

## Common Questions & Answers in relation to post-separation employment from public service: general guidance for those who are leaving, or have left, a public service role.

The office of the Queensland Integrity Commissioner has developed this guide, '*Common Questions & Answers in relation to post-separation employment from public service: general guidance for those who are leaving, or have left, a public service role*' (Post-separation Guide), based on the most common questions the QIC has been asked by those who are leaving, or have left, a public service role.

It is not specifically directed at Ministerial staff or persons to whom the *Public Service Act 2008* does not apply, although similar restraints and issues will apply.

As well, a separate guide has been developed for former senior government representatives such as former Ministers.

The Post-separation Guide should be read in conjunction with '*Lobbying: Common questions & answers*', available from: [Lobbying: Common questions and answers \(integrity.qld.gov.au\)](https://www.integrity.qld.gov.au/lobbying-common-questions-and-answers)

Whilst we hope you find the Post-separation Guide useful; however, it is generalist in nature and the answers do not constitute legal advice.

Further, as discussed below, the Queensland Integrity Commissioner's (IC) role is limited to 'ethics and integrity' issues, which does not include providing legal advice or advice on the interpretation of specific post separation obligations.

### Relevant standards

- *Criminal Code Act 1899* (Qld) (Criminal Code)
- *Public Sector Ethics Act 1994* (Qld) (PSEA) sections 6, 8, and 9
- *Public Service Act 2008* (Qld) (PSA) sections 102, 186
- *Code of Conduct for the Queensland Public Service* (Code of Conduct) Parts 1.1, 1.2 and 4.2
- *Integrity Act 2009* (Qld) (the Act) sections 10(1), 20A, 70 and 71
- '*Post-separation employment provisions*', Queensland Public Service Commission, January 2011 (the PSC Policy),<sup>1</sup> and
- '*Post-separation employment, When employees move to the private sector*', Crime and Corruption Commission, July 2017 (the Advisory).<sup>2</sup>

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<sup>1</sup> <https://www.forgov.qld.gov.au/documents/policy/post-separation-employment-provisions>.

<sup>2</sup> <http://www.ccc.qld.gov.au/research-and-publications/publications/prevention/post-separation-employment>.

## Why is it important to consider dealings between public service employees and former senior government representatives?

Maintaining public trust and confidence in those who serve, or who have served, is vital.

Post-separation restraints exist to promote transparency and accountability, and to prevent former employees and former senior government representatives from taking personal advantage of specific relations or information acquired through their former positions.

Former public servants, pursuant to their contract of employment, the PSEA, and their Codes of Conduct, must abide by the Post-Separation Employment Provisions.<sup>3</sup> Moreover, current public sector workers are also similarly required to ensure that their interactions with you are consistent with your ongoing obligations.<sup>4</sup>

## What are the main restrictions?

There are specific obligations on former public service employees and former senior government representatives in relation to business meetings and lobbying.<sup>5</sup>

## What are the quarantine periods?

The relevant quarantine periods are set out in Appendix 1 to the PSC Policy.

## Am I a former senior government representative?

A *'former senior government representative'* as defined in the PSC Policy, includes a *'public sector officer, who was .... a senior executive or senior executive [SES] equivalent'*.

This also includes the chief executive and senior executives of GOCs.<sup>6</sup>

## What is meant by a 'business meeting'?

The PSC Policy defines *'business meetings'* as, *'meetings which have a commercial focus and have been convened to discuss matters which have a profit motive in mind.'*

## Do the restrictions apply to ALL business meetings?

The post-separation quarantine restrictions do not automatically apply to every meeting. Whether a restriction applies to a particular meeting will depend on the nature and purpose of the meeting.

The restrictions also do not apply to meetings outside the relevant timeframes, or that relate to official dealings which occurred outside the prescribed timeframes.

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<sup>3</sup> Post separation Employment Provisions, para 4.1.2.

<sup>4</sup> Post separation Employment Provisions, para 4.1.1.

<sup>5</sup> For information about Lobbying, please see the Lobbying Q&A Factsheet.

<sup>6</sup> Post Separation Employment Provisions, p.4.

Further, there is some uncertainty as to whether the post-separation restriction on ‘business meetings’ in the PSC Policy apply to Government Owned Corporations or Government entities. It may turn on the particular facts of the circumstances.

The relevant time frames are set out in the PSC Policy, Appendix 1.

In the event of any uncertainty, we recommend you seek legal advice and/or seek the agreement of your former government employing entity as to your proposed involvement.

### What is meant by ‘official dealings’?

The meaning of ‘official dealings’ is defined in the PSC Policy as follows:

#### *‘5. Definitions*

...

*Official dealings are specific policies, procedures, transactions, negotiations or cases in which former senior government representatives previously acted for, or provided advice to, the government (either through the CEO or the Minister). Simply viewing documents, such as Cabinet submissions and decisions, would not constitute having had “official dealings” on a matter. However, the confidentiality provisions of the Queensland Cabinet Handbook and Public Service Commission Directive No. 2/09 - Employment Separation Procedures would still apply.’<sup>7</sup>*

Noting that it is a legal question, the restrictions on ‘official dealings’ are intended to reflect your overall duties.

Any matters in relation to which you attended any briefings, however preliminary or for which you received confidential papers, may also be matters in which you had ‘official dealings’.

However, whilst merely sighting a document may not amount to official dealings on that matter, the information would still be subject to confidentiality requirements for which it is a criminal offence to unlawfully disclose or use.

You will therefore need to remain vigilant and should err on the side of caution about whether any employment outside of the public sector also touches on a matter in which your senior public service involvement amounts to ‘official dealings’.

It may also be useful to discuss such issues with public sector employees with whom you may be meeting to ensure that potential issues are addressed early in any ongoing business relationship.

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<sup>7</sup> Post Separation Employment Provisions, p. 5.

## Do the restrictions apply if I take up a government appointment?

The PSC Policy explains that the restriction on business meetings involving former senior government representatives is not intended to apply where the former senior government representative has taken up a government appointment. This is seemingly only reference to Queensland Government appointments or entities.

## What if I have not yet resigned but am in discussions with a prospective employer?

While employed in the public service, you are obliged to comply with all legislative and policy requirements relating to ethical behaviour and managing conflicts of interest, including that you, *'undertake that any conflict of interest issue will be resolved or appropriately managed in favour of the public interest'*.<sup>8</sup>

In some circumstances, engaging with a prospective employer may be a personal interest that might be perceived as creating a conflict of interest. That is, your interest in securing the new role may compromise the proper performance of your duties where you are involved in a matter that might materially affect your prospective employer.

The PSA<sup>9</sup> and the Code of Conduct require public service employees to disclose a personal interest that could, now or in the future, be seen as influencing the performance of our duties, and participate in developing a resolution strategy to ensure any conflict of interest can be resolved in the public interest.<sup>10</sup>

Where you are considering prospective employment outside of the Queensland government, consider the nature of the roles you are looking at and any intersection with your current employment. Comply with your disclosure obligations under the Acts and the Code of Conduct, talk to your manager and ethics officer, where appropriate, and take any necessary steps to manage the conflict. This may mean that you need to remove yourself from discussions and deliberations in relation to a relevant matter.

## What are my obligations regarding confidentiality after my public service employment ends?

Confidential information is information which is not in the public domain, and which would be regarded as confidential.

It does not need to be in writing and there is no time limit.

You are prohibited under the Criminal Code from disclosing confidential information (including commercial-in-confidence information). Further, whilst you are a public servant, as well as the Criminal

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<sup>8</sup> PSEA, section 6.

<sup>9</sup> Section 186 of the PSA creates an obligation to disclose a conflict of interest for non-chief-executives. Section 102 creates the equivalent obligation for chief executives.

<sup>10</sup> Code of Conduct part 1.2.

Code, other legislation and the Code of Conduct also prohibit you from disclosing confidential information (including commercial-in-confidence information).

You may also have fiduciary and contractual duties (general law duties) to maintain confidentiality post separation.

Unlike the post separation quarantine periods for business dealings and lobbying, there is no time limit to the prohibition on disclosing and/or using confidential information.

The range of confidential information and possible breaches are many, and again it is necessary for you to remain vigilant. You should also preferably avoid or carefully manage situations where your future duties would put you at inherent risk of breach.

### What steps can I take to prevent breaching my obligations after my public service employment ends?

It is your responsibility to act ethically and to familiarise yourself with any ongoing obligations that you have, including any legal obligations imposed as part of your employment / separation contract/s.

As well, you are obliged to preserve the confidentiality of information obtained in the course of your public service employment.

Strategies that may help you identify and prevent a potential breach of confidentiality or conflict of interest (that in some cases may also amount to corrupt conduct) include:

- while the information remains fresh in your mind: compile a list of relevant past agencies and government representatives (including ministerial staff) you have had official dealings with over the last two years; and consider any potential issues that may arise in a new role
- declare to any prospective employers that you have post-separation obligations around confidentiality of information and ethical use of past official dealings and contacts
- if meeting with a government representative, prepare an agenda to ensure matters are carefully articulated prior to the meeting and seek out relevant information
- absent yourself from meetings and matters where potential breaches may arise
- err on the side of caution if there is any uncertainty, and
- seek advice if you are uncertain.

### Limited role of the Queensland Integrity Commissioner

Again, the IC has only a very limited role in relation to the post-separation obligations, and this is not well understood.

The role of the IC is limited to providing advice to those in public service on ‘ethics and integrity’ issues, only.<sup>11</sup> And, for those who have left the public service, the IC only provides advice relevant to section 20A(2) of the Act:

**20A Request by former designated person**

- (1) Within 2 years after ceasing to be a designated person, a person may ask for the integrity commissioner’s advice on an ethics or integrity issue involving the person that arises from a post-separation obligation.
- (2) In this section—  
*post-separation obligation* means—
  - (a) an obligation (including an obligation under an Act, contract of employment, directive, policy or code of conduct) that—
    - (i) applies to the person because the person was, but is no longer, a designated person; and
    - (ii) relates to contact with a government representative or Opposition representative; or
  - (b) an obligation applying to the person under section 70.

[Emphasis added]

To date, most requests for advice received by the IC in relation to post-separation matters have not primarily related to an ongoing ethical or integrity obligation under ‘... *an Act, contract of employment, directive, policy or code of conduct*’.<sup>12</sup>

For that reason, this Post-separation Guide has been put together and generally encompasses the full extent of the information on related policy and legislation the IC will provide to public service or former public service personnel.

This is because the IC does not provide:

- legal advice, or
- advice on legal interpretation, or
- advice about current or ongoing legal obligations arising from employment or other contracts, Acts, directives, policies, or codes, or
- advice on the application of a policy, or
- advice on process, administrative matters, or on matters that fall under the jurisdiction of other agencies or departments, or
- recommendations as to when to engage a solicitor or which solicitor you might engage.

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<sup>11</sup> For elected officials this extends to include advice on interest issues.

<sup>12</sup> Further, only advices deemed by the IC to be relating to a conflict-of-interest issue fall under the protective provisions of section 40 of the *Integrity Act 2009*. As well, the IC will not provide advice about managing conflict-of-interest issues to a former designated person where there is not a clear potential breach of an ongoing obligation under 20A(2)(a), or where the request relates to activity that is dealt with under Chapter 4, ‘*Regulation of lobbying activities*’.

In that regard, whether the post-separation restrictions apply to any particular work you might be considering undertaking, or are undertaking, is essentially a legal question that relates to your personal interests and your personal legal obligations, and the IC does not provide legal advice.

Your ongoing obligations post-separation in regard to any work you are undertaking, including conflict-of-interest management, are also essentially personal legal matters and the IC does not provide advice about current or ongoing legal obligations arising from employment or other contracts, Acts, directives, policies, or codes.

As well, the definitions and meanings of any terms contained within the *'Post-separation employment provisions'*, (Queensland Public Service Commission, January 2011) (PSC Policy), are essentially questions of legal interpretation or public policy matters, and the IC does not provide advice on such matters.

Consequently, if you have any questions about the post-separation restrictions and how they might apply to you or a new role you are undertaking, or in the event of any uncertainty as you navigate your post-separation obligations, you should:

- seek advice from your department prior to leaving, or
- and/ or seek legal advice (at your own cost) at any stage.

The Public Service Commission is also well placed if you have any questions about the general meaning and application of any terms in the PSC Policy.

### Further questions?

If you have any questions about the post-separation restrictions and how they might apply to you, you should:

- seek advice from your department prior to leaving, and/ or
- seek legal advice (at your own cost) at any stage.

The Public Service Commission is also best placed if you have any questions about the general meaning and application of any terms in the PSC Policy following your separation.

This publication, *'Common Questions & Answers in relation to post-separation employment from public service: general guidance for those who are leaving, or have left, a public service role'*, has been prepared by Dr Nikola Stepanov, Queensland Integrity Commissioner.

Copies of this publication can be obtained from [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au) or by contacting (07) 3003 2888.

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