



Queensland Integrity
Commissioner
annual report 2007–08

The Integrity Commissioner is an independent person who advises Queensland Government public officials on conflicts of interest

Statement to the Minister

1 October 2008



Integrity Commissioner

The Honourable Anna Bligh MP
Premier of Queensland
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

It gives me pleasure to submit to you my fourth annual report – the eighth Annual Report of the Integrity Commissioner.
This report is for the 12 months to 30 June 2008 and has been prepared in accordance with section 43 of the *Public Sector Ethics Act 1994*.

It is a written report about the performance of the Commissioner's functions for the financial year.
The report is in general terms and does not contain information likely to identify individuals who sought my advice about a conflict of interest issue.

Yours sincerely

A handwritten signature in black ink, appearing to read "G Crooke".

Gary Crooke QC
Queensland Integrity Commissioner

Level 3 61 Mary Street
Brisbane
PO Box 15290 City East
Queensland 4002 Australia
Telephone + 61 7 3224 2351
Facsimile + 61 7 3224 2326
Website www.integrity.qld.gov.au

Section 43 of the *Public Sector Ethics Act 1994* provides that –

- (1) The Integrity Commissioner must, as soon as practicable after the end of each financial year, give the Premier a written report about the performance of the Commissioner's functions for the financial year.
- (2) The report must be in general terms and must not contain information likely to identify individuals who sought the Commissioner's advice about a conflict of interest issue.

Location

Level 3
61 Mary Street
Brisbane Queensland Australia

Enquiries

Enquiries can be directed to:
Office of the Queensland Integrity Commissioner
PO Box 15290
City East Qld 4002

Telephone +61 (0)7 3224 2351
Facsimile +61 (0)7 3224 2326
Web www.integrity.qld.gov.au
Email integrity.commissioner@qld.gov.au

Copies of this Annual Report can be obtained by telephoning +61 (0)7 3224 2351, by faxing a request to +61 (0)7 3224 2326, or by written request to the address provided. Copies can also be downloaded from the website.

Table of contents

Who is the Integrity Commissioner?	4
The role and function of the Integrity Commissioner	5
Overview of the reporting year	6
Summary of requests	9
Issues considered	10
Contribution to public understanding of public integrity standards	12
Staffing of the Office of the Integrity Commissioner	14
Compliance disclosures	14
Financial statement	15

Who is the Integrity Commissioner?

Mr Gary Crooke QC was appointed by the Governor in Council on 1 July 2004 as Queensland's second Integrity Commissioner. On 3 May 2007, Her Excellency the Governor, with the advice of the Executive Council, reappointed Mr Crooke for a further term of 2 years. His appointment will now expire on 30 June 2009.

The role was established in 1999 under the *Public Sector Ethics Act 1994* and is detailed in the Statement of Affairs published on the website www.integrity.qld.gov.au.



Mr Crooke succeeded the Honourable Alan Demack AO, a former Supreme Court Judge, who retired on 30 June 2004 after almost four years of service in the role. Mr Demack became Queensland's and Australia's first Integrity Commissioner in August 2000.

Mr Crooke is married with three adult sons and four grandchildren. His interests include cricket, fishing and farming beef cattle.

He began his education at Pulteney Grammar School Adelaide, and went on to graduate from a Bachelor of Arts in 1963 and a Bachelor of Law in 1966 at the University of Queensland. He began practising as a barrister in 1966 and was appointed Queen's Counsel (QC) in 1982.

During his career he has worked on a number of high profile matters including:

- Senior Counsel Assisting the Queensland Fitzgerald Inquiry 1987-89
- Senior Council Assisting New South Wales Royal Commission into Police Corruption 1994-97.

He has also held the following appointments:

- Chairman National Crime Authority 1999-2002
- Co-Chair Asia Pacific Group on Money Laundering 1999-2002.

Mr Crooke was also the President of the Queensland Bar Association 1989-90, the President of the Australian Bar Association 1990-91 and has been a Life Member of the Queensland Bar Association since 1993.

The role and function of the Integrity Commissioner

The *Public Sector Ethics Act 1994* was amended in 1999 to add Part 7 for that Act. This Part creates the Office of Integrity Commissioner and designates the role and function of that office.

The purpose of Part 7 is to help Ministers and others avoid conflicts of interest, and in so doing, to encourage confidence in public institutions (section 25). The functions of the Integrity Commissioner are:

1. to give advice to designated persons about conflict of interest issues as provided under division 5;
2. 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;
3. to contribute to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Integrity Commissioner's functions.

The Queensland Integrity Commissioner can give advice only to designated persons (section 29). These persons are essentially Government Members of Parliament, including the Premier, Ministers and Parliamentary Secretaries, but also including Members of other Parties or Independent Members who are themselves members of a Parliamentary Committee on the nomination of a Government Member.

The term also includes statutory office holders, departmental heads and senior officers employed in their departments, together with staff employed to give advice in the office of Ministers and Parliamentary Secretaries. It is possible for a Minister to nominate a person or class of persons to be included within the definition. In March 2006, the first example of the exercise of this power occurred when the Minister for Transport and Main Roads advised me by letter that he had included marine pilots as a class of persons nominated by him under section 27(1)(k) of the Act to be included in the classification of "designated persons".

In this reporting year, the second example occurred when, in October 2007, the Minister for Health advised me by letter that, pursuant to section 27(1)(k) of the *Public Sector Ethics Act 1994* (the Act), he had nominated those employed in Queensland Health under the provisions of the *Health Services Act 1991*, to an equivalent level of senior officer or senior executive under the *Public Service Act 1996*, as a class of person to be included within the definition of a "designated person" under the Act.

All told, there are more than 5000 "designated persons" in Queensland.

A conflict of interest issue involving a person means an issue about a conflict between the person's personal interest and the person's official duties (this is defined in the Schedule to the Act).

Overview of the reporting year

This report covers the eighth year of operation of the Office of Integrity Commissioner and my fourth year of tenure.

The year under review saw an overall total of 40 requests for advice, compared to 39 in the previous year.

Similar issues emerged to those recorded in my previous reports. Those who requested advice were motivated to ensure that they were acting in accordance with high standards of ethics and integrity.

On the question of post-separation employment, you sought my advice concerning the situation of your predecessor as Premier. You released a slightly edited copy of the advice to the local press. This created a very advantageous opportunity for the community to consider the issues involved in such a situation, as well as providing an insight into the role of the Integrity Commissioner. The letter, as published, appears on the Integrity Commissioner's website www.integrity.qld.gov.au.

The question of acceptance of gifts by public officials, referred to in my previous Annual Report, has now been comprehensively addressed by the publication of a Directive by the Public Service Commissioner in December 2007, which took effect as from 1 January 2008. I am pleased to record that the tenor of this Directive, which the Codes of all departments must reflect, is in accordance with observations I made on these matters in my previous report. The underpinning principles which apply in this area have aspects of general application and are of sufficient significance to repeat them here. These principles are:

- A decision to devote one's career to the service of the public bespeaks selflessness. It embodies the acknowledgement that actions will be governed by the public interest and not self interest.
- Any gift acquired by a public official in the light of performance of his or her office is never the property of the public official, but is always the property of the department or the State. In turn, such department or government is obliged to deal with the property in the public interest and not for the benefit of an individual.
- A gift to a decision-maker by a person or organisation likely to contend for favourable consideration will raise a reasonable public perception to place the decision-maker in an inappropriate position of conflict.

Recognition of these principles created a departure from the previous situation where there was a tendency to base acceptance of a gift, and later dealings with the gift, on a scale of monetary values rather than the fundamental ethical principle as to if, and when, any gift should be accepted.

Whilst the above Directive applies to public service departments, I understand that consideration is being given to reviewing the provisions of the Ministerial Code of Conduct that relate to acceptance of gifts.

Another work in progress appears to be the finalisation of the Government's position in relation to shareholdings by Ministers, Parliamentary Secretaries and their spouses. This is an issue raised in the Parliament by your predecessor (Hansard 22 May 2007 at p1494), and it awaits final pronouncement.

This is an area that involves a balancing of individual rights with public expectation and public duty. It is appropriate and justifiable that a high level of ethical conduct should be set for those holding high offices. As I have observed on many previous occasions, the setting

of an example by leadership is of the highest importance. Those who look up to leadership cannot be expected to adhere to more onerous standards than those which leaders set for themselves.

The area of public administration saw positive developments in the field of openness and accountability. The Government commissioned a comprehensive review of Freedom of Information legislation and the principles underpinning it. The report has now been published and its recommendations are being considered. The thrust of the report is essentially to recommend a reversal of the current approach to the release of government information. Instead of approaching issues in this field from the standpoint that much government information is confidential, the recommendation is that government information should be available to the community unless public interest dictates otherwise. I am sure that the final determination of the Government's approach will be the subject of keen public interest. Without doubt, it is of paramount importance to public administration.

Another issue that has become topical is the role of lobbyists. The issue has been addressed at the Commonwealth level. In the Prime Minister's Standards of Ministerial Ethics, there is now a requirement for those carrying on the practice of lobbying to record it in the public register, together with details of their activities.

Whilst care must be taken to ensure that citizens, corporate or otherwise, are not denied access to their elected representatives, I consider that it is timely to address what is the proper role and responsibilities of this soi-disant enterprise. No doubt, those who act professionally and ethically in the area will be pleased to adhere to appropriate ethical desiderata. One of the dangers that must be recognised and guarded against is the possibility that some in this field may wish to convey the false impression that access to a Minister or a high Government official cannot take place without their assistance and intervention, upon payment to them of a not inconsiderable fee.

A common ethical based thread runs through considerations relating to issues such as post-separation employment, lobbying, and even fundraising. I consider that an insight into desirable principles can be obtained by calling in aid a concept of capital in relation to government property.

All the components of government property (whether physical, intellectual or reputational) are really no more, and no less, than the property of the community, the capital of which is held in trust by elected or appointed representatives or officials.

The term "capital" is an amorphous one and includes all the entitlement to respect and inside knowledge that goes with holding a high position in public administration.

The trust bestowed importantly includes an obligation to deal with government property or capital only in the interests of the community. As such, it is singularly inappropriate for any person to use it for personal gain.

By way of example, it would be quite inappropriate for a former Minister or senior official to hold out that he or she could obtain privileged access to a current Government official, because of his or her previous position. Not only is this part of capital not available to any person to sell, for personal gain; it also offends basic concepts of public administration which call for a process founded upon equal access to decision-makers for all interested citizens.

This same principle carries into post-separation employment. The concept of capital includes private and confidential information held by Government. It is not for sale or purchase. Not only should departing Government officials acknowledge its reality and act accordingly, but

those outside Government should also adhere to principles and behaviour which recognise that a good corporate citizen would not seek to acquire such “insider” knowledge, or place the departing person under any pressure to reveal what is not theirs to impart.

Whilst there are welcome emerging signs in the commercial community, and in the public sector, that ethical behaviour should be an adjunct to any business dealing, there still seem to exist practices which, if analysed, may not accord with recognition of proper trusteeship of the capital to which I have referred.

In the past, I have repeatedly emphasised that the proper test of an unacceptable conflict of interest is the view of a reasonable member of the public, properly informed. Perception is reality.

I detect a healthy emerging focus and heightened expectation by the community on high standards of ethical behaviour from elected and appointed representatives. The indications I get from performing my role indicate that this focus is reciprocated by the senior public officials or representatives with whom I deal. I note that you have made several public statements confirming your commitment to high ethical standards.

Against this background it is opportune to scrutinise a long continuing practice adopted by Governments at all levels and of all persuasions throughout Australia.

In the area of fundraising, it seems to be a common strategy to hold a dinner or like function where entry is often by invitation, and usually at a price well beyond the cost of the provision of any food or services at the function. Often, it is openly advertised that such payment will ensure access to a Minister or other high-ranking politician.

Having regard to my reference to “capital” and trusteeship of the same, it seems to me that questions such as the following need to be asked:

- What is being sold and who (or what entity) receives or controls the proceeds?
- Whose is it to sell, or can it appropriately be sold?
- Is what is on offer, being offered on equal terms to all members of the community?
- What is the likely understanding or expectation, of the payer on the one hand, and of the reasonable member of the community on the other, of what the buyer is paying for?
- If there is a Government decision to be made, is a perception likely to arise that those interested, and not attending the function, whether competitors for a tender, or opponents to a proposal, are at a disadvantage?

Unless questions such as the above can be unequivocally answered in a way which is consonant with the integrity issues raised in the previous discussion of capital and trusteeship, it would not be appropriate to engage in, or continue this practice.

In areas such as this a tone is set at the top, which permeates down the levels of public administration. The example set at the top level is all important.

In the same way that a long standing approach to the acceptability of public officials receiving gifts has been reviewed and subjected to change to better accord with proper ethical principles, it seems that ethical and integrity considerations underlying the type of fundraising practice referred to, are in need of examination to scrutinise the extent to which they comply with proper principles of ethics and sound public administration.

Summary of requests

Requests received

Requests	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08
Premier	3	4	2	1	4	4	5	3
Ministers or Parliamentary Secretaries	4	3	2	10	9	8	10	5
Directors-General	6	4	6	5	4	6	3	2
*Other designated persons	1	14	14	5	8	3	12	17
*Preliminary discussions					6	9	9	13
Total	14	25	24	21	31	30	39	40

* Prior to 04/05, there was no separation of these figures. These were included under the heading "Other".

Issues considered

A total of 40 written requests for advice were received in the reporting year. Section 43(2) of *Public Sector Ethics Act 1994* requires that my report must be in general terms and must not contain information likely to identify individuals who sought my advice. Additionally, there are strict statutory secrecy provisions relating to disclosure by the Integrity Commissioner of any advice, or material submitted for the purpose of obtaining advice, all of which is exempt from the provisions of Freedom of Information legislation.

Bearing this in mind, I can report that requests received covered a broad field within the category of a possible conflict between personal interests and public duty. As enabled by the statute, you and your predecessor requested advice about matters in broader compass relating to the field of ethics and integrity.

Issues raised included potential conflicts including perceived influence or personal involvement regarding:

- receipt of political donations
- requests for endorsement or references
- shareholding, including shareholding by a spouse
- involvement in a decision-making process when there was a personal connection with the subject matter
- a Member of Parliament holding a directorship in a not-for-profit organisation in the Member's electorate
- a senior executive holding a position in a voluntary community based undertaking when the activities carried out by the undertaking may come under the jurisdiction of the public functions exercised by the executive
- secondary employment or consultancy
- social involvement with possible stakeholders in later decisions
- soliciting donations for charitable causes within a Member's electorate.

Contribution to public understanding of public integrity standards

One of the functions of the Integrity Commissioner is to contribute to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Integrity Commissioner's functions.

To make this possible a website, www.integrity.qld.gov.au was launched by the Office on 6 April 2001. The site includes information about the Integrity Commissioner, the *Public Sector Ethics Act 1994*, and various articles and papers prepared and presented by both the former and current Commissioners. During this reporting period, there were over 22,700 visits to the website, compared to approximately 12,250 visits during 2005/2006. Statistics for the number of visits to the website during 2006/2007 were not available.

The availability of the website to international and national governments, the Queensland public and the public sector, assists to increase awareness of ethics matters in the public arena, and contributes to broader understanding of ethical practices across the sector.

This function of the Integrity Commissioner is not a mandate to comment at large upon any matter of public interest. It is confined to public discussion of policy and practice relevant to the Queensland Integrity Commissioner's functions. In discharging this area of responsibility, the following steps have been undertaken in the reporting year:

(a) Maintaining the website of the Integrity Commissioner, which includes publication of the following material:

- Information Sheet No. 1 *Who is the Integrity Commissioner?*
Published in November 2000 and updated in 2005, describes the role of the Integrity Commissioner.
- Information Sheet No. 2 *Conflicts of Interest in the Public Sector*
Published in March 2002 and addresses conflict of interest issues for public servants.
- Information Sheet No. 3 *Statutory office holders and conflicts of interest*
Published in June 2003, helps a specialist group of people in the public sector determine whether they are able to seek advice from the Integrity Commissioner.
- Handbook *Building Integrity in the Queensland Public Sector*
This handbook, prepared and published by the former Integrity Commissioner, discusses the relationship between ethics and law.

- Annual Reports Also on the website are the annual reports for the previous seven financial years, making them available for public discussion.

Papers and presentations given by the Integrity Commissioner are also included on the website.

(b) During the reporting year, the Integrity Commissioner:

- met personally with:
 - the new Premier and her Chiefs of Staff
 - newly appointed Ministers, Parliamentary Secretaries and Directors-General
 - Members of Parliament
 - other Chief Executive Officers
 - the new Leader of the Opposition
 to discuss his role and functions.
- attended meetings of a group consisting of the Auditor-General, the Chairman of the Crime and Misconduct Commission, the Public Service Commissioner and the Information Commissioner to discuss common work priorities.
- attended meetings and spoke to the Queensland Public Sector Ethics Network regarding:
 - *The future focus of ethics in the public sector*
 - *Post-separation employment (recent media attention)*
 - *Secondary employment (local councillors).*
- attended meetings of a Reference Group set up by the Queensland Legal Services Commission.
- presented a paper at the Australian Public Sector Anti-Corruption Conference in Sydney
 - *The Queensland Integrity Commissioner – Role and functions: Conflicts of interest matters and examples.*
- gave a presentation and participated in a panel session at the Chartered Secretaries Australia Annual Public Sector Update
 - *Developing an ethically sound governance culture.*
- met with a delegation from the Department of Supervision, Hebei Province, China to discuss the Queensland Integrity Commissioner's role and the Queensland Integrity Regime.
- gave a presentation at a CEO Breakfast Forum:
 - *The Role and Experience of the Integrity Commissioner – Gifts and Trojan horses.*

- gave a presentation to Executive Directors and Directors of the Governance Division, Department of the Premier and Cabinet on their ethical obligations generally.
- facilitated a workshop with Queensland Transport employees.
- gave presentations to the following groups regarding the role and functions of the Integrity Commissioner:
 - senior officers of the Department of Primary Industries and Fisheries
 - CMC Liaison Officers
 - participants of the Graduate Program
 - new staff of the Office of the Public Service Commissioner.
- was invited to comment on the consultation draft for the *Criminal Code and Other Acts Amendment Bill 2008*.
- was invited to make a submission on the FOI Independent Review.
- was asked to comment on a proposed revised Code of Conduct for the Department of Transport.
- was asked to comment on a consultation draft Code of Health Rights and Responsibilities - proposed Code for Queensland Health Quality and Complaints Commission.
- gave an interview to the Queensland Law Society - Proctor - *Fitzgerald Inquiry ... 20 years on ... Loss of Innocence*.
- gave an interview to Griffith University - *Griffith Review*.

Staffing of the Office of the Integrity Commissioner

The conditions of employment of the Integrity Commissioner are engagement on a part-time basis, being the equivalent of two days per week. The Integrity Commissioner, like his predecessor usually resides outside of Brisbane. Like his predecessor, he spends at least two days per month in Brisbane and for the balance works from elsewhere. The only claim made associated with the Integrity Commissioner's location outside Brisbane is for reimbursement of telephone expenses.

Whilst the premises of the Integrity Commissioner are located on the same floor as the Office of the Public Service Commissioner, the Integrity Commissioner is separate from, and independent of, any other Office. For reasons of economy and efficiency, funding for the Office of the Integrity Commissioner comes from within the appropriation for the Office of the Public Service Commissioner.

Funding includes the provision of a dedicated Executive Coordinator accountable to the Integrity Commissioner as well as the provision of incidental administrative support on an ad hoc basis, again for reasons of economy and efficiency. I express my gratitude for this assistance and for the capable way in which the position is fulfilled by Mrs Mattea Slinger.

In August 2007, following an external assessment and review, the position of Executive Coordinator was upgraded from an AO4 level to an AO5 level.

Compliance disclosures

The Office of the Queensland Integrity Commissioner uses the Code of Conduct for the Department of the Premier and Cabinet.

On 20 August 2007, the Queensland State Archivist approved a Records Classification Scheme and Records Disposal Authority which was developed for the Office of the Queensland Integrity Commissioner. A copy of this document is available on the website www.integrity.qld.gov.au. A copy is also available on the Queensland State Archives website www.archives.qld.gov.au

No consultants were used and no overseas travel was taken.

No public interest disclosures were received by the office under the *Whistleblowers Protection Act 1994*.

This Annual Report is also available on the website www.integrity.qld.gov.au.

Other documents relevant to the Office of the Integrity Commission available on the website are:

- the *Privacy Plan*; and
- the *Statement of Affairs* (required by the *Freedom of Information Act 1992*).

Attached to this report is the *Financial Statement* of the Office of the Integrity Commissioner.

Financial statement

Revenue and expenditure for the year ended 30 June 2008

	2007/08	2006/07
Revenue from ordinary activities		
Output revenue	159,700	150,800
Total revenue from ordinary activities	159,700	150,800
Expenses from ordinary activities		
Employee Expenses¹		
Salaries and wages and related costs	130,236	106,288
Salary-related taxes	10,477	7,971
Other employee expenses	1,667	965
Superannuation	15,888	14,239
Total employee expenses	158,268	129,463
Supplies and services		
Consumables	581	343
Parking	2,760	2,102
Travel costs - domestic	1,682	328
Telecommunications costs	2,935	2,111
Legal expenses	1,725	-
Marketing and public relations	2,294	3,079
Hospitality and functions	-	84
Minor plant and equipment	1,894	4,296
Other administrative expenses	316	212
Repairs and maintenance	644	242
Total supplies and services	14,831	12,797
Total expenses from ordinary activities	173,099	142,260
Net Operating Result	-\$ 13,399	\$ 8,540

The Office of the Integrity Commissioner is an independent entity created by Statute. For reasons of economy and efficiency, funding and administrative support is received through the Office of the Public Service Commissioner. Corporate services and asset replacement have been provided through the Office of the Public Service Commissioner.

The Office of the Integrity Commissioner no longer reports assets due to the adoption of a whole-of-government non-current asset policy in 2005-06 which standardised the asset recognition threshold for all government assets and results in assets being expensed in the year of purchase rather than depreciated over a number of years.

Please note that this financial statement has not been subject to audit.

Note 1: * The increase in Employee Expenses was primarily due to:

- salary increases due to an Enterprise Bargaining Agreement
- following an external assessment and review, the position of Executive Coordinator having been upgraded from an A04 level to an A05 level
- differences caused by relieving arrangements.

