at least every six months.
2. In so doing, the Commission has sought to ensure that such reports are tabled as soon as practical so that they may become public documents. The Commission will continue to endeavour to ensure that members of the public are thereby kept informed of the work of the Commission on a regular and ongoing basis.
3. During the current reporting period the Commission has continued its review on the current procurement system in the Cayman Islands including meetings with various stakeholders. The Commission has also commenced its review of the existing procedures for appointing members to public authorities, and the terms of such appointment as mandated under section 117(e) of the 2009 Constitution Order.
4. The Commission has also during this period continued to assist with the creation of the underlying statutory framework that is fundamental to the ability of the Commission to effectively perform its functions under the 2009 Constitution Order.
5. In this report the Commission will outline the progress made and the key issues arising from the work completed by the Commission over the last six months.

## SECTION TWO

### CODES OF CONDUCT – THE SEVEN PRINCIPLES OF PUBLIC LIFE

6. As an integral part of its first report and in the exercise of its constitutional remit to assist in the setting of the highest standards of integrity, competence and behaviour on the part of public officers in order to ensure the prevention of conflict of interests or corruption; the Commission defined and adopted *The Nolan Principles* as the seven core principles which govern standards in public life.
7. The Commission continues to reaffirm its undertaking to uphold, promote and apply these seven core principles which form the basis of a universal standard of good governance, namely:

#### ***Selflessness***

*Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.*

#### ***Integrity***

*Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.*

#### ***Objectivity***

*In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.*

#### ***Accountability***

*Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

#### ***Openness***

*Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.*

**Honesty**

*Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

**Leadership**

*Holders of public office should promote and support these principles by leadership and example.*

8. Since the tabling of its third report, the Commission has spent considerable time reviewing and addressing the various ways and means of moving forward with the application of these seven principles of good governance with a view to assessing the most effective manner in which these principles may be readily adopted and upheld by the relevant individuals and the Public Service as a whole.

## **SECTION THREE**

### **APPOINTMENTS TO STATUTORY BOARDS AND USE OF DECLARATION FORM**

9. The Commission is of the view that there is scope for improvement in the process of appointing persons to statutory boards. As an integral part of its Constitutional remit, the Commission has spent considerable time over the past six months reviewing and assessing the framework for appointments to statutory boards not only on a local, but also regional and international spectrum.
10. As part of its ongoing review the Commission has examined the framework currently in place for the appointment of members to statutory boards some of which are governed by law, others by regulations and in some instances, memorandum and articles of association. The Commission is of the view that there needs to be a clear and unequivocal set of rules and standards to govern how members of public boards are selected and how they are expected to operate.
11. The Commission is also of the firm belief that steps must be taken to ensure that individuals who are appointed to public boards do not place themselves in positions where conflicts of interest arise. Furthermore, the Commission is of the firm view that each potential member should be required, at the time of their appointment, to disclose, by way of a Personal and Conflict of Interest Form, any obligation, commitment, relationship or interest that could conflict with his or her duties as a member of the public board or other entity upon which he or she has agreed to serve. It is envisaged that whilst there should be no need for the proposed declaration to be unnecessarily invasive, the information contained therein should serve to assist in the prevention of conflicts of interest both of a real and perceived nature.
12. During the course of the next reporting period the Commission will continue to explore the various other ways in which the seven basic principles of Public Life may be incorporated by way of governing legislation with a view to ensuring that all Government boards and bodies have a statutory obligation to adhere to these principles.

## **SECTION FOUR**

### **DRAFT STANDARDS IN PUBLIC LIFE LEGISLATION**

13. In its three previous reports, the Commission highlighted the need for the enactment of the necessary enabling legislation to ensure the Commission can fully perform its functions in a proper, timely and effective manner.
14. The Commission remains of the view that the lack of supporting and enforceable legislation renders its mandate to maintain a Register of Interests as well as the additional responsibilities of the Commission under section 117 of the Constitution meaningless in so far as it relates to the Commission's ability to validate powers of compliance monitoring for standards in public life and investigations of potential breaches.
15. Since the submission for tabling of its third report in mid-August 2011, the Commission has completed its role in the drafting of the SPL Bill which is now with the Honourable Attorney General for final consideration before being forwarded to the Honourable Deputy Governor for submission to Cabinet and finally the Legislative Assembly.
16. Until the requisite enabling legislation is put in place, the Commission will continue to use its best endeavours to address the tenets of good governance and standards in public life in the broadest terms possible.

## SECTION FIVE

### ONGOING REVIEW OF PROCUREMENT FRAMEWORK

17. Under the terms of the 2009 Constitution Order, the Commission is mandated under section 117(9)(d) to review and establish procedures for the awarding of all public contracts.
18. Based on its initial research and findings as outlined in its third report, which was tabled in the Legislative Assembly on the 28<sup>th</sup> September 2011, the Commission outlined eight preliminary recommendations. It is the strong belief of the Commission that the implementation of these recommendations will serve not only to enhance the current system of procurement but will provide for a higher degree of transparency and by so doing, give added comfort to public concerns regarding the integrity of the present framework for awarding public contracts which is governed by the *Public Management and Finance Law* under Part IX and Part XII of the *Financial Regulations (2010 Revision)*.
19. During the period immediately leading up to and following the tabling of its third report the Commission's Chair sought a meeting with the Honourable Financial Secretary to allow for the necessary feedback and discussion of the relevant matters arising from the recommendations outlined in the appendix to the third report of the Commission hereinbefore referred to.
20. The requested meeting was held on the 9<sup>th</sup> January 2012 when the Honourable Financial Secretary was asked by the Chairman of the Commission to provide his views regarding the recommendations offered by the Commission in its third report as set out below:

***Recommendation 1: The Financial Secretary should develop and publish, specific Terms of Reference or provisions for the manner in which members of both the CTC and DTC are to be appointed and the way in which they are to achieve their intended objectives.***

*Response: I support this recommendation*

***Recommendation 2: The Financial Secretary should develop and publish, a policies and procedures manual which sets out in writing clear guidelines on the manner in which the CTC and DTC's operate.***

*Response: I support this recommendation*

**Recommendation 3: The Financial Secretary should require each member of the CTC and DTC to sign a confidentiality agreement before commencing work.**

*Response: I support this recommendation. It should however be noted that I do not appoint members of the DTC, the requirement for a confidentiality agreement would therefore be reflected in the policies and procedures manual which will be developed.*

**Recommendation 4: The Financial Secretary should require each member of the CTC and any DTC to complete a full disclosure of all pecuniary and business interests to the Financial Secretary before commencing work and an update every twelve months thereafter. The Financial Secretary should compile these declarations into a Register of Interest which upon request should be made available for public viewing.**

*Response: There is partial support for this recommendation. DTCs are appointed on an ad hoc and as needed basis depending in son the nature of the procurement. I do not appoint these committees and it would be impractical for each member of each DTC to make the recommended declaration to me before starting work.*

*During the course of a fiscal year, the Government may convene several hundred DTCs which may consist of Civil Servants, members of the public or both. In many instances, a member of the public may be requested to sit on a DTC based on their expertise in that area (i.e. procurement of a Doppler radar) but may never serve on any future Technical Committee. To maintain and update a register of such a person's business and pecuniary interest on an annual basis would be impractical.*

*I believe a more practical approach would be to develop a form, supported by legislation, which each potential DTC and/or CTC member would sign as a requirement prior to commencing work.*

*The form would essentially be an affirmation that the potential member is unaware of any existing conflicts of interest regarding the matter he/she is being asked to deliberate on and will declare at the earliest opportunity if any such conflicts come to their attention during the period of deliberation. The form would also be initialled by the potential member indicating understanding on their part that it would be an offense to either make a false declaration or to deliberate on any matter in which they or their immediate relatives, business associates, employees, etc. have an interest.*

**Recommendation 5: The Financial Secretary should develop and publish clear direction for members of the CTC and any DTC regarding the handling of conflicts of interests which may arise (or perceived to arise) during their dealing with public contracts and the procurement process as a whole.**

*Response: I support this recommendation*

**Recommendation 6: The Financial Secretary should put in place a system in which more support, guidance and leadership is given to the DTCs. This support system should include exercises in which the CTC reviews decisions made by the DTC.**

*Response: I support this recommendation. The Central Tenders Committee previously had a dedicated Secretary who would be responsible for training programs, public liaison and other administrative matters of the Committee. Due to austerity measures, the Committee now uses an Officer from the Economics and Statistics Office on a part time basis to provide secretarial support. The only other Civil Servant member of the Committee is the Director of the Revenue Unit who serves on the Committee in addition to numerous other functions and responsibilities.*

*It would certainly be desirable to have the personnel capacity for greater involvement in the workings of the DTC. However, given that the CTC only meets twice per month for an afternoon on each occasion, it would be impractical for that Committee to review the decisions of the DTC which focus mainly on smaller procurements. The DTC's decisions on matters involving procurements greater than \$250K is already reviewed by the CTC as part of its normal operating procedures.*

**Recommendation 7: The Financial Secretary should provide training to the existing members of the CTC and all key players in the DTC's on these new changes.**

*Response: I support this recommendation in the context of the response given to recommendation 6.*

**Recommendation 8: The Central Tenders Committee should develop and public a policies and procedures manual which sets out in writing clear guidelines on the manner in which the DTC's operate.**

*Response: This was covered in Recommendation 2 and is supported.*

21. The Honourable Financial Secretary has since communicated that he supports seven of the eight recommendations and partially supports the other.
22. The Commission continues to research the issue of securing an expert in the area of procurement who can best assist the Commission to fulfil its constitutional mandate.
23. Ongoing consultation also continues to occur on the subject area of procurement between the various stakeholders.
24. Overall, the Commission is seeking to formulate a strategy and action plan in order to manage the procurement process and create a system specific to the needs of the Cayman Islands.
25. The Commission has actively reviewed the procurement processes associated with Bermuda, Jersey and Jamaica.
26. The Commission continues to reaffirm its commitment to ensuring the procedural rules governing the awarding of public contracts is one which:
  - is seen to be fair, impartial and transparent;
  - maintains the highest possible standards of integrity with all business relations;
  - fosters appropriate standards of professional competence amongst those for whom they are responsible; and
  - declares any personal interest which it may be viewed as a potential conflict.

## **SECTION SIX**

### **MEETINGS AND CONSULTATIONS WITH STAKEHOLDERS**

27. Commission members availed themselves of or were afforded the opportunity to meet with Mr. Colin Roberts, Solicitor General of the Foreign Commonwealth Office (FCO). Mr. Roberts agreed with the Commission that steps must be taken to ensure that the Commission is provided with the requisite enabling legislation that is fundamental to the ability of the Commission to effectively perform its functions under the 2009 Constitution Order. Discussions also took place regarding the need for improvement to the current procurement process in the Cayman Islands and the role of the Commission in this regard.
  
28. The Chairman has held a series of separate meetings with various primary stakeholders who play a primary role in the procurement process. The meetings were of a fact finding nature and in some instances provided an independent correlation of the views expressed by the Auditor General in his report. Essentially the Commission gleaned that although on paper the current procurement system appears to be one which is of a relatively sound concept, it lacks comprehensive guidance and there is in fact a wide scope for improvement.

## **SECTION SEVEN**

### **PUBLIC RELATIONS**

29. As part of its efforts to formulate positive interaction with the Public, the Commission embraced the opportunity to utilise the local television show, GIS Spotlight as a means of reaching out to the public. The short segment included the primary responsibilities of the Commission and a short introduction to the Nolan Principles. The Commission will continue to seek alternative ways in which to increase their appearance in the public. The segment can be viewed at: <http://www.youtube.com/watch?v=J4ML0gFkPj8>.
  
30. In October 2011 the Chairman was asked to serve on the Committee to review the 1999 White Paper that was charged with garnering public views and input for the United Kingdom's review of its relationship with the overseas territories. The Report of the Committee which was submitted in November 2011 included the views received regarding the need for codes of conduct for persons in public life and the role of the Commission in relation thereto.
  
31. The Commission will continue to formulate positive public interaction and are considering ways in which they can effectively represent the importance and the details of each of the Nolan Principles to the public.

## **SECTION EIGHT**

### **MOVING FORWARD**

#### **Procurement**

32. The Commission continues to research the issue of securing an expert in the area of procurement who can best assist the Commission to fulfil its constitutional mandate.
33. The Commission is seeking to formulate a strategy and action plan in order to manage the procurement process and create a system specific to the needs of the Cayman Islands.
34. The Commission will also seek to ensure the Government understands the importance placed on the recommendations contained in the Third Report which have yet to be enacted.

#### **Nolan Principles and Codes of Conduct**

35. The Commission recommends that the Government enact legislation which will require all persons who serve on a public body to adhere to the Nolan Principles.

#### **Appointments to Statutory Boards and Use of Declaration Form**

36. The proposed legislation should include the mandatory use of a Declaration of Interests Form for all board members at the time of their appointment to a Statutory Board. The focus will be placed on avoiding conflicts of interest by disclosure of personal interests.

#### **Monitoring of Ethical Conduct**

37. Through legislation requiring all public officials to adhere to the use of the Nolan Principles the Commission will be provided with the tools to allow it to fulfil its constitutional mandate of section 117 (9)(b). With the passing of its own Standards in Public Life legislation the Commission will be able to establish protocols for monitoring the ethical conduct in the Legislative Assembly, the Cabinet and on the part of public authorities and public officers including establishing channels in which individuals may lodge complaints about the ethical conduct of the members of the aforementioned entities and methods of investigating complaints and producing reports.

**Enabling Legislation**

38. The Commission will continue its efforts to assist with the creation of the underlying statutory framework that is fundamental to the ability of the Commission to effectively perform its functions under the 2009 Constitutional Order.

Dated this 17<sup>th</sup> day of February, 2012.



Karin M. Thompson (Chair)



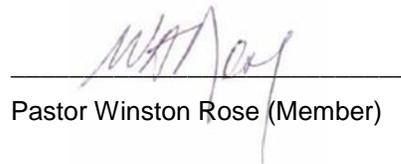
Nyda Mae Flatley (Member)



Roy McTaggart (Member)



Hedley Robinson (Member)



Pastor Winston Rose (Member)