# Queensland Integrity Commissioner

## Annual Report 2013-14

**The Integrity Commissioner is an independent officer of the Parliament who advises senior Queensland public officials on ethics or integrity issues**

## About this report

This annual report provides information about the Integrity Commissioner's financial and non-financial performance for 2013-14. It has been prepared in accordance with the *Financial Accountability Act 2009* and the *Financial and Performance Management Standard 2009*.

This report has been prepared for the Speaker and the Finance and Administration Committee for tabling in the Legislative Assembly.

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Integrity Commissioner Annual Report 2013-14



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Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Mr Steve Davies MP
Chair
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Madam Speaker

Dear Mr Davies

This is the Annual Report of the Integrity Commissioner for the 12 months ending 30 June 2014.

It is the fifth report under the provisions of s. 85 of the *Integrity Act 2009* and complies with the provisions of that section. It is, in accordance with that section, provided to the Speaker and the Parliamentary Committee for Finance and Administration. Previous Annual Reports were provided to the Premier as required by the provisions of the *Public Sector Ethics Act 1994*. Since 1 January 2010 when the Integrity Act came into force, the Integrity Commissioner has been an officer of the Parliament.

As my appointment as Integrity Commissioner ends on 30 June 2014 I have completed the report subject to the addition later of a financial statement that will be prepared by the Department of the Premier and Cabinet.

Yours sincerely

**Dr David Solomon AM**
**Queensland Integrity Commissioner**

30 June 2014

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## Who is the Queensland Integrity Commissioner?

Dr David Solomon AM was appointed as Queensland's third Integrity Commissioner on 1 July 2009, for a five-year term.

The position of Queensland Integrity Commissioner was established in 1999 by amendments to the *Public Sector Ethics Act 1994*. The Honourable Alan Demack AO, a former judge of the Supreme Court of Queensland, took office as the first Integrity Commissioner in August 2000, and retired on 30 June 2004.

He was succeeded by Mr Gary Crooke QC, who served a five year term until 30 June 2009. Mr Crooke had a distinguished legal career that included serving as Senior Counsel assisting the Fitzgerald Inquiry, 1987-89 and Chairman of the National Crime Authority, 1999-2002.

Dr David Solomon was appointed to a five year term as Integrity Commissioner on 25 June 2009, and took office on 1 July 2009.

Dr Solomon was Chair of the Independent Panel appointed by the Bligh Government to review Queensland's Freedom of Information laws in 2007-08.

He spent most of his working life in Canberra, writing about politics and the law, for such newspapers as *The Australian*, *The Australian Financial Review* and *The Canberra Times*. He moved to Brisbane in 1992 to chair the Electoral and Administrative Review Commission, and, when that Commission was wound up, began writing for the *Courier-Mail* as a Contributing Editor. He retired from full-time journalism at the end of 2005.

He has degrees from the Australian National University in Arts and Law (with honours), and a Doctorate of Letters. He has written almost a dozen books on parliament, politics, constitutional law and the High Court.

He received the Centenary Medal in 2001, and was appointed a Member of the Order of Australia in 2006.

# The roles and functions of the Integrity Commissioner

## Adviser and regulator

The Integrity Commissioner has two main functions – (1) to provide advice (if asked) to Ministers, Members of Parliament, senior public servants and others on ethics or integrity issues; and (2) to regulate contact between lobbyists and government and Opposition representatives, "so that lobbying is conducted in accordance with public expectations of transparency and integrity". (Integrity Act, s. 4)

The responsibilities and duties of the Queensland Integrity Commissioner are detailed in the *Integrity Act 2009*. They were originally contained in the *Public Sector Ethics Act 1994*.

The functions of the Integrity Commissioner are set out in section 7 of the *Integrity Act*. They are:

(a) to give written advice to a designated person on ethics or integrity issues;

(b) to meet with, and give written or oral advice to, members of the Legislative Assembly;

(c) to keep the lobbyists register and have responsibility for the registration of lobbyists;

(d) to raise public awareness of ethics or integrity issues by contributing to public discussion of these issues relevant to the integrity commissioner's functions.

## The integrity function

The Integrity Commissioner's role in providing advice on ethics or integrity matters, including conflict of interest issues, is limited. Advice may only be given when it is sought by a "designated person". The Act specifies who are or may be the "designated persons" that the Integrity Commissioner may assist. Essentially they are Ministers, Members of Parliament (though Opposition MPs were only added by an amendment that came into effect in September 2009), statutory office holders, Chief Executives of government agencies, senior executive officers and senior officers, staffers of Ministers and Assistant Ministers and other people who may be nominated by a Minister or Assistant Minister.

There are more than 5,000 people who fit the description of a designated person. However senior executives, senior officers and senior officer equivalents, who together constitute the overwhelming majority of the designated persons, may only seek advice if they have the signed authority of their chief executive.

The term "conflict of interest" is defined in the Integrity Act.

> Conflict of interest issue, involving a person, is an issue about a conflict or possible conflict between a personal interest of the person and the person's official responsibilities.

The underlined words were added to the definition originally in the Public Sector Ethics Act to bring in the notion of a possible conflict, and to extend what were first described as "official duties" to "official responsibilities".

Requests for advice on ethics or integrity issues must be in writing. The Integrity Commissioner must base the advice provided on relevant approved codes of conduct or approved ethical standards and such other standards as the Integrity Commissioner considers appropriate. The advice must be in writing. The Integrity Commissioner may only decline to provide advice if the Integrity Commissioner reasonably believes that not enough information has been provided in relation to the issue or that giving the advice would not be in keeping with the purpose of the Act. Requests for advice, and the advice given, are confidential, and are not subject to disclosure under the *Right to Information Act 2009*. However a person who receives advice may disclose it.

The Premier may ask for the Integrity Commissioner's advice involving any person who is or has been a designated person, other than a non-government MP. The Premier may also ask for advice on standard setting for ethics or integrity issues.

Others in leadership positions – the Leader of the Opposition, Ministers, Assistant Ministers and Chief Executives – may ask for the Integrity Commissioner's advice on an ethics or integrity issue involving a designated person for whom they have responsibility, as set out in sections 17 –20 of the Act.

Members of the Legislative Assembly may request a meeting with the Integrity Commissioner to discuss ethics or integrity issues arising from their declaration of interests in the Parliamentary register of members' interests or the register of related persons' interests. The Integrity Commissioner may give such advice either orally or in writing.

## The lobbyists function

Since 2010 the Integrity Commissioner has been responsible for administering the regulation of lobbying activities under the Integrity Act. This involves the maintenance of the Lobbyists Register and approval of a Code of Conduct for lobbyists. The regulatory system is based on the requirement, in s. 71 of the Act, that "government representatives" must not knowingly permit an entity that is not a registered lobbyist to carry out a lobbying activity for a third party client with the government representative.

"Government representative" is broadly defined. It includes the Premier, Ministers, Assistant Ministers and their respective staff members, Chief Executives and the staff of their departments, local government councillors and Chief Executives and staff of councils, the parliamentary staff, and the chief executives and staff of government owned corporations.

Since December 2012 the Act has also covered lobbying of the Leader and Deputy Leader of the Opposition and the Leader's staff.

"Lobbyist" is narrowly defined. While "lobbying" has a meaning that would be accepted in many jurisdictions – "contact with a government representative in an effort to influence State or local government decision making" (s. 42(1)) – an entity that lobbies is defined in a very restrictive way that excludes many of those who do in fact lobby government. According to section 41(1),

A ***lobbyist*** is an entity that carries out a lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client.

A ***third party client*** is an entity that engages another entity to provide services constituting, or including, a lobbying activity for a fee or other reward that is agreed to before the other entity provides the service (s. 41(2)).

The section goes on to provide a series of exceptions. Those who are declared not to be lobbyists for the purposes of the Act include:

- non-profit entities
- entities constituted to represent the interests of their members
- entities lobbying on their own behalf
- entities that carry out lobbying that is "occasional only and incidental to the provision of professional or technical services".

The Integrity Commissioner maintains a register of lobbyists. To register, a lobbyist must provide:

(a) the lobbyist's name and business registration particulars;

(b) for each person (***listed person***) employed, contracted or otherwise engaged by the lobbyist to carry out a lobbying activity—

(i) the person's name and role; and

(ii) if the person is a former senior government representative, the date the person became a former senior government representative;

(c) the name of each current client of the lobbyist;

(d) the name of each client for which the lobbyist has carried out a lobbying activity within the 12 month period before the lobbyist most recently gave the integrity commissioner the particulars under this division or section 53;

These details are published in the register on the Integrity Commissioner's website.

Proposed "listed persons" (that is, lobbyists employed by lobbying entities) must provide a statutory declaration with details of any relevant criminal history, including any dishonesty offence with a conviction in the previous 10 years.

The requirement that "former senior government representatives" have to be identified on the register flows from the fact that the Act prohibits such people, for two years after they become "former" senior government representatives, from any lobbying activity relating to their official dealings as a government representative in the two years before becoming a former senior government representative.

"Former senior government representative" is defined in a very broad manner to include, for example, anyone who had worked in the office of a Minister or Assistant Minister, as well as Ministers and Assistant Ministers, and senior public servants, down to senior executive level or equivalent.

Lobbyists are also prohibited by the Act (in section 69) from receiving a success fee for their efforts in lobbying government. If a lobbyist offended this prohibition, they would be liable not only to be fined but also to surrender the fee to the government.

Lobbyists are required to comply with a Lobbyists Code of Conduct, approved by the Integrity Commissioner, that is published on the website. The Lobbyists Code of Conduct was introduced in March 2010 and was largely based on an administrative code that was in force in 2009. The range of ethical requirements lobbyists are now required to meet was increased in the new code.

Significantly the Lobbyists Code of Conduct includes two important prerequisites to any lobbying activity, designed to make it easier for government and local government representatives to appreciate the nature of the lobbying activity to which they are being asked to respond.

First, when making an initial contact lobbyists have to make clear that they are on the lobbyist register, and the person conducting the lobbying is listed, who they are representing, the nature of the issue they wish to raise and the reasons for the approach.

Second, if the listed lobbyist is a former government representative, they must indicate when they became a former government representative and that the matter they wish to lobby about is not banned by the Act as a "related lobbying activity".

The Lobbyists Code of Conduct was amended in 2013, with effect from 1 May 2013, to require registered lobbyists to report details of their lobbying contacts with government and Opposition representatives. The reports may be accessed by anyone on the Integrity Commissioner's website.

### The public awareness function

The Integrity Commissioner is required:

> to raise public awareness of ethics or integrity issues by contributing to public discussion of these issues relevant to the integrity commissioner's functions.

In performing this function, however, the Integrity Commissioner must not disclose information likely to identify a specific request for advice that has been received or information that could result in the identification of any person who sought advice or about whom advice was sought.

# The 2013-14 year in review

## Lobbyists Code of Conduct

In the 2012-23 annual report I detailed legislative changes that opened the way to changes in the Lobbyists Code of Conduct to provide for the disclosure by registered lobbyists of their lobbying contacts with government and Opposition representatives. I also detailed my consultations with the Parliamentary Finance and Administration Committee that preceded the formal amendment of the Code. The amended Code came into effect on 1 May 2013.

The Parliamentary Committee revisited the issue in its Report No. 26, "Oversight of the Queensland Integrity Commissioner 2012 and Review of the Lobbyists Code of Conduct". It again expressed the view that lobbyists should be required to provide for publication details of client names or the purpose of the meeting but not both.

However the Government, in its response to this recommendation, said (in part):

> In accordance with section 68 of the *Integrity Act 2009*, the Integrity Commissioner, as an independent officer of the Parliament, is responsible for approving the code of conduct. However, the Government notes that the reporting of this information will facilitate open disclosure of lobbying activity by lobbyists.

The Code requires lobbyists to provide the following information about their contacts with government and Opposition representatives:

(a) the name of the registered lobbyist

(b) whether in arranging the contact, the lobbyist complied with the requirements of 3.2 of the Lobbyists Code of Conduct and, if relevant, 3.3

(c) the date of the lobbying contact

(d) the client of the lobbyist

(e) the title and/or name of the government or Opposition representatives present

(f) the purpose of contact [from a drop-down menu]: making or amendment of legislation; development or amendment of a government policy or program, awarding of government contract or grant; allocation of funding; making a decision about planning or giving of a development approval under the *Sustainable Planning Act 2009*, commercial-in-confidence; other.

My office has been analysing the material provided and comparing it with the monthly ministerial diary extracts and with some agency records of contact with lobbyists.
The overall number of contacts recorded has dropped in the last year, although it has risen since the low period usually experienced over the Christmas/New Year months. This may partly be due to the increase in training in lobbying during the latter half of 2013, both within agencies and from talks given by the Integrity Commissioner, leading to less frequent inaccurate and unnecessary listings.

The number of lobbyist contacts with Ministers remains consistently low, with occasional blips (9 in July 2013, 11 in February 2013, with other months usually 1 or 2. However ministerial staffers are frequently lobbied. But we are unable to cross-check these lobbying contacts as ministerial staffers are not required to maintain records of their contacts with lobbyists.

Lobbyists regularly list contacts with local governments. Comparisons with local government records indicate that local governments do not have as good a grasp of what constitutes "lobbying activity".

Many lobbyists list their contacts with Members of Parliament who are not Ministers or Assistant Ministers, failing to realise the Integrity Act does not include MPs within its scope. More education is required in this area. Our experience is that departments, agencies and local governments should be encouraged to maintain training about record-keeping requirements. Staff turn over frequently, and some staff need their knowledge refreshed as they have infrequent contact with lobbyists.

Over the past four years I have sought occasional access to information recorded by State departments and local governments about their contacts with registered lobbyists, including in July 2013, when I was able to compare the entries to those listed by registered lobbyists of their contacts with government representatives.

I repeated this exercise in February this year. Lobbyists reported slightly more contacts – 42 when 33 were listed in July 2013 – and generally there was much more compatibility between lobbyist and government representative entries.

Again, lobbyists showed a greater understanding of the meaning of 'lobbying activity' as defined in the Integrity Act, again probably because the Act and Code regulate their everyday activities. While some errors still occurred, generally, those involved appear to have gained from the education activity that took place in the second half of 2013.

Contact with the Office of Liquor and Gaming Regulation (OLGR) was reviewed separately from other interaction with lobbyists, as was done in July 2013, and this review brought about a different result. OLGR is the agency where most lobbying contacts are recorded. Entries by OLGR dropped from 139 in July to 114 in February, and it is hoped this indicates increasing thought being given in making entries as knowledge of what is required grows. However, there were only two entries by lobbyists for lobbying contacts with OLGR in February (zero in July 2013). The dissimilarity between the entries makes it clear further work is necessary in this area. This has been taken up with the lobbyists identified by OLGR as having the most contacts with them.

The OLGR entries included four lobbyists who contacted OLGR 13 times or more, and follow-up with these lobbyists is ongoing. This office hopes to determine which reporter in each case – lobbyist or government representative or both – is at fault.

It was noted that 19 of the 42 entries by lobbyists could not be compared to government representative entries because the contact was with a Ministerial staff member. This problem is and will be ongoing while Ministerial offices are not required to keep a register of contact with lobbyists.

Lobbyist contact log breakdown 2013 - 2014

| | Total Contacts/Recorded meetings | Ministers lobbied | Ministerial Staff lobbied | Local Government | Departmental | MP's |
|---|---|---|---|---|---|---|
| July | 48 | 9 | 17 | 17 | 16 | 4 |
| August | 28 | 2 | 7 | 7 | 20 | 5 |
| September | 14 | - | 6 | 12 | 1 | - |
| October | 21 | 1 | 4 | 17 | 9 | 5 |
| November | 14 | - | 5 | 3 | 9 | 1 |
| December | 15 | 2 | 9 | 2 | 3 | - |
| January | 13 | 1 | 1 | 1 | 16 | 3 |
| February | 42 | 11 | 13 | 22 | 12 | 3 |
| March | 32 | 6 | 13 | 6 | 14 | 2 |
| April | 25 | 1 | 11 | 11 | 9 | 2 |
| May | 22 | 3 | 16 | 2 | 9 | 2 |
| June | 26 | 1 | 9 | 2 | 42 | 2 |

## Developments in other jurisdictions

I mentioned last year recent developments in Britain concerning lobbying, including a quotation from the conclusion of the House of Commons Public Administration Select Committee's 2009 report on "Lobbying: Access and influence in Whitehall" (at p. 60, emphasis added):

> The key, in this area as in others, is transparency. **There is a public interest in knowing who is lobbying whom about what**.

After extensive debate the UK Parliament enacted legislation which is somewhat limited in its regulation of lobbyists. The Labour Opposition has indicated it would amend the law if it were elected in 2015.

Queensland is at present the only Australian jurisdiction that bases its regulation of lobbyists in legislation. However in 2011 the Western Australian Government introduced legislation to provide a statutory basis for the regulation of lobbyists in that state. While it passed the Legislative Assembly it lapsed in the Legislative Council when Parliament was prorogued for the 2012 state election. I understand that a new Bill will be introduced into the WA Parliament. It is likely to include a penalty for unregistered lobbying of $10,000. The Queensland Act does not contain a penal provision for unregistered lobbying.

In my 2009-10 annual report I noted that I had made a submission to the NSW Independent Commission Against Corruption (ICAC) when it conducted a review of lobbying. My main submission was that the definition of lobbyists who should be covered by registration should be extended to cover in-house and industry lobbyists. This was the same proposal I had made to the Queensland Government in a number of submissions, both before and after my ICAC submission. ICAC produced a report in which it made recommendations along similar lines. The NSW Labor Government did not accept those recommendations. However last year, after a series of political scandals had been unveiled in new ICAC hearings, the Liberal-National Party Government said it would reconsider ICAC's proposals. Subsequent hearings by ICAC clearly demonstrate the need for stronger regulation of lobbyists in that State. I believe the same applies in Queensland.

In May this year I wrote to ICAC to draw their attention to the scheme in the Qld Lobbyists Code of Conduct requiring lobbyists to report their lobbying contacts, and said that this was a major advance in ensuring that lobbying contacts (i.e. those that were regulated) were more open to public scrutiny. In response I was informed that ICAC would wait to see whether the NSW Government intended to implement the outstanding recommendations about lobbying in its earlier report, and that "the recent developments in Queensland show how transparency in the system can be improved without unduly interfering with access to government."

Also in May the NSW Government announced that it proposed to require all lobbyists, whether registered or not, to abide by the minimum ethical standards set out in the Lobbyists Code of Conduct. (I interpolate that I suggested to the Queensland Government several years ago that if it was not prepared to require in-house and other lobbyists exempted under the Act from registering, it should require them to adhere to the requirements of the Code when lobbying government representatives. No action was taken here.) The NSW Government proposes that any breach of the code would result in the lobbyist being put on a Watch List, which would result in any meetings they held being monitored by officials, including a note-taker.

In late June the NSW Electoral Commissioner, Colin Barry, and his principal legal officer, Mel Keenan, visited this office to discuss issues arising under the new legislation and its administration by the Electoral Commission.

Victoria has introduced a long-mooted proposal to require various in-house lobbyists with influential connections to political parties to register as Government Affairs Directors (GADS). They are subject to the requirement of the Code of Conduct. This has increased the number of registered lobbyists by about 25 per cent, to 156.

### Government response to Parliamentary Committee recommendations

As I reported in my last annual report, the Parliamentary Finance and Administration Committee in early 2013 made recommendations for possible changes to the Integrity Act, particularly in relation to lobbyists. In previous annual reports I have noted that I have made a number of submissions to the Department of the Premier and Cabinet recommending that the registration of lobbyists should be extended to cover many of the other people who lobby (in the normal meaning of the word, not the definition in the Act) government. Based on a comparison with the registration scheme in Canada, I have estimated that the current Queensland scheme only covers about 20 per cent of the people who actually lobby government.

The Parliamentary Committee agreed that the definition of lobbyists should be extended to cover many of those other lobbyists. It recommended:

> **Recommendation 2**
>
> The Committee recommends that the *Integrity Act 2009* be amended to include paid in-house lobbyists of both corporations and associations.
>
> **Recommendation 3**
>
> The Committee recommends that a review of the *Integrity Act 2009* be completed and include examination of the following topics:
>
> - sanctions for section 71 and code of conduct breaches
> - investigative powers for the Integrity Commissioner
> - definition of lobbyist
> - definition of lobbying activity
> - post-separation and employment restrictions
> - definition of designated persons
> - sanctions for non-provision of information under the Public Records Act.

The Government responded to this report in July 2013. Its repose to recommendation 2 was:

> **Government response**: The Government notes that the Integrity Commissioner supports the extension of the operation of the *Integrity Act 2009* to capture in-house lobbyists, and has previously made this recommendation to Government.
> However, the Government notes that adoption of this recommendation would involve a fundamental change to the scope of the Act, and would impact on a range of businesses, industry associations and peak bodies. Therefore, the Government will consider this issue as part of the Open Government reform agenda to be implemented during 2013. This will ensure that affected stakeholders have the opportunity to be consulted and for the Government to consider the regulatory and resourcing implications of this proposal.

Its response to recommendation 3 was:

> **Government response**: The Government notes that the operational review of the Act commenced by the former Government focused on the practical application of the Act to identify and resolve any issues arising during implementation of the lobbying provisions. The Government intends to undertake a holistic examination of the operation of the Act as part of its proposed Open Government reform agenda, to ensure it is meeting its stated objectives. This will involve considering the issues identified in this recommendation, including submissions previously made by stakeholders on the operation of the Act.

The Open Government reform agenda arises also in relation to the next matter.

## Strategic review

Chapter 6 of the Integrity Act deals with strategic reviews of the Integrity Commissioner's functions. Section 86(2) says the first review under this section "must be conducted within 4 years of the commencement of this section". The Act, including s.86, commenced on 1 January 2010. The Strategic Review was therefore required to be conducted by 31 December 2013. There was no review in the time specified in the Act.

I wrote to Mr Jon Grayson, the Director-General of the Department of the Premier and Cabinet, on 1 July 2013, reminding him of the requirement for a strategic review to be conducted by the end of 2013. Mr Grayson responded on 22 July 2013, saying:

> As you are aware, the Government is proposing to undertake an Open Government reform process, which will holistically examine the operation of the *Integrity Act 2009* (the Act) to ensure it is meeting its stated objectives.
>
> Given that multiple reviews of the Act and the Integrity Commissioner's functions have recently been undertaken and to avoid further duplication with the upcoming Open Government reform process, it is currently intended to defer the strategic review. The Open Government reform process will identify a new date for the strategic review to be conducted and I will provide further advice to you on this matter in due course.

The only public manifestation of the Open Government reform process in 2013 was a forum held on 13 August. The only matter discussed by the participants that related to the Integrity Act was whether the definition of lobbyists should be broadened to include (in particular) entities constituted to represent the interests of their members (such as the Property Council) and more generally, in-house lobbyists. The forum was told the Government hoped to advance the issues raised by the end of the year – that is, 2013.

On 17 October 2013 I wrote to the Premier to make a submission. In it I dealt with the lobbyists issue, and also with my role as an integrity adviser, a role that had been questioned in a submission by a central government agency to the Callinan/Aroney review of the Crime and Misconduct Act, but had been supported by the Callinan/Aroney report (as mentioned in my annual report for 2012-13).

In this submission I again mentioned the Strategic Review, pointing out that the advantage of the review was that (unlike the Open Government review) it had defined terms of reference about which the Minister would have to consult both the Integrity Commissioner and the Parliamentary Committee.

The Premier responded to that submission on 5 December 2013, saying the Government proposed to release a policy paper for public consultation which would address the issues raised at the forum as well as outstanding matters relating to the operation of the Act. The Government, he said, would outline its preferred position in relation to these matters (including the Integrity Commissioner's role) in the Open Government policy paper.

Unknown to me, the Premier advised the Parliamentary Finance and Administration Committee in August 2013 that the strategic review would be deferred, and later advised it that the department was taking steps to engage a strategic reviewer to conduct and complete the review as soon as practicable, to allow me to be consulted as part of the review during my term of office. I learnt of these developments from the Committee's report No. 44 – "Oversight of the Integrity Commissioner 2013" – tabled in Parliament on 5 June 2014. As the Committee also noted, the Government is required to consult the Integrity Commissioner and the Committee before a reviewer is appointed about the appointment and the terms of reference for the review.

As I conclude my term in office today I am unaware of any action that has been taken to advance the strategic review.

## Raising awareness

One of the functions of the Integrity Commissioner set out in section 7 of the Integrity Act is to raise public awareness of ethics or integrity issues by contributing to public discussion of those issues relevant to the Commissioner's functions. This is done in a number of ways, including by making speeches and delivering papers to interested organisations. During the period under review I spent some time preparing a paper on "Nepotism, patronage and the public interest", assisted by the Government Research and Information Library (GRAIL) which conducted a literature search on nepotism at my request. Before it was finished I was invited to present a paper at the launch of the T. J. Ryan Foundation, a think tank funded by some Queensland trade unions. I used the occasion to present an edited version of the paper, which I simultaneously published on the Integrity Commissioner's website.

The speech was misreported by Australian Associated Press, and that report was picked up and used by News Ltd and The Australian. It falsely claimed that I said that more must be done to prevent nepotism and cronyism in the public sector and more safeguards were needed to ensure chief executives were employed on merit alone. Several days later, on a Sunday, I received an extraordinary phone call from the Premier's chief of staff, Mr Ben Myers, attacking me for having criticised the government and saying "we" could no longer have faith in my integrity. I pointed out that he was basing his and the Premier's concerns on a false and misleading report of what I had said. I said he should read what I actually had said, which he could access on the Integrity Commissioner's website. I said I would write to the Premier, setting out the facts. This is the letter I wrote:

> 3 March 2014
>
> Hon Campbell Newman MP
> Premier of Queensland
> Level 15, 100 George Street
> BRISBANE QLD 4000
>
> Dear Premier
>
> I was disturbed yesterday to receive a phone call from Ben Myers, your chief of staff, in which he complained about a speech I gave last Thursday which he said was critical of the Government. As you will see, it is unnecessary for me to deal with each of the matters he raised, because they were based on a false premise. I want to make it very clear that nowhere in the paper I wrote was there any criticism of the Government.

I gathered from what he said that you and he based your views about what I had supposedly said on an AAP report (which I **attach**) that was reproduced by *The Australian* and on the news.com website. That report was false in many respects. It began:

> **QUEENSLAND'S integrity commissioner says more must be done to prevent nepotism and cronyism in the public sector.**
>
> Dr David Solomon says proper safeguards are needed to ensure chief executives and directors-general are employed on merit alone.

Both those statements were wrong. I said neither. They are contrary to what I was suggesting.

The "history" reported in paragraphs six to nine of the report were added by the reporter. They were not in my paper, or the speech, which was an edited version of the paper. I did not make the statement reported in the third last paragraph.

A much fairer report of what I said was published on the *Brisbane Times* website on Friday. I **attach** a copy. I also **enclose** a copy of the full speech which was published on the Integrity Commissioner website several hours before I delivered the speech.

But I reproduce here the four concluding paragraphs of my paper and speech. You will see that there is no basis for the complaints Mr Myers expressed.

> The fact is that the roles and relationships of and between Ministers and Chief Executives of the public services in Australia have changed considerably, perhaps fundamentally, in the past two or three decades. And this may well mean that there are some circumstances in which it may be perfectly acceptable for a Premier or Prime Minister to make a patronage appointment because trust and/or commitment and/or loyalty etc may be as important (or more so) as merit in delivering the best performance by government – that is, by elected and appointed officials jointly. We may need to recognise that there is such a thing as 'good patronage'. We may need to change the rules and/or make them more flexible.
>
> If that is so, it is no longer the case that there should be 'reform of public sector appointments so that merit is the overriding consideration rather than nepotism and cronyism'. That quotation is from the Liberal National Party's submission to the Bligh Government's discussion paper on integrity and accountability in Queensland in 2009 and that policy is already required by the Public Service Act. Rather we might need to consider a question that the same submission also posed: 'Should Government/political appointments be subject to Parliamentary probity or scrutiny by an independent body?'
>
> That is already the case in relation to various integrity officers in Queensland, where the relevant Parliamentary committee is involved in the appointment process.
>
> But it is not the case with the appointment of Directors-General and other Chief Executives. If we are to permit and favourably sanction the exercise of 'good patronage' do we need to adjust the system to provide more openness and transparency, in ways such as those mentioned in the LNP submission? I think it time these issues were examined and proper safeguards adopted.

There are two other matters Mr Myers raised with me to which I should respond.

First, Mr Myers seems to say that I was at fault because the Opposition Leader was quoted in the article. To this I can only say that I have no influence over which people reporters ask for comments and none at all over what those people say, or what is then reported.

Second, Mr Myers said I was at fault in speaking to a Labor Party group. I was told that the TJ Ryan Foundation is an independent think tank with some trade union funding. But in any event I speak to many groups of various political, professional and other natures. What I say is not influenced by the audience which I address – other than discussing matters of interest to that audience. As you know, I spoke to the incoming Ministers, at your request, shortly after the election of your government in March 2012.

The Integrity Act says one of my functions is –

> to raise public awareness of ethics or integrity issues by contributing to public discussion of these issues relevant to the integrity commissioner's functions.

In my view the TJ Ryan Foundation was an appropriate forum for the speech I gave.

There is one other matter I should address. Mr Myers said if I had any complaints about the government I should have raised them with you, at the time. As I said, there were no such criticisms in my speech. I have been concerned for some time, however, about the general issue of nepotism and patronage and began researching it in the middle of last year with a view to preparing a paper on it, which I hoped would contribute to raising public awareness of the integrity issues involved. I think the paper does that, notwithstanding AAP's misreporting of it.

Yours sincerely

**Dr David Solomon AM**
**Queensland Integrity Commissioner**

That was provided to the Premier's office on 3 March 2014. I received no reply (and no apology from Mr Myers for his ill-informed, abusive rant against me).

On 1 July 2014 the Premier wrote to congratulate me on successfully concluding my term as Queensland Integrity Commissioner. He said, "You have discharged your function as Integrity Commissioner in a considered and impartial manner."

## Correcting the record

The Integrity Act imposes a high level of secrecy on the work of the Integrity Commissioner in providing advice to designated persons. It also provides for "authorised disclosures" in various circumstances detailed in sections 25 to 39. The Integrity Commissioner may not make public the name of a designated person who has sought advice or the advice that was given. However the person who has been given advice may disclose it to anyone, and may make it public.

For some time I have been concerned about what I should do if a person makes public advice that they have received, but does so in a way that does not reflect that advice accurately. Twice in the past two years I have had to consider what action I should take when my role or my advice may have been misrepresented by a requester. In each case what I did was take up the matter with that requester, who then settled the problem to my satisfaction. Ultimately, it seems to me that the only recourse open to the Integrity Commissioner if such an outcome is not reached is to

decline to provide any further advice to that person under s. 21(4)(a)(ii) or s. 23 (4)(a)(ii), because the giving of that further advice would not be in keeping with the purpose of the Act.

## Declarations of interest

The Integrity Act provides in s. 72C that various statutory offices must provide a copy of their declarations of interest to the Integrity Commissioner. Chief executives are required by the Public Service Act, s. 101, similarly to provide copies of their declarations of interest to the Integrity Commissioner. The Integrity Act requires the Integrity Commissioner to include in the annual report details of compliance by those statutory officers and chief executives with these requirements.

But that is all. Neither Act indicates what then happens with those declarations, though the Archives Act requires that they be retained by the Integrity Commissioner.
There may be a misunderstanding (this has emerged in a few cases in the recent past) that in receiving the declarations the Integrity Commissioner in some way endorses the interests or arrangements set out in them. That is not so. It is certainly not the case that the fact that the Integrity Commissioner has seen a declared interest means that the person could not, or does not, have a conflict of interest.

In 2010, I suggested to the then government that the Integrity Commissioner should be given authority to examine the various declarations and to raise with their authors any issue about possible conflicts of interest the Commissioner thought might arise from the contents of the declaration. I also suggested that if such conflicts could not be resolved the Commissioner should be able to raise the matter with the responsible Minister. (At that time the Integrity Act did not include the requirement for statutory officers to provide a copy of their declarations of interest to the Integrity Commissioner.)

The Department of the Premier and Cabinet agreed and because amendments to the *Integrity Act* were scheduled to be introduced into Parliament a few days later, decided that an amendment incorporating this proposal should be introduced during the Committee stages of the Bill.

Meanwhile the Explanatory Notes were changed to reflect the contents of the proposed amendment.

The Notes said, at p. 34:

> The provision of these statements of interests to the independent monitor of integrity standards for the Queensland Government, the Integrity Commissioner, will allow independent review of possible conflicts between an office holder's public duties and private interests. If the Integrity Commissioner identified a conflict of interest or possible conflict of interest through a statement provided by a statutory office holder under this Act, or by a chief executive in accordance with section 101 of the *Public Service Act 2008*, the Integrity Commissioner would be able to raise the conflict or potential conflict directly with the officer involved. Where identified conflicts are not resolved, the Integrity Commissioner would also be able to raise the conflict, or potential conflict, with the relevant Minister, who would also have been provided with the statement in accordance with the requirements of the Acts.

However because of the way the Parliament dealt with the Bill there was no opportunity to introduce the amendment. I subsequently raised the issue again, in response to a review of the Integrity Act conducted in 2011, and recommended that the amendment should be revived and included in the next amendments to the Integrity Act. However no such amendment was introduced.

In March 2014 I raised this issue again with the Department of the Premier and Cabinet. To date, nothing has been done to resolve this matter.

For completeness I note now that in relation to Members of Parliament, who make declarations of interest to the Parliament, MPs may request a meeting with the Integrity Commissioner and seek advice about ethics or integrity issues relevant to the MP for or in the register of Members' interests or the register of related persons' interest. In addition, the Integrity Commissioner is required by the Ministerial Code of Conduct to undertake random checks of the compliance by Ministers and Assistant Ministers with that Code including their declarations of interest.

## Registration of lobbyists

The Integrity Commissioner became responsible for the Lobbyists Register on 1 January 2010, when the Integrity Act came into force. At that point, there were 65 registered entities, with 188 registered lobbyists having 695 clients. As at 30 June 2014, the Register contained the names of 153 registered entities, 315 registered lobbyists and 1,757 clients.

This table shows the way the registration figures have changed.

| Date | Registered Entities | Registered Lobbyists | Clients (Current and previous combined) |
|---|---|---|---|
| 01/01/2010 | 65 | 188 | 695 |
| 30/06/2010 | 97 | 225 | 1,332 |
| 30/06/2011 | 134 | 350 | 2,815 |
| 30/06/2012 | 154 | 374 | 2,700 |
| 30/06/2013 | 159 | 379 | 2,835 |
| 30/06/2014 | 153 | 315 | 1,757 |

## Requests from designated persons

The number of requests for advice from designated persons continues at a relatively high level. There were 41 such requests received in 2013-14. In my five years as Integrity Commissioner the number of requests in each year were 57, 40, 67, 68 and 41. The number of requests received by my two predecessors over the previous 10 years averaged about 28. A detailed breakdown is provided in a later section of this report.

Most requests for advice were answered in about 24 hours. Some took longer because I needed further information from the person making the request, or because a designated person needed to obtain permission from their chief executive to make the request.

These comments on my performance of this function are necessarily expressed in a generalised and unspecific manner. This is dictated by the requirement in the *Integrity Act* that the annual report "must not disclose information likely to identify a specific request for the Integrity Commissioner's advice on an ethics or integrity issue, including information likely to identify" anyone requesting advice or about who advice was requested – s. 85 (3).

Additionally I received 24 requests for advice about lobbying issues. These requests are not necessarily "advice on ethics or integrity issues" of the kind specified in chapter 3 of the Integrity Act, though a few were. Some requests were not from designated persons, but from people concerned with lobbying. As noted later, the Integrity Commissioner is also asked to provide advice about other matters, such as proposed amendments to legislation. Again, this is mostly not "advice" of the kind specified in the Act, but an opinion.

### Meetings with MPs

Part 3 of the Integrity Act provides that Members of the Legislative assembly may request a meeting with the Integrity Commissioner relating to their declarations of interest, and particularly as to whether any conflicts of interest might arise. Although the Act provides that advice may be given orally in these meetings, it has been my practice to inform MPs that I would only provide them with formal advice in writing (see the section below, "Providing advice"). In fact it is rare for MPs to seek formal advice about matters arising from their declarations of interest. These meetings normally only last five to ten minutes. There were only a few meetings with MPs in 2013-14.

### Requests and meetings concerning lobbying

I received and responded to 24 requests for advice about lobbying. Some of these requests were from designated persons, and some of these requests actually raised integrity issues. I made a presentation on lobbying to officers of two government agencies.

### Other presentations and meetings

I had meetings and attended workshops or conferences with a variety of organisations in relation to both integrity and lobbying matters.

This year I had no meetings with local government in relation to lobbying.

I made a submission to a NSW Legislative Council Select Committee on Ministerial Propriety, mainly about the doctrine of individual ministerial responsibility, but also on conflicts of interest issues, lobbying, codes of conduct and ministerial codes.

## The Integrity Act - other formal matters

### (a) Providing advice

Section 15 of the Act requires that all requests for advice by designated persons must be in writing, and s. 21 stipulates that the Integrity Commissioner must provide such advice in writing. Section 23 provides an exception to this system. It provides that when a Member of the Legislative Assembly has a meeting with the Integrity Commissioner to discuss ethics or integrity issues arising from the declaration of interests they have made to the Parliament on behalf of themselves or a related person, they may seek advice orally or in writing and that advice may be given orally or in writing. It has been my invariable practice, however, that when a Member of the Legislative Assembly does request such advice, I ask that it be put in writing, and I provide my advice in writing. This is to ensure there can be no doubt about the facts upon which the advice is provided, or the nature of the advice that is given. Very few interviews with Members of the Legislative Assembly have resulted in the need for a request for advice being put in writing.

I occasionally have discussions, in my office or over the telephone, with non-parliamentary designated persons about matters they wish to raise that may or may not involve an ethics or integrity matter. If it appears to me that an issue does arise, I always tell them that I can only give them advice in writing in response to a request for such advice in writing. I am not permitted by the Act to give them oral advice, and nothing that I may say to them can be taken to be formal advice.

### (b) Requests and meetings concerning lobbying

As indicated above, I received and responded to 24 written requests for advice about various aspects of the lobbying provisions of the *Integrity Act*, both from lobbyists and from government representatives.

### (c) The Integrity Commissioner's work-load

For the whole of the 2013-14 year I have been employed on the basis that I would carry a workload that was 80 per cent of full-time. That is a reasonably accurate reflection of what has occurred.

### (d) Relations with Parliamentary Committee

I have had two meetings with the Parliament's Finance and Administration Committee, which has oversight jurisdiction of the Integrity Commissioner. The Hansard record of these meetings has been tabled in the Parliament.

### (e) Declarations of interest by statutory office holders and chief executives

Section 85(2) of the Integrity Act requires the Integrity Commissioner to provide details of compliance by statutory office holders and chief executives of departments with the respective requirements of s. 72C of the Act and s. 101 of the *Public Service Act 2008* to give the Integrity

Commissioner statements and written advice. These sections deal with declarations of interest by statutory office holders and chief executives to a Minister and to the Integrity Commissioner. I can report that, as at 30 June 2014, all statutory office holders and chief executives had complied with the requirements of the Act.

### (f) The Integrity Commissioner's declarations

In accordance with s. 80 of the Act I have provided the Speaker with my own declaration of interests and with a declaration covering a related person (my wife) along with several amendments.

### (g) The Integrity Committee

Since 2001, an informal meeting has been convened three or four times a year of what is known as the Integrity Committee. Those invited to attend are the Chair of the Crime and Misconduct Commission, the Auditor-General, the Ombudsman and the Integrity Commissioner. Since 2005 the Information Commissioner has also attended. There were three meetings of the group in 2013-2014.

### (h) Office location

The office of the Integrity Commissioner is on the 13th floor of 53 Albert Street, Brisbane. The Public Service Commission is on the same floor and provides accounting and some technical services to my office. Computer services are provided by the Department of the Premier and Cabinet.

## Summary of requests

| | |
|---|---|
| Premier and other Ministers | 8 |
| Assistant Ministers | |
| Other MPs | 5 |
| Directors-General | 13 |
| Other designated persons | 15 |
| DESIGNATED PERSONS | 41 |
| Lobbying – formal advice | 24 |
| **FORMAL ADVICE 2013-14** | **65** |

## Issues considered

The preceding table lists the source of the requests for advice received in the 2012-2013 year. The Integrity Act states that my report must not disclose information likely to identify a specific request for my advice on an ethics or integrity issue, including information likely to identify an individual who requested advice, or about whom advice was sought. The statistics this year once again combine any requests that the Premier may have made with requests from other Ministers.

Notwithstanding the secrecy provisions in the Act concerning the requesting of advice and the advice itself it is possible to indicate the general nature of the issues that have been raised by most requests during the year.

Most requests for advice concerned conflicts of interest of various kind, some of which are detailed below. There were also a significant number of requests for advice about restrictions that apply when people cease to hold their current positions and move to other, private, employment.

The conflicts issues included:

- conflicts of interest about post separation employment
- conflicts of interest arising from the interests of relatives
- conflicts of interest arising from share holdings
- conflicts of interest of staff
- conflicts of interest arising from MP's constituency interests.

## Contribution to public awareness and understanding of ethics or integrity issues

One of the functions of the Integrity Commissioner is "to raise public awareness of ethics or integrity issues by contributing to public discussion of these issues relevant to the Integrity Commissioner's functions" – s. 7(1)(d) of the Integrity Act. As my immediate predecessor, Gary Crooke QC, noted in his final annual report, this is not a mandate to comment at large on any matter of public interest. What the Integrity Commissioner is required to do is discuss "issues relevant to the Integrity Commissioner's functions". That said, the mandate is reasonably broad. Ethics or integrity issues are involved in a wide range of matters concerning government structures, practices and policies. As noted earlier, I made a submission to a NSW Legislative Council Select Committee about ministerial propriety.

There are a number of ways in which the Integrity Commissioner may contribute to the relevant public discussion. Perhaps the most basic is by making information available to anyone who is interested through the website, www.integrity.qld.gov.au. This site was opened on 6 April 2001. It was updated in the first half of 2011 and given a fresh look. Much of the material that was on the site was rewritten, to reflect changes that were brought about in part by the enactment of the Integrity Act. It also acquired a completely new section, dealing with lobbyists. The Lobbyists Register in now published on the site and is searchable for registered entities, employed lobbyists and organisations that employ lobbyists to lobby for them. An upgrade for this part of the website has been made, allowing lobbyists to alter their own entries on the register. There is also a section recording all lobbying contacts by lobbyists.

The website includes papers and presentations by Integrity Commissioners past and present, and the most recent annual reports of the Integrity Commissioner. In the past year there have been more than 7,600 visits to the website, and 23,000 page views.

| Date range | No. Visits to website (year) | No. visits to website (monthly average) | No. page views (year) | No. page views (monthly average) |
|---|---|---|---|---|
| 1 July 2013 – 30 June 2014 | 7,626 | 635.5 | 23,000 | 1,916 |

As indicated earlier, I have given a large number of papers at conferences, in Queensland and interstate.

## Staffing for the Integrity Commissioner

Throughout the 2013-2014 financial year, I have been employed on a part-time basis, the equivalent of four days a week, though I am generally in the office (or travelling on official business) on most working days.

The Integrity Commissioner has the support of a full-time Executive Coordinator. The position has been filled for the past 10 years by Mrs Mattea Slinger. I am grateful for her extremely capable support.

In January 2010, two additional positions were created within the office to maintain the Lobbyists Register and other matters concerning lobbying. Deborah Clark-Dickson is the Principal Policy Officer (Lobbying). Craig Hunter is the Research Support Officer (Lobbying) and was responsible for developing the new inter-active website that enables lobbyists to directly change their details on the register and for the new part of the site where lobbyists report the lobbying activities. The competence and dedication of Deborah and Craig has ensured that the Lobbyists Register is kept accurate and up-to-date. Most requests for registration are dealt with within two days.

## Compliance disclosures

The Code of Conduct for the Queensland Public Service, approved by the Premier for adoption, if appropriate, by public service agencies, is the Code to which the Integrity Commissioner and staff adhere.

A copy of the Records Retention and Disposal Schedule (QDAN 629 v.3) developed for the Queensland Integrity Commissioner and approved by the Queensland State Archivist on 29 November 2010 is available on the Queensland State Archives website, www.archives.qld.gov.au.

No consultants were used.

No public interest disclosures under the *Whistleblowers Protection Act 1994* or the *Public Interest Disclosure Act 2010* were received by the office.

## Right to Information

One request was received concerning a lobbying matter. The decision was appealed by the requestor to the Information Commissioner.

A request received in the previous financial year was finalised when the applicant withdrew its applications for external review in July 2013.

No information may be provided about the Integrity Commissioner's activities under chapter 3 of the Act – see schedule 1 – "Documents to which this Act does not apply" - of the *Right to Information Act 2009*. Section 6 of that schedule says –

> **6 Documents received or created by integrity commissioner for *Integrity Act 2009*, ch 3**
>
> A document created, or received, by the Queensland Integrity Commissioner for the *Integrity Act 2009*, chapter 3.

This Annual Report, the Privacy Plan and Statement of Affairs of the Integrity Commissioner are available on the website, www.integrity.qld.gov.au.

# Financial statement

**Office of the Integrity Commissioner**
**Revenue and Expenditure**
**For the year ended 30 June 2014**

| | 2013/14 | 2012/13 |
|---|---|---|
| **Revenue from ordinary activities** | | |
| Output revenue | 708,927 | 726,473 |
| **Total revenue from ordinary activities** | 708,927 | 727,473 |
| | | |
| **Expenses from ordinary activities** | | |
| **Employee Expenses** | | |
| Salaries and wages and related costs | 403,313 | 402,028 |
| Salary-related taxes | 27,753 | 24,748 |
| Superannuation | 49,482 | 49,187 |
| Other employee expenses | 20,102 | 2,616 |
| **Total employee expenses** | **500,649** | **478,578** |
| | | |
| **Supplies and services** | | |
| Building services | 68,858 | 66,732 |
| Consumables | 1,465 | 1,464 |
| Corporate technical services SSP | 88,020 | 88,920 |
| Consultancy and contractors | - | 46,403 |
| Depreciation | 973 | 973 |
| External computer charge | 105 | 11,263 |
| Marketing and public relations | 21,682 | 132 |
| Minor plant and equipment | - | 364 |
| Other administrative expenses | 446 | 78 |
| Other supplies and services | 3,336 | 1,839 |
| Parking | 8,079 | 9,049 |
| Professional services | - | - |
| Telecommunications costs | 3,082 | 4,598 |
| Travel costs | 12,233 | 16,080 |
| **Total supplies and services** | **208,279** | **247,894** |
| | | |
| **Total expenses from ordinary activities** | 708,928 | 726,473 |
| **Net Operating Result** | - | - |

The Office of the Integrity Commissioner is an independent entity created by Statute.

For reasons of economy and efficiency, funding and administrative support is received through the Public Service Commission. Corporate services and asset replacement have been provided through the Public Service Commission.