

Queensland Integrity Commissioner

# Annual Report to the Premier

June 2002

The Hon Peter Beattie MP  
Premier and Minister for Trade  
PO Box 185  
BRISBANE ALBERT STREET BC QLD 4002

Dear Mr Premier

I have the honour to submit to you the second Annual Report of the Queensland Integrity Commissioner.

The report shows that over the past twelve months 25 requests for advice on conflict of interest issues have been received. This compares with 14 requests received in the first 10 months of my appointment.

The web site [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au), which was established in April 2001, received 3458 visits over the past twelve months. An information sheet offering advice on conflicts of interest to chief executive officers, senior executive officers, senior officers and the staff of Ministers and Parliamentary Secretaries has been well received.

I initiated informal meetings with the Auditor-General, the Chairperson of the Crime and Misconduct Commission, the Ombudsman and the Public Service Commissioner. I have delivered lectures to professional bodies.

The report supports the view that the Queensland Integrity Commissioner occupies a small but significant place within the Queensland public sector ethics regime which should be maintained at its present establishment.

Yours sincerely



The Hon Alan Demack AO  
**Queensland Integrity Commissioner**

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## 1. Creation of the Office of the Queensland Integrity Commissioner

The Office of the Queensland Integrity Commissioner was created by the 1999 Amendment to the *Public Sector Ethics Act 1994* which added part 7 to that Act. The purpose of part 7 is to help Ministers and others to avoid conflicts of interest, and in so doing to encourage confidence in public institutions (s.25).

The word “avoid” is significant because it implies that, to fulfil that purpose, Ministers and others will use the provisions of part 7 before relevant decisions are made. These provisions centre upon the appointment of the Integrity Commissioner whose functions are:

- (a) to give advice to designated persons about conflict of interest issues as provided under division 5 (of part 7);
- (b) 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;
- (c) 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.

(s.28)

The Integrity Commissioner is appointed by the Governor in Council for a period not longer than 5 years on terms decided by the Governor in Council. A person is qualified for appointment as the Integrity Commissioner if the person has knowledge, experience, personal qualities and standing within the community, suitable to the office (ss.37, 38). The Governor in Council may terminate the appointment if the Integrity Commissioner:

- (a) can not satisfactorily perform the Integrity Commissioner’s duties; or
- (b) is convicted of an indictable offence; or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the Integrity Commissioner were a public service officer; or
- (d) is absent, without the Minister’s leave and without reasonable excuse, for 14 consecutive days or 28 days in any year.

(s.41)

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. 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 (s.43).

## 2. Development of the Office of the Queensland Integrity Commissioner

In my first annual report, I described the terms of my appointment and the establishment of the Office of the Queensland Integrity Commissioner. During that period there was a close working relationship between the ethics unit of the Office of Public Service Merit and Equity (OPSME) and my personal assistant who was appointed on a temporary basis.

Following the reorganisation of the OPSME, applications were called for the appointment of my Executive Coordinator on a permanent basis. The appointee commenced work on July 30, 2001. Being a permanent public service officer, she has been able to undertake duties previously performed in part by officers of OPSME. Generally, she has been fully

occupied with the work of the office. This has included doing research under my direction which has been of benefit to OPSME.

I have continued to visit the Brisbane office in Federation House, 95 William Street, for two days a month. For most of those visits I have travelled to Brisbane by car. Because I have been able to combine these visits with personal commitments I have not claimed petrol expenses or mileage. For some visits I have travelled by plane. Apart from these visits I have not travelled by plane to discharge the duties of my office. During the other weeks of the month I have worked in Rockhampton in a secure office provided by the Department of the Premier and Cabinet.

## 3. Statutory Basis for the Authority of the Queensland Integrity Commissioner

In my first report, I examined in some detail the provisions of the *Public Sector Ethics Act 1994* which define the nature, authority and function of the Office of the Queensland Integrity Commissioner. A more concise reference to that Act will be sufficient for this report.

That Act declares five ethics principles for public officials –

- respect for the law and the system of government
- respect for persons
- integrity
- diligence
- economy and efficiency.

(s.2)

These five principles are expanded into ethics obligations which apply to public officials. Public officials are the officers and employees of public sector entities, as well as the constituent members of public sector entities whether holding office by election or selection. Judicial officers and local government councillors are not public officials for the purposes of the Act.

The definition of public sector entity is very broad and includes the Parliamentary Service, the administrative office of a court or tribunal, a department, a local government, a university, university college, TAFE institute 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 and an entity, prescribed by regulation, that is assisted by public funds. Some bodies that would fall within that

definition are specifically excluded. They are a Government Owned Corporation (GOC), a corporatised corporation, some entities under the *Education (General Provisions) Act 1989* and an entity prescribed by regulation.

The chief executive officer of each public sector entity must ensure a code of conduct is prepared for the entity. The codes of conduct, when approved, apply to public officials in performing their official functions, and provide standards of conduct consistent with the ethics obligations. Each code

must relate to a particular public sector entity, and applies to all public officials of the entity.

In giving advice to “designated persons”, the Integrity Commissioner must have regard to approved codes of conduct, among other things. In my first report I said that over this year a careful analysis of the various codes of conduct would be undertaken. This was intended as a means of identifying the resources available in my office and not as an audit of the codes. It was also seen as assisting the work of the OPSME.

## 4. Analysis of Codes of Conduct

The *Public Sector Ethics Act 1994* recognises that the way in which the ethics obligations will apply to public service officials will vary, not only between entities, but within entities. A brief explanation of this is necessary as it may not be obvious why this is so.

The various public sector entities perform an enormous range of functions. Some have a very specific role which involves little or no contact with the public while, for others, the service of the public is a major part of the role the entity has. Some have considerable interaction with the business community while others engage in research. Some large departments will have all of these activities.

If there is considerable interaction with the public, the principle, respect for persons, will be very significant. If there is a regulatory function, respect for the law and integrity will be uppermost. For those making purchases on behalf of the Government, economy, efficiency and integrity will be dominant. This list can be extended across the whole range of public sector activity.

An analysis of the approved codes of conduct reveals how each entity has applied the ethics principles to

the activities of its public officials. It is clear enough that each entity must work through the issues with which it deals. There appeared to be only one area where it might be possible to introduce some uniformity, namely, in the way in which the codes offer advice on ethical decision making.

The *Public Sector Ethics Act 1994* provides that a code of conduct may contain guidelines about the application of an ethics or conduct obligation. This has meant that the codes generally contain models for ethical decision making. While there are some common patterns, there is no uniformity. Because public officials may serve in a variety of entities over a period of time, there is some advantage in having a standard model for ethical decision making.

I prepared a brief paper for a meeting of the Queensland Public Sector Ethics Network (QPSEN) meeting in August 2001 to encourage discussion of the issue. This discussion showed that, even in this area, there is such a diversity of needs that uniformity is not desirable. More significantly, the discussion showed that within the public sector there is a lively awareness of the place of continuing education in respect of codes of conduct.

## 5. “Designated Persons”

The people who can seek advice from the Integrity Commissioner about conflict of interest issues are identified by the *Public Sector Ethics Act 1994* as “designated persons”. The list includes “a statutory office holder” and “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”.

The Act defines “a government entity” in general terms but lists a significant number of exceptions including a local government and a university or university college. All of these entities are “public sector entities” for the purposes of the Act and so are required to have codes of conduct. However, as each is not “a government entity”, their chief executive officers are not “designated persons” and, consequently, cannot seek advice about conflicts of interest issues.

On the other hand, a GOC is not required to have a code of conduct because it is excluded from the definition of “public sector entity”. However, the members of the board of a GOC are appointed by the Governor in Council to an office established under an Act to which a person may only be appointed by the Governor in Council. This means that the directors are statutory office holders within the meaning of the Act and are able to seek advice about conflicts of interest.

I referred to these matters in my first report and said that this year I would concentrate my attention on GOCs, statutory bodies and controlled entities. In saying this, I was only interested in understanding how conflict of interest issues might arise and how they could be resolved.

## 6. Government Owned Corporations (GOCs)

The *Government Owned Corporations Act 1993* provides a process for the corporatisation of nominated government entities. During this process the entity continues in public ownership while operating, as far as possible, on a commercial basis and in a competitive environment.

There are two kinds of GOCs – a statutory GOC and a company GOC. A statutory GOC is a body corporate established under the *Government Owned Corporations Act 1993*, but not registered under the *Corporations Act 2001*. It must have a board of directors and a share capital and issued shares. A company GOC is a public company, limited by shares, within the meaning of the *Corporations Act 2001*.

A statutory GOC must have only two shareholders, both of whom are Ministers and are called the GOC Minister and the portfolio Minister. The portfolio Minister is the Minister who had the duty to administer the legislation that established, or provided for the structure or management of, the entity that became a GOC. As Ministers are “designated persons” within the meaning of the *Public Sector Ethics Act 1994*, each of the shareholders, being Ministers, can seek my advice if a conflict of interest issue arises. That conflict of interest issue may involve a personal interest that either Minister has which is in conflict with the Minister’s official duties in respect of the statutory GOC. The GOC Minister may also seek advice about any conflict of interest issue that involves one of the directors of the statutory GOC, because the directors are statutory office holders whose office is established under an Act administered by the Minister. The portfolio Minister may also seek advice about any conflict of interest issue that involves the chief executive officer of a statutory GOC because a statutory GOC is “a government entity” within the meaning of the *Public Sector Ethics Act 1994*, being a corporation established under an Act. It should be noted that the definition of “a government entity” in the *Government Owned Corporations Act 1993* is different from the definition of “a government entity” under the *Public Sector Ethics Act 1994*.

Section 30 of the *Public Sector Ethics Act 1994* lists the people about whom advice about conflict of interest issues may be sought. Section 30 (3)(c) lists the “designated persons” about whom a Minister may seek advice. It includes:

“a chief executive officer of a government entity or a senior executive equivalent employed in the entity nominated by the Minister under section 27(1)(h).”

I have assumed that the words “administered by the Minister” have been unintentionally omitted after the words “a government entity”. They are found in a corresponding place in s.30 (3)(b) and it could never have been intended that Ministers should seek advice about people employed outside their area of Ministerial responsibility.

It follows from what has been said that the directors and the chief executive officer of a statutory GOC are “designated persons” and can each seek advice about any conflict of interest issue which concerns them personally.

A company GOC must have only five shareholders, two of whom are voting shareholders and three are non-voting shareholders. Both the voting shareholders are Ministers. Consequently, the situation in respect of advice about conflict of interest issues that applies to Ministers, directors and chief executive officers of statutory GOCs also applies to company GOCs. The shareholding Ministers may seek advice about their own conflicts of interest and the GOC Minister may seek advice about conflict of interest issues involving the directors and the portfolio Minister may seek advice about a chief executive officer. The directors and a chief executive officer may seek advice about conflict of interest issues which involve them personally. The Premier may seek advice about a conflict of interest issue involving any “designated person”.

## 7. Conflict of Interest Issues involving Government Owned Corporations (GOCs)

For the purposes of the *Public Sector Ethics Act 1994*, a conflict of interest issue arises when there is a conflict between a person's personal interests and the person's official duties. This means that where the conflict arises from the interaction of different duties, the Integrity Commissioner's advice cannot be sought. However, in my first report, I expressed the opinion that "when a person is appointed to a statutory office, the duties belonging to that office are the 'official duties' and the other duties and obligations the person has are 'personal interests' even if they include being chairperson of the board of directors of a very large public company". I adhere to that opinion.

The role of the board of directors of both a statutory GOC and a company GOC is defined by the *Government Owned Corporations Act 1993* to include:

- (a) responsibility for the GOC's commercial policy and management;
- (b) ensuring that as far as possible, the GOC achieves, and acts in accordance with, its statement of corporate intent and carries out its objectives outlined in its statement of corporate intent;
- (c) accounting to the GOC's shareholders for its performance as required by the Act and other laws applying to the GOC;
- (d) ensuring that the GOC otherwise performs its functions in a proper, effective and efficient way.

(s.92 and s.95)

A number of duties and liabilities are imposed on the directors and chief executive officers of statutory GOCs. Briefly, they are required to act honestly and with care and diligence. They must not use information improperly or improperly use their positions to gain advantages for themselves or anyone else or to cause detriment to the GOC. They must have regard to the community service obligations of the GOC and any directions given by the shareholding Ministers. They must prevent insolvent trading (ss.136 to 140).

A number of different personal interests could come into conflict with these duties. A director of a statutory GOC must disclose any direct or indirect interest in a matter being considered by the board (s.134). If a director has a material personal interest, that director must not vote on or take part in the discussion of the matter, unless the other directors are satisfied the interest should not disqualify the director (s.135).

The directors of company GOCs are bound by the provisions of the *Corporations Act 2001* which apply to directors. These are similar to the duties and liabilities imposed on the directors of statutory GOCs, except that there is a detailed description of the kind of interests that should be disclosed (ss.180 to 184, 191, 194, 195).

It follows that the directors of both statutory GOCs and company GOCs have a defined role and identified duties and liabilities. There is a procedure for dealing with conflicts of interest. The important issue then is one of education. Since May 2000 the Office of Government Owned Corporations has been established within Queensland Treasury. It now conducts annual training programs for directors.

## 8. Statutory Office Holders

Among the people listed as “designated persons” in the *Public Sector Ethics Act 1994* are the “statutory office holders”. The definition in the Act means that a statutory office holder is:

“A person appointed by the Governor in Council or a Minister to an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister.”

There is a broad band of offices established under Acts to which a person may only be appointed by the Governor in Council or a Minister. The State Affairs Branch of the Department of the Premier and Cabinet keeps a Register of Appointees to Queensland Government Bodies, which includes statutory office holders. It lists 198 Acts which have been referred to in compiling the list. However, statutory bodies have not been established under each of those Acts and, in some instances, a number of bodies has been established under the one Act. There are also bodies on the list which are not established under an Act.

When a person is appointed to a body on this Register, the letter of appointment is accompanied by a book entitled “Welcome Aboard”. This is a guide for members of Queensland Government boards, committees and statutory authorities. It includes advice about the duties and responsibilities of such appointees and about procedures to be followed if an appointee has a conflict between personal interests and official duties. Because of the very different functions that statutory bodies have, advice contained in a general publication cannot be specific to the issues individual bodies face.

However, as a general rule, the bodies on the Register are public sector entities within the meaning of the *Public Sector Ethics Act 1994*, being:

“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.”

This means that for the purposes of the *Public Sector Ethics Act 1994*, the person responsible to the Minister for the management of the entity on the Register is the chief executive officer who is also responsible for the preparation of a code of conduct for the entity. As many of the entities have a limited function, it can be anticipated that the code of conduct of the department which administers the entity will be used by the entity. This issue is discussed in “Welcome Aboard”.

Consequently, from my perspective, statutory office holders are provided with information which enables them to be alert to conflict of interest issues. Also they are able to seek advice from me about such issues. A Minister can also seek advice about conflict of interest issues which involve a statutory office holder whose office is established under an Act administered by the Minister. The Premier may seek advice about a conflict of interest issue involving any “designated person”.

## 9. Interaction between the *Financial Administration and Audit Act 1977* and the *Public Sector Ethics Act 1994*

The *Financial Administration and Audit Act 1977* provides for the financial administration and audit of the State's public finances, of departments and statutory bodies, and for the audit of associated bodies. In that Act the definition of statutory body is:

“An authority, corporation, instrumentality or office-

- (a) that is established under an Act; and
- (b) that has control of funds; and
- (c) that includes, or whose governing body includes, at least one member who is appointed under an Act, by the Governor in Council or a Minister or whose appointment is confirmed by the Governor in Council or a Minister.”

The definition, however, excludes a department, an authority, corporation, instrumentality whose expenditure is payable in whole or in part out of amounts paid to the department from the Consolidated fund, a local government and a body prescribed under another Act as not to be a statutory body.

This definition includes many, but not all, of the entities to which statutory office holders, as defined by the *Public Sector Ethics Act 1994*, are appointed. For example, the Integrity Commissioner is a statutory office holder, because the appointment is made by the Governor in Council. However, the Office of the Queensland Integrity Commissioner is not a statutory body because its expenditure is paid out of amounts paid to the Department of the Premier and Cabinet from the Consolidated fund.

The use of different definitions in the two Acts is necessary because the Acts have different purposes. The *Financial Administration and Audit Act 1977* is concerned about the audit of government monies. The *Public Sector Ethics Act 1994* is concerned about ethics within the public sector. This does not present any difficulty for statutory office holders who wish to seek advice about conflict of interest issues. Also, a Minister can seek advice about conflict of interest issues which involve a statutory office holder whose office is established under an Act administered by the Minister. The Premier may seek advice about a conflict of interest issue involving any “designated person”.

## 10. Corporations other than Government Owned Corporations (GOCs) which are Established for a State Purpose

Quite apart from GOCs, a significant number of entities have been incorporated under the *Corporations Act 2001* for a State purpose. These bodies generally appear in the reports of the Auditor-General as controlled entities of departments. While the members of the boards of directors of these corporations have been appointed by Ministers to an office established by an Act, that is not an office to which a person can only be appointed by the Governor in Council or a Minister. Consequently, such directors are not statutory office holders.

In some instances, directors of these corporations will be the chief executive officers of a department, and so will be able to seek advice about conflict of interest issues. However, the Minister by whose department the entity is controlled is not able to seek advice about conflict of interest issues which may affect some directors. Under the *Public Sector Ethics Act 1994* a Minister may seek advice about conflict of interest issues involving specified “designated persons”. Some of the directors of corporations

established under the *Corporations Act 2001* may not be “designated persons”. They are not statutory office holders and there is no other category in the definition of “designated persons” which describes all of them. Those who are chief executive officers of departments are “designated persons”.

It is desirable that consideration be given to enlarging the definition of “designated persons” in s.27 of the *Public Sector Ethics Act 1994* to include people appointed as directors of corporations established for a State purpose under the provisions of the *Corporations Act 2001*. A comparison of the controlled entities in the report of the Auditor-General with the Register of Appointees to Queensland Bodies kept by State Affairs Branch of the Department of the Premier and Cabinet shows that a number of the controlled entities are not on the Register. This suggests that all of the directors of corporations which are controlled entities may not be receiving a copy of “Welcome Aboard”.

## 11. Information Sheets

I prepared an information sheet to assist chief executive officers and the staff of Ministers and Parliamentary Secretaries in dealing with conflicts of interest. The sheet was printed and distributed through offices and departments.

The phrase “conflicts of interest” is used to cover a variety of circumstances, but in the *Public Sector Ethics Act 1994* it involves a conflict between a person’s personal interests and that person’s official duties. Any conflict of interest must be resolved in the public interest. The information sheet was designed to identify “official duties”, “personal interests” and “public interest”. It was placed on the

Integrity Commissioner’s web site, and was downloaded 104 times from 18 March 2002 to 30 June 2002.

I have begun to prepare a similar sheet for statutory office holders. My discussion of this important group of people in this report has exposed the difficulty of preparing a useful document which can be printed on both sides of a sheet of A4 paper.

These information sheets are not designed to condense or replace codes of conduct. They are simply an additional tool available to decision-makers.

## 12. Informal Meetings on Integrity Issues

It seemed to me that some other public sector officials had similar concerns to mine in respect of integrity within the public sector. Consequently, in August 2001, I invited the Public Service Commissioner, the Auditor-General, the Ombudsman and the Chairperson of the Criminal Justice Commission (now the Crime and Misconduct Commission) to meet informally. My initial interest was to gain some impression from them of the extent to which conflict of interest issues were involved in complaints they dealt with.

The Ombudsman was able to identify eight such complaints in each of the past two financial years. Of the eight in the year ended 30 June 2001, six concerned local government personnel, one concerned members of a statutory board and one concerned a public official who was not within the definition of “designated persons” in the *Public Sector Ethics Act 1994*.

Apart from providing this useful information, our meeting allowed for an informal discussion of matters of common interest. Subsequent meetings allowed us to develop the idea of inviting departmental chief executive officers to a meeting at which we could discuss issues known to be of concern to departmental chief executive officers.

This happened on 8 May 2002. Using the “hypothetical” format, the Solicitor-General, Patrick Keane QC, presented scenarios which allowed comment and debate from the Public Service Commissioner, the Auditor-General, the Ombudsman, the Chairperson of the Crime and Misconduct Commission and myself. This proved to be a useful way of presenting these issues.

## 13. Issues Considered

Three requests for advice which were received from Ministers concerned the difficult issue of the extent to which a Minister may support an organisation in the Minister's electorate with which members of the Minister's family are associated. A Minister does not cease to represent organisations within the Minister's electorate, but must be careful not to make representations which would secure benefits for family members which are not available to other people in the electorate. A Minister should not be involved in decisions which commit public funds to an organisation in which family members are involved. A request for advice about this issue was also received from a government member. Another government member who sought advice verbally was referred to the Member's Ethics and Parliamentary Privileges Committee.

A Minister sought advice about a staff member's interest in land near a proposed development. The staff member was not involved in the decision making. One request for advice which came from a chief executive officer of a department concerned the incorporation of an entity for a State purpose. This raised the possibility of conflicts between the policies of the department and the constitution of the corporation. This did not raise a conflict of interest issue.

Another request for advice from the chief executive officer of a department concerned the interaction of the officer's educative and supervisory roles. Again this was not a conflict of interest issue.

Two requests for advice received from statutory office holders concerned expenses relating to the office and the officer's personal expenses.

Two requests for advice received from statutory office holders concerned the way in which conflicts of interest issues should be dealt with in particular circumstances. The first concerned taking advice from a firm to which one

board member belonged. The second concerned the keeping of proper records by a tribunal.

The statutory office holders of a committee that made community grants sought advice about dealing with conflicts of interest.

One chief executive officer phoned twice to discuss whether particular matters which involved a conflict of interest, but on each occasion formal advice was not required.

One verbal inquiry was received about the State Purchasing Policy.

Five requests were received from people who were not "designated persons". They were advised that no advice could be given. One of these people was a Councillor in a local government.

In addition to these requests, I was given the opportunity by an officer of the Treasury to comment on proposed guidelines about internet use by public officials. This arose from the information sheet about conflicts of interest. I was also able to comment on the question whether Ministers who were shareholders in GOCs and in corporations created for a State purpose should disclose these shareholdings in the Register of Members' and Related Persons' Interests.

I also responded to the inquiry into legal protection for constituents undertaken by the Members' Ethics and Parliamentary Privileges Committee, and to the Legal, Constitutional and Administrative Review Committee on issues of constitutional reform.

Requests Received: 1 July 2001 to 30 June 2002				
Received From	Number	Potential Conflict Resolved	No Conflict	No Jurisdiction
Premier	4	2	2	
Minister	3	1	1	1
Director-General	4	3	1	
Other	14	3	4	7
Total	25	9	8	8

## 14. Contribution to Public Understanding

One of my responsibilities 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 function. The principle method used is the web site [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au). During the year 3458 visits were made to the site.

I delivered a paper "Exploring Trust in Government" to the Annual State Conference of the Institute of Public Administration Australia (IPAA Qld Division) and a paper "Internal Auditors and the Integrity Commissioner" to a meeting of the Institute of Internal Auditors. Both of these papers are on the web site.

The significant proportion of people visiting the web site are in overseas countries. Two of the requests for advice from people who were not "designated persons" came from the USA.

This interest in the Office of the Queensland Integrity Commissioner was also shown by overseas visitors

whom either my Executive Coordinator or I met to explain the nature and functions of the office. These included Mr Tony Holland, Chairman of the Standards Board of England, Professor Koch from Hamburg University, a delegation of Pacific Parliamentarians and a delegation of Philippine Public Officials.

One matter which was referred to me by a Minister's office concerned the difficulties a member of the public had faced in obtaining employment in the public service. A list of the methods by which applicants for public service positions may be assisted is now kept by the Office of Public Service Merit and Equity (OPSME).

On 3 October 2001 I answered questions raised by a team of Victorian public officials who were gathering information about the role of the Queensland Integrity Commissioner. I also discussed aspects of the proposed Coroners Bill with an officer of the Crown Law Office.

## 15. Compliance Disclosures

During this year my Executive Coordinator received financial training, code of conduct training, and training in relation to the prevention of workplace bullying. She also participated in the Springboard Personal Development Program and in Parliamentary Process Training.

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

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 available on the website [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au)

Attached to this report are the Financial Statement (Attachment 1), the Statement of Affairs (Attachment 2) required by the *Freedom of Information Act 1992*, the Privacy Plan (Attachment 3), and the Conflicts of Interest Information Sheet (Attachment 4).

## 16. Future Directions

As this is my second report, it is timely to ask if the role of the Integrity Commissioner needs to be changed.

### (a) Advice to Members of Parliament on Defamation Issues

One suggestion made during this year was that the Integrity Commissioner's advice be available to all Members of Parliament in relation to any matter they want to raise that "could otherwise reasonably be expected to bring on successful defamation proceedings if those allegations were made outside the Chamber".

As such issues would not usually involve a conflict between a member's personal interest and the member's official duties, there would be no conflict of interest issue about which advice could be sought. Consequently, it would not simply be a matter of amending the definition of "designated persons" in the *Public Sector Ethics Act 1994*. The issues about which advice may be sought would need to be re-examined.

In relation to the suggested change, it is my opinion that the proceedings in the Legislative Assembly should be dealt with by the Assembly and its Committees. The Member's Ethics and Parliamentary Privileges Committee and its individual members should be able to give advice about the appropriateness of raising matters in the House. The Committee includes members appointed by the Leader of the Opposition, so that any member of the House should be able to find a member of the Committee from whom confidential advice can be obtained.

### (b) Directors of State Purpose Corporations as "Designated Persons"

I have referred to the fact that, in some instances, a director of a corporation established under the *Corporations Act 2001* for a State or local government purpose may not be a "designated person". I have not undertaken the research necessary to establish how many people are in that position. However, with a growing number of such bodies, it may be desirable to include in the definition of "designated persons" in the *Public Sector Ethics Act 1994* "the directors of corporations established for a State or local government purpose". It is possible that conflict of interest issues could arise for such people.

### (c) Whether the Chairperson of a Statutory Body should seek advice about Board Members

I had a telephone conversation with the chairperson of a statutory body who was concerned about the actions of a committee member. While both people were "designated persons" they could only seek advice about their own conflict of interest issues. Consequently, the chairperson could not seek advice about the committee member and the committee member would be unlikely to seek advice. Only the Minister in whose portfolio the statutory body belonged, or the Premier, could seek advice about the committee member.

If a statutory body undertakes significant and largely independent functions, the chairperson of the governing board may want to accept responsibility for the integrity of the board without involving the Minister responsible for the body. However, the overall responsibility remains with the Minister who should be kept aware of issues which may question the integrity of the board's process. Consequently, it is not, in my opinion, necessary to give to the chairperson of a statutory body the right to seek advice about conflict of interest issues concerning members of the governing board or committee.

**(d) Chief Executive Officers of Public Service Offices**

Among the list of “designated persons” in the *Public Sector Ethics Act 1994* is

“a chief executive officer of a department of government or a public service office”.  
(s.27(1)(f))

In the corresponding section (s.30(3)(b)) which defines the “designated persons” about whom a Minister may seek advice, the reference to “a public service office” is omitted. The chief executive officers of public service offices are identified in Schedule 1 to the *Public Service Act 1996*. These people, with one exception, are appointed to an office established under an Act to which a person may only be appointed by the Governor in Council. The one exception is appointed to an office established under an Act to which a person may only be appointed by a Minister. This means that each person is a statutory office holder. The Minister who administers the Act under which those offices were established can seek advice about a conflict of interest issue which involves the chief executive officer of a public service office. The Premier may seek advice about a conflict of interest issue involving any “designated person”.

**(e) Workload**

The number of requests for advice for the year is shown on page 12. In all there were twenty-five requests, an increase from fourteen in the previous ten months. This reflects a growing awareness of the existence of the Office of the Queensland Integrity Commissioner. This same growth is reflected in the use of the web site.

I have referred to the information given to me by the Ombudsman (page 11). This is some indication of the likely number of requests for advice that may be received, namely two in a period of twelve months. The 2001 Annual Report of the Criminal Justice Commission shows that across the whole of the public sector some people ignore conflicts of interest and commit criminal offences or other acts of misconduct. However, it does not appear that any of those investigated fall within the definition of “designated persons” in the *Public Sector Ethics Act 1994*.

Consequently, it is not likely that there will be any significant increase in the number of requests for advice. I expect that the requests will be dealt with promptly. I will continue to work with the Auditor-General, the Chairperson of the Crime and Misconduct Commission, the Ombudsman and the Public Service Commissioner to enhance the existing integrity systems in the public sector. I will give public addresses when requested and offer lectures at professional conferences. I will support the Queensland Public Sector Ethics Network (QPSEN). These activities will contribute to the maintenance of a positive ethical ethos in the Queensland public sector.

# Financial Statement

The Office of the Queensland Integrity Commissioner  
Expenditure for Financial Year 2001/02

**Approved Budget for 01/02** **181400.00**

ITEM DESCRIPTION	EXPENDITURE
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## Salaries & Oncosts

Commissioner Salary	49 191.61
Superannuation	6 724.60
Oncosts	9 097.32
<b>Sub Total</b>	<b>65 013.53</b>

Administration Staff Salaries	37 355.94
Superannuation	4 972.06
Oncosts	8 810.28
<b>Sub Total</b>	<b>51 138.28</b>

**Total Salaries & Oncosts** **116151.81**

## General Expenses

Office Expenses (incl. Computer Equip)	2 732.08
Domestic Travel & Accommodation	6 288.61
Telecommunications	1 358.55
Hospitality	135.77
Productions & Publications	1 022.80
Minor Capital Works	516.00
Other Administration Costs	8 052.40
<b>Sub Total</b>	<b>20 106.21</b>

**Total General Expenses** **20 106.21**

**TOTAL EXPENDITURE FOR 2001/02** **136258.02**

The Office of the Integrity Commissioner is part of the Office of the Public Service Commissioner which is a controlled output of the Department of Premier and Cabinet for the 2001 - 2002 financial year.

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

# Statement of Affairs of the Agency

The following is published in accordance with s.18 of the Freedom of Information Act 1992:

(A) The Office of the Queensland Integrity Commissioner was established by the enactment of part 7 of the *Public Sector Ethics Act 1994*.

The Integrity Commissioner has the following functions:

- (a) to give advice to designated persons about conflict of interest issues as provided under division 5 of part 7 of the Act;
- (b) 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;
- (c) 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;

These functions are discharged by the Integrity Commissioner on a part time basis equivalent to two days per week. The Integrity Commissioner's staff consists of an Executive Coordinator.

(B) The Integrity Commissioner's functions directly affect the following members of the community who are "designated persons" within the meaning of s.27 of the *Public Sector Ethics Act*:-

- (a) the Premier;
- (b) a Minister;
- (c) a Parliamentary Secretary;
- (d) a government member;
- (e) a statutory office holder;
- (f) a chief executive officer of a department of government or a public service office;
- (g) a senior executive officer or senior officer employed in a department of government or public service office;
- (h) 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;

- (i) a person employed in the office of a Minister, or engaged, to give advice to the Minister;
- (j) a person employed in the office of a Parliamentary Secretary, or engaged, to give advice to the Parliamentary Secretary;
- (k) without limiting paragraph (i) or (j), a person, or a person within a class of person, nominated by a Minister or Parliamentary Secretary.

These people can seek confidential advice about conflicts of interest which arise because their personal interests conflict with their official duty.

- (C) The Queensland Integrity Commissioner accepts invitations to speak at public meetings, conferences and seminars to enable members of the community to participate in the formulation of policy. Papers and speeches are found on the web site [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au). The functions of the Integrity Commissioner are exercised in accordance with the *Public Sector Ethics Act 1994*.
- (D) The documents usually held by the Queensland Integrity Commissioner are relevant Acts of Parliament, Codes of Conduct, correspondence, financial records, lectures, papers and confidential advice. A limited number of fact sheets about the role of the Integrity Commissioner are available free of charge. Lectures and papers are accessible on the web site [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au)
- (E) The Queensland Integrity Commissioner does not provide subscription services or free mailing lists. Material is available on the website.
- (F) No boards, councils, committees or other bodies constituted by two or more persons have been established for the purpose of advising the Queensland Integrity Commissioner.
- (G) The Queensland Integrity Commissioner does not keep documents concerning the personal affairs of members of the community, except when such matters are disclosed as a basis for seeking confidential advice. The person whose affairs are so disclosed has the opportunity to ensure that they are accurately disclosed before advice is given.
- (H) Requests for confidential advice on conflicts of interest are made in writing. If a "designated person" wishes to amend the personal affairs disclosed in such application, that should be done in writing addressed to The Integrity Commissioner, PO Box 290, Brisbane Albert Street, Qld 4002

# Privacy Plan for the Office of the Integrity Commissioner

## 1. Acts Administered

The Office of the Queensland Integrity Commissioner was established by the enactment of part 7 of the *Public Sector Ethics Act 1994*. The Act is administered by the Premier and Minister for Trade as published in The Government Gazette on 15 February 2002, Administrative Arrangements Order (no.1) 2002. The Office of the Queensland Integrity Commissioner has been delegated part 7 of this act.

Under the Act the Integrity Commissioner has the following functions:

1. to give advice to designated persons about conflict of interest issues as provided under division 5 of part 7 of the Act;
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;

These functions are discharged by the Integrity Commissioner on a part time basis equivalent to two days per week. The Integrity Commissioner's staff consists of an Executive Coordinator. The Executive Coordinator is also the Privacy Officer.

## 2. Types of Personal Information Held

The Integrity Commissioner's functions directly affect the following members of the community who are "designated persons" within the meaning of s.27 of the *Public Sector Ethics Act 1994* -

- (a) the Premier;
- (b) a Minister;
- (c) a Parliamentary Secretary;

- (d) a government member;
- (e) a statutory office holder;
- (f) a chief executive officer of a department of government or a public service office;
- (g) a senior executive officer or senior officer employed in a department of government or public service office;
- (h) 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;
- (i) a person employed in the office of a Minister, or engaged, to give advice to the Minister;
- (j) a person employed in the office of a Parliamentary Secretary, or engaged, to give advice to the Parliamentary Secretary;
- (k) without limiting paragraph (i) or (j), a person, or a person within a class of person, nominated by a Minister or Parliamentary Secretary.

These "designated persons" can apply in writing to the Integrity Commissioner for confidential advice on conflicts of interest. When requests for confidential advice on conflicts of interest are made, the "designated person" may disclose personal information relevant to that issue. A "designated person" who discloses personal information for the purpose of obtaining advice about a conflict of interest issue is obliged to provide accurate information so that reliable advice can be given. If the person seeking advice does not disclose enough information about the conflict of interest issue the Integrity Commissioner may ask for further information, which could include personal information.

If a “designated person” wishes to amend the personal affairs disclosed in such an application, that should be done in writing addressed to -

The Queensland Integrity Commissioner  
PO Box 290  
Brisbane Albert Street BC QLD 4002

The Office of the Queensland Integrity Commissioner holds personnel records relevant to the current staff of the office. The purpose of these records is to maintain employment history, payroll and administrative information relating to the employees.

The Queensland Integrity Commissioner does not keep documents concerning the personal affairs of members of the general community, except when such matters are disclosed as a basis for seeking confidential advice. Any personal information is used only for the purpose of giving advice on conflict of interest issues. Such advice is confidential and is not placed on the website.

### 3. Existing Contracts/Licences

The Office of the Queensland Integrity Commissioner does not have any current contracts for goods or services. Nor do we employ the services of business consultants or contractors.

### 4. List of Public Registers

The Queensland Integrity Commissioner does not hold any public registers.

### 5. Implementation Schedule & Review

This privacy plan will be enacted once approved by the CEO of the Office of the Queensland Integrity Commissioner. The Integrity Commissioner is the CEO of the agency. Once approved this Privacy Plan will be published on the Queensland Integrity Commissioner’s website at [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au) The Privacy Statement will also be published on this website.

### 6. Retention and Disposal of Records

Records are kept in accordance with the *Libraries and Archives Act 1988*.

### 7. Access Rights

All of the information collected in order to give advice on conflict of interest issues is securely stored by the Privacy Officer who is the Executive Coordinator to the Integrity Commissioner. The only people who have access to this information are the Privacy Officer and the Integrity Commissioner. All of the information is exempt from disclosure under the *Freedom of Information Act 1992*.

### 8. Complaints & Review Procedures

If people believe that the Office of the Integrity Commissioner has not dealt with their personal information in accordance with an IPP, you may make a complaint to the CEO of the agency, who is the Integrity Commissioner. The complaint must be in writing and set out the alleged breach of the privacy principles. It should be made as soon as possible after the incident, and include as much detail as possible. Written complaints should be sent to the Integrity Commissioner for the attention of the Privacy Officer, at the following address –

The Queensland Integrity Commissioner  
PO Box 290  
Brisbane Albert Street BC QLD 4002

### 9. Review

This plan will be reviewed annually.

### 10. Privacy Principles

You can view the privacy principles by logging on to the following web address

<http://www.justice.qld.gov.au/dept/privacy.htm>

This information sheet has been prepared to assist chief executive officers, senior executive officers, senior officers and the staff of Ministers and Parliamentary Secretaries in the effective discharge of their duties.

#### CONTACT DETAILS

The Office of the Queensland Integrity Commissioner is located at:

Floor 1  
Federation House  
95 William Street  
Brisbane 4000

The postal address is:

PO BOX 290  
Brisbane Albert Street BC  
Queensland 4002

Telephone:  
(07) 3224 2351

Facsimile:  
(07) 3224 2326

#### The Office of the Queensland Integrity Commissioner information sheet series

This series of information sheets has been designed to answer the questions most frequently asked of The Office of the Queensland Integrity Commissioner.



**Queensland  
Government**

# Conflicts of Interest in the Public Sector

Under the *Public Sector Ethics Act 1994*, a conflict of interest involves a conflict between a person's personal interests and that person's official duties. Any conflict of interest must be resolved in favour of the public interest.

Three concepts are involved: -

- Official duties
- Personal interests
- Public interest

## Official duties

Official duties include: -

- **Administrative obligations** derived from:-
  - *Public Service Act 1996*
  - *Financial Administration and Audit Act 1977*
  - *Financial Management Standard 1997*
  - *Freedom of Information Act 1992*
  - *Crime & Misconduct Act 2001*
  - *Judicial Review Act 1991*
  - *Libraries and Archives Act 1988*
- Legislation establishing your public sector entity
- Legislation administered by your public sector entity
- State Purchasing Policy
- your contract of employment

- **Ethics obligations** derived from:-
  - *Public Sector Ethics Act 1994*
  - your Code of Conduct
- **Performance obligations** derived from:-
  - instructions for task in hand

## Personal Interests

Because of the broad duties imposed on public sector officials, a variety of personal interests may come into conflict, or appear to come into conflict, with the performance of official duties.

The appearance of a conflict of interest may be as serious as an actual conflict because it may reduce public confidence in the integrity of the public sector. Consequently, actions which would raise the appearance of a conflict of interest in the mind of a reasonable person with knowledge of the relevant facts should be avoided.

In the public sector such personal interests can arise if: -

- (i) a person has an interest in property of any kind, including money, the value of which may be altered by a decision the person may be involved in making.

This is the kind of interest which is usually disclosed by the registration of personal interests. Such interests can give rise to an actual, apparent or potential conflict of interest.

- (ii) a person has an interest in any kind of property, including money, the value of which may be altered by the use of confidential information obtained in the discharge of official duties: for example, selling shares in a company because of confidential information that a pending Government decision will reduce the value of those shares.

- (iii) a person seeks and/or accepts gifts and/or hospitality which may influence or appear to influence decision-making.

The *Financial Management Standard 1997* contains a general standard for reporting gifts and hospitality received by public officials where the value is in excess of \$250. However, it is possible that hospitality of a lesser value than \$250 can be received in a way that compromises the decision-maker's impartiality.

- (iv) a person has or seeks employment either in or outside the public sector which could compromise decision-making: for example, if a public official makes a decision favourable to a non-public sector person or entity in the hope of obtaining employment, or if an official attempts to set up a business which could deal with the entity in which the official is employed. Such conduct may involve a criminal offence under s.89 of the *Criminal Code*.

- (v) a person's relationship or friendship influences or appears to influence decision making.

As a general rule, when a decision is to be made involving a relative or friend, the decision-maker should not make that decision alone. If the decision is being made by a panel, the nature of the relationship or friendship should be disclosed to the other panel members so that the decision is based on merit.

- (vi) a person has a strongly held personal conviction: for example, an official with a strongly held opinion about euthanasia may be unable to give sound and impartial advice to the Government about the issue.

- (vii) a person's private activities benefit from the use of Government property: for example, when access to the internet is used for personal e-commerce.

## Public Interest

Public officials serve the public interest when they faithfully perform their official duties. This means that where a conflict arises because of some of the interests described above, the personal interest will not be pursued: for example, a bribe to make a particular decision will be rejected, decisions will not be influenced by the hope of an offer of employment, confidential information will not be used for private gain and Government property will not be used for private purposes.

In respect of other interests, the public official should disclose the conflict of interest to the chief executive officer and appropriate arrangements should be made to deal with the conflict, usually by reassigning the task to another official. This is so not only when there is an actual conflict of interest but also when there appears to be a conflict of interest or when there is a potential for a conflict of interest to arise.

## Seeking Advice about Conflicts of Interest

Sometimes there is uncertainty about the extent of a public official's duty, or difficulty in identifying a private interest. On other occasions there is difficulty resolving any conflict of interest. In any case of doubt or uncertainty, chief executive officers, senior executive officers, senior officers and the staff of Ministers and Parliamentary Secretaries can seek advice about conflict of interest issues from the Integrity Commissioner.

Requests for advice should be made in writing. A request made by a senior executive officer or a senior officer must be accompanied by a signed authority to seek the advice from the chief executive officer.

The address of the Queensland Integrity Commissioner is:

PO Box 290  
Brisbane Albert Street BC  
Queensland 4002

Further information about the Queensland Integrity Commissioner can be obtained from the website [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au) ■

