

Queensland Integrity Commissioner

Annual Report to the Premier

June 2003



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 third Annual Report of the Queensland Integrity Commissioner.

The annual report shows that over the past twelve months 24 requests for advice on conflict of interest issues have been received. This compares with 25 requests received in the previous year.

The web site www.integrity.qld.gov.au, which was established in April 2001, received 7155 visits over the past twelve months, a 107% increase over the previous year. An information sheet offering advice on conflicts of interest for statutory office holders was published.

I have continued to meet informally 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.

Your department made it possible to accept an invitation to present a paper to a workshop at the 11th International Anti Corruption Conference in Seoul, Republic of Korea, 25-28 May 2003. I also chaired two workshops at the conference.

The annual report supports the view that the Queensland Integrity Commissioner occupies a small but significant place within the Queensland public sector ethics regime.

I have recommended that consideration be given to amending the *Public Sector Ethics Act 1994* to add two categories of persons to the list of "designated persons" in section 27 of the Act.

This will be the last annual report I shall have the privilege of submitting to you as my term of office will end soon. May I express my thanks for this opportunity to serve the people of Queensland.

Yours sincerely

A handwritten signature in black ink, reading "Alan Demack".

The Honourable 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).

It is in avoiding the conflicts of interest that are defined by the Act that confidence in public institutions is encouraged. The phrase “conflict of interests” is now used to cover many issues outside the definition in the Act. Although this broad use robs the phrase of any precise meaning, its use always carries the implication of impropriety.

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 cause, 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 Integrity 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 Integrity 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. In my second annual report I referred to the on-going relationship between my Office and the Office of the Public Service Commissioner.

It has become clear that one of the major responsibilities of the Integrity Commissioner is to provide resources within the public sector to help public officials avoid conflicts of interest. This is not a function referred to in the *Public Sector Ethics Act 1994*, but it is implicit in the concept of helping officials avoid conflicts of interest.

To do this it is necessary for there to be a close working relationship between the Office of the Integrity Commissioner and the Office of the Public Service Commissioner. The reason for this is that the Public Service Commissioner is responsible for the administration of both the *Public Service Act 1996* and the *Public Sector Ethics Act 1994*. That responsibility is discharged through the Office of the Public Service Commissioner. These two Acts establish the basic duties public officials have. Their personal interests should not conflict with their official duties.

When the Office of the Queensland Integrity Commissioner was established, it was located at 95 William Street, Brisbane. At that time, the Office of the Public Service Commissioner was located in the Executive Annex, which is, in effect, across William Street. This allowed my Executive Coordinator to use office equipment in the Office of the Public Service Commissioner, when that was necessary.

When the Office of the Public Service Commissioner moved to 61 Mary Street that ease of access to office equipment was lost. Because I live in Rockhampton and come to Brisbane only two days each month, it seemed appropriate that, when I am not in Brisbane, my Executive Coordinator should work from within the rooms of the Office of the Public Service Commissioner. This has happened during this reporting year.

The confidentiality surrounding advice about conflicts of interest is strictly maintained. The advice given is mine alone. The budget prepared before my appointment included provision for the employment of consultants. I have not used consultants and cannot foresee a situation where they could be needed. However, the preparation of material of general significance is not confidential and the present arrangement assists that.

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

In my previous annual reports I have examined the provisions of the *Public Sector Ethics Act 1994*, which define the nature, authority, and function of the Office of the Queensland Integrity Commissioner. Because this Office is different in nature and scope of authority from other offices bearing similar titles, it is desirable to repeat the following passage in the 2001-2002 annual 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.4)

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 that 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.

4. “Designated Persons”

The list of “designated persons” includes the Premier, a Minister, a Parliamentary Secretary, a government member, a chief executive officer, and a senior officer of a department of government or a public service office, and persons employed by Ministers and Parliamentary Secretaries. These officials are readily identified and no comment needs to be made about them.

The list also 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”.

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.

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 Government Owned Corporation (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.

5. Inter Agency Cooperation

I mentioned in my 2001-2002 annual report that the Auditor-General, the Chairperson of the Crime and Misconduct Commission, the Ombudsman, the Public Service Commissioner and myself had begun to meet informally to discuss integrity issues. This has kept me informed of the excellent educational material being prepared by the Crime and Misconduct Commission and the Ombudsman's Office.

I have continued to attend the quarterly meetings of the Queensland Public Service Ethics Network (QPSEN). This body has been operating for a number of years and its emphasis has changed over that time. Initially, it was a means of encouraging public sector entities to prepare their codes of conduct as required by the *Public Sector Ethics Act 1994*. Now, it is a forum that allows officials working within agencies to discuss issues that arise.

Because the administration of both the *Public Service Act 1996* and the *Public Sector Ethics Act 1994* is the responsibility of the Public Service Commissioner, it is appropriate that an officer of the Office of the Public

Service Commissioner convenes the meetings of the network. However, not all public sector entities, which are required by the *Public Sector Ethics Act 1994* to have codes of conduct, are within the responsibilities of the Public Service Commissioner. Universities and local governments are two examples of such entities.

In these circumstances, there is a strong case for using the Queensland Public Service Ethics Network as an information exchange forum that assists the Office of the Public Service Commissioner in the discharge of its obligations under the *Public Sector Ethics Act 1994* in respect of the entities for which it has direct responsibility. This would encourage a "whole of government" approach to ethical issues.

This would not leave local governments unassisted. The Department of Local Government and Planning has prepared excellent material and both the Crime and Misconduct Commission and the Ombudsman have also produced very helpful material for Local Governments.

6. Constitution of Queensland 2001 and the Parliament of Queensland Act 2001

After years of preparation the *Constitution of Queensland 2001* and the *Parliament of Queensland Act 2001* were passed and came into operation on 6 June 2002. Although these are very important pieces of legislation, there has been little response to them in the news media over the past twelve months. This is particularly disappointing because it is desirable that citizens know how government functions. Once people leave school, their information about these things comes largely from the news media.

The issue of relevance to this annual report is the changed status of the Member's Ethics and Parliamentary Privileges Committee. Prior to the 6 June 2002 that Committee had a limited role under the *Parliamentary Committees Act 1995*. It nonetheless

produced an important report about a Code of Ethical Standards for Members of the Queensland Legislative Assembly. The Code of Ethical Standards was published on 4 September 2001.

Under the *Parliament of Queensland Act 2001*, the Member's Ethics and Parliamentary Privileges Committee has the authority to review the Code of Ethical Conduct for Members. In doing this, it must take account of the ethics principles and obligations in the *Public Sector Ethics Act 1994*. This means that the standards set by the *Public Sector Ethics Act 1994* apply generally across the broad public sector. The only two groups of people to whom they do not apply are judicial officers and local government councillors. It would be helpful if the public knew that the ethics principles apply across the entire public sector.

7. The Organization for Economic Cooperation and Development Guidelines for Managing Conflicts of Interest

Certain words and phrases enjoy a season of fruitfulness. Sometimes the fruit stimulates positive ideas and improvement in the human lot. Sometimes the fruit feeds a sense of powerlessness and fear. “Conflicts of Interest” is a phrase which has been enjoying a season of fruitfulness. On the positive side it has produced a substantial harvest of thoughtful writing. On the negative side, its indiscriminate use has produced confusion and alarm.

A recent helpful contribution has been the Organization for Economic Cooperation and Development (OECD) guidelines for Managing Conflicts of Interest in the public service. Of greatest interest in Queensland is the definition –

“A ‘conflict of interest’ involves a conflict between the public duty and the private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of the official duties and responsibilities.”

This definition expands the definition in the *Public Sector Ethics Act 1994*, which refers to a conflict between a person’s personal interests and the person’s official duties. The expansion is interesting because, as the guidelines recognize, this definition has the same meaning as “actual conflict of interest”. In the past it has generally been said that conflicts of interest may be actual, apparent (or perceived) or potential.

It has always been difficult to identify the concept of an apparent or perceived conflict of interest. Does it arise if some one who knows some of the facts concludes that there is a conflict of interest? Or does it only arise if it appears to a reasonable person, knowing all the facts, that there is a conflict of interest? In the latter case, how is this different from an actual conflict of interest?

In my previous annual reports and in two of the information sheets I have prepared, I have used the

three-fold concept of conflict of interest, and this approach will probably continue to be used for some time. More recently it has seemed to me that generally the mischief created by an apparent or perceived conflict of interest is a perception or apprehension or fear of bias.

In my first annual report I said –

“A quiet drink, which allows a person wanting to influence a decision, to spend an hour with one of the decision makers, may raise more conflict than a lavish banquet, and should be avoided.”

Two years later, the advice that such conduct should be avoided remains absolutely correct, the idea could be better expressed, but the opinion that the activity raises a conflict of interest is questionable. The problem is that the decision maker is far too intimate with the person wanting to influence the decision. To members of the public and to any business competitor this would be unfair and would create the appearance or perception or fear of bias on the part of the decision maker.

What the OECD guidelines do and what the *Public Sector Ethics Act 1994* does is to emphasize the need to use the phrase “conflict of interest” only in circumstances where there is a conflict between a public duty and an identifiable private interest.

It is a major educational task to inform the public and the media that when the phrase “conflict of interest” is used in the Queensland public sector it means a conflict between a person’s personal interest and that person’s official duties.

It follows from this that a Government cannot have a conflict of interest over a particular issue. Neither can a corporation have a conflict of interest. When the phrase is used in the Queensland public sector it refers to a conflict between a person’s personal interests and that person’s official duties.

8. Conflict of Interest and Conflict of Duties

One of the issues that has arisen concerns the responsibilities of a chief executive officer of a department who is appointed as a director of a corporation established for a State purpose. Such an officer has two sets of duties. First, there are the duties under the *Financial Administration and Audit Act 1977* by which the chief executive officer has financial responsibilities as the accountable officer. Second, there are the duties which fall on a director of a corporation under the *Corporations Act 2001*. There may be occasions when these duties come in conflict.

This is not a conflict of interest as that phrase is defined by the *Public Sector Ethics Act 1994*. The chief executive officer has no personal interest in the matter. Rather there is a conflict between duties that arise from the two distinct offices that the person holds.

There will be other occasions where a conflict of duties rather than a conflict of interest may arise. Because I can give advice only about conflict of interest issues, as defined in the *Public Sector Ethics Act 1994*, I cannot give advice where there is a conflict of duties. Generally, when asked about such a matter, it is possible to discuss the issues involved in both sets of duties in a way that offers a solution as well as showing that there is no conflict of interest.

It would be undesirable to enlarge the Integrity Commissioner's role to give advice about conflicts of duty as well as conflicts of interest. When conflicts of interest are avoided, duty is faithfully done by the official. If an official needs advice on how to perform his or her duties, these duties are, in effect, delegated to someone else.

9. Independent Commission Against Corruption and the Crime and Misconduct Commission Workshop

The New South Wales Independent Commission Against Corruption (ICAC) and the Queensland Crime and Misconduct Commission (CMC) are working to produce a set of guidelines on conflicts of interest. As part of the project, a workshop was held in Sydney on 3 June 2003 which was attended by one of the Organization for Economic Cooperation and Development (OECD) officers responsible for preparing the OECD guidelines.

I was invited to participate and presented the approach which I have understood the definition in the *Public Sector Ethics Act 1994* required. That involves first, an identification of the person's official

duties, then the recognition of that person's personal interests that may clash with those duties, and finally a resolution in the public interest.

The workshop was attended by senior public officials from New South Wales, Queensland, Victoria, Western Australia and New Zealand. There was a lively debate about the issues, which left the officers charged with the preparation of draft guidelines an abundance of material to work with. Because the phrase conflict of interest is used in such varied circumstances, it would be helpful if there is a common agreed approach across the Australian Public Sector.

10. Official Duties

In the Information Sheet that I prepared to assist chief executive officers and others to resolve conflicts of interest, I divided official duties into administrative obligations, ethics obligations and performance obligations. Performance obligations were described as being derived from instructions for the task in hand. This information sheet was published in my June 2002 Annual Report.

The importance of this approach to the issue of conflict of interest was borne out by the decision of the High Court in *Hot Holdings Pty Ltd v Creasy* (2002) 193 A.L.R. 90. The case involved an appeal from the Full Court of West Australia. Because the West Australian decision created some interest among those exploring the concept of conflict of interest, it is helpful to discuss the High Court decision.

The action involved a challenge to the decision of the West Australian Minister of Mines to grant an exploration licence to Hot Holdings Pty Ltd. The legislation under which the Minister made his decision required him to consider the recommendation of a mining warden. The mining warden had recommended that the licence be granted to Hot Holdings Pty Ltd in priority to other applicants.

As part of the Ministerial process, a minute was prepared after a meeting between two officers of the department, in the presence of a third officer. The minute recommended that the Minister follow the mining warden's recommendation. The Minister considered the recommendation over a period of six weeks during which he had two meetings with one of the officers who made the recommendation in the minute and with a Senior Assistant Crown Solicitor.

The Minister did not know that the third officer present when the recommendation was formulated held 40 000 shares in a listed public company which had an option to purchase an 80% interest in the exploration licence if Hot Holdings Pty Ltd was the successful application. Nor did he know that the son of the second officer, who had joined

in making the recommendation but who had not been involved in discussions with the Minister, also held shares in that company. The officer with the 40 000 shares did not disclose this interest and did not take part in preparing the recommendation. Although he was asked to prepare the minute embodying this recommendation, he passed that task to a subordinate.

The West Australian Full Court held that this officer's share holding gave rise to a reasonable apprehension or suspicion that the Minister's decision was not an impartial one. The son's shareholding was also said to have infected the Minister's decision.

The High Court set aside the Full Court decision because the son's interest was not sufficient to give rise to a reasonable apprehension that the decision-making was affected by bias, and because the third officer's role was subordinate or peripheral.

If the issue is approached using the procedure in the Information Sheet, the third officer's performance obligation was to produce a minute which expressed the decision the other two officers had made. His pecuniary interest could not and did not influence the decision which the other officers made. Consequently, he had no conflict of interest in respect of this recommendation to the Minister. It was suggested that he should have withdrawn from the discussion, but it is not reasonable simply to withdraw from an appointed task. If the reason had been given, the two officers making the recommendation would have known that the recommendation they were discussing could bring a financial benefit to a colleague, and that could be said to give them a bias in favour of a recommendation to grant the exploration lease.

However, once the third officer knew what his colleagues were recommending, he possessed confidential information, which could alter the value of his shares. If he took advantage of that

information in a way that increased or protected the value of his shares, he would be in breach of his duty to use his official powers properly for the common good. So there is, in fact, a conflict of interest in the case of the third officer, and to resolve that conflict he must not deal with his shares until after the Minister's decision has been made public. This conflict of interest is something of which the Minister is unaware, and so it could not invalidate the Minister's decision.

This case emphasises the importance of following the sequence adopted in the Information Sheet. First, identify the official's duty; then identify the personal interest; and then analyse the impact of that interest on the duty. If there is a conflict between interest and duty that must be resolved in favour of the public interest, which usually means the official must perform the official duty, uninfluenced by the personal interest. Sometimes that duty can only be done by assigning the task to another official.

11. Statutory Office Holders Information Sheet

I said in my last annual report that I was in the process of preparing an information sheet for statutory office holders about conflict of interest. This has been a difficult task because of the very broad range of duties that those "designated persons" perform.

The task has been completed and Information Sheet 3 is attachment 4 in this annual report.

One of the invitations I received this year was to address members of the Council of Administrative Tribunals (COAT). This recently formed Council is open to both Commonwealth and State Tribunals

and is a significant development in Australian Administrative Law. The Queensland members are statutory office holders. Using the five ethics principles in the *Public Sector Ethics Act 1994*, I set out a guide for standards of conduct in the hearing of appeals by tribunals. This paper is on the website www.integrity.qld.gov.au

Some Queensland Public Service Commissioner Appeals Delegates were present at that address and subsequently I spoke to the Appeals Delegates about Ethics Principles and Tribunal Members, which are also on the website.

12. Eleventh International Anti-Corruption Conference

I was invited to attend the Eleventh International Anti-Corruption Conference held in Seoul, Republic of Korea, 25-28 May 2003. The invitation was to present a paper on the topic of “Ethics for Elected Officials”. The invitation came from Howard Whitton, one of the organisers of the workshop at the Conference, which dealt with that topic. Howard Whitton who now works for the Organization for Economic Cooperation and Development (OECD) in Paris, was closely involved in the drafting of the *Public Sector Ethics Act 1994*.

In addition to presenting the paper and participating in the discussion that followed, I chaired two sessions at the Conference; one titled “eCorruption and Unmanaged Risk” and the other “Building Ethics into Organisations”.

The conference allowed me to present the substance of the Queensland public sector ethics regime at an international conference. Contacts made during the

course of the conference encouraged me to think that the material placed on our website is making some contribution to a worldwide debate about public sector responsibilities.

Reflection on the issues discussed at the conference has strengthened my conviction that it is necessary to demonstrate the core values which are expressed both in law and ethics, and to encourage public officials to see the close relationship of ethics and law in the daily business of good public administration.

One of the keynote speakers spoke of law being the floor and ethics being the ceiling. He did not expand on that, but it did not seem to me to be a helpful image. It can give the impression that law is beneath us and ethics beyond us. It made me thankful that, in the *Public Sector Ethics Act 1994*, our Queensland Parliament has seen the value of a close working relationship between law and ethics.

13. Issues Raised

Six of the twenty-four requests for advice raised issues about gifts and hospitality. Each was able to be resolved. The Office of the Public Service Commissioner has been preparing revised guidelines about this issue and as these become more familiar to public officials, concerns about gifts and hospitality should be more readily resolved.

One request concerned a conflict of duties between the responsibilities of a departmental officer and the responsibilities that person has as a director of a corporation established for a state purpose. As I have said, this is a conflict of duties, not a conflict of interest.

Two requests concerned the extent to which a statutory officer holder should be involved in

community organisations within the office holder’s area of responsibilities. This requires a balance between awareness of community concerns and the independence of a statutory office. Again this is not a conflict of interest.

One request also emphasised the importance of beginning any analysis with a consideration of the official duties the official has. An accountable officer wished to appoint to the position of chair of an internal audit unit a former public official well known and respected by the accountable officer. For the accountable officer, it was essential that the appointee be someone in whom the officer could place confidence. Consequently the existing relationship was the reason for the choice rather than a personal interest which came in conflict with an official duty.

Another request for advice exposed the awkward relationship between Government Owned Corporations (GOCs) and the *Public Sector Ethics Act 1994*. While GOCs are specifically excluded from the provisions of that Act, the shareholding Ministers, exercising the authority given by section 123 of the *Government Owned Corporations Act 1993*, on 11 May 2001 notified GOCs that they must comply with the State Purchasing Policy. This required individual purchasing officers to comply with the ethical obligations imposed by the *Public Sector Ethics Act 1994*.

As I have mentioned in chapter 4 of this annual report, directors of GOCs are statutory office holders who can seek advice about conflicts of interest. If such advice is sought I must have regard to approved codes of conduct. Such codes will be based on the ethics principles and obligations expressed in the *Public Sector Ethics Act 1994*, so that, by necessary implication, directors of GOCs should observe those principles and obligations.

It may well be desirable to have an open debate about the reasons why GOCs should be excluded from the definition of “public sector entity” in

Public Sector Ethics Act 1994. The ethics principles and obligations seem, on their face, to be equally appropriate to the commercial sector as to the public sector. It is not a sustainable proposition that ethics have no place in commercial practice.

One of the requests for advice received from people who are not “designated persons” came from a senior employee of a local government. It is desirable that consideration be given to amending the *Public Sector Ethics Act 1994* to include some senior employees of local governments among the list of “designated persons”. This would enable them to seek advice about appropriate conflict of interest issues.

While the *Public Sector Ethics Act 1994* requires a “designated person” to make a written request for any advice about a conflict of interest issue, I have been willing to discuss issues with “designated persons” in a telephone call. On three occasions I received calls from persons who had identified a personal conflict of interest and who sought confirmation that their method of resolving this was appropriate. In each instance no written request for advice was received.

Summary of Requests - Received from 1 July 2002 to 30 June 2003

Received From	Number Received	Potential Conflict Resolved	No Conflict	No Jurisdiction
Premier	2	2		
Minister	2	2		
Director General	6	5		1
Other	14	4	1	9
Totals	24	13	1	10

14. Contribution to Public Understanding of the Office

I have accepted invitations to address conferences and meetings about the policy and practice relevant to the Integrity Commissioner's functions.

By displaying these lectures on our website, the public is able to gain an understanding of public integrity standards.

The following is the list of those occasions and topics –

Date	Occasions	Topics
12 July 2002	Annual Conference of the Judges of the Family Court of Australia, Brisbane	The Public's Interest in Public Sector Ethics
6 October 2002	International Institute for Public Ethics and the Australian Association for Professional and Applied Ethics Conference, Brisbane	Public Interest or Common Good of the Community? - Bringing order to a dog's breakfast
8 October 2002	The Annual Dr David Williams Lecture Kings College, St Lucia, Brisbane	Challenge or Cancer; the Impact of Competition Policies on the Professions
4 February 2003	Queensland Public Sector Ethics Network. Brisbane - QPSEN	Respect for the Law and the System of Government as an ethics principle
14 February 2003	COAT – Council of Australian Administrative Tribunals, Brisbane	A Guide to Standards of Conduct for Tribunal Members
2 April 2003	Public Service Commissioner Appeals Delegates, Brisbane	Ethics Principles and Tribunal Members
6 May 2003	Queensland Public Sector Ethics Network. Brisbane - QPSEN	<i>Constitution of Queensland 2001</i> and the <i>Parliament of Queensland Act 2001</i>
26 May 2003	11th International Anti Corruption Conference, Seoul, Republic of Korea	Ethics for Elected Officials
4 June 2003	Queensland Law Society & Government Lawyers Meeting, Brisbane	Ethics for Government Lawyers

During the year 7155 visits were made to the website, a 107% increase over the previous year.

In addition, I participated in the workshop referred to in chapter 9 of this annual report. In my absence

from Brisbane, my Executive Coordinator spoke of the work of this Office to a senior lecturer from the Law School, University of Liverpool, and to a delegation of Pacific Parliamentarians.

15. Responses to Public Sector Issues

It has become clear that one of the responsibilities of the Integrity Commissioner is to assist in the provision of resources within the public sector which express the ethics principles and obligations in the *Public Sector Ethics Act 1994*.

To do this I have made submissions in respect of the following -

- Education Queensland Discussion Paper on Definition of Sexual Misconduct and Revised Code of Conduct and Student Protection Policy
- Members' Ethics and Parliamentary Privileges Committee Inquiry into Constituent Communications to Members

- Draft United Nations Convention Against Corruption
- 2003 Public Service Commissioner's Conference Report

I have also commented upon –

- Proposed Public Service Charter
- Queensland Government Sponsorship Policy
- Accountability Framework for the Queensland Public Service
- Gifts & Benefits Policy
- Guidelines on Personal Expenses

16. Compliance Disclosures

During this year my Executive Coordinator did training in Leadership Development by working with the Young Professional at the Institute of Public Administration of Australia (IPAA) to develop a short term leadership program for 'young' public servants. She also attended Myers Briggs Training and has established a mentoring relationship with a senior executive officer in the Office of the Public Service Commissioner.

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

No consultants were used. I travelled to Seoul, Republic of Korea, to attend the 11th International Anti-Corruption Conference 25-28 May 2003, and have reported on that conference to the Premier and to the Director General Department of the Premier and Cabinet. The conference fee of USD\$650 was waived by the organisers of the conference. The cost of fares and accommodation was AUD\$7 229.86. My

wife accompanied me and her expenses were paid personally.

No public interest disclosures were received by the office under the *Whistleblower's Protection Act 1994*.

This annual report is available on the website www.integrity.qld.gov.au

Attached to this annual report are –

Financial Statements of the Office	Attachment 1
Statement of Affairs of the Agency	Attachment 2
Privacy Plan for the Office	Attachment 3
Conflicts of Interest for Statutory Office Holders Information Sheet 3	Attachment 4

17. Future Directions

This is my third annual report and the period it covers almost completes the term of my appointment. I have indicated that, to allow for a smooth transition to the next Integrity Commissioner, I am willing to continue in office until 31 December 2003.

Over the past two years and ten months I have endeavoured to expound and apply the *Public Sector Ethics Act 1994* which I now regard as a particularly fine piece of legislation. It is drafted in a way that encourages the application of sound principle to public administration.

This Act is administered by the Public Service Commissioner so that it is appropriate for there to be a close working relationship between the Public Service Commissioner and the Integrity Commissioner, and between their respective offices.

This has been the case over the past two years and ten months and it should continue. This enables the Integrity Commissioner to contribute to the development of directives and programs which encourage the avoidance of conflicts of interest.

This year 24 requests for advice on conflicts of interest were received. This may well indicate the extent to which significant conflict of interest issues arise among “designated persons”. However the number of requests received is not the only indication of the significance of the Office of the Queensland Integrity Commissioner in the public sector. The very existence of the office draws attention to the need to recognise and resolve conflicts of interest. The material produced by the office assists in that process.

18. Recommendations

In my annual report last year I referred to the fact that some directors of corporations established under the *Corporations Act 2001* for a State or local government purpose may not be “designated persons”. I have referred in chapter 13 of this annual report to the desirability of including some senior employees of local governments within the category of “designated persons”.

I recommend that consideration be given to the addition to section 27 (1) of the *Public Sector Ethics Act 1994* of –

- Persons appointed as directors of corporations established for a State or local government purpose;
- Senior officers of local governments.

If that happens, the issue of an appropriate amendment to section 30 of the Act will need to be considered. It is not envisaged that this would result in any significant change in the number of requests for advice received by the Integrity Commissioner.

Financial Statement

The Office of the Queensland Integrity Commissioner
Expenditure for Financial Year 2002/03

Approved Budget for 02/03 139 200.00

ITEM DESCRIPTION	EXPENDITURE
Salaries & Oncosts	
Commissioner Salary	50 144.64
Superannuation	6 952.80
Oncosts	12 111.18
Sub Total	69 208.62
Administration Staff Salaries	38 971.36
Superannuation	5 642.71
Oncosts	8 719.82
Sub Total	53 333.89

Total Salaries & Oncosts **\$122 542.51**

General Expenses

Office Expenses (Consumables)	482.93
Domestic Travel	5 983.08
International Travel	50.00
Telecommunications	1 989.63
Marketing and Public Relations	3 801.58
Hospitality and Functions	21.82
Other Administrative Expenses	94.82
Depreciation and Amortisation	3 402.35
Other Operating Expenses	632.41

Total General Expenses **\$16 458.62**

TOTAL EXPENDITURE FOR 2002/03 **\$139 001.13**

The Office of the Queensland Integrity Commissioner is part of the Office of the Public Service Commissioner. Provision of Corporate Services has been provided through the Office of the Public Service Commissioner. 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 Queensland 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 Queensland Integrity Commissioner on a part time basis equivalent to two days per week. The Queensland 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 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 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. The functions of the Queensland 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

- (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 Queensland 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 21 February 2003, Administrative Arrangements Order (no.1) 2003.

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 Queensland 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 The Privacy Statement will also be published on this website.

6. Retention and Disposal of Records

Records are kept in accordance with the *Public Records Act 2002*.

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 Queensland Integrity Commissioner has not dealt with their personal information in accordance with an IPP, they may make a complaint to the CEO of the agency, who is the Queensland 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 Queensland 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>

The *Public Sector Ethics Act 1994* defines "statutory office" as "an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister. It is immaterial whether an appointment may only be made after a recommendation or other process."

This 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.

Contact

Queensland Integrity Commissioner

PO Box 290
Brisbane Albert Street BC
Queensland 4002

Telephone: (07) 3224 2351

Facsimile: (07) 3224 2326



**Queensland
Government**

Statutory office holders & conflicts of interest

Designated persons

Statutory office holders are "designated persons" within the meaning of the *Public Sector Ethics Act 1994*, and so can seek advice from the Integrity Commissioner about conflict of interest issues.

Examples of statutory office holders include: -

- members of Boards of Trustees of Grammar Schools having been appointed to offices established under the *Grammar Schools Act 1975* to which members can only be appointed by the Governor in Council;
- members of Cane Production Boards and Cane Protection and Productivity Boards having been appointed to offices established under the *Sugar Industry Act 1999* to which members can only be appointed by a Minister. It is immaterial that some members are elected by growers and some nominated by mill owners.

Not all the people on the Register of Statutory Authorities kept by the Department of the Premier and Cabinet are statutory office holders.

Examples of people who are not statutory office holders include:-

- the members of Negotiating Teams established under the *Sugar Industry Act 1999*, because, although they hold offices established under the *Sugar Industry Act 1999*, they are not appointed by the Governor in Council or a Minister;
- directors of companies established for a State purpose under the *Corporations Act 2001* because, although the office of director is established under an Act, it is not an office to which a person can only be appointed by the Governor in Council or a Minister;

- members of advisory boards which are not established under an Act but who are appointed by a Minister;

People who are not statutory office holders cannot seek advice about conflict of interest issues from the Integrity Commissioner. They should still ensure that their personal interests do not come into conflict with their public duty.

Conflict of interest

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

A statutory office holder's official duties include: -

✂ **Administrative obligations** derived from:-

- the Act which established the office to which the statutory office holder was appointed by the Governor in Council or Minister;
- legislation which applies generally in the public sector such as the:-
 - *Financial Administration and Audit Act 1977*
 - *Freedom of Information Act 1992*
 - *Crime and Misconduct Act 2001*
 - *Judicial Review Act 1991*
 - *Public Records Act 2002*
 - *Anti-Discrimination Act 1991*
- directions from appointing Minister;
- privacy policy.

✂ **Ethics obligations** derived from:-

- *Public Sector Ethics Act 1994*

✂ **Performance obligations** derived from:-

- Agenda for task in hand

Personal interests

The kind of personal interest which may conflict with official duties will depend upon the responsibilities a statutory office holder has.

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 office that is held. Consequently, statutory office holders should avoid any actions which would appear, to a reasonable person with knowledge of the relevant facts, to involve a conflict of interest.

As a general rule, if a statutory office holder stands to gain some financial benefit or personal advantage from a decision, recommendation or advice, that office holder should not be involved in that decision or recommendation or in giving that advice. However, some people may be appointed as statutory office holders because they have a financial interest in the industry in respect of which they will make decisions. Usually in such a case, the Act which establishes the statutory office will describe the extent to which they can properly benefit from their decisions; eg. *Sugar Industry Act 1999* s.172(5); *Water Act 2000* s.610(7).

The kind of financial benefit or personal advantage which would amount to a personal interest includes:-

1. a person's interest in property of any kind, including money, the value of which may be altered by a decision, recommendation or advice that person may make or be a party to making.

This is the kind of interest which is usually disclosed by the

registration of personal interests. Such interest can give rise to an actual, apparent or potential conflict of interest.

2. a person's commercial or business interest of any kind which could be advanced or harmed by a decision, recommendation or advice that that person may make or be a party to making.
Again such interests should be disclosed by the registration of personal interests.
3. a person seeks or accepts gifts and/or hospitality which may influence or appear to influence decision making.
4. a person's relationships influence or appear to influence a decision, recommendation or advice that person may make or be a party to making.

As a general rule, when a decision, advice or recommendation may help or harm a person the statutory office holder knows, the person responsible for the decision, recommendation or advice should not act alone. If a number of people are involved in the decision, recommendation or advice, the nature of the relationship should be disclosed to all of them.

If the statutory body has regulatory or disciplinary responsibilities, an office holder should not be involved in making a decision in which the person being considered is a relative, friend or business competitor.

Public interest

The public interest is served when statutory office holders faithfully perform their official duties. This means that where a conflict arises because of the personal interests described above, the personal interest will not be pursued. For example; gifts and/or

hospitality offered in the expectation of a favour will be rejected; decisions, recommendations or advice will not be influenced by the hope of financial benefits or business advantages; relatives and friends will not receive unmerited benefits; confidential information will not be used for personal gain.

A statutory office holder should not take part in any debate or vote on any issues in which any personal interests exist, unless participation is authorised by the Act which creates the office, or if the other members of that statutory body agree, having debated the issue in the absence of the person with the personal interest.

Seeking advice about conflicts of interest

Sometimes there is uncertainty about the extent of a statutory official holder's duties, or difficulty in identifying a private interest. On other occasions there may be difficulty resolving a conflict of interest. In any case of doubt or uncertainty, a statutory office holder can seek advice about conflict of interest issues from the Integrity Commissioner.

Requests should be made in writing. All requests and advice given are confidential. The address is;

Queensland Integrity Commissioner
PO Box 290
BRISBANE ALBERT STREET BC
QUEENSLAND 4002

* *Welcome Aboard – A Guide to Members of Queensland Government Boards, Committees and Statutory Authorities* is available from the State Affairs Branch of the Department of the Premier and Cabinet.

