

# Fact Sheet: Post separation obligations for Chief Executive, Senior Executive and Senior Executive equivalents

Post separation obligations exist to promote integrity, transparency and accountability. They prevent former Chief Executives, Senior Executive Service (SES) officers and SES equivalent officers (**senior public sector officers**)<sup>1</sup> from taking personal advantage of specific relationships or information they acquired during their time in public office to gain a personal benefit after leaving their public sector role.

After you leave your position as a senior public sector officer, there are 3 key post separation obligations you have:

1. You must continue to maintain the confidentiality of Cabinet-in-Confidence and other confidential information you were privy to because of your public sector role.
2. For 18 months after you leave your public sector role, you cannot have business meetings with Queensland Government representatives on matters you had official dealings with, in your last 18 months as a senior public sector officer.
3. If you become a Queensland registered lobbyist, you cannot engage in lobbying activities concerning matters you had official dealings with in your last 2 years as a senior public sector officer, for 2 years after leaving your public sector role.

This fact sheet tells you what you need to know about these 3 key post separation obligations.

## 1. Continuing confidentiality obligations

The confidentiality requirements that applied to you in your public sector role continue to apply after you leave.

Confidential information is information which is not in the public domain and came to your knowledge because of your employment. It does not need to be in writing and there is no time limit to the prohibition on disclosing confidential information. It includes Cabinet-in-Confidence information.

The [Code of Conduct for the Queensland Public Service](#)<sup>2</sup> (the **Code of Conduct**), (2011 p. 13) states that public sector officers will:

- treat official information with care and use it only for the purpose for which it was collected or authorised
- store official information securely, and limit access to those persons requiring it for legitimate purposes, and
- not use confidential or privileged information to further personal interests.

We will continue to respect the confidentiality of official information when we leave public service employment.

The range of confidential information and possible breaches are many, and 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 risk of a breach of confidentiality.

The Post separation employment provisions, Queensland Government, 2011 ([the Post Separation Policy](#)) section 4.1.3 states:

Former senior government representatives must not use confidential information gained during government employment for a private commercial benefit. The confidentiality clause in former senior government officers' contracts requires the non-disclosure of confidential information post separation.

Unlawful disclosure of Cabinet-in-Confidence or other confidential information may be criminal offence under the *Criminal Code* chapter 12 or corrupt conduct under the *Crime and Corruption Act 2001*.

Section 13K of the *Ministerial and Other Office Holder Staff Act 2010* applies to a Chief Executive and makes it an offence to unlawfully disclose criminal history information (about an individual) obtained through their Chief Executive role.

## 2. Restrictions applying to business meetings

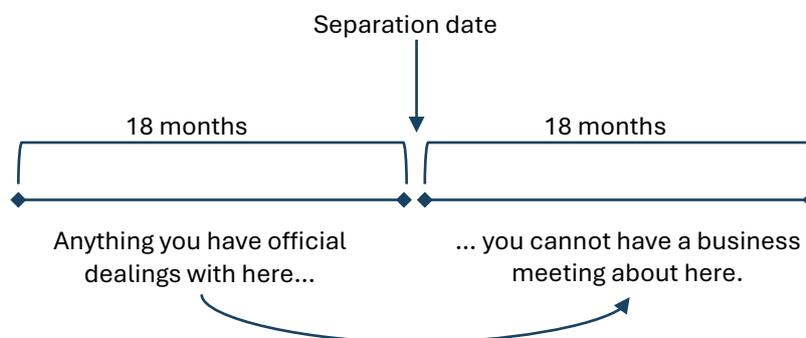
The Post Separation Policy applies to employees in all Queensland government departments.

The Post Separation Policy establishes the **quarantine periods** for the conduct of **business meetings** between **Government representatives** and **former senior government representatives** as required under the Code of Conduct, relevant departmental Standards of Practice and employment contracts regarding employment following separation from the Queensland public sector.<sup>3</sup>

### What is the quarantine period and what restrictions apply to business meetings?

As a former senior public sector officer,<sup>4</sup> there is a **quarantine period** of 18 months that applies to you from your date of cessation. During the quarantine period you cannot conduct or participate in a **business meeting** with a **government representative** on any matter that you had **official dealings** with in your last 18 months as a senior public sector officer.

These requirements are explained in the diagram below.



## **Key terms and definitions**

To understand how the Post Separation Policy operates and applies to you, you need to know how the key terms highlighted above are defined:

**Quarantine periods** are set out in Appendix 1 of the Post Separation Policy.

**Business meetings** are “meetings which have a commercial focus and have been convened to discuss matters which have a profit motive in mind.”<sup>5</sup>

**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. 15/14 - Employment Separation Procedures would still apply.”<sup>6</sup>

**Former senior government representatives** includes Chief Executives, SES and SES equivalent officers.<sup>7</sup>

A **government representative** is defined in section 44 of the *Integrity Act 2009* (**Integrity Act**) and includes the Premier, a Minister, an Assistant Minister, a Local Government Councillor, a Ministerial staff member, an Assistant Minister staff member and a **public sector officer**.

A **public sector officer** is defined in section 41 of the *Integrity Act* and means any person who is an officer or employee in a public sector entity under section 8 of the *Public Sector Act 2022*, a local government, a corporate entity under the *Local Government Act 2009*, the parliamentary service, a government owned corporation, a rail government entity under the *Transport Infrastructure Act 1994* or an entity, prescribed by regulation, that is assisted by public funds.

### **Do the restrictions apply to ALL business meetings during the quarantine period?**

No – it only applies to those business meetings which concern matters you had official dealings with in your last 18 months as a senior public sector officer. The question of whether a matter is in fact one you had official dealings with in your former senior public sector role, is one you need to assess by applying the definition of official dealings specified above.

In seeking a business meeting with a government representative on a matter you had knowledge of in your former senior public sector role but which you have assessed as not meeting the definition of official dealings, you should advise the departmental staff you are liaising with of that fact and of your assessment. There is a duty placed on departmental staff to ensure compliance with the requirements of the Post Separation Policy. Departmental staff must make their own decision as to whether the purpose of the requested meeting with a government representative meets the definition of official dealings before it is scheduled.

### **What if I take up a government appointment?**

The Post Separation Policy explains that the restriction on business meetings with former senior government representatives is not intended to apply where you take up a government appointment.

### 3. Restrictions applying to lobbying activities

Chapter 4 of the Integrity Act sets out how third party lobbyists (often called professional lobbyists) and lobbying activity is regulated in Queensland.<sup>8</sup> If you decide to become a Queensland Registered Lobbyist<sup>9</sup> upon leaving your public sector role, there are particular matters you cannot lobby on for 2 years.

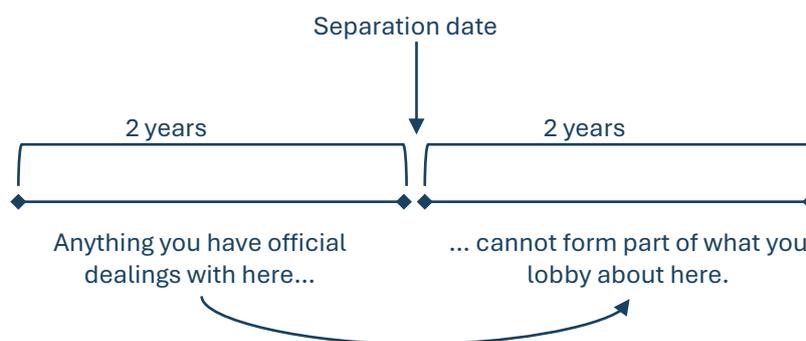
#### What is the quarantine period and what restrictions apply to lobbying activity as defined in the Integrity Act?

As a former senior public sector officer, section 62(2) of the Integrity Act restricts what you may lobby about as a registered lobbyist:

Within 2 years after the person becomes a **former representative**, the person must not carry out **lobbying activity** for a **third party client** if the activity relates to **official dealings** in which the person engaged in the person's official capacity in the 2 years immediately before the person became a **former representative**.

This means if you become a registered lobbyist after leaving your public sector role, you cannot lobby for the next 2 years on any matter you had official dealings within the last 2 years in your public sector role.

These requirements are explained in the diagram below.



#### Key terms and definitions

To understand how section 62(2) operates and applies to you, you need to know how the key terms highlighted above are defined:

A **former representative** includes a former Chief Executive, SES or SES equivalent officer.<sup>10</sup>

**Official dealings** is defined in section 41 of the Integrity Act:

official dealings, in relation to a person who is a former representative, means any of the following dealings that the person engaged in as part of the person's ordinary duties on a regular basis—

- (a) government or Opposition business or activities;
- (b) negotiations, briefings, contracts and the making or receipt of representations relating to government or Opposition business or activities.

A **third party client** is defined in section 41 of the Integrity Act and "means an entity that engages another entity to provide services constituting, or including, a lobbying activity for a commission, payment or other reward, whether pecuniary or otherwise, that is agreed to before the other entity provides the services."

**Lobbying activity** is defined in section 42 of the Integrity Act and means:

- communicating with a government representative in an effort to influence decision-making of the State government or a local government
- communicating with an Opposition representative in an effort to influence decision-making of the Opposition.

There are certain activities which are excluded from the definition of lobbying activity (e.g. communicating with a committee of the Legislative Assembly or a local government, responding to a call for submissions, or responding to a request for tenders). Refer to section 43 of the Integrity Act for the complete list of excluded activities.

## What steps can I take to prevent breaching my obligations?

It is your responsibility to recognise when a potential breach or conflict involving your post separation obligations may arise. You may wish to adopt strategies to help prevent a breach including:

- Compiling a list of key government business activities and policy you had involvement with, advised on or made decisions about, in the last 2 years in your role while the information remains fresh in your mind (noting if you apply to become a registered lobbyist in Queensland you must provide a statement of official dealings as part of your application and this statement is published on the Lobbying Register once you are registered).
- Remaining vigilant about any potential issues in any new role.
- Declaring to any prospective employers you have post separation obligations.
- Preparing an agenda for a proposed business meeting with a government representative to ensure matters are carefully articulated before the meeting and to avoid potential breaches of the post separation provisions.
- Absenting yourself from meetings and matters where potential breaches may arise.
- Erring on the side of caution if there is any uncertainty.
- Seeking out information that may be relevant and/or seeking advice from your Ethical Standards Unit (or equivalent), before you leave, or from an independent legal advisor after you have left.

## What if I have not yet resigned but am considering other employment?

There is nothing wrong or inappropriate in applying for a new role, having discussions with a prospective employer or considering a job offer made to you. However, these activities constitute a personal interest which could give rise, in the mind of a reasonable person informed of the facts, to a conflict of interest – either actual, potential or perceived. This occurs when your personal interest in the prospective employment/employer conflicts with the performance of your official duties. For example, if you are involved in a matter that may have a material impact on your prospective employer.

If an actual, perceived or potential conflict arises because of a job you are applying for, discussions you are having with a prospective employer or a job offer made to you, the *Public Sector Act 2022* outlines the steps you must take with separate provisions determined by your public sector role:

- Section 183 if you are a chief executive, or
- Section 89 if you are a public sector officer (including SES and SES equivalent officers).

Both sections 89 and 183 require you to disclose the nature of the interest and conflict to your Minister (in the case of a Chief Executive) or the Chief Executive (in the case of a SES or SES equivalent officer), as soon as practicable after the relevant facts come to your knowledge. You must not take action or further action concerning the conflict unless authorised by your Minister or Chief Executive. This statutory requirement is reflected in the Code of Conduct (2011, section 1.2) and in the following policy and directives:

- [Declaration of Interests – Senior Executives and Equivalent Employees Policy](#)<sup>11</sup>
- [Declaration of interests - Chief Executives of departments \(Directive 05/24\)](#)<sup>12</sup>
- [Declaration of interests – Public sector employees excluding chief executives \(Directive 03/24\)](#)<sup>13</sup>

The form you must use to disclose a conflict of interest can be found on the [ForGov website](#).

## Seeking advice from the Queensland Integrity Commissioner

You can seek the advice of the Queensland Integrity Commissioner on a prospective job if it raises an ethics or integrity issue due to a post separation obligation.

You are eligible to seek this type of advice for 2 years after you leave your public sector role.<sup>14</sup>

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<sup>1</sup> A public sector employee is defined in s 12 of the *Public Sector Act 2022 (PSA 2022)* as a public service employee or a person employed under another Act or Law in a public sector entity. A public service employee is defined in s 13 of the PSA 2022 as a person employed under chapter 4 or 5 of the PSA 2022 as a general employee, a fixed term temporary employee, a casual employee, an officer, a senior officer, a senior executive or a chief executive. The Public Sector Commissioner and Special Commissioners are public service employees. Chief Executives and Senior Executives are appointed under s 170 and s 188 respectively which are contained in Chapter 5.

<sup>2</sup> <https://www.forgov.qld.gov.au/pay-benefits-and-policy/public-service-values-and-conduct/public-service-code-of-conduct>

<sup>3</sup> The Post Separation Policy also sets out the restrictions on lobbying activities – as those restrictions are outlined in the following section, they are not discussed here.

<sup>4</sup> A former senior public sector officer is a former senior government representative as defined under section 59 of the Integrity Act.

<sup>5</sup> Post separation employment provisions (the [Post Separation Policy](#)), Queensland Government, 2011, p.3.

<sup>6</sup> *ibid.* p 5.

<sup>7</sup> Is any person who was employed in any of the positions listed in section 59 of the Integrity Act.

<sup>8</sup> For information about lobbying, please see the [Lobbying: Common questions & answers \(May 2024\)](#).

<sup>9</sup> If you are unsure if you need to be registered as a lobbyist please read [Fact Sheet - Who needs to be registered to lobby in Queensland](#). You should also be aware that unregistered lobbying is an offence under section 46 of the Integrity Act.

<sup>10</sup> Former representative is defined in section 61 of the Integrity Act and includes a former senior government representative which is any person who was employed in any of the positions listed in section 59 of the Integrity Act (which includes former senior public sector officers).

<sup>11</sup> <https://www.forgov.qld.gov.au/pay-benefits-and-policy/directives-policies-circulars-and-guidelines/declaration-of-interests-senior-executives-and-equivalent-employees>

<sup>12</sup> <https://www.forgov.qld.gov.au/pay-benefits-and-policy/directives-policies-circulars-and-guidelines/declaration-of-interests-chief-executives-of-departments-directive-0524>

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<sup>13</sup> <https://www.forgov.qld.gov.au/pay-benefits-and-policy/directives-policies-circulars-and-guidelines/declaration-of-interests-public-sector-employees-excluding-chief-executives-directive-0324>

<sup>14</sup> Section 20A of the Integrity Act. Note the Queensland Integrity Commissioner cannot provide you with legal advice.