

PART 1 - ADVICE ON ETHICS AND INTEGRITY ISSUES

1.1 Introduction

Under the *Integrity Act 2009*, the integrity commissioner may be asked by certain people to provide advice on an ethics or integrity issue.¹

When providing advice, the integrity commissioner must have regard to:

- approved codes of conduct and standards of practice under the *Public Sector Ethics Act 1994*
- ethical standards or codes of conduct adopted by the Legislative Assembly by resolution
- ethical standards or codes of conduct approved by the Premier for Ministers.²

The integrity commissioner may also have regard to other ethical standards that the commissioner considers appropriate.

The code or codes of conduct which are relevant to a particular request for advice will vary depending on who is seeking the advice.

1.2 Who can seek advice

The *Integrity Act 2009* specifies that a 'designated person'³ can seek advice from the integrity commissioner about an integrity issue involving that person.

An ethics or integrity issue is defined simply as 'an issue concerning ethics or integrity and includes conflict of interest issue'.⁴

The Act specifies the following categories of designated person:

- A member of the Legislative Assembly
- A statutory office holder
- A chief executive of a department of government or a public service office
- A senior executive or senior officer. S.15(2) of the *Integrity Act 2009* specifies that if advice is sought by a person in this category, they must at the time also give to the integrity commissioner a signed authority from their chief executive authorising the person to ask for the advice
- A chief executive or senior officer employed in a government entity,⁵ who is nominated by the Minister responsible for administering the entity
- A ministerial staff member who gives, or a person engaged to give, advice to a Minister or Assistant Minister
- A person or class of persons nominated by a Minister or Assistant Minister.

Persons or classes of person who have been nominated as designated persons⁶ are:

¹ See ss. 15 and 23 of the *Integrity Act 2009*.

² See ss. 21(3)(a) and 23(3)(a) of the *Integrity Act 2009*.

³ See s.12 of the *Integrity Act 2009*.

⁴ See s.9(1) of the *Integrity Act 2009*.

⁵ The term 'government entity' is defined in s.24 of the *Public Service Act 2008* as including departments, public service offices, agencies established under an Act, other declared entities and court registries. It does not include local governments, government owned corporations, courts or other bodies listed in s.24.

- Marine pilots – nominated by the Minister for Transport and Main Roads on 3 March 2006
- Persons employed in Queensland Health under the provisions of the *Health Services Act 1991* to an equivalent level of senior officer or senior executive under the *Public Service Act 1996* – nominated by the Minister for Health on 2 October 2007
- Queensland Government Trade Commissioners – nominated by the Minister for Transport, Trade, Employment and Industrial Relations on 15 September 2008
- Queensland Government Special Representatives for Trade – nominated by the Minister for Natural Resources, Mines and Energy and Minister for Trade on 1 May 2009
- an Adviser to the Queensland Government – nominated by the Minister for Natural Resources, Mines and Energy and Minister for Trade on 1 May 2009
- an Assistant Electorate Officer nominated by a Member of Parliament on 30 August 2009
- the interim CEO of a government business – nominated by a Minister on 6 July 2010.

The *Integrity Act 2009* makes specific provision for advice sought by the Premier. A request for advice from the Premier can extend to standard setting for ethics or integrity issues,⁷ as well as to an ethics or integrity issue (including a conflict of interest issue) generally. The Premier may also ask for advice in relation to any person who is or has been a designated officer, other than a non-government member.⁸

Ministers and Assistant Ministers may also seek advice about designated persons as specified in the *Integrity Act 2009*.⁹ In general terms, this power permits them to seek advice about statutory office holders, chief executives and senior officers relevant to their portfolio; and about ministerial staff or persons nominated by that Minister or Assistant Minister.

The Leader of the Opposition can ask for advice on an integrity issue concerning a non-government member who is a member of the political party to which the Leader belongs.¹⁰

A chief executive can ask for advice about an integrity issue involving a designated person employed in the relevant department or public service office.¹¹

1.3 Relevant Codes of Conduct

1.3.1 Members of the Legislative Assembly

1.3.1.1 Ministers and Assistant Ministers

The Ministerial code of conduct is set out as Appendix 1 to the Ministerial Handbook published by the Department of Premier and Cabinet.¹²

⁶ Individual positions have not been described with particularity to avoid identifying people who may have sought advice. With the exception of the last nomination, the nominations were all made prior to the commencement of the *Integrity Act 2009* on 1 January 2010, under a predecessor of s.12(1) of that Act, namely s.27 of the *Public Sector Ethics Act 1994*, as it then was. S.94 of the *Integrity Act 2009* is a transitional provision which continues those nominations in effect.

⁷ See s. 9(2) of the *Integrity Act 2009*.

⁸ See s. 16 of the *Integrity Act 2009*.

⁹ See s.17 and 18 respectively of the *Integrity Act 2009*.

¹⁰ See s.19 of the *Integrity Act 2009*.

¹¹ See s.20 of the *Integrity Act 2009*.

The code states that the Integrity Commissioner will undertake random checks of Minister/Assistant Minister compliance with the code, in accordance with section 16 of the *Integrity Act 2009* (which contemplates that the Premier can ask for the Integrity Commissioner's advice about ethics and integrity issues); and is to meet with each Minister and Assistant Minister at least once in each year for this purpose.

1.3.1.2 Other members of the Legislative Assembly

S.11 of the *Parliament of Queensland Act 2001* requires the Legislative Assembly to prepare and adopt, from time to time, Standing Rules and Orders for the conduct of parliamentary business.¹³ These Standing Orders govern the conduct of business and proceedings in the House and are to be read in conjunction with any Sessional Orders and the practices of the House.

Chapter 39 of the Standing Rules and Orders deals with 'Order and Conduct of Members'. This chapter sets out the expectations of the Parliament in relation to the conduct of Members in the House.

Chapter 40 of the Standing Rules and Orders deals with Declarations of Interest, and Chapter 41 deals with the Register of Interests.

The Members' Ethics and Parliamentary Privileges Committee¹⁴ (now the Ethics Committee) published a Code of Ethical Standards in September 2004.¹⁵ It deals with:

- disclosure of interest requirements
- the management of conflicts of interest arising in various situations
- the use of allowances
- the use of information
- the conduct of Members in the House
- the qualification and disqualification requirements of electoral laws
- the oath or affirmation of allegiance and office to be taken by Members
- Members' electorate office staff.

It also establishes a complaints procedure, and provides advice on resolving conflicts of interest.

1.3.2 Statutory office holders

Generally, statutory office holders are not appointed under the *Public Service Act 2008* and thus it might be thought that that Act does not apply to their employment. However, s.21 of that Act

¹² See The Queensland Ministerial Handbook – Governing Queensland, Sixth edition March 2014, available at <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/assets/ministerial-handbook.pdf>, retrieved on 30 March 2016.

¹³ Standing Rules and Orders of the Legislative Assembly, effective from 31 August 2004 (amended 16 February 2016) at <http://www.parliament.qld.gov.au/documents/assembly/procedures/StandingRules&Orders.pdf>, retrieved on 30 March 2016.

¹⁴ Established as the Ethics Committee under s.102 of the *Parliament of Queensland Act 2001*.

¹⁵ See <http://www.parliament.qld.gov.au/documents/committees/CLA/2009/CES2009.pdf>, retrieved on 30 March 2016. The current version of this document was first published in September 2004, and was most recently amended in May 2009.

provides that the offices listed in Schedule 1 of the Act are public service offices, and the head of each office is specified in the Schedule.

S.22(2) goes on to provide that the *Public Service Act 2008* and other Acts apply to a public service office mentioned in s.21(1)(a) and its public service employees as if—

- (a) the office were a department; and
- (b) the head of the office were the department's chief executive.

It follows that the Code of Conduct for the Queensland Public Service i.e. the code of conduct made under Subdivision 1, Division 2 of Part 4 (ss.11-12C) of the *Public Sector Ethics Act 1994* applies to these offices.

The offices are:

- The (now replaced) adult guardian appointed under the *Guardianship and Administration Act 2000*
- The anti-discrimination commissioner appointed under the *Anti-Discrimination Act 1991*
- The auditor general appointed under s.6 of the *Auditor General Act 2009*
- The general manager of the Building and Construction Industry (Portable Long Service Leave) Authority appointed under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*
- The (no longer existing) commissioner for children and young people and child guardian appointed under the *Commission for Children and Young People and Child Guardian Act 2000*
- The electoral commissioner appointed under section 20 of the *Electoral Act 1992*
- The family responsibilities commissioner appointed under s.8 of the *Family Responsibilities Commission Act 2008*
- The chief executive officer of the Gold Coast Waterways Authority, appointed under s.60 of the *Gold Coast Waterways Authority Act 2012*
- The industrial registrar appointed under the *Industrial Relations Act 1999*
- The information commissioner appointed under s.123 of the *Right to Information Act 2009*
- The chairperson of the Land Tribunal appointed under the *Aboriginal Land Act 1991*
- The chairperson of the Land Tribunal appointed under the *Torres Strait Islander Land Act 1991*
- The chairperson of the Mental Health Review Tribunal appointed under the *Mental Health Act 2000*
- The energy and water ombudsman appointed under the *Energy and Water Ombudsman Act 2006*
- The (now replaced) chief executive officer of the Office of the Health Quality and Complaints Commission appointed under the *Health Quality and Complaints Commission Act 2006*
- The Inspector General of Emergency Management appointed under the *Disaster Management Act 2003*

- The executive director of the Office of the Prostitution Licensing Authority appointed under the *Prostitution Act 1999*
- The director of the Office of the Queensland College of Teachers appointed under the *Education (Queensland College of Teachers) Act 2005*
- The parliamentary counsel appointed under the *Legislative Standards Act 1992*
- The (soon to be replaced) director of the Office of the Queensland Studies Authority appointed under the *Education (Queensland Studies Authority) Act 2002*
- The chief executive officer of the Public Safety Business Agency appointed under the *Public Safety Business Agency Act 2014*
- The chief executive of the Public Service Commission appointed under the *Public Service Act 2008*
- The public trustee of Queensland appointed under the *Public Trustee Act 1978*
- The commissioner appointed under the *Queensland Mental Health Commission Act 2013*.
- The chief executive officer of the Queensland Reconstruction Authority appointed under the *Queensland Reconstruction Authority Act 2011*.

However, there are many other statutory officers established under various Acts of Parliament. Unless those offices are held as, or in conjunction with, a position under the *Public Service Act 2008*, it is difficult to see how the Code of Conduct for the Queensland Public Service applies to them. This is because they do not appear to be caught by the definitions of ‘public service agency’ or ‘public sector entity’ set out in the *Public Sector Ethics Act 1994*, as discussed in the following section.

1.3.3 Chief Executives/Directors-General; and senior executives and senior officers

1.3.3.1 Departments, public service agencies and public sector entities

The term ‘chief executive’ is used by the *Public Service Act 2008* and thus as matter of law - though not common practice – replaces the more traditional term ‘Director-General’.

All chief executives, senior executives and senior officers are ‘public officials’ in a ‘public service agency’. Thus, under s.12H of the *Public Sector Ethics Act 1994*, they are bound by the code of conduct for the Queensland Public Service made under Subdivision 1, Division 2 of Part 4 (ss.11-12C) of that Act.

In an individual public service agency, the code may be supplemented by a ‘standard of practice’ made under Subdivision 2, Division 2 of Part 4 (ss.12D-12G) of that Act.¹⁶ Separate standards apply in Queensland Health and the Queensland Police Service.

The *Public Sector Ethics Act 1994* applies to two types of entities: *public service agencies* and *public sector entities*. These terms are defined as follows:

public service agency means any of the following—
 (a) a department;

¹⁶ Note that ‘public sector entities’ (i.e. the Parliamentary Service, universities, local government councils etc) are required to have their own individual codes of conduct made under Division 3 of Part 4 of the *Public Sector Ethics Act 1994*.

- (b) a TAFE institute or TAFE Queensland;
- (c) the administrative office of a court or tribunal;
- (d) an entity prescribed under a regulation that is not a public service agency.

public sector entity means any of the following—

- (a) the parliamentary service;
- (b) a local government;
- (c) a university, university college or agricultural college;
- (d) an entity established under an Act or under State or local government authorisation for a public, State or local government purpose;
- (e) an entity prescribed under a regulation;

but does not include any of the following—

- (f) a GOC;
- (g) a corporation owned by a local government, or a subsidiary of a corporation owned by a local government;
- (h) the following entities under the *Education (General Provisions) Act 2006*—
 - (i) a parents and citizens association;
 - (ii) a non-State school;
 - (iii) an advisory committee;
 - (iv) an international educational institution;
- (i) an entity prescribed under a regulation as a public service agency.

responsible authority, for a public sector entity, means—

- (a) for the parliamentary service—the Speaker; or
- (b) for a university or university college—the council of the university or university college; or
- (c) for a local government—the local government’s chief executive officer; or
- (d) for another public sector entity established under an Act—the Minister administering the Act; or
- (e) for another public sector entity—the Minister administering the entity.

Public service agencies are covered by the Code of Conduct for the Queensland Public Service. The Commission Chief Executive of the Public Service Commission has responsibility for the development and review of this code and this is approved by the Premier.

As a default, *public sector entities* are required to develop their own Codes of Conduct, with the chief executive of the entity responsible for its development. The code is then approved by the ‘responsible authority’. Who is the responsible authority depends on the entity – for example, for local governments, the local government CEO is the responsible authority.

Public sector entities have an alternative option and that is to apply the Code of Conduct for the Queensland Public Service by being prescribed through the *Public Sector Ethics Regulation 2010* as a ‘public service agency’. No local governments have been prescribed under the Regulation.

1.3.3.2 Government owned corporations (GOCs)

Most if not all GOCs are corporations under the *Corporations Act 2001* (Cth.). Directors and others are therefore bound by the provisions of that Act, in addition to their obligations under other Queensland laws and policies.

While the *Public Sector Ethics Act 1994* does not apply to GOCs there are a range of government policies and guidelines that affect the way they carry out their functions.

The principal relevant document is titled *Government Owned Corporations - Corporate Governance Guidelines for Government Owned Corporations*,¹⁷ which acknowledges that 'there is no single model of corporate governance which is appropriate for all GOCs. As GOCs vary in the size and scope of their business activities and their internal and external environment, it is not possible or desirable to create such a model.

Accordingly, the Guidelines establish reporting and disclosure obligations, and contain Corporate Governance Principles. These are a series of recommendations grouped under the following principles:

- Foundations of management and oversight
- Structure the board to add value
- Promote ethical and responsible decision-making. This includes recommendations that a code of conduct should be established 'in line with the best practice guide provided in Appendix A'; and draws attention to resources which should be considered in preparing a GOC's code of conduct (including the *Public Sector Ethics Act 1995* (sic))
- Safeguard integrity in financial reporting
- Make timely and balanced disclosure
- Respect the rights of shareholders
- Recognise and manage risk
- Remunerate fairly and responsibly

The Guidelines also incorporate an appendix titled 'Government Owned Corporations - Code of Conduct and Conflicts of Interest Best Practice Guide for Government Owned Corporations'.¹⁸ As the title indicates, this provides guidance to GOCs on the need for and content of a code of conduct; and on guiding principles applying to conflicts of interest and conflict of interest policies.

1.3.4 Ministerial and other office holder staff

The *Ministerial and Other Office Holder Staff Act 2010* governs the employment of staff employed in Ministerial offices, the office of the Leader of the Opposition, and the offices of other political office-holders. Part 3 of the Act deals with work performance and conduct, and Division 4 specifies the obligations of the relevant staff in relation to declarations and conflicts of interest.

In addition to the explicit declaration and conflict of interest obligations imposed by the Act, there is a code of conduct made under Part 3 of the Act.¹⁹ It provides required standards of conduct framed around the principles set out in s.16 of the Act, as follows:

- Acting honestly, fairly and in the public interest

¹⁷ Version 2.0, release date February 2009, available at <https://www.treasury.qld.gov.au/publications-resources/services/government-owned-businesses/documents/corporate-governance-guidelines.pdf>, retrieved on 30 March 2016.

¹⁸ Version 1.0, release date February 2009.

¹⁹ This is dated 23 February 2015. See <http://www.premiers.qld.gov.au/right-to-info/published-info/assets/code-of-conduct-ministerial-staff.pdf>, retrieved on 30 March 2016.

- Ensuring the effective efficient and appropriate use of public resources
- Interacting with public service employees respectfully, collaboratively and with integrity
- Observing all laws relevant to the staff member’s employment
- Ensuring the staff member’s personal conduct does not reflect adversely on the reputation of his or her employing member
- Complying with any code of conduct that applies to the staff member.

The code also provides guidance about issues such as what happens if it is breached.

S.17 of the Act requires staff members to comply with the ethics values set out in the *Public Sector Ethics Act 1994* to the extent that they are relevant;²⁰ and provides guidance about issues such as what happens if the code is breached.

1.4 Other possible standards to be considered

1.4.1 The ethics principles and values

S.4 of the *Public Sector Ethics Act 1994* establishes the ethics principles. It provides as follows:

4 Declaration of ethics principles

(1) The ethics principles mentioned in subsection (2) are declared to be fundamental to good public administration.

(2) The *ethics principles* are—

- integrity and impartiality
- promoting the public good
- commitment to the system of government
- accountability and transparency.

S.5 goes on to provide that in recognition of the principles, ethics values are to apply to public service agencies, public sector entities and public officials. S. 5(3) states that the values are intended to provide the basis for codes of conduct but are not legally enforceable in themselves.

Subsequent sections (ss.6-10) set out the ethics values, which are expressed in such a way as to give effect to the principles.

1.4.2 Work performance and personal conduct principles

As well as the obligation to comply with the ethics principles and values, and the relevant code of conduct, s. 26 of the *Public Service Act 2008* imposes an additional obligation on people who work in the public sector. It provides as follows:

²⁰ S.17(2) of the Act states that ‘ethics values about providing advice, or acting in relation to policies, apply to staff members subject to the way they may reasonably be expected to honestly and properly carry out their functions helping Ministers, the Leader of the Opposition or other non-government members’. It notes that a staff member’s function may include providing advice that is not apolitical; and in the case of an Opposition or non-government staff member, may not be directed towards developing or giving effect to policies of the government.

26 Work performance and personal conduct principles

- (1) In recognition that public service employment involves a public trust, a public service employee's work performance and personal conduct must be directed towards—
 - (a) achieving excellence in service delivery; and
 - (b) ensuring the effective, efficient and appropriate use of public resources; and
 - (c) giving effect to Government policies and priorities; and
 - (d) collaborating with other departments with a focus on public service-wide priorities as well as department-specific priorities; and
 - (e) providing sound and impartial advice to the Government; and
 - (f) improving all aspects of the employee's work performance; and
 - (g) carrying out duties impartially and with integrity; and
 - (h) acting honestly, fairly and in the public interest; and
 - (i) interacting with staff members under the *Ministerial and Other Office Holder Staff Act 2010* respectfully, collaboratively and with integrity; and
 - (j) observing all laws relevant to the employment; and
 - (k) ensuring the employee's personal conduct does not reflect adversely on the reputation of the public service; and
 - (l) observing the ethics principles under the *Public Sector Ethics Act 1994*, section 4; and
 - (m) complying with an approved code of conduct and any approved standard of practice as required under the *Public Sector Ethics Act 1994*, section 12H or 18.