

The Queensland Integrity Commissioner

by the Hon Alan Demack AO, Queensland Integrity Commissioner
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Queensland has established a regime designed to promote integrity in Government. The Clerk of Parliament oversees the Members' register of interests. The Audit Office carries out an audit of public sector finances. The Ombudsman deals with complaints about public administration. The Criminal Justice Commission investigates official misconduct. The Anti-Discrimination Commission, Health Rights Commission and Children Services Tribunal deal with specific areas of complaint involving the public sector. Within this network, the Queensland Integrity Commissioner has a limited role. The purpose of this Paper is to examine this role.

However, because the role cannot be fully explained without reference to these other bodies, I should begin with them.

Register of Members' Interests

On 19 April 1989, the Queensland Legislative Assembly (the only House of Parliament in Queensland) passed a resolution establishing a Register of Members' Interests. In 1999, it also resolved to establish a Register of Related Persons' Interests. The Clerk of the Parliament acts as Registrar of these two registers. The Register of Members' Interests is readily accessible to the public and the media. The Register of Related Persons' Interests is available for inspection by a limited number of people.

Within one month of taking an oath or affirmation as a member of the Legislative Assembly, each member must provide to the Registrar a statement of registerable interests and a statement of their related persons' registerable interests. Changes must

be notified within one month of the member becoming aware of the change. Members must submit a yearly statement of interest to the Registrar by 31st July each year.

Complaints by the public or by another member about any breach of these requirements must be made in writing to the Registrar. The Registrar then refers the allegation to the Members' Ethics and Parliamentary Privileges Committee. A member who knowingly fails to give a statement of interests or who supplies false, incomplete or misleading material is guilty of contempt of Parliament.

The Audit Office

The first Queensland Auditor General, Mr Henry Buckler, was appointed in 1860. The present statutory provisions which regulate the Audit office are found in the *Financial Administration and Audit Act* 1977. The Auditor-General is required to perform, each year, an audit of the consolidated fund and of the funds of "all public sector entities". These include all departments, all local governments, all statutory bodies and any controlled entities of one of those bodies.

Such audits explore issues which touch on the Integrity Commissioner's role. For example, in the Auditor-General's Report No 1 2000-2001, there is a report of the audit of the management of reportable gifts (6.2). This not only provides factual information about the extent of compliance with the *Financial Management Standard* 1997, which required public service officers to report gifts given to them of a value in excess of \$100, but also analyses the difficulties that arise because of conflicts of interest associated with the receipt of gifts and hospitality.

The Parliamentary Commissioner for Administrative Investigations

The *Parliamentary Commissioner Act* 1974 established the office which is popularly called the Ombudsman. The principal function of the Parliamentary Commissioner for Administrative Investigations or Ombudsman is to investigate administrative actions taken by "agencies". Agencies in this Act are essentially the same bodies which are called public sector entities in the *Financial Administration and Audit Act* 1977. The

Act applies to all agencies and their officers, but does not apply to a police officer in that person's capacity as a police officer.

The Ombudsman has the same powers as a Royal Commissioner. He reports to the principal officer of the agency investigated and, if no appropriate response is made, the matter is reported to the Premier.

The Criminal Justice Commission

The *Criminal Justice Act* 1989 established the Criminal Justice Commission. Among its various responsibilities it can investigate allegations of official misconduct involving "units of public administration". The definition of unit of public administration is much wider than the definition of "agency" in the *Parliamentary Commissioner Act* 1979 and the definition of "public sector entity" in the *Financial Administration and Audit Act* 1977. It includes the Legislative Assembly, the Executive Council, the Police Service, and the Courts, although the independence of judicial officers is recognised.

The Commission has appropriately wide powers including the power to seek the arrest of witnesses and to apply to the Supreme Court to use a listening device.

The Anti-Discrimination Commission

The *Anti-Discrimination Act* 1991 binds the Crown so that the powers given to the Anti-Discrimination Commission can be exercised in respect to acts of discrimination occurring in the public sector. The Commission is, however, in a different position from the other bodies to which I have referred because its function is not limited to the public sector. Nonetheless, it deals with complaints about decisions made in the public sector which affect members of the community.

The Health Rights Commission

This Commission was established by the *Health Rights Commission Act* 1991. The purpose of the Act was to provide independent review and conciliation with respect to

services provided by health service providers and health service users. Some of the complaints which are dealt with concern public general hospitals and public health services.

The Children Services Tribunal

The Children Services Tribunal Bill 2000 and the Commission for Children and Young People Bill 2000 were debated together in Parliament and passed in November 2000. When the Children Services Tribunal is in operation it will review certain decisions made under the *Adoption of Children Act 1964*, the *Child Protection Act 1999*, the *Child Care Act 1991* and the *Commission for Children and Young People Act 2000*. These decisions are administrative ones which generally concern services for children and young people. The Commission will use a mix of adversarial and inquisitorial processes and powers. It replaces the existing Children's Services Appeals Tribunals.

Public Sector Ethics Act 1994

The *Public Sector Ethics Act 1994* recognises five ethics principles which apply to public officials. These are then defined as ethics obligations which are intended to provide the basis for codes of conduct for public officials. The five ethics principles are:

- ✍ Respect for the law and the system of Government
- ✍ Respect for persons
- ✍ Integrity
- ✍ Diligence
- ✍ Economy and efficiency

It is not necessary to spell out the details of the ethics obligations which give substance to these principles. For my present purpose it is enough to refer to the codes of conduct.

The CEO of each public sector entity must ensure that a code of conduct is prepared for that entity. A "public sector entity" means any of the following:

- ? the Parliamentary Service;
- ? the administrative office of a court or tribunal;
- ? a department
- ? a local government
- ? a university, university college, State college or agricultural college;
- ? a commission, authority, office, corporation or instrumentality established under an Act or under State or local government authorisation for a public, State or local government purpose;
- ? an entity, prescribed by regulation, that is assisted by public funds;

but does not include any of the following

- ? a GOC;
- ? a corporatised corporation;
- ? the following entities under, or within the meaning of, the *Education (General Provisions) Act 1989*-
 - (i) a parents and citizens association;
 - (ii) a school that is not a State school;
 - (iii) an advisory committee;
 - (iv) an international educational institution;
- ? an entity prescribed by regulation.

It is obvious from the definition that a wide band of public entities is included within this definition. It should be noted that Government Owned Corporations and their equivalent in local government, corporatised corporations, are excluded from the definition.

Codes of Conduct

A public official of a public sector entity must comply with the conduct obligations stated in the entity's code of conduct which apply to the official. That latter phrase is necessary because a code of conduct may make different provisions, consistent with the ethics obligations, for different types of public officials.

“Public official” means-

- ? an officer or employee of a public sector entity; or
- ? a constituent member of a public sector entity, whether holding office by election or selection,
- ? but does not include a judicial officer or local government councillor.

A code of conduct may contain anything the responsible authority for the entity considers necessary or useful for achieving the purpose of the code. This may include obligations public officials must comply with. A code may contain information explaining both the purpose of and the object intended to be achieved by both ethics obligations and conduct obligations. It may contain guidelines, examples and explanatory notes about ethics obligations and conduct obligations.

The preparation of a code of conduct must include consultation with the public officials to whom it applies and with industrial organisations and other appropriate entities representing the interests of any of the officials. Before the responsible authority can approve a code of conduct it must be accompanied by a written statement by the CEO outlining the nature and intent of such consultations and the outcome. The responsible authority in most instances is the Minister.

Obligations of Chief Executive Officer

Each CEO of a public sector entity must ensure that each public official of the entity has reasonable access to a copy of the ethics principles and obligations for public officials and the conduct obligations stated in the entity’s code of conduct that apply to the official. Copies of the codes must be available during office hours on business days at the entity’s head and regional office, both for inspection and purchase by any person.

Appropriate training and education must be available to public officials about the operation of the *Public Sector Ethics Act*, the application of ethics principles and obligations to public officials, the contents of the entity’s approved code of conduct

and the rights and obligations of the official in relation to contraventions of the approved code of conduct.

Each annual report of an entity must include an implementation statement giving details of the action taken during the reporting period to comply with obligations placed on chief executive officer by the *Public Sector Ethics Act 1994*.

Disciplinary Action

The *Public Sector Ethics Act 1994* provides that any disciplinary action for a contravention of an approved code of conduct by a public official of a public sector entity should be dealt with under:

- ? if the official is a public service officer – the *Public Service Act 1996*; or
- ? if the official is a local government employee – the local government legislation applying to the local government; or
- ? if the official is not a public service officer or a local government employee but there are disciplinary processes applying to the official – the disciplinary process; or
- ? if there are no disciplinary processes applying to the official – the regulations.

“Local government legislation” means:

- ? the following Acts –
 - o *City of Brisbane Act 1924*
 - o *Community Services (Aborigines) Act 1984*
 - o *Community Services (Torres Strait) Act 1984*
 - o *Local Government Act 1993*; or
- ? an Act prescribed by regulation

To date, no regulations have been made which apply to disciplinary proceedings.

The Queensland Integrity Commissioner

In November 1999, Part 7 was added to the *Public Sector Ethics Act 1994*. The purpose was to help ministers and others to avoid conflicts of interest and in so doing to encourage confidence in public institutions. The method of achieving this was to create the office of the Queensland Integrity Commissioner who can give advice to designated persons about conflict of interest issues. A conflict of interest issue means an issue about a conflict between the person's personal interest and the person's official duties.

Designated Persons

The description "designated person" covers some 5000 or more people who fall into four categories:

- ? some members of Parliament
- ? staff of Ministers and Parliamentary Secretaries
- ? statutory office holders
- ? senior public officials

The members of Parliament who are designated persons are each of the following:

- ? the Premier
- ? a Minister
- ? a Parliamentary Secretary
- ? a Government Member

Of these, only the government members require any comment. The definition of "government member" is –

- ? a member of the Legislative Assembly who is a member of a political party recognised in the Legislative Assembly as being in government; or

- ? a member of the Legislative Assembly, other than a member mentioned above who-
- (i) is a member of a parliamentary committee; and
 - (ii) was appointed to the committee on the nomination of a member of a political party recognised in the Legislative Assembly as being in government.

When the *Public Sector Amendment Bill 1999* was introduced, the Members' Ethics and Parliamentary Privileges Committee (MEPPC) raised concerns with the Premier, as the following passage in its report of 5 September 2000 indicates:

At a meeting with the Premier on 24 November 1999, and in subsequent correspondence, the MEPPC raised a number of concerns in relation to the apparent overlap of responsibilities between the Integrity Commissioner and the committee, and the potential for conflict regarding advice of the Commissioner on one hand and the MEPPC and the Clerk of the Parliament on the other. The committee's concerns centred on the fact that the role of the Integrity Commissioner could be construed as being to advise members (other than ministers and parliamentary secretaries), amongst other things, in respect of ethical standards set by the Parliament for its members.

In advising members, the Integrity Commissioner will be necessarily be required to interpret standards set by Parliament. There is, therefore, potential for the interpretations given by the Integrity Commissioner to be at variance with interpretations given by the Clerk, the MEPPC and the House itself, particularly given the fact that the Integrity Commissioner is unlikely to be aware of the history, practice and procedure of such rules.

The committee was also concerned that the Integrity Commissioner is an extra-parliamentary officer – independent from but in a real sense appointed by the executive – advising members of Parliament in respect of the application of the Parliament's *Code of Ethical Standards*.

In his detailed written response to the committee's concerns, the Premier advised the committee that the Integrity Commissioner may provide advice only on **a conflict of interest**, as defined, and is not empowered to give advice in the application of Standing Orders or the *Code of Ethical Standards* in relation to any matter. The Premier also advised that s 31(3) of the Ethics Act provides that the Integrity Commissioner may refuse to give any advice in certain prescribed circumstances. The Premier stressed that this measure "...was provided so as to enable the Integrity Commissioner to avoid conflict with e.g the Speaker, or the MEPPC, for example in dealing with a situation in which an actual significant conflict of interest involving an MLA comes to notice".

In my meeting with the members of the Members' Ethics and Parliamentary Privileges Committee on 18 October 2000, I stated that I accepted the correctness of the Premier's reply and would avoid conflicts with the Speaker and the MEPPC. Also, there is an indication in the definition of "government member" that it is in respect of the operation of the statutory Parliamentary Committees established by the *Parliamentary Committees Act 1995*, rather than the Parliamentary process, that relevant conflict of interest issues are likely to arise. As the Members' Ethics and Parliamentary Privileges Committee is one of those Committees, there could be an occasion when independent advice is desirable.

In respect of the staff of Ministers and Parliamentary Secretaries, they will either be employed under a contract and outside of the provisions of the *Public Service Act 1996* or be public service officers on leave without pay employed under a contract. Generally, the terms of the contract of employment will include the provisions of the *Public Sector Ethics Act 1994*.

Statutory Office Holders

A statutory office is an office established under an Act to which a person may only be appointed by the Governor in a Council or a Minister. The State Affairs Branch, Department of Premier and Cabinet keep a Register of Statutory Authorities, which contains the following:

A Statutory Authority is an entity that has been established by an Act of Parliament. Statutory Authorities may be small in size, operate on limited budgets and target affairs of specific groups. Others operate as highly structured organisations targeting the broader affairs of the community. Individually and collectively, Statutory Authorities have considerable decision-making powers which greatly impact upon the economic and social well-being of all Queenslanders.

Although the definition of ‘public sector entity’ excludes Government Owned Corporations, those who are appointed to the managing board or commission are generally appointed either by a Minister or the Governor in Council to an office established under an Act. Consequently, although a GOC is not required to have a code of conduct which conforms to the *Public Sector Ethics Act*, its board members are designated persons who can seek my advice on issues involving a conflict of interest.

It may well be that this group of designated persons will provide some if the more complex problems with which the Integrity Commissioner will have to deal. The *Water Act 2000*, which contains provisions about the way directors of water authorities are to deal with conflict of interest issues, recognises that complex issues are involved.

Senior Public Officials

Three categories of senior officials are included among the designated persons in the *Public Sector Ethics Act 1994*:

- ? a chief executive officer of a department of government or a public service office;
- ? a senior executive officer or senior officer employed in a department of government or public service office;

- ? a chief executive officer of a government entity or a senior executive equivalent employed in a government entity who is nominated by the Minister responsible for administering the entity;

A department of government is declared so to be by the Governor in Council by gazette notice. “A public service office” is an entity named in schedule 1 of the *Public Service Act 1996*. These are some of the important commissions and offices which are independent of the government, but which perform important public functions, such as the Queensland Audit Office, Electoral Commission of Queensland and the Office of the Queensland Parliamentary Counsel.

A “government entity” has the meaning given by s 21 of the *Public Service Act 1996*. The relevant part of the definition is:

“an agency, authority, commission, corporation, instrumentality, office or other entity, established under an Act”.

A significant number of entities are excluded from the definition namely:-

- ? a local government or a corporatised corporation;
- ? the parliamentary service;
- ? the Governor’s official residence (known as ‘Government House’) and its associated administrative unit;
- ? the Executive Council;
- ? the Legislative Assembly
- ? a court of the State of any jurisdiction
- ? the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a);
- ? a school council established under the *Education (General Provisions) Act 1989*, university or university college;
- ? a primary producer cooperative association or commodity board that is not in receipt of moneys of, or financial assistance from, the Crown;
- ? another entity, or part of another entity, declared under a regulation not to be a government entity.

So University Vice Chancellors are not designated persons, but the Chairperson of the Crime and Misconduct Commission is.

Functions of the Integrity Commissioner

These are expressed clearly in the *Public Sector Ethics Act 1994* as:

- ? to give advice to designated persons about conflict of interest issues as provided under division 5;
- ? to give advice to the Premier, if the Premier asks, on issues concerning ethics and integrity, including standard-setting for issues concerning ethics and integrity;
- ? to contribute to public understanding of public integrity standards by contributing to public discussions of policy and practice relevant to the integrity commissioner's functions.

Request for advice

The Act describes the way in which advice is to be sought.

The integrity commissioner may give advice about a conflict of interest issue only if –

- (a) the person seeking the advice is a designated person; and
- (b) the person makes a written request for the advice and, if the person is a senior officer, the request is accompanied by a signed authority to seek the advice from the chief executive officer of the department, public service office or government entity in which the person is employed.

(‘**senior officer**’ includes a senior executive officer and senior executive equivalent.)

The people described as “senior officers” constitute the largest group of designated persons, apart from the statutory office holders.

Who may seek advice about whom?

Any designated person may seek advice about a conflict of interest issue involving that person.

The Premier may seek advice about a conflict of interest issue involving any designated person.

A Minister may seek advice about a conflict of interest issue involving a statutory office holder whose office is established under an Act administered by the Minister, the chief executive and senior officers of the Minister’s department, the chief executive officer and senior equivalent employed in a government entity established under an Act administered by the Minister, and the Minister’s staff.

A Parliamentary Secretary may seek advice about a conflict of interest issue involving a staff member.

The CEO of a department or public service office may seek advice about a conflict of interest involving a designated person employed in the department or office. Similar access is given to the CEO of a government entity in respect of a senior executive equivalent employed by the entity.

Advice cannot be sought by or about a person who has been, but is not presently, a designated person.

It will be seen from this that any designated person can seek advice about a personal conflict and interest but if that person is a senior officer, the signed authority of the CEO is needed. On the other hand, advice may be sought about other designated persons only according to the lines of responsibility within government. If a designated person has concerns about a conflict of interest of a more senior person,

the remedy lies in the *Whistle Blowers Protection Act 1996* not under the *Public Sector Ethics Act*.

Process for Seeking Advice

A request for advice must disclose all relevant information about the conflict of interest issue for which advice is sought. The integrity commissioner may ask for further information from the person seeking advice. The integrity commissioner may refuse to give advice if there is not enough information to give advice or if advice is sought in circumstances where the giving of advice would not be in keeping with the purpose of Part 7 of the *Public Sector Ethics Act*. This was the provision to which the Premier referred in his reply to the Members' Ethics and Parliamentary Privileges Committee.

Advice given must be in writing, and the reasons for any refusal to give advice must be in writing.

Standards to be applied

When giving advice about a conflict of interest, the integrity commissioner must have regard to:

- ? Approved codes of conduct
- ? Ethical standards or codes of conduct adopted by the Legislative Assembly by resolution
- ? Ethical standards or codes of conduct approved by the Premier for Ministers
- ? Other appropriate ethical standards

What is a conflict of interest?

The *Public Sector Ethics Act 1994* defines a "conflict of interest issue" as an issue about a conflict between the person's personal interest and the person's official duties.

It is important to begin by looking at the public official's duty in any particular case. Generally speaking, that duty is found in the *Public Sector Ethics Act 1994*, the *Public Service Act 1996* and the *Financial Management Standard 1997*. These Acts impose a great range of duties to cover a great range of activities. It is necessary to determine which duty or duties applies in a particular case.

Once that duty or duties are identified, the next question is whether the decision-maker has a personal interest which conflicts with those duties.

Examples of a Personal Interest

It is difficult to give an all inclusive definition of what amounts to a personal interest, but such an interest can arise if –

- ? a person has an interest in any kind of property, the value of which may be altered by a decision the person may be involved in making,
- ? a person accepts gifts and/or hospitality which may influence or appear to influence decision making,
- ? a person has or seeks employment outside the public sector which could compromise decision making,
- ? a person uses an official position to gain unmeritorious advantages for relatives or friends.

Confidentiality

Except in the performance of functions authorised by the *Public Sector Ethics Act 1994*, a person must not record, use or disclose information about conflict of interest issues that come of the person's knowledge because of involvement in the administration of Part 7 of the *Act*. The information is protected from disclosure under the *Freedom of Information Act 1992*.

Authorised Disclosures

A designated person to whom the advice relates may disclose the advice.

The integrity commissioner may disclose a relevant document to a designated person to whom it relates.

The integrity commissioner must give copies of relevant documents to –

- ? the Premier, if the premier asks for a copy,
- ? a Minister if the minister asks for a copy and the person is one about whom the minister may seek advice,
- ? a Parliamentary Secretary and CEOs on the same basis as Ministers.

If the integrity commissioner advises a designated person that the integrity commissioner reasonably believes that the person has an actual and significant conflict of interest and if the person fails within 7 days to resolve the conflict to the integrity commissioner's satisfaction, the integrity commissioner must advise the Premier.

The phrase “reasonably believes that the person has an actual and significant conflict of interest” recognises that there will be conflicts of interest that are not significant enough to flaw the decision making process. By using the word ‘actual’, it recognises that an apparent conflict of interest may not flaw the decision making process.

Protection for Designated Persons

If a designated person

- ? asks for the integrity commissioner's advice about a personal conflict of interest issue,
- ? discloses all relevant information, and
- ? resolves the conflict substantially in accordance with the advice given, the designated person is not liable in a civil proceeding or under an administrative process for an act taken to resolve the conflict.

Integrity Commissioner's Appointment

The integrity commissioner is appointed by the Governor in Council for a term not longer than 5 years. My appointment is for 3 years on a part time basis equivalent to 2 days each week.

The integrity commissioner must report in writing to the Premier as soon as practical after the end of the financial year. The report is to be in general terms and must not contain information likely to identify individuals who sought advice.

General Comments

As I said at the outset, the Queensland Integrity Commissioner has a limited role. While the number of people who may seek advice about conflicts of interest is quite large, in most instances those people have the resources to understand and resolve conflicts of interest without seeking independent advice.

It will also be apparent that the Queensland Integrity Commissioner has a range of responsibilities that do not coincide with those of similar offices overseas. There is no investigative role and no supervisory role. Advice is given when requested about specific matters giving rise to a conflict of interest. Again advice may be given to the Premier when requested and there is a public education role. But the primary responsibility is to help Ministers and more than 5000 others to avoid conflicts of interest and, in so doing to encourage confidence in public institutions.