

Queensland Integrity Commissioner

Annual Report to the Premier

June 2004

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1. Creation of the Office of the Queensland Integrity Commissioner

The *Public Sector Ethics Act 1994* was amended in 1999 to add 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).

To achieve this purpose the *Act* established the Office of the Queensland Integrity Commissioner (s.26) 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 Queensland Integrity Commissioner's functions (s.28).

The Queensland Integrity Commissioner can give advice only to designated persons (s.29). The people who are designated persons are identified in s.27 and fall into five broad categories:

- government members of Parliament, including the Premier, Ministers and Parliamentary Secretaries;
- statutory office holders;
- chief executive officers of government departments, public service offices, and government entities;

- senior officers employed in government departments and public service offices;
- staff employed to give advice in the office of Ministers and Parliamentary Secretaries.

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

The words Queensland Integrity Commissioner suggest that the responsibilities of the person so described cover much more than giving advice to designated persons about conflict of interest issues. In the year ending 30 June 2002 and the year ending 30 June 2003, five requests for advice were received each year from people who were not designated persons. This year only one such request was received. This suggests that the information available on our website <www.integrity.qld.gov.au> allows members of the public, who have concerns about the issues in the public sector, to direct those concerns to the appropriate statutory body.

2. Giving Advice on Conflict of Interest Issues

Any designated person may make a written request for advice about a conflict of interest issue involving that person. If the designated person is a senior executive officer or a senior officer, the request for advice must be accompanied by a signed authority to seek the advice from the chief executive officer of the department, public service office or government entity in which the senior officer is employed (s.29). This is consistent with the obligation in the Public Service Act 1996, s.84, which requires every public service employee to disclose any conflict of interest to the employee's chief executive officer. The request must disclose all relevant information about the issue for which advice is sought (s.31).

A number of designated persons may also seek advice about conflict of interest issues involving other designated persons. Generally this depends upon the responsibilities the designated person has. The Premier, who has broad responsibilities in respect of the public service (Public Service Act 1996, part 4, division 1), may seek advice about any designated person. Ministers and Parliamentary Secretaries may seek advice about designated persons who are within the responsibilities of their office. Chief executive officers may seek advice about designated persons employed in their department, public service office or government entity (s.30).

Because the purpose of Part 7 is to help designated persons avoid conflicts between their personal interest and their official duties, advice cannot be sought by or about a person who has been, but is not presently, a designated person (s.30). Such a person is no longer performing official duties, and so can have no conflict of interest that should be avoided.

The Queensland Integrity Commissioner may ask the designated person for further information for the purpose of giving advice and may in writing refuse to give advice, if enough information about the conflict of interest issue is not provided (s.31).

In giving advice, the Queensland Integrity Commissioner must have regard to codes of conduct approved under the Public Sector Ethics Act 1994, ethical standards or codes of conduct adopted by the Legislative Assembly by resolution, and ethical standards or codes of conduct approved by the Premier for Ministers, as well as other appropriate ethical standards (s.32).

Advice given under Part 7 must be in writing. The request for advice and any written advice is protected from disclosure under the Freedom of Information Act 1992. The Queensland Integrity Commissioner may disclose the advice about a conflict of interest issue to the designated person who has sought the advice, except that advice about senior executive officers and senior officers is not disclosed to the Premier (s.34).

If the Queensland Integrity Commissioner reasonably believes that a designated person other than a senior executive officer or a senior officer has an actual and significant conflict of interest, which has not been resolved within seven days of advice to that effect being given, the Queensland Integrity Commissioner must advise the Premier (s.34).

3. Identifying Conflicts of Interest

The definition of a conflict of interest issue in the Public Sector Ethics Act 1994 involves a conflict between a person's personal interests and the person's official duties. In 2002, I prepared an information sheet *Conflicts of Interest in the Public Sector*. It was intended 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. This sheet was included in my annual report of June 2002, and is available on our website <www.integrity.qld.gov.au>.

In 2003, I prepared an information sheet, *Statutory Office Holders and Conflicts of Interest*. This was intended to assist statutory office holders in the discharge of their duties. The sheet was included in my annual report of June 2003, and is available on our website <www.integrity.qld.gov.au>.

In my annual report of June 2003, I said,

Six of the twenty-four requests for advice raised issues about gifts and hospitality. Each was able to be resolved. The Office of Public Service Merit and Equity 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.

This year, only one request for advice raised an issue about gifts and hospitality. This suggests that the material that has been prepared is assisting designated persons to make decisions about the issues that arise through offers of gifts or hospitality. If public officials are clear about the duties they have in any given situation, it is much easier to see how offers of gifts or hospitality can come into conflict with those duties.

4. Interaction of Ethics and Law

In my report of June 2003, I referred to my involvement in the Eleventh International Anti-Corruption Conference, and said,

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.

This year I have prepared, and my office has printed, a handbook for Queensland public officials entitled, *Building Integrity in the Queensland Public Sector*. Distribution of this handbook has begun and the early response has been encouraging.

Parliament has provided the Queensland Public Sector with an excellent legislative framework which expresses strong ethical values as the foundation upon which public service is built. Training in the responsibilities that public officials have is available through the Office of Public Service Merit and Equity and within departments.

Oversight of the Queensland Public Sector is carried out by the Auditor-General, the Ombudsman and the Crime and Misconduct Commission. A number of other bodies deal with specific areas within which complaints about the performance of the public sector may arise. The laws that Parliament has enacted to create this integrity regime are based on sound ethical values.

It is always a risk, that there will be instances where even the best integrity regime fails, and the challenge always is to avoid foreseeable risks.

5. Queensland Public Sector Ethics Network

This year I have continued to attend the quarterly meetings of the Queensland Public Sector Ethics Network (QPSEN). QPSEN provides a forum for public officials who have responsibilities within departments and public service offices in respect of codes of conduct and ethical issues.

I read papers on two occasions and these are available on our website <www.integrity.qld.gov.au>.

One of the issues that has been discussed at QPSEN a number of times is s.89 of the Criminal Code 1899, which reads:

Any person who, being employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than 20 persons, a private interest in any contract or agreement which is made on account of the public service with respect to any matter concerning the department of the service in which the person is employed, is guilty of a misdemeanour, and is liable to imprisonment for 3 years, and to be fined at the discretion of the court.

This section is one of a number of sections in the Criminal Code 1899 which deal with corruption and abuse of office. They include bribery, extortion, false claims and abuse of office. It seems likely that the purpose of s.89 was to stop public officials from receiving additional benefits from their department through contracts which went beyond the terms of their employment.

Over the past hundred years, the relationship between public officials and departments has changed considerably. Many public officials are involved in research which produces marketable products in respect of which there is Crown copyright. Any contract between the official and the department, no matter how openly negotiated, which gave the official any rights in respect of that intellectual property could be a breach of s.89. It seems undesirable that this possibility exists because it discourages research. There is a good reason to amend s.89 to ensure that only conduct which is detrimental to the public service is declared to be criminal.

6. Issues Considered

The Public Sector Ethics Act 1994 requires the Queensland Integrity Commissioner to give the Premier a written report about the performance of the functions of the office for the financial year. The report must be in general terms and must not contain information likely to identify individuals who sought advice about a conflict of interest issue (s.43).

As I have mentioned only one request concerned a gifts and hospitality question. The advice was to reject an offer of tickets to a sporting event by a company involved in a tendering process.

Four requests concerned the relationship between a Minister and organisations within the Minister's electorate. Ministers do not cease to have responsibilities to people and organisations in their electorates. Consequently, it is appropriate for them to offer endorsement and support for such people and organisations from their electorate office, but not from their Ministerial office or with departmental resources. Departmental officers should also understand that, when a Member of Parliament or a Minister endorses an application for a grant, that endorsement, in so far as it contains relevant information, should be used in assessing the merit of the proposal, but the fact that the endorsement is by a Member of Parliament or a Minister should not be used to add merit to the proposal.

When public funds are used, it is of fundamental importance that a Minister draws clear lines between private, electorate and Ministerial expenses.

Six requests for advice emphasised the need to look carefully at the duty or responsibility the official had. If the person is involved in giving advice, it may be helpful if the person has experience with the issue, provided that any interest the person has in any of the organisations or people involved is disclosed. If the person is involved in an investigative or regulatory role, it is important that the person has no interest in the industry, organisation or people being investigated or regulated.

A Minister who has announced the intention not to contest the next election may ask a person who has had contact with the Minister in the course of the Minister's duties to act as referee in an application for post-parliamentary service employment.

One request raised an issue that was resolved by the passing of the *Parliament of Queensland Amendment Act 2004* which clarified the circumstances in which a Member of Parliament may transact business with the State. Another request raised a secondary issue about contracts to which a Member of Parliament cannot be a party.

On two occasions an issue was raised in a phone call, but no conflict of interest issue was involved. In all 21 requests were received, one of which was from a person who was not a designated person. Seventeen written advices were given to designated persons. One request was answered by providing copies of the information sheet, *Statutory Office Holders and Conflicts of Interest*.

Requests Received: 1 July 2003 to 30 June 2004

Received From	Number	Potential for Conflict		No Jurisdiction
		Resolved	No Conflict	
Premier	1	1		
Minister or Parliamentary Secretary	10	9		1
Director-General	5	2	3	
Other	5	4		1
Total	21	16	3	2

7. Contribution to Public Understanding of the Office

I have accepted invitations to address conferences and meetings about the policy and practice relevant to the Queensland Integrity Commissioner's functions. The following is the list of those occasions and topics:

Date	Organisation	Topic
15 August 2003	Ideas at the Powerhouse	Watching, Waiting, Winning
5 September 2003	National Appeals Delegate Conference hosted by the Queensland Public Service Commissioner	Judging Justly
3 October 2003	North Queensland Law Association Conference	Corporatisation and Professional Ethics
23 November 2003	Queensland Public Sector Ethics Network. Brisbane - QPSEN	Three Years Later
3 December 2003	Corruption Prevention Network Qld	The Gifts of the Three Wise Men
2 May 2004	Rotary International District 9570 Conference	Ethics and You
7 May 2004	612 ABC Radio	Conversation Hour

In addition I met two people representing the Japanese Government to discuss whistleblowers legislation.

By displaying material on the website the public is able to gain an understanding of public integrity standards.

In my absence from Brisbane, my Executive Coordinator met a Malaysian Delegation and discussed the Office of the Queensland Integrity Commissioner and the *Public Sector Ethics Act 1994*. The Executive Coordinator also collated and presented material to new Members of the Legislative Assembly on the *Public Sector Ethics Act 1994*, the Queensland Integrity Commissioner and *Conflicts of Interest*.

During the year 11,332 visits were made to the website, a 228% increase from the last year.

8. Responses to Public Sector Issues

I have accepted that one of the responsibilities of the Queensland 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 to the following:

- The Senate Inquiry into Members of Parliament Staff employed under the Members of Parliament (Staff) Act 1984;
- The Select Committee appointed by the Legislative Assembly considering the Consequences of Changing Political Status;
- The Department of Local Government and Planning on Codes of Conduct for Local Government Councillors;
- The Crime and Misconduct Commission's Inquiry into Police Radio Communication Access by Media;
- The Research Director of the Legal, Constitutional & Administrative Review Committee, A Queensland Parliamentary Committee on a Preamble for the Queensland Constitution.

I have also contributed to the Jurisdictional Reports presented at the biannual Public Service Commissioner's Conference.

9. Compliance Disclosures

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

No consultants were used. 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>.

Attached to this annual report are:

Financial Statements of the Office
Attachment 1

Statement of Affairs of the Agency
Attachment 2

10. Review of the Past Four Years

My term in office was extended to 30 June 2004, and this will be my last report. During the past four financial years, the Office of the Queensland Integrity Commissioner has been established.

Throughout the four years we have worked closely with the Office of the Public Service Commissioner (OPSME) and in April 2004, the Office of the Queensland Integrity Commissioner was moved to 61 Mary Street, on the same floor of that building as the OPSME. This move fulfills the obligations to be both economical and efficient.

The publication and distribution of the two fact sheets on conflicts of interest and of the handbook, *Building Integrity in the Queensland Public Sector*, have added to the resources available in the public sector to resolve conflicts of interest.

The website, which now contains a good deal of information about policy and practice relevant to the Queensland Integrity Commissioner's functions, contributes to public understanding of public integrity standards.

Where written advice has been obtained about potential conflicts of interest, conflicts have been resolved without damaging publicity. This has helped to maintain public confidence in public institutions.

Financial Statement

The Office of the Queensland Integrity Commissioner
Expenditure for Financial Year 2003/2004

Approved Budget for 2003/2004 158 600.00

ITEM DESCRIPTION	EXPENDITURE
Employee Related Expenses	
Salaries Wages and Related Costs	107 942.67
Salary Related Taxes	5 741.94
Superannuation	13 270.90
Sub Total	<u>126 955.51</u>
Supplies and Services Expenses	
Office Expenses (Consumables)	34.60
Domestic Travel	5 678.99
Telecommunications	2 495.18
Marketing and Public Relations	10 300.44
Hospitality and Functions	82.00
Other Administrative Expenses	1 957.07
Repairs and Maintenance	3.61
Minor Plant and Equipment	4 439.75
Minor Works	475.00
Depreciation and Amortisation	3 518.76
Sub Total	<u>28 985.40</u>

Total Expenditure for 2003 to 2004 155 940.91

The Office of the Queensland Integrity Commissioner is part of the Office of Public Service Merit and Equity.

Provision of Corporate and Building Services has been provided through the Office of Public Service Merit and Equity.

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 Queensland 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 Queensland 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 website <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 Queensland Integrity Commissioner are available free of charge, as is the handbook for Queensland public sector employees, *Building Integrity in the Queensland Public Sector*. Lectures and papers are accessible on the website <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