

# Integrity and Accountability in Queensland



August 2009



# Contents

<b>Premier’s foreword</b> .....	<b>2</b>
<b>Overview</b> .....	<b>3</b>
<b>Part one</b>	
<b>Historical background in Queensland</b> .....	<b>5</b>
<b>Part two</b>	
<b>Queensland’s integrity and accountability framework</b> .....	<b>7</b>
Queensland’s integrity and accountability legislative framework .....	7
Judicial officers integrity framework .....	9
Local government integrity framework .....	9
<b>Part three</b>	
<b>Are there sufficient guidelines for decision makers?</b> .....	<b>10</b>
Codes of conduct .....	10
Pecuniary interests registers and managing conflicts of interest .....	11
Gifts and hospitality .....	12
Political donations, fundraising and campaigning .....	13
Lobbying .....	15
Procurement processes .....	17
Transparency .....	18
Prevention .....	19
<b>Part four</b>	
<b>Are the mechanisms to find unacceptable behaviour sufficient?</b> .....	<b>22</b>
Oversight bodies and audit mechanisms .....	22
Investigations .....	22
Recent developments .....	25
Whistleblowing .....	25
<b>Part five</b>	
<b>Are the sanctions for unacceptable behaviour sufficient?</b> .....	<b>27</b>
<b>Part six</b>	
<b>Conclusion</b> .....	<b>30</b>
<b>Part seven</b>	
<b>What do you think?</b> .....	<b>31</b>
How to make submissions .....	32
<b>Appendix A – integrity framework for Australian jurisdictions</b> .....	<b>33</b>

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## Premier's foreword

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As we celebrate 150 years of independence, as a State we have the opportunity to reflect on our past and to shape our future.

Accountability and transparency in public administration is at the heart of a robust democracy.

We have come a long way over the past twenty years, since Tony Fitzgerald brought down his landmark report after a Commission of Inquiry into corruption in the Queensland Police Service and public sector.

His report threw open the doors to a very dark part of Queensland's history and inspired a new era of accountability in this great State.

Queensland is now one of only three states to have an independent watchdog. In Queensland, this is the Crime and Misconduct Commission, which has the powers of a standing Commission of Inquiry.

And since I became Premier, we have introduced the most comprehensive and transparent reforms to Right to Information.

We have introduced a Lobbyists Register and post-separation employment restrictions to prevent former Ministers, Ministerial staff and senior public servants from using information from their former positions to make money.

We have also toughened political donation laws, banned government Members of Parliament from political fundraising with business and, in an Australian-first, banned Ministers from holding shares or company directorships.

But the job of delivering accountability and transparency in government is never done.

As Premier, I believe government has a duty to continually reform and adjust to the evolving expectations of the people they represent.

This discussion paper gives Queenslanders a voice on these issues – to put their views forward and help us reshape the way government does business in Queensland.

I want all Queenslanders to feel they have access to, and are part of, a healthy democracy in this State and I look forward to your contribution to shaping the future of integrity and accountability in Queensland.

**ANNA BLIGH MP**  
**PREMIER OF QUEENSLAND**

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## Overview

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A civil society depends on public trust in its democratic institutions. Good governance is a prerequisite of good government. A critical issue in good governance is ensuring the integrity of the key participants.

Queensland has a comprehensive system of checks and balances currently in place. This paper provides an overview of the current Queensland system of integrity and accountability. Table 1.1 provides a summary of the current Queensland framework and how it compares to other Australian jurisdictions.

However, the world does not stand still and our system of government needs to continue to evolve to ensure the integrity framework can deal with new challenges. To ensure the Queensland system is robust enough to deal with these challenges, this Paper also explores what more could be done to improve or strengthen the current regime that governs the behaviour of key decision-makers, including: Members of Parliament, Ministers and Parliamentary Secretaries, Ministerial staff and the public service and Queensland Police Service (QPS).

In considering how to strengthen or improve the operation of the current regime, there are three key principles which provide a useful framework to consider further enhancements:

- the extent to which changes enhance or support open government and **transparency**
- the impact on **accountability** of any possible change
- the **workability** of changes, individually and collectively.

This paper considers the broad question – **how can Queensland’s integrity and accountability framework be improved and strengthened?**

**The Queensland Government welcomes comments and suggestions on any aspect of the Queensland integrity and accountability framework.**

**Table 1.1 Accountability – How does Queensland compare?**

	QUEENSLAND	CWTH	NSW	VIC	WA	SA	TAS	NT	ACT
Independent public sector anti-corruption body such as the CMC.	✓	<b>X</b>	✓	<b>X</b>	✓	<b>X</b>	<b>X</b> *	<b>X</b>	<b>X</b>
Police anti-corruption body	✓	✓	✓	✓	✓	<b>X</b>	<b>X</b> *	<b>X</b>	✓ Note 1
Integrity Commissioner	✓	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b> Note 2	<b>X</b>	<b>X</b>
Register of Lobbyists	✓	✓	✓	<b>X</b>	✓	<b>X</b>	<b>X</b> *	<b>X</b>	<b>X</b>
Lobbyist Code	✓	✓	✓	<b>X</b>	✓	<b>X</b>	<b>X</b> *	<b>X</b>	<b>X</b>
Political donation disclosure (threshold)	✓ (\$1000)	✓ (\$10,900) Note 3	✓ (\$1000)	<b>X</b>	✓ (\$1800)	<b>X</b>	<b>X</b>	✓ (\$1500)	✓ (\$1000)
Whistleblower Protection legislation	✓	<b>X</b> Note 4	✓	✓	✓	✓	✓	✓	✓
Recent reforms to Freedom of Information Laws	✓	✓	✓	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b> *	<b>X</b>	<b>X</b> *
Ombudsman	✓	✓	✓	✓	✓	✓	✓	✓	✓
Public Service Code of Conduct/Ethics	✓	✓	✓	✓	✓	✓	✓	✓	✓
Stand-alone Ministerial Code of Conduct/Ethics	✓	✓	✓	<b>X</b>	✓	✓	✓	<b>X</b>	✓
Restrictions on post separation employment	✓	✓	<b>X</b> Note 5	<b>X</b>	<b>X</b> Note 6	✓	<b>X</b> Note 7	<b>X</b>	<b>X</b> Note 6
Ban on direct holding of shares by Ministers and Parliamentary Secretaries	✓	✓	<b>X</b> Note 8	<b>X</b>	✓ Note 9	✓ Note 9	<b>X</b>	<b>X</b>	<b>X</b>
Register of Members' interests	✓	✓	✓	✓	✓	✓	✓	✓	✓

\* Although this has been proposed in a specific government policy announcement.

Note 1: ACT police officers come from Australian Federal Police and are therefore considered Commonwealth Police officers and employees and are subject to the Australian Commission for Law Enforcement Integrity.

Note 2: It is likely that Tasmania will introduce an Integrity Commissioner in the near future.

Note 3: A proposed threshold of \$1500 is the subject of legislation currently being considered at a Commonwealth level.

Note 4: But the Public Service Act 1999 provides some protection for whistleblowers.

Note 5: The Parliamentary Ethics Advisor, as established by resolution of the House, has the power to advise in relation to post-separation employment – care should be exercised in considering post-separation employment.

Note 6: Codes of conduct provide that care is to be exercised in considering post-separation employment.

Note 7: It is likely that Tasmania will introduce restrictions on post separation employment in the near future.

Note 8: Premier can direct Minister to divest.

Note 9: Where a conflict of interest with portfolio responsibility exists.

See Appendix One for a more fulsome inter-jurisdictional comparison.

## Part one

# Historical background in Queensland

In 1987, following a series of The Courier-Mail articles and an ABC documentary *The Moonlight State*, Acting Premier Bill Gunn appointed Tony Fitzgerald QC to lead a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct.

Two years later, following expansion of the Inquiry's Terms of Reference, the Commission of Inquiry finally closed. While set up to investigate police corruption, the Inquiry produced a series of revelations about public administration in Queensland. The 630 page report containing over 100 recommendations, changed the Queensland governance landscape forever.

Since the Fitzgerald Inquiry, there has been a continual evolution of the system that promotes integrity in government. This evolution has meant that the system has been improved and enhanced, and has allowed for new circumstances to be taken into account, including:

- 1989
  - The Electoral and Administrative Review Commission was established
  - Ministerial Guidelines and the Ministers' Code of Ethics were introduced
  - A Register of Members' Interests was established
- 1990
  - The Criminal Justice Commission (CJC) was established to investigate police and public sector misconduct and organised crime
- 1992
  - The *Freedom of Information Act 1992* was enacted to give Queenslanders the right of access to public documents, and an Information Commissioner was appointed to oversee the operation of the legislation
  - The *Electoral Act 1992* was enacted to ensure fair electoral boundaries
- 1994
  - The *Public Sector Ethics Act 1994* and the *Whistleblowers Protection Act 1994* were enacted to improve the operation and independence of the public service
  - Estimates Committees were first established, giving Parliament an opportunity to scrutinise the State Budget
- 1995
  - A comprehensive system of Parliamentary Committees was established to improve Parliamentary oversight of the Government's business
- 1997
  - The Ethical Standards Command in the Queensland Police Service was established
- 1998
  - Ministerial credit cards were abolished
  - Regular Community Cabinets were instituted to provide the public with direct access to Ministers and Directors-General
- 1999
  - The Office of the Integrity Commissioner was established to provide independent advice on potential conflicts of interest
  - The *Charter of Social and Fiscal Responsibility* was introduced into the *Financial Administration and Audit Act 1977*
  - Prostitution was decriminalised and regulated in Queensland to safeguard against corruption and organised crime through the introduction of appropriate checks and balances
  - A Register of Related Persons' Interests was established requiring related person, such as a Member's spouse or child, to place on record any pecuniary or other relevant interests which may give rise to a conflict of interest
  - Audited Ministerial Expenditure reports were tabled in Parliament for the first time
- 2000
  - The *Witness Protection Act 2000* was amended to augment inadequate legislation regarding witness protection
- 2001
  - The CJC was merged with the Queensland Crime Commission to establish the Crime and Misconduct Commission (CMC)
- 2002
  - The *Electoral Act 1992* was amended requiring political parties and candidates to meet new standards of honesty and accountability and imposed tough new penalties for electoral fraud

- 2003
    - e-petitions were established, giving Queenslanders a more direct avenue to influence Parliamentary debates
    - The Government issued a *Public Service Gifts and Benefits Policy* to provide guidance to public service employees on the acceptance of gifts and hospitality
    - Audio broadcasting of Parliament on the internet commenced
  - 2006
    - The *Local Government Act 1993* was amended to enhance transparency and accountability in local government elections and decision making
    - The *Financial Administration and Audit Act 1977* was amended to require the disclosure of financial reports of Ministerial expenses
  - 2007
    - The *Whistleblowers Protection Act 1994* was amended to allow public interest disclosures to be made to Members of Parliament and extend protection to people engaged by public sector entities on an individual contract of service
    - Audio-visual broadcasting of Parliament on the internet commenced
  - 2008
    - The rules governing disclosure of political donations were changed, so that all donations over \$1000 must be publicly disclosed
    - The *Electoral Act 1992* was amended to require that all donations which total over \$100,000 from a single donor in any six-month period must be disclosed within 14 days of the donation which takes the total over \$100,000
    - The ban on Ministers and Parliamentary Secretaries from holding shares, including restrictions which apply to their spouse/partner, was implemented
  - 2009
    - The Right to Information reforms were implemented replacing the freedom of information regime, making access to information easier and quicker and ensuring Queensland has the most open Government in Australia
    - New post separation employment restrictions were introduced for Ministers, Parliamentary Secretaries, Ministerial staff and senior public servants, limiting their ability to lobby government on issues with which they had official dealing during their government employment
    - Legislation was passed to create an offence of Misconduct in Public Office in the Criminal Code which carries a maximum penalty of seven years imprisonment
- Legislation was passed to ensure public servants and police officers cannot avoid disciplinary proceedings by resigning or retiring
  - The *Public Sector Ethics Act 1994* was amended to ensure that all Members of Parliament can seek the advice of the Integrity Commissioner
  - The Queensland Contact with Lobbyists Code and Register of Lobbyists was instituted and published
  - A separate *Auditor-General Act 2009* was enacted to reflect and reinforce the independence of the office.
- More recently, the Government has committed to:
- Ban the payment of success fees to lobbyists which are contingent on success in achieving outcomes from government, such as securing a government contract, securing a meeting with a Minister, securing a licence for their client or a change of legislation, regulation or policy
  - Require that each Labor Member of Parliament meets annually with the Integrity Commissioner to discuss their pecuniary interests and how the Member intends to manage any potential conflicts of interest
  - Required that Government Members of Parliament do not take part in exclusive political fundraisers attended by members of the private sector
  - Ban individuals listed on the Register of Lobbyists from being appointed to government boards or to other significant positions paid for by the Queensland Government.

## Part two

# Overview of Queensland's integrity and accountability framework

Democratic government, including the doctrine of the separation of powers, is a keystone of any integrity framework. The doctrine of the separation of powers divides the institutions of government into three branches:

- **Executive** – puts the laws into operation through the administration of the State and acts collectively through Cabinet to make and execute decisions
- **Legislature** – makes the laws and, through its proceedings and Committees, holds the Executive to account
- **Judiciary** – interprets the laws impartially and apolitically. A key principle of the judiciary is that everyone is equal in the eyes of the law. The courts are also, through Judicial Review, empowered to question and overturn administrative decisions made by the Executive.

In addition there is a range of institutions and bodies that have a role in public administration. For instance:

- **Public Service** – delivers services to the people of Queensland, accepts the policy direction of the Government of the day, provides expert advice on the best way to deliver the Government's stated policies and ensures effective implementation of these policies. The public service provides expert apolitical advice. It has a responsibility to ensure due diligence and due process are observed in decision-making by the Executive.
- **Ministerial staff** – provide support directly to the Minister to assist the Minister in meeting their broad responsibilities including policy formulation, ensuring election commitments are implemented, coordination with their Ministerial and Parliamentary colleagues, timely response to the media, the Parliament and to the public. They play an important role in ensuring the Minister is in a position to make informed decisions and comment and to actively participate in the routines of government.

## Queensland's Integrity and Accountability Legislative Framework

Queensland has an extensive integrity and accountability legislative framework which has been progressively amended and enhanced over recent years.

### Constitution of Queensland 2001

The *Constitution of Queensland 2001* consolidated and modernised the Constitution of Queensland and implemented recommendations for constitutional reform

from committees including the Electoral and Administrative Review Committee and the Queensland Constitutional Review Commission.

### Parliament of Queensland Act 2001

The *Parliament of Queensland Act 2001* commenced concurrently with the *Constitution of Queensland 2001* and sets out laws incidental to the operation of the Legislative Assembly of Queensland, its powers, procedures, Members and committees.

The system of Parliamentary committees was reformed in May 2009 to create a committee system more focused on developing best practice policy and legislative solutions to issues facing Queenslanders, while maintaining the important oversight role of parliamentary committees.

### Local Government Act 1993

The system of local government of Queensland is established under the *Local Government Act 1993* to provide a legal framework for an effective, efficient and accountable system of local government and recognises the jurisdiction of local government to take autonomous responsibility for the government of its area with a minimum of intervention by the State.

Extensive reform of the local government system in Queensland was initiated in April 2007 to build stronger local governments better able to deliver on long term plans for sustainability and viability, and to meet community service obligations. The new *Local Government Act 2009* will provide a more contemporary, principles-based framework to the operations of local governments in Queensland. This Act is proposed to commence in late 2009.

### Electoral Act 1992

The *Electoral Act 1992* establishes the framework for the conduct of elections in Queensland and establishes the Electoral Commission of Queensland as an independent and impartial body. The Commission's main functions include administering Queensland's electoral laws and conducting free and democratic elections.

The Act was amended in September 2008 to increase transparency with respect to political donations including reducing the electoral donation disclosure threshold from \$1500 to \$1000. These amendments also require that all donations which total over \$100,000 from a single donor in any six-month period must be disclosed within 14 days of the donation which takes the total over \$100,000.

### Crime and Misconduct Act 2001

The *Crime and Misconduct Act 2001* establishes the CMC and empowers it to deal with official misconduct within the Queensland public sector. Official misconduct is defined as being conduct which could, if proven, be:

- a criminal offence; or
- a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

The object of the Act is to improve the integrity of, and reduce the incidence of misconduct in, the public sector, through a framework that supports a shared responsibility between the CMC and the public sector.

The CMC's misconduct jurisdiction applies to 'units of public administration' which includes the Legislative Assembly, ministerial offices, departments, the police service, local governments, the Executive Council, a State Court and some corporate and non-corporate entities.

The CMC is the equivalent of a standing Commission of Inquiry, similar to an ongoing Fitzgerald Inquiry.

### Criminal Code Act 1899

Under the *Criminal Code Act 1899*, the offence of official corruption may apply to any person employed in the public sector and carries a maximum term of imprisonment of seven years. Official corruption includes corruptly asking for, receiving, obtaining or agreeing/attempting to receive or obtain, any property or benefit of any kind for himself or herself.

Likewise, abuse of office is a misdemeanour under the Code which applies to any person employed in the public sector and carries a term of imprisonment of two years. If the act is done or directed to be done for purposes of gain, the person is liable to imprisonment for up to three years.

### Police Service Administration Act 1990

The *Police Service Administration Act 1990* applies to the QPS and provides a legislative framework for the functions, powers and duties of the QPS, as well as a disciplinary regime.

### Public Sector Ethics Act 1994

The *Public Sector Ethics Act 1994* provides an ethics regime for the public service. Its objectives are to:

- declare particular ethics principles as the basis of good public administration in the Queensland public sector generally, and to identify specific ethics obligations as the framework for agency-based codes of conduct for public officials;
- require each public sector agency to develop a code of conduct under the Act, setting out the agency's requirements for the application of the ethics obligations in that agency;

- require chief executive officers of included public sector agencies to implement the agency's code effectively, in particular by ensuring consultation on the code's content, by requiring that administrative practices and procedures are consistent with the agency's code, and by providing training for staff on ethics standards and the application of the code; and
- provide a statutory basis for a chief executive officer to encourage exemplary conduct by officials, and to take disciplinary action against an employee for failure to comply with a relevant code of conduct.

The Act was amended in November 1999 to establish the office of the Integrity Commissioner to provide independent advice on potential conflicts of interest, ethics and integrity. Further amendments were passed in August 2009 in the *Criminal Code and Other Legislation (Misconduct and Breaches of Discipline) Amendment Act 2009*. The amendments allow all Members of Parliament to seek the Integrity Commissioner's advice on conflict of interest matters involving themselves.

### Public Service Act 2008

The *Public Service Act 2008* provides a legislative foundation for ensuring that Queensland has a high performing public service that is responsive, innovative, accountable, effective and efficient. The Act also sets out the disciplinary framework for the public service.

### Whistleblowers Protection Act 1994

The *Whistleblowers Protection Act 1994* applies to public officers who disclose wrongdoing in the public sector. The principal object of the Act is to promote the public interest by protecting such persons who disclose:

- unlawful, negligent or improper conduct affecting the public sector;
- danger to public health or safety; or
- danger to the environment.

The *Whistleblowers Protection Act 1994* was amended in March 2007 to allow public interest disclosures to be made to Members of Parliament and to extend whistleblower protection to people engaged by public sector entities on an individual contract of service, such as many casual nurses.

### Auditor-General Act 2009

The *Auditor-General Act 2009* confers on the Queensland Auditor-General and the Queensland Audit Office the functions and powers necessary to carry out independent audits of the Queensland public sector and related entities.

### Financial Accountability Act 2009

The *Financial Accountability Act 2009* provides for accountability and transparency in government through the preparation of and regular reporting against the government's stated broad objectives for the community and charter of fiscal responsibility. Among its many functions, it also provides for the preparation, auditing and tabling in Parliament of Ministerial office expense reports.

### Government Owned Corporations Act 1993

The *Government Owned Corporations Act 1993* applies to the Government Owned Corporation (GOC) sector. The Act makes provision for a structural reform process (corporatisation) for nominated government entities. The objectives of corporatisation are to improve Queensland's overall economic performance, and the ability of the Government to achieve social objectives, by:

- improving the efficiency and effectiveness of GOCs; and
- improving the accountability of GOCs.

### Right to Information Act 2009

The primary objective of the *Right to Information Act 2009* is to give the public a right of access to information held by government agencies unless, on balance, it is contrary to the public interest to provide the information.

The Act commenced in 2009 and implemented significant reforms to the Government's approach to management of information.

### Ombudsman Act 2001

The *Ombudsman Act 2001* establishes a regime to give people a timely, effective, independent and just way of having administrative actions and decisions investigated. One of the primary objectives of the Act is to improve the quality of decision-making and administrative practices in agencies (departments, local governments and public authorities).

### Judicial Review Act 1991

The *Judicial Review Act 1991* provides for judicial review on questions of law of certain administrative decisions made by government.

## Judicial Officers Integrity Framework

The integrity framework which applies to judicial officers in Queensland includes the ability to remove judges and magistrates from office as well as a distinct criminal offence of judicial corruption. The removal of judges and magistrates is governed by the *Constitution of Queensland 2001* and the *Magistrates Act 1991*, respectively.

Additionally, the CMC has authority to conduct an investigation into the conduct of a judicial officer only where the misconduct, if established, would warrant the judicial officer's removal from office. The investigation must be exercised in accordance with appropriate procedures settled in continuing consultation between the chairperson of the CMC and the Chief Justice.

While these provisions do allow for the removal of judicial officers in certain cases, they also ensure that the doctrine of separation of powers is upheld and judicial officers are able to exercise the functions of their office without interference from other arms of government.

## Local Government Integrity Framework

A significant process of reform and modernisation of local government legislation has recently been completed, with the passage of the *Local Government Act 2009*, proposed to commence in late 2009. The Act sets out overarching local government principles designed to ensure the system of local government is accountable, effective, efficient and sustainable. The local government principles require transparent and effective processes; good governance of, and by, local government; and ethical and legal behaviour of councillors and local government employees. Additionally, employees must comply with work performance and conduct principles, which are a combination of ethical obligations (e.g. carrying out duties with impartiality and integrity) and work performance standards (e.g. ensuring effective, efficient and economical management of public resources). These requirements are additional to and complement the *Public Sector Ethics Act 1994*.

The Act will implement a new system for dealing with complaints about councillor misconduct and poor performance, including a formal investigation process enabling serious allegations against councillors to be investigated by independent regional conduct review panels. More serious performance issues will be dealt with by a new state Local Government Remuneration and Discipline Tribunal.

Local governments are also subject to the jurisdiction of the CMC and chief executives of local governments are public officials for the purposes of referral of complaints by the CMC to the local government for investigation.

Further, once the new Act commences, local councils will be required to comply with the Queensland Contact with Lobbyists Code.

## Part three

# Are there sufficient guidelines for decision makers?

There are a number of policies and guidelines that set standards of integrity and accountability for the Parliament, the Executive and the public sector. These supplement the legislative framework and institutions which monitor, set standards, provide advice, or undertake enforcement.

## Codes of conduct

### Members of Parliament

The Code of Ethical Standards for Members of the Legislative Assembly is issued under the Standing Rules and Orders of the Legislative Assembly of Queensland.

The Code assists Members to better understand the nature of their public office and the distinct obligations that arise by virtue of that office. The Code is also designed to assist Members manage conflicts of interest and resolve ethical dilemmas and provide an overview of the current ethical obligations which Members are required to observe.

The Members' Ethics and Parliamentary Privileges Committee is established by legislation (Section 90 - *Parliament of Queensland Act 2001*) and is responsible for the ethical conduct of Members.

In particular the Committee's responsibilities regarding the ethical conduct of Members include: publishing and reviewing the Code including procedures for complaints of non compliance; considering complaints against particular Members for failing to comply; and reporting on complaints to the Legislative Assembly. The Committee must also have due regard for the principles and obligations outlined in the *Public Sector Ethics Act 1994* and the desirability of consistency between standards in the Code and the ethics principles in the *Public Sector Ethics Act 1994*.

Non-compliance with the Code is dealt with by the Legislative Assembly. Where a breach is also a criminal offence, this may be dealt with by the courts.

### Ministers

As Members of Parliament, Ministers must comply with the Code of Ethical Standards for Members of the Legislative Assembly. In addition Ministers must comply with the Ministers' Code of Ethics which is published in the Ministerial Handbook.

The Code was developed and is updated to ensure that the highest standard of ethics is applied to Ministers and Parliamentary Secretaries. Ministers and Parliamentary Secretaries are required to:

- act with due regard for accountability, fairness, integrity and transparency

- be aware of their constitutional responsibilities
- manage conflicts of interest
- resign from directorships and divest their shareholdings
- comply with post employment restrictions in the two years after leaving office for Ministers and eighteen months for Parliamentary Secretaries.

Further, rules relating to shareholdings also apply to the spouse or partner of a Minister or Parliamentary Secretary.

The Ministers' Code of Ethics is not established under legislation. Discipline under the code is at the discretion of the Premier unless the breach is a criminal offence.

In accordance with the *Cabinet Handbook* and Ministers' Code of Ethics, Ministers attending meetings of Cabinet or Cabinet Committees must declare any private interests held by them, or members of their immediate families, in relation to the matters before a relevant meeting. Ministers should also advise the Premier if they find themselves in a situation of conflict of interest. This advice will be tendered at Cabinet and a record made by the Cabinet Secretary that the Minister so declared his/her pecuniary interest or conflict of interest.

### Public sector

#### Ministerial staff

Codes of conduct for Ministerial staff and staff of the Office of the Leader of the Opposition are issued in accordance with the *Public Sector Ethics Act 1994*. They are framed around the ethics principles and obligations set out in the Act.

All staff are provided with an induction that focuses on the Code and follow up training on the Code is provided every two years.

Similar to Ministers, post employment restrictions apply and require that former Ministerial staff shall not, for a period of eighteen months after they cease public sector employment, engage in lobbying activities relating to any matter that they had official dealings with in their last eighteen months in public sector employment.

Ministerial staff and Office of the Leader of the Opposition staff are employed under the *Public Service Act 2008*. Breaches of the Code trigger disciplinary processes such as reprimand or dismissal.

A process to review the Code of Conduct for Ministerial staff in accordance with the *Public Sector Ethics Act 1994* has recently commenced.

### Public servants

Codes of conduct for public sector entities are issued in accordance with the *Public Sector Ethics Act 1994*. The ethics principles and obligations fundamental to good governance administration included in the Act are: respect for the law and the system of government, respect for persons, integrity, diligence and economy and efficiency.

Codes of conduct provide standards of conduct for public officials consistent with the ethics obligations set out in the Act. Codes are also required to define post employment restrictions that apply to chief executive officers and senior executives within the public service.

Chief executive officers have additional responsibilities to ensure all public officers have access to the ethics principles detailed within the Act, their obligations as public officials as required by the Act and the codes and receive education and training on the codes. An implementation statement must be included in annual reports providing details of action to comply with the above obligations.

### Police

The QPS Code of Conduct provides guiding principles supporting ethical decision making and promoting professionalism, integrity, fairness, lawfulness, and the public interest. Police officers' responsibilities as public officials are also emphasised.

The Code reinforces the direct relevance of the *Public Sector Ethics Act 1994*, the *Whistleblowers Protection Act 1994* and the *Crime and Misconduct Act 2001* to all officers. Included in this Code is a Statement of Ethics and a demonstration of right and proper decision making using a realistic scenario. The Code also reflects the professional standards stipulated within the *Police Service Administration Act 1990*. The *Police Service Administration Act 1990* also provides the associated sanctions for police officers who breach standards of professional conduct.

## Pecuniary interests registers and managing conflicts of interest

### Members of Parliament

The Queensland Parliament first established an ongoing Register of Members' Interests in 1989. This Register was established by resolution of the House and subsequently included in the Standing Orders of the Legislative Assembly in 2004.

Standing Order 263 establishes the Register of Members' Interests and a Register of Related Persons' Interests. Schedule 2 outlines the rules for registration and procedures for the establishment and maintenance of the Registers.

Section 91 of the *Parliament of Queensland Act 2001* outlines the responsibilities of the Members' Ethics and Parliamentary Privileges Committee as they relate to the registers of interests. These include the arrangements for keeping, compiling and allowing inspection of the registers; considering proposals about the form and content of the registers; publishing explanatory information and any other issues regarding the registration of interests.

The Clerk of the Parliament is also the Registrar of Members' Interests and has a pivotal role in providing advice to Members regarding their obligations under the Members' interests requirements.

The registers are tabled in Parliament and are therefore publicly available as soon as possible after the first sitting day of each Parliament and as soon as possible after 30 June each subsequent year during the term of that Parliament. The Register of Members' Interests is also available for inspection by any person at the Clerk of the Parliament's office.

There is a separate Register of Related Persons' Interests maintained which holds confidential details of relevant pecuniary interests of the spouse or partner and children of Members. This Register is available for viewing by a limited group of people including Leaders of Parliamentary Parties and statutory office holders of the Parliament due to privacy considerations.

The Government has committed to requiring each Government Member of Parliament to meet annually with the Integrity Commissioner to discuss the Member's pecuniary interests and how the Member intends to manage any potential conflicts of interest.

Queensland has an extensive range of codes of conduct in place – are any key individuals or groups missed?

Should the codes be strengthened in any way? If so, how should they be strengthened?

## Ministers and Parliamentary Secretaries

Ministers and Parliamentary Secretaries are required to comply with the Parliamentary Register of Members' Interests. This is outlined in the Ministerial Handbook (Section 3.10) and the Ministers' Code of Ethics.

Ministers must manage any conflict of interests, particularly if they are relevant to a matter coming to Cabinet. They must tender advice of any conflicts at the Cabinet meeting.

The Ministers' Code of Ethics has been amended to ban Ministers and Parliamentary Secretaries from holding directorships or shares.

As a result of the Right to Information reforms, new information relating to the expenses and activities of Ministerial offices from 1 July 2009 will be released proactively through the Department of the Premier and Cabinet website.

## Public sector employees

### Ministerial staff

Ministerial staff are required under the Ministerial Handbook to provide a Statement of Pecuniary Interests to their Minister on appointment and annually by 30 June each year.

These statements become official records and must be retained. However they are not publicly available.

### Public servants

Chief executive officers are required under the *Public Service Act 2008* to provide a Statement of Pecuniary Interests to their Minister and the Chief Executive of the Public Service Commission within 30 days of appointment. Statements are to be updated within one month of a change in their interests, on reappointment or change of contract. Members of the Senior Executive Service are also required to provide a Statement of Pecuniary Interests to their chief executive on appointment. These are to be updated on a change of interests.

### Police

Requirements for police officers and public servants employed in the Queensland Police Service are contained primarily under the *Police Service Administration Act 1990*.

These requirements are reflected within the QPS Code of Conduct. Members of the QPS are expected to perform their duties in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the Service and its members is preserved. In satisfaction of this objective members are to arrange their private affairs in a manner that will prevent any actual or apparent conflict of interest arising wherever foreseeable.

Further, members of the QPS are to ensure that as far as practicable, there is no conflict between their personal interest and the impartial fulfilment of their official duties and responsibilities. Where conflict of interest does arise between the private interest of a member and the official duties or responsibilities of that member, the member is to disclose details of the conflict to their supervising officer.

## Gifts and hospitality

Official gifts and hospitality may be provided to public officials by virtue of their office. Official gifts can be provided for a number of reasons including ceremonial and cultural presentations, functions on behalf of foreign dignitaries or to mark official occasions. Often there are cultural sensitivities around the acceptance of gifts and hospitality. In the interests of diplomacy and good manners it can be difficult to refuse a gift without causing offence.

Rules relating to gifts and hospitality are in place to prevent real or perceived conflicts of interest, or perceptions that a public official may fall under some obligation to provide preferential treatment to a gift giver.

### Members of Parliament

Members are required to disclose gifts (including hospitality) received over a threshold of \$500 retail value as part of the Register of Members' Interests. Gifts are not treated as public property and the Standing Orders do not deal with acceptance or retention of gifts.

### Ministers and Parliamentary Secretaries

There are separate Ministerial policies for gifts and hospitality contained in the Ministerial Handbook. This Handbook has its head of power in the *Financial*

Should the requirements for disclosure and managing conflicts of interest be set out in legislation?

How could safeguards to ensure conflicts of interest are appropriately managed be improved?

The Premier has committed to require that all Government Members of Parliament be required to meet with the Integrity Commissioner annually to discuss their pecuniary interests and how they intend to manage any potential conflicts of interest which may arise – should this requirement also apply to opposition and independent Members of Parliament?

*Accountability Act 2009* and is approved by Cabinet.

Under the Ministerial Gifts and Hospitality policies the reporting thresholds are \$300 wholesale value.

Gifts are treated as public property. Any gift regardless of value that is of cultural or historical value must be retained. Gifts below the threshold may be retained at no cost and gifts above the threshold value may be purchased by the Minister or Parliamentary Secretary for the valuation less the threshold amount of \$300.

A register of gifts is maintained centrally by the Department of the Premier and Cabinet and reportable gifts are published annually. The Ministerial Gift Register is published on the Department of the Premier and Cabinet website.

Under current rules, the Ministerial gifts policy negates the need for any further reporting of gifts in the Register of Members' Interests.

## Public sector employees

### Ministerial staff

Ministerial staff are covered by the same policies that relate to Ministers and Parliamentary Secretaries in the Queensland Ministerial Handbook.

Guidance on gifts and hospitality is also provided in the Code of Conduct for Ministerial staff.

### Public servants

The current Public Service Gifts and Benefits Policy was issued by the Public Service Commission in 2008. The policy draws on the *Public Sector Ethics Act 1994*, codes of conduct, the *Public Service Act 2008*, and the *Crime and Misconduct Act 2001*.

The policy actively discourages receipt of gifts and hospitality and provides ethical guidance to the gift recipient. Gifts are treated as public property. A reporting threshold of \$100 market-value applies and gifts over \$350 in market-value cannot be retained without chief executive officer approval and only if exceptional circumstances exist. Public service gift registers are not published.

Each public service agency may implement their own gifts and benefits policy that is relevant to their particular circumstances. All such policies must be consistent with the policy issued by the Public Service Commission.

Guidance on gifts and hospitality is also provided to public servants in the code of conduct for each agency.

### Police

Under the QPS Code of Conduct, police officers are guided by a range of questions to assist in assessing a situation in relation to the offer of gifts or benefits. Officers are directed that should the gift/benefit exceed a nominal amount and cannot be refused, policy within the Human Resource Management Manual and the Financial Management Practices Manual must be followed. The Code stipulates that both these policy documents must align with the Gifts and Benefits Policy issued by the Public Service Commission and the *Financial and Performance Management Standard 2009*.

## Political donations, fundraising and campaigning

### Donations

Political parties in Queensland are governed by the *Electoral Act 1992*. Under the Act there are few restrictions on how a party may raise funds, who a party may accept donations from and no upper limit on the amount an individual or entity can donate.

The key accountability mechanism built into the *Electoral Act 1992* is the requirement to disclose, to the independent Electoral Commission Queensland, donations over \$1000 from a single donor every six months. Where a donation over \$1000 is made during an election campaign, the donation must be disclosed with 15 weeks of the election.

The Queensland Government also recently amended the *Electoral Act 1992* to require that where a donor contributes over \$100,000 in any six month period, it must be disclosed within 14 days of the donation which brings the total over \$100,000.

The above disclosures are publicly accessible for viewing through the Electoral Commission.

While it is possible for the *Electoral Act 1992* to include disclosure requirements unique to Queensland, the question of capping or banning donations is complicated by the national structure of major political parties.

Major political parties often have both a national office and state branches. Donations to a state branch may be used for either state or federal campaigns.

The Queensland Government cannot act to impose restrictions that would interfere with Commonwealth elections; such a law would be vulnerable to constitutional challenge. Any Queensland laws to implement a ban or donation cap in Queensland would need to be carefully drafted to avoid unconstitutionality.

Should policies regarding gifts and hospitality be the same for Ministers, Members of Parliament and public sector employees?

The Commonwealth Government is currently undertaking a green paper process on electoral reform. The first green paper considered donations funding and expenditure was released in December 2008.

The Queensland Government strongly supports nationally consistent reform of donation laws, to ban donations outright or cap them at a very low level.

However, if significant national reform is not progressed by 1 July 2010, the Government has committed to legislate to ban or cap donations in Queensland.

This could include:

1. a complete ban on donations to political parties; or
2. the introduction of a low cap on the amount individuals, companies and organisations (including trade unions) can donate to a political party in any given year.

In Australia, the Commonwealth Constitution has been held to include an implied right to freedom of political communication. It may be unconstitutional to ban individuals from supporting the political party of their choice through a small donation.

The introduction of a cap on donations would preserve the constitutional right of Queenslanders to show their support for the political party of their choice, while kerbing any undue influence which may be obtained by those able to make large donations.

It is also widely recognised that any ban on donations or a cap on the amount, would require an increase in public funding to all political parties to ensure the cap or ban does not restrict the ability of political parties to participate in public debate and our robust system of democracy.

### Public funding

Public funding is currently provided to candidates and political parties as a reimbursement of campaign costs after an election. Reimbursement is calculated on the basis of the number of votes received if the candidate gained at least four per cent of the formal first preference vote in the electorate contested. The entitlement is calculated by multiplying the total eligible votes received by the election funding rate, which is currently \$1.59596. Where a candidate runs as an endorsed candidate of a political party, the reimbursement goes to the political party, rather than to the candidate.

Reimbursement cannot exceed the amount the candidate or party actually expended during the campaign. This ensures no-one can profit from their candidacy in any Queensland State elections.

Following the 2006 State Election, total public funding of \$3.1 million was provided to candidates and political parties.

In the United States of America, at the Federal level, public funding is limited to subsidies for the Presidential

candidates who choose to be subject to an expenditure cap. Candidates may choose not to accept public funding and are then not subject to an expenditure cap.

Only candidates seeking nomination by a political party to the office of President are eligible.

To receive subsidies in the primary, candidates must qualify by privately raising \$5000 each in at least 20 states. For qualified candidates, the government provides a dollar for dollar "match" for contributions to the campaign up to a limit of \$250 per contribution. In return the candidate must agree to limit spending according to a statutory formula.

Personal spending is limited to \$50,000 per candidate.

When imposed in 1971, the limit for spending by a candidate in a primary election was \$10 million plus cumulative cost of living adjustments. In 2008 this amount was \$42.05 million.

Presidential nominees become eligible for a public grant of \$20 million plus cost of living adjustment for the General Election. This 1971 figure was inflated by cost of living adjustments to \$84.1 million in 2008.

Candidates who choose to accept public funding must limit spending to the amount of the grant.

If some political fundraising avenues are to be capped or banned, parties will not only require public funding for campaign costs but also day-to-day running of the organisation including in non-election years. A new formula for the distribution of public funds would need to be developed to ensure no party is disadvantaged and new parties are able to develop.

### Fundraising functions

Members of Parliament are often invited to attend political fundraisers that range from small barbecues attended by party members only, to dinners attended by senior members of the business community which cost thousands of dollars per head.

Some political parties hold exclusive political fundraising functions to which members of the private sector and elected or public officials are invited.

Although there is nothing illegal about participation in these business fundraisers, it may give rise to the perception that access and influence can be paid for through attendance fees for these functions.

Consequently, Government Members of Parliament have been directed that they are not to attend such functions, where money raised goes to a political party.

However, this does not prevent members of the Opposition or independent Members from taking part in such functions.

In order to ensure all elected members do not participate in such fundraisers, a legislative ban may be required.

## Election campaigns

There is currently no restriction on the amount of money a political party may spend during a state election campaign in Queensland.

The total expenditure declared by all major political parties in 2005/06, a non-election period, was \$10.3 million. In 2006/07, an election period, the total expenditure was \$24.1 million. These figures suggest around \$14 million was spent on the 2006 State Election by all political parties.

The total expenditure declared by all major political parties in 2002/03, a non-election period, was \$8.6 million. In 2003/04, an election period, the total expenditure was \$20.7 million. These figures suggest around \$12 million was spent on the 2004 State Election by all political parties.

The increasing cost of elections puts additional pressure on political parties to raise funds making them more dependent on private funds.

Campaign expenditure caps have previously applied in a number of Australian jurisdictions. Until 1980 the *Commonwealth Electoral Act 1918* imposed campaign expenditure caps. Expenditure limits still apply in Tasmania in Legislative Council elections. The cap per candidate was set at \$10,000 in 2005, increasing by \$500 each year, so the cap is currently \$12,000. In Tasmania breach of the expenditure cap by more than \$1000 can result in the candidate's election being declared invalid.

A cap on campaign expenditure would remove some of the incentive for political parties and candidates in Queensland to seek the financial backing of the private sector. These donations may result in an expectation by donors that they will receive favourable treatment should the party or candidate be elected.

It is critical that any such cap is not set so low as to

restrict a party's ability to effectively communicate with electors about issues of public policy and the promotion of candidates for election.

In election campaigns a great deal of total expenditure goes toward political advertising, including television, radio and print advertising and billboards.

Any cap on political party expenditure must also be coupled with regulation of third party participation in election campaigns to avoid funding simply being funneled through third parties, such as business groups or trade unions, which would effectively render an expenditure cap useless.

Another area of expenditure which could be subject to increased restrictions is how-to-vote cards. In an election, political parties will print millions of these fliers which are used only once. Some other jurisdictions, such as Tasmania and the Australian Capital Territory ban how-to-vote cards.

## Lobbying

Lobbying is, by its very nature, a part of a democratic system of government – every person, organisation or interest group has a right to be heard by those in government who make decisions that affect them. However, when professional third party lobbyists and their clients are involved, issues of transparency and accountability on the part of the office holder and the lobbyist are particularly important.

Clarity on whose interests are being represented when professional third party lobbyists approach government representatives is regarded as essential to ensure that Government decision-makers have a complete and accurate set of information on which to base decisions.

To ensure that contact between lobbyists and government representatives is conducted in accordance with public

Should donations to political parties be banned altogether? If so, how should political parties be funded?

If donations from an individual, corporation or organisation (including trade unions) were to be capped at a certain amount per year, what should the amount be:

- \$1500?
- \$1000?
- Another amount?

Should there be a ban on all Members of Parliament taking part in exclusive political fundraising functions with members of the private sector?

How should this be regulated to ensure it does not limit legitimate grassroots fundraising?

Should Members only be allowed to attend fundraisers where the price for attendance is less than a certain amount?

Should there be a cap on the amount of money political parties can spend on an election campaign?

Should there be a specific limit on expenditure on political advertising?

expectations of transparency, integrity and honesty, the Queensland Government has established the Queensland Contact with Lobbyists Code and the publicly available Register of Lobbyists.

The Contact with Lobbyists Code has delivered a high level of transparency in the lobbying process, ensuring that lobbyists wishing to have contact with government representatives must register their details (including whether they are receiving a success fee) on the Register of Lobbyists.

Under the Code, a lobbyist must disclose to any government representative they seek to lobby that they are a lobbyist, that they are making contact on behalf of a third party, the name of the third party and the nature of the issue to be discussed.

The Code also contains Principles of Engagement with government representatives which requires that, when engaging with government representatives:

- Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment
- Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies
- Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions
- Lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party.

Government representatives are required not to allow themselves to be lobbied by a lobbyist who they believe has

failed to observe any of the above requirements.

Further, the *Local Government Act 2009* will ensure the Queensland Government's Contact with Lobbyists Code also applies to all local governments across Queensland.

The Director-General, Department of the Premier and Cabinet, can remove lobbyists from the Register if they contravene any of the provisions of the Code, provide inaccurate information in registering their details or engage in conduct that is considered to be inconsistent with general standards of ethical conduct.

Lobbyists are required to provide a statutory declaration regarding any criminal history as part of the registration process.

There are currently no special requirements which must be included in a contract for service between a lobbyist and their client. It is important that a client is aware, when choosing to employ a lobbyist that this will not provide them with better access to government. One possibility is that the government could legislate to provide for certain terms to be included in a lobbyist-client contract, for example, a provision which states that the client acknowledges that the lobbyist is not in a position to provide any superior access to government decision makers and that the lobbyist has not represented that they can provide superior access.

The government has also announced a ban on individuals listed on the Register of Lobbyists from being appointed to government boards or to other significant positions paid for by the Queensland Government. This measure removes any suggestion of conflict of interest that may arise from an overlap between the role of the lobbyist and the role of appointees.

In addition to these recent developments, there are other mechanisms in place which assist public officers in discharging their duties impartially, including the *Public Sector Ethics Act 1994*, *Public Service Act 2008*, *State*

The Queensland Government has announced it will ban success fees, using the Canadian model – are there any additional changes to regulating lobbyists that would enhance integrity and accountability in public administration?

Is the Department of Premier and Cabinet the appropriate body to oversee the Lobbyist Register? If not, who should oversee the register?

Should the Contact with Lobbyists Code be expanded to include other provisions which lobbyists must adhere to?

Should a person be required to sign a copy of the Contact with Lobbyists Code to indicate their acceptance of its requirements before they can be placed on the Register of Lobbyists?

Should the government require that lobbyist-client contracts contain certain standard provisions?

Should registration on the Register of Lobbyists be subject to a good-character requirement? Who should assess applications to determine whether an applicant is of good-character?

Procurement Policy, and the Guide on Ethics, Probity and Accountability in Procurement.

Some lobbyists base part, or all, of the fee that they charge on the degree of success achieved through their work. This type of arrangement is called a success fee because payment is contingent on the success of the undertaking.

These success fees imply that lobbying, not merit, contributed to the success of a contract bid for example, or a licence approval. Further, success fee arrangements may promote the use of improper means by lobbyists, such as distorting relevant facts to ensure success.

The Queensland Government has announced that it will ban the receipt and payment of success fees in relation to lobbying government.

The proposed legislation will be based on the Canadian *Lobbying Act 2008*.

The Canadian model goes beyond banning success fees in relation to government procurement but also bans fees contingent on:

- communications with public office holders in relation to changes to legislation, regulation, policies or programs;
- obtaining a grant, a contribution or contract; or
- arranging a meeting between a public office holder and any other person.

## Procurement processes

The State Procurement Policy (SPP) is a mandatory requirement. The objectives of the SPP include ensuring probity and accountability for outcomes. The SPP is a high level procurement policy published by the Department of Public Works.

Compliance with the SPP requires the conduct of a fair and open tendering process in accordance with the principles of the SPP. Prescriptive processes are set out in the SPP including requirements for the agency to develop procurement procedures, flowing from which will be the processes for issuing request for tenders, evaluating and awarding tenders.

The SPP requires that Queensland Government agencies conduct their procurement activities with the utmost probity. Probity is the evidence of ethical behaviour in a particular process. Agencies are to ensure that procurement is carried out in accordance with such obligations as may be placed upon them by:

- the *Financial Accountability Act 2009*
- the *Financial and Performance Management Standard 2009*
- the *Public Sector Ethics Act 1994*
- such other legislative or government policy obligations as may from time to time apply to the procurement activities of the agency.

### Gateway Motorway – an example

The \$1.9 billion Gateway Motorway project provides an example of typically robust procurement process used in the appointment of the successful contractors to a major infrastructure project. The procurement process involved a multi-agency assessment team reviewing a ‘blind’ tender and overseen by an eminent probity advisor. A summary of the process follows:

**Expression of Interest** – potential proponents were invited to indicate their interest in the project. An assessment of each potential proponent was undertaken to assess their capability of completing the project. Non-conforming proponents were eliminated at this stage.

**Request For Tender** – selected proponents were asked to submit a detailed tender. Tenders were received by the State and maintained in a discrete, secure facility with robust access controls. All tenders received were treated as ‘blind’ tenders before review by the assessment committees, that is the proponents could not be identified.

**Assessment Process** – the tender was assessed on a modular basis with discrete teams for each major component of the project, for example bridge, traffic, finance. Each assessment team was formed from suitably qualified and expert public sector officers drawn from a number of agencies as well as relevant private sector experts. All assessment team members were subject to probity review prior to accessing the tender documentation. This probity review included the declaration of any conflicts of interest including any relationship with tenderers.

All communication with proponents was undertaken in writing and all proponents were treated uniformly.

All assessment team members were required not to discuss the project or the assessment process with proponents.

The proponents could not be identified from the tender documentation provided to the assessment teams.

**Selection of successful offeror** – the successful offeror was selected on the basis of the aggregate score of each assessment team. All tenders were still treated as ‘blind’ at this stage.

**Approval of successful offeror** – Cabinet Budget Review Committee (CBRC) considered the outcome of the selection process and endorsed the assessment committee’s recommendation. All tenders were treated as ‘blind’ through the CBRC approval process – i.e. CBRC did not know the identity of the recommended consortium, nor did the assessment panel.

The identity of the successful consortium was not revealed until after CBRC had completed its consideration, at which point a sealed envelope was opened by the CBRC.

Agencies are accountable for outcomes in procurement and must demonstrate how the public interest has been protected in the expenditure of public funds and that procurement outcomes are consistent with the SPP.

Agencies may use a range of procurement techniques in the acquisition of goods and services. The procurement methodology will be informed through procurement planning processes and in the context of value, difficulty of supply and risk. Procurement offers are evaluated to determine the purchase that will provide the best performance for the money being spent. Evaluations will typically be performed by a diverse group with input from agency managers, procurement experts, end users and technical experts. Probity experts may also be involved in a procurement process depending on the complexity and value of the procurement. Procurement outcomes are approved by the appropriate agency expenditure delegate.

Budget sector agencies are required to publish details of all awarded contracts and standing offer arrangements with a value of \$100,000 and over. Details should include specifics of the contract and the procurement method used.

Agencies must develop and maintain fair, equitable and non-discriminatory procedures for addressing complaints and concerns raised by suppliers or members of the community about the conduct of agency procurement activities. Complaints are to be addressed by the agency in the first instance and may be referred to the Queensland Government Chief Procurement Office. External independent review of a procurement complaint is available through the Queensland Ombudsman.

### The role of probity experts

For most procurement activities, procurement staff and evaluation teams can effectively manage probity issues. Where the activity may be complex, high value, sensitive, or offeror grievances are more likely, it may be beneficial to engage a probity advisor and/or a probity auditor.

A probity advisor is an individual or organisation engaged to observe, review and provide guidance on the probity framework and/or processes of a procurement project. Agencies use internal or external probity advisors to verify that the processes followed are consistent with best practice principles. A probity advisor provides opinions and guidance

on probity risks and issues that may arise during the process and confirms, in writing, whether the process is consistent with the requirements outlined in a probity plan, as well as general probity fundamentals. If probity requirements are not being or have not been met, the advisor identifies the non-conformities and any reasons for these in a written report and if necessary, suggests solutions and monitors their implementation.

A probity advisor's primary concern is the integrity of the procedures and processes adopted. That is, the focus is on the means, not the ends of the project. The advisory role is essentially preventative. For this reason, a probity advisor is usually engaged at an early stage to assist with project establishment and before any serious procurement integrity issue may develop.

Further, a probity auditor may be engaged at the conclusion of a project to report on whether a process has complied with the necessary standards.

## Transparency

As part of both the legislative and policy frameworks there are extensive transparency measures for both the Government and the Parliament.

### Members of Parliament

Reporting accountabilities are established in the *Parliament of Queensland Act 2001* and the *Standing Rules and Orders of the Legislative Assembly*.

Ministers are required to table information to the Legislative Assembly such as annual reports either as prescribed in the *Parliament of Queensland Act 2001* or other Acts.

The Clerk of the Parliament has custody of documents including the Members' Register of Interests. This Register is available to be viewed, including by members of the public.

Hansard is a transcript of the daily proceedings and is available on the Parliament House website. The proceedings are also available live in either audio or audio visual format from the website.

Government contracts are governed by strict procedures and legislation – are there any further ways in which accountability and transparency can be enhanced?

Should probity auditors be required for all contracts above a financial threshold or should this requirement be assessed on the basis of risk?

Should probity audit reports be made public following appointment of the successful tenderer?

### Executive (including Ministerial staff)

Ministers are required under various legislation to provide a range of information including financial reporting, tabling of annual reports for bodies within their portfolios and other accountability requirements.

Under the *Queensland Ministerial Handbook*, Ministers must table in Parliament a report on official overseas travel. Statements of interest are required from Ministers, Parliamentary Secretaries and Ministerial staff in accordance with Standing Orders and the *Queensland Ministerial Handbook*.

Each year as part of the budget documentation required under the *Financial Accountability Act 2009*, details of budget, estimated expenditure and staffing for each Ministerial office are included in the Service Delivery Statement for the Premier's portfolio.

### Public sector

Public sector entities are required to be accountable and demonstrate transparency through legislation outlined under the Queensland integrity and accountability legislative framework. Annual reports are key accountability documents and the principal way in which public sector entities report on their activities to provide a full and complete picture of agency performance to Parliament and the wider community.

In addition to this, the *Right to Information* reforms have implemented a fundamental shift in the government's approach to the management of information based on the over-riding principle that the community has a right to access information held by the government. The *Right to Information Act 2009* (RTI Act), which commenced on 1 July 2009, replaced the *Freedom of Information Act 1992* (FOI Act) following a comprehensive review of the operation of the FOI legislation by an independent review panel led by Dr David Solomon.

The RTI Act was developed following a process of extensive public consultation. The Act clearly provides that information should be released unless it is contrary to the public interest to do so. This is a reversal of the previous presumption towards non-disclosure unless there was a public interest in release, as found in the FOI Act.

The RTI Act includes a reduced number of exemptions from release and sets out a new framework for assessing the suitability of release of information through an innovative public interest test. In addition to factors favouring disclosure and factors favouring non-disclosure, the Act sets out factors which are irrelevant to deciding the public interest. Notably, it is now explicitly irrelevant for

a decision-maker to consider whether disclosure of the information could cause embarrassment to the government in determining whether information should be released. The scope of the Act has also been extended to government owned corporations which do not operate in competitive environments.

Beyond the legislative framework, the Right to Information reforms signal a move towards a "push" model of information release, whereby the government regularly and proactively publishes information, with formal application for access to information under the Act becoming a last resort.

All agencies are required to have publication schemes which clearly set out the information they hold and the way that information may be accessed. In addition, disclosure logs of non-personal information previously released to applicants will be published, to facilitate broader community access to information previously released under the Act.

The Right to Information reforms have already resulted in the commencement of the proactive publication of summaries of matters considered by Cabinet through the Cabinet website. Information such as Ministerial gift registers and the staffing profile of Ministerial offices are also now being made available through the Department of the Premier and Cabinet's publication scheme.

## Prevention

A number of the oversight bodies in Queensland are also charged with assisting the government in preventing misconduct and improving ethical standards in government.

### The Integrity Commissioner

The Queensland Integrity Commissioner provides, upon request, advice on conflict of interest matters. The Integrity Commissioner is an independent statutory office holder who provides confidential advice to Queensland Government public officials on conflict of interest issues under the *Public Sector Ethics Act 1994*.

The Integrity Commissioner plays an important role in advising officials, including Ministers, Parliamentary Secretaries and senior public servants on ethical matters to ensure that potential conflicts of interest are avoided. Amendments were passed to the *Public Sector Ethics Act 1994* in August 2009 to allow all Members of Parliament, rather than only Government Members, to seek the advice of the Integrity Commissioner.

Is information about the decision making processes of government sufficiently available?

How else could this information be made available to the public?

## Members of Parliament

The Members' Ethics and Parliamentary Privileges Committee is a Parliamentary committee charged with monitoring and ensuring the ethical conduct of Members of the Legislative Assembly.

## Ministers and Parliamentary Secretaries

Training and induction programs are in place for Ministers and Parliamentary Secretaries. These have been held since 1998 and have been updated to provide training on the changes to the Ministers' Code of Ethics including post separation employment restrictions and the Queensland Contact with Lobbyist Code.

## Ministerial staff

Ministerial staff are provided with an induction which focuses on the Code of conduct, including expectations and accountability. Regular training is provided on the Ministerial Handbook.

## Public sector

There is a range of legislative and policy based prevention mechanisms operating in the public sector.

The Queensland Ombudsman's Office helps State and local government agencies improve their administrative practice by:

- making recommendations based on investigations
- conducting training on good decision-making and complaints management
- providing advice and other assistance.

The CMC is responsible for monitoring the way in which agencies deal with individual complaints and has a number of mechanisms for doing so.

Prevention activities are an important part of the CMC's misconduct function. Misconduct prevention involves helping public sector agencies reduce their risk of corruption by improving their internal controls, accountability and integrity of operation.

Under the *Crime and Misconduct Act 2001* the CMC's prevention and misconduct functions are specifically defined.

The CMC's misconduct function as outlined within the Act requires it to promote standards and ensure complaints of misconduct are dealt with appropriately. To achieve this the CMC is required to consider the capacity of an agency to undertake its own investigations taking into account the nature and seriousness of the allegation(s) and the imperative of maintaining public confidence. The CMC is committed to working in cooperation with departments, engaging in capacity building, devolving activities to the relevant agencies where possible and considering and upholding the public interest.

The CMC also undertakes quality assurance reviews of the complaints management systems and integrity frameworks of public sector agencies (including local councils). Quality assurance reviews examine an agency's integrity framework, including its policies, code of conduct, complaints and records management systems and training and internal monitoring systems.

Further, under the *Crime and Misconduct Act 2001*, the CMC is specifically tasked with assisting public sector agencies to build their capacity to deal with suspected misconduct. The CMC is committed to helping public sector agencies take greater responsibility for dealing with the wrongdoing of their own officers.

This commitment is put into practice by the CMC by:

- visiting regional and rural areas to offer advice and listen to specific concerns
- conducting liaison officer forums
- surveying a range of government agencies on their capacity to deal with and prevent misconduct
- developing guidelines for dealing with suspected official misconduct
- researching, and providing advice on, the management of staff who make public interest disclosures
- carrying out risk-management system reviews for government agencies that have been the subject of a CMC investigation.

The Public Service Commission is the lead government agency with respect to ethics and whistleblowing. The Commission provides the Premier and government agencies support on the principles and standards governing ethical behaviour. This includes:

- advising the Premier on ethics issues for public sector officials
- administering the *Whistleblowers Protection Act 1994*
- advising on public interest disclosures
- facilitating the Queensland Public Sector Ethics Network, a forum to raise awareness about public sector ethics
- assisting agencies to review and implement codes of conduct as per Directive 09/96 Codes of Conduct
- advising agencies on ethics issues including the gifts and benefits policy.

There is an extensive training and development regime in place across the public sector on accountability issues. This is delivered internally by departments and also through other government bodies such as the Queensland Ombudsman's Office, the CMC, Crown Law and the Public Service Commission.

### Police

While integrity and professionalism are everyone's responsibility, the QPS' Ethical Standards Command (ESC), reporting directly to the Deputy Commissioner (Specialist Operations), is specifically tasked with promoting ethics, monitoring the organisation's ethical climate and advising senior executives on related proactive and reactive issues/strategies.

The goal of the ESC is to ensure that the community has confidence in and respect for the QPS. The ESC also works closely with the CMC and other statutory bodies to prevent misconduct, identify and address issues and promote ethical behaviour.

In addition to its Internal Investigations Branch, the ESC is comprised of the Ethical Practice Branch, the Inspectorate and Evaluation Branch and has an Internal Audit capacity. The Chief Superintendent, ESC is responsible to the Assistant Commissioner for the coordination of the operations of the ESC's three branches. The Ethical Practice Branch undertakes various activities to promote ethical practices throughout the QPS, including providing state-wide training in all aspects of the discipline and risk management processes and support to QPS employees who report misconduct and breaches of discipline by others. The Inspectorate and Evaluation Branch provides an independent assessment of managerial, administrative and operational functions to promote professionalism, strategic thinking and best practice management within the QPS. Internal Audit assists the Commissioner with his financial responsibilities under Part 5 Division 2 of the *Financial Accountability Act 2009*.

How could prevention measures be enhanced?

Are there any other ways the CMC could assist public sector agencies to build capacity to prevent inappropriate conduct?

## Part four

# Are the mechanisms to find unacceptable behaviour sufficient?

The mechanisms to uncover unacceptable behaviour are primarily covered by:

- oversight bodies and audit mechanisms
- investigations
- whistleblowing.

## Oversight bodies and audit mechanisms

The spectrum of relevant bodies that oversee and audit the behaviour of the public sector is extensive.

### Audit

Within government departments themselves, internal audit areas are charged with helping departments maintain propriety in decisions. The Ministerial Services Branch of the Department of the Premier and Cabinet also undertakes a standing audit role for Ministerial Offices. In addition to this the Queensland Audit Office (QAO) reviews financial processes to ensure integrity in decision-making. The QAO supports the Auditor-General in providing Parliament with an independent assessment of the financial management-related activities of public sector entities to enhance public sector accountability.

The Auditor-General is responsible for the annual audits of 339 diverse public sector clients including departments, statutory bodies, government owned corporations, local governments, Aboriginal and Torres Strait Island councils and by arrangement audits.

### Oversight

The Queensland Ombudsman's Office is an independent complaints investigation agency. It investigates complaints about the actions and decisions of Queensland public agencies and their staff that may be unlawful, unreasonable, unfair, improperly discriminatory or otherwise wrong.

The Members' Ethics and Parliamentary Privileges Committee of the Legislative Assembly has responsibility for the ethical conduct of all Members of Parliament. This responsibility includes examining the arrangements for the keeping of the Register of Members' Interests and the Register of Related Persons' Interests. The Committee is also responsible for publishing and reviewing the Code of Ethical Standards for Members.

The Parliamentary Crime and Misconduct Committee (PCMC) ensures that the functions of the CMC are subject to independent scrutiny of the Parliament.

The principal functions of the PCMC are to monitor and review the performance of the functions of the CMC, report to Parliament on matters relevant to the CMC and participate in the selection of Commissioners of the CMC.

The PCMC has a continual role in monitoring and reviewing the CMC and also conducts specific inquiries in respect of matters pertaining to the CMC. To monitor and review the CMC the PCMC:

- receives and considers complaints against the CMC
- reviews CMC guidelines and makes suggestions for improvement of CMC practices
- reviews CMC reports including its annual report and research reports
- requests reports from the CMC on matters which have come to the committee's attention, through the media or by other means
- deals with ad hoc issues concerning the CMC as they arise.

Additionally, there are other specific bodies set up to maintain and enhance the integrity of the Queensland public sector. Some of the other officers and agencies in this network include the Information Commissioner, the Health Rights Commission and the Anti-Discrimination Commission.

## Investigations

The investigative mechanisms that apply to the conduct of public officers depends on the nature and seriousness of the allegations in question.

### Investigation by the Crime and Misconduct Commission

Following the Fitzgerald Inquiry, the *Criminal Justice Act 1989* (replaced by the *Crime and Misconduct Act 2001*) placed primary responsibility for dealing with misconduct in the Queensland public sector with the CJC, now the CMC.

The CMC handles complaints of misconduct from members of the public or from official sources. Where possible, the CMC encourages public sector agencies to investigate allegations of misconduct themselves, while it performs a monitoring or collaborative role.

The decision to refer a complaint to an agency for investigation is entirely the prerogative of the CMC, and can be reversed at CMC's discretion at any time.

The CMC also monitors how public sector agencies handle complaints the CMC refers to them.

To ensure public confidence in the agency, however, it is sometimes necessary for the CMC itself to undertake investigation, especially in more serious matters.

The CMC has jurisdiction over all units of public administration (very broadly defined) and is concerned with official misconduct. The term 'misconduct' has a specific meaning in the *Crime and Misconduct Act 2001*. It is not the same definition of 'misconduct' as, for example, appears in the *Public Service Act 2008*.

In the *Public Service Act 2008*, misconduct encompasses any inappropriate or improper conduct relating to an officer's duties and any inappropriate or improper conduct in a private capacity by an officer that reflects seriously and adversely on the public service. In the *Crime and Misconduct Act 2001*, misconduct means 'official misconduct' and 'police misconduct'. It refers only to conduct connected with an officer's powers, authorities or duties; it does not relate to any private misconduct on the part of the officer (except in certain circumstances).

Official misconduct is conduct relating to the performance of a person's duties that:

- is dishonest or lacks impartiality
- involves a breach of the trust placed in an officer by virtue of their position
- is a misuse of officially obtained information.

The conduct must be a criminal offence or serious enough to justify dismissal.

Allegations of official misconduct can come to the CMC's attention in a variety of ways, for example in the form of a complaint from a member of the public via letters, faxes, emails, telephone calls or face-to-face interviews. It can come as information from whistleblowers, anonymous sources or media or from the CMC's own activities or intelligence sources.

Additionally, there is an obligation on chief executive officers of all units of public administration to notify the CMC of any suspected official misconduct (see section 38 of the *Crime and Misconduct Act 2001*).

This obligation is on all chief executive officers, including the Commissioner of Police. In addition to this obligation, the Commissioner must also notify the CMC of 'police misconduct'. Police misconduct means conduct, other than official misconduct, of a police officer that:

- is disgraceful, improper or unbecoming a police officer
- shows unfitness to be or continue as a police officer
- does not meet the standard of conduct the community reasonably expects of a police officer.

Once a complaint involving official misconduct is received, the CMC assesses the matter and decides what action to take, having regard to the principles contained in the *Crime and Misconduct Act 2001* (see section 34). These principles provide that 'action to prevent and deal with misconduct should generally happen within the unit', subject to the public interest principle, which provides that the CMC has 'an overriding responsibility to promote public confidence'. The capacity of the public sector agency to deal with the matter must also be considered.

In making its decision, the CMC may decide to do one or more of the following (see section 46, *Crime and Misconduct Act 2001*):

- refer the complaint to the subject agency to deal with, subject to some form of monitoring by the CMC investigate the complaint itself
- investigate the complaint in cooperation with the subject agency
- refer possible criminal activity to the Queensland Police Service (QPS)
- refer the complaint to another agency (e.g. the Ombudsman) to deal with
- take no further action.

The CMC will notify the relevant agencies of its assessment decision. If an allegation is referred to the subject agency to deal with, the CMC may also provide:

- recommendations about how to deal with the matter
- investigation advice (if appropriate)
- prevention advice and material (if appropriate).

The relevant agency is advised of the CMC's assessment decision with some explanation.

On average, the CMC assesses between 3000 – 4000 complaints a year. In 2007-08 the CMC assessed 3768 matters.

## Where the Crime and Misconduct Commission has not investigated a matter

### Investigation by the Queensland Police Service

In addition to official misconduct, the disciplinary regime for police officers includes conduct described as breach of discipline and police misconduct.

The *Police Service Administration Act 1990* defines breach of discipline and police misconduct as:

*A breach of this Act, the Police Powers and Responsibilities Act 2000 or a direction of the commissioner given under this Act, but does not include misconduct.*

Breaches of discipline are investigated and dealt with by the QPS, either at the local level with oversight by the Ethical Standards Command or by the Ethical Standards Command itself.

Police Misconduct as defined by the *Crime and Misconduct Act 2001* means conduct that –

- (a) is disgraceful, improper or unbecoming an officer
- (b) shows unfitness to be or continue as an officer
- (c) does not meet the standard of conduct the community reasonable expects of a police officer.

Misconduct of a less serious nature is investigated by the QPS with investigation and/or oversight by ESC and the CMC.

The *Crime and Misconduct Act 2001* confirmed the QPS' principal responsibility for dealing with allegations of misconduct against police, while at the same time obliging the QPS to report all complaints of official misconduct and police misconduct to the CMC. Under section 4.10 of the *Police Service Administration Act 1990* the Commissioner of Police has delegated his powers, functions and duties relating to discipline to the Assistant Commissioner, ESC. In practice the ESC's Internal Investigation Branch undertakes and overviews investigations of breaches of discipline and misconduct complaints with oversight by the CMC.

Pursuant to section 7.4 of the *Police Service Administration Act 1990*, the Police Commissioner must provide notice of findings and outcomes in relation to misconduct to both the officer in question and the CMC within 14 days of making the finding or decision.

## Investigation by a public sector agency (excluding police)

Agencies themselves deal with matters that:

- do not involve official misconduct (other disciplinary matters)
- may involve official misconduct, but which the CMC has referred it back to the agency to deal with.

Usually, agencies deal with matters internally (by ethical standards units) and disciplinary action (if recommended) is taken by chief executive officers under the *Public Service Act 2008*.

Generally, agencies are required to undertake investigations themselves and take action against the officer in question. Aside from when the CMC is involved, there is no centralised unit within the Queensland Government that provides advice to agencies or oversees findings made by agencies, nor is there any centralised unit to ensure that findings and disciplinary action taken is consistent across the whole of the public sector.

## Crime and Misconduct Commission review of investigations

To maintain the integrity of the complaints process, and to safeguard public confidence in it, the CMC monitors how public sector agencies handle individual complaints that are referred to agencies but which have been identified as warranting scrutiny. Reasons for this could include the need to maintain public confidence or to follow up on possible systemic issues.

Reviewing may involve:

- overseeing an agency's investigation while it is taking place (including, on occasions, assisting in interviewing witnesses)
- reviewing the finalised investigation report before any disciplinary or other managerial action is taken
- after the matter was finalised, reviewing how the agency dealt with the complaint
- auditing the way agencies have dealt with complaints that have been referred to them.

In 2007-08 the CMC undertook reviews of 251 individual complaint matters.

## Crime and Misconduct Commission audits of investigations

Additionally, the CMC undertakes detailed audits of public sector agencies (including the police service and local councils). The public sector audits examine the way the agency handles specific complaints of misconduct.

The CMC audits focus on such things as compliance with standards, integrity of the manner in which complaints are dealt with generally, timeliness, and the way in which an agency is dealing with particular types of alleged conduct, for example, reprisals against whistleblowers. The samples of complaints selected for these audits are taken from those referred to the agency to deal with, and which the CMC have not individually reviewed.

## Recent developments

In August 2009, amendments were made to the *Crime and Misconduct Act 2001* to enable the CMC to lay disciplinary charges for official misconduct against certain public service officers and members of the police service whose employment in the public sector has ended. Amendments similar to these have also been made to the QPS' legislation and the *Public Service Act 2008*.

The Three Yearly Review of the CMC was recently tabled in Parliament. The Report made a number of recommendations in relation to the CMC's jurisdiction, including extending the jurisdiction of the CMC to government owned corporations. Specifically, the PCMC noted that recent reforms to right to information laws drew a distinction between GOCs that operate in competitive environments and those that do not, with only the first group being excluded from the new information regime. GOCs which operate in a commercial environment are subject to the oversight of the Australian Securities and Investments Commission (ASIC). GOCs are subject to corporate law legislation monitored by the ASIC; competition related issues are monitored by the Australian Competition and Consumer Commissioner; criminal activity is referred to the police, discrimination issues to the Anti-Discrimination Tribunal and industrial relations issues to the Industrial Relations Commission. The extension of the CMC's jurisdiction to GOCs warrants further consideration by government in the context of consistency in the application of accountability and transparency measures across the Queensland Government.

## Whistleblowing

Queensland was one of the first jurisdictions in Australia to introduce legislation to protect whistleblowers. The *Whistleblowers Protection Act 1994* is a key component of the integrity and accountability framework in Queensland and provides whistleblowers with protection from civil and criminal liability for making a disclosure and makes it a criminal offence to take reprisal action against a public service employee who has made a public interest disclosure. The *Whistleblowers Protection Act 1994* is administered by the Public Service Commission, which produces guidance and advice to those considering making a public interest disclosure.

The whistleblower protection scheme protects public interest disclosures which can be about:

- official misconduct
- maladministration that adversely affects anybody's interests in a substantial and specific way
- negligent or improper management by a public officer, a public sector entity or a public sector contractor that directly or indirectly results, or is likely to result, in a substantial waste of public funds
- a substantial and specific danger to public health or safety, or to the environment.

Rather than create a centralised system with one agency responsible for protecting whistleblowers in Queensland, the *Whistleblowers Protection Act 1994* makes each public sector agency responsible for receiving public interest disclosures about the conduct of its officers, managing the disclosure process and taking steps to protect its officers from reprisals.

The *Whistleblowers Protection Act 1994* was amended in March 2007 to allow public interest disclosures to be made to Members of Parliament and to extend whistleblower protection to people engaged by public sector entities on an individual contract of service, such as many casual nurses. These amendments followed a review of the Act commenced on the recommendation of the PCMC and followed consideration of the recommendations of the Queensland Public Hospitals Commission of Inquiry.

Are the current systems and processes in place to manage investigations appropriate?

Should the CMC have jurisdiction over Government Owned Corporations which operate in a non-competitive environment?

Is there a more effective way that the CMC could deal with complaints regarding police misconduct?

Queensland has also been a part of the Whistling While They Work project, a three year collaborative research project funded by the Australian Research Council and 14 partners, including the Commonwealth Ombudsman, Australian Public Service Commission and public integrity bodies from New South Wales, Queensland, Western Australia, the ACT and the Northern Territory.

In its two reports, released in February 2009 and July 2009, The Whistling While They Work project identified 10 areas for action in all jurisdictions and most public agencies, namely:

1. more comprehensive agency systems for recording and tracking employee reports of wrongdoing
2. agency procedures for assessing and monitoring the risk of reprisals or other conflict for those who report
3. clearer and better advice for employees on the range of avenues available for reporting wrongdoing
4. basic training for public sector managers in how to recognise and respond to possible public interest disclosures
5. a program of training for internal investigators in basic techniques, with special attention to issues of internal witness management
6. adoption and expansion of structured support programs for employees who report wrongdoing
7. improved mechanisms for monitoring the welfare of employees who report wrongdoing, from the point of first report
8. more detailed and flexible agency procedures for the investigation and remediation of reprisals and breaches of duty of care
9. a dedicated oversight agency or unit for the coordination of responses to employee-reported wrongdoing
10. legislative action to provide more effective organisational systems and realistic compensation mechanisms, and to recognise public whistleblowing.

On 20 April 2009, the PCMC tabled its Three Yearly Review of the CMC (Report No.79), which included a recommendation that government review the *Whistleblowers Protection Act 1994* in light of the findings of the Whistling While They Work research project. The Queensland Government is currently considering how to best progress improvements to legislative and administrative whistleblowing arrangements in the context of these recent developments.

How could the current legislative protections for whistleblowers be enhanced?

## Part five

# Are the sanctions for unacceptable behaviour sufficient?

### Members of Parliament

The *Parliament of Queensland Act 2001* provides that a Member vacates their seat in defined circumstances including if they are convicted of certain offences (section 72) or if they accept paid public appointment other than a State appointment.

The Legislative Assembly has powers of punishment for contempt of the Assembly, as set out in the Standing Rules and Orders, including imposition of a fine or imprisonment.

The Standing Rules and Orders of the Legislative Assembly of Queensland provide that Members may be sanctioned for contempt of Parliament, which includes deliberately misleading the House or accepting bribes or fees for professional services. If the Members' Ethics and Parliamentary Privileges Committee recommends that a person be charged with contempt, they may be fined up to \$2000 or face imprisonment (chapter 39–41).

A Member who knowingly fails to give a statement of interests to the Registrar of Members' Interests, fails to notify the Registrar of a change of details contained in a statement of interests; or gives to the Registrar a statement or information that is false, incomplete or misleading in a material particular is guilty of a contempt of the Parliament and may be dealt with accordingly (schedule 2).

Members of Parliament are also within the jurisdiction of the *Crime and Misconduct Act 2001*, as the Legislative Assembly is defined as being a unit of public administration. Members can be investigated for official misconduct if their conduct could amount to a criminal offence.

Additionally, a member of the PCMC must not disclose confidential information provided to the Committee in a separate confidential report (section 66 – maximum penalty of 85 penalty units or one year's imprisonment).

### Public officials

The Criminal Code provides criminal sanctions for all types of criminal behaviour, but it also contains specific provisions relating to unethical behaviour in public administration.

Chapter 13 of the Criminal Code contains 11 offences relating to corruption and abuse of office, including the following:

- Section 87 – Official Corruption is a crime punishable by seven years imprisonment and a fine at the discretion of the court. The offence applies to a person employed in the public service, or being the holder of any public office
- Official Corruption committed by, or in relation to a Minister of the Crown is punishable by 14 years imprisonment and a fine at the discretion of the court

- Sections 88, 89, 91, 93, 94 – Misdemeanours involving extortion by public officers, official dealings with property or business in which public officers have a private interest, false claims made by officials and the issue of false certificates or land valuations are all punishable by three years imprisonment
- Section 92 – Abuse of office is an offence which is punishable by two years of imprisonment or, if it was done for gain, three years imprisonment. The offence applies to a person employed in the public service.

Section 85 (Chapter 12) also makes disclosure of official secrets by a public officer an offence punishable by two years imprisonment.

The term 'public officer' is defined broadly in the Criminal Code and will capture any person, except a judicial officer, holding office or employed by the Crown including police, public service employees and members, Ministers and their staff, officers or employees of an authority, board, corporation, commission, local government, council, committee or other similar body established for a public purpose.

Additionally, Chapter 14 of the Criminal Code lists a range of offences related to corrupt and improper practices at elections. However, these are not limited to public officers or those employed in the public service.

In addition to the above, in August 2009 the *Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009* was passed. The Act introduces a new offence of Misconduct in Public Office in the Criminal Code. The offence will apply to a person who, with intent to dishonestly gain a benefit for, or cause a detriment to, any person:

- deals with information gained because of office
- performs or fails to perform a function of office
- abuses the authority of office.

The new offence also prohibits former public officers from using any information gained because of their former position, to dishonestly gain a benefit for themselves or another person, or to dishonestly cause a detriment to another person.

In addition to the criminal sanctions in the Criminal Code, all public officers (including Members of the Legislative Assembly, local governments and police officers) are within the jurisdiction of the CMC.

Under the *Crime and Misconduct Act 2001*, if the CMC investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of misconduct and decides that prosecution proceedings or disciplinary action should be considered, the CMC may:

- report on a misconduct investigation to entities including the Director of Public Prosecutions for the purposes of any prosecution proceedings or the chief executive of the unit of public administration for disciplinary action (see section 49)
- charge a prescribed person (which means a police officer or employee of a unit of public administration whose appointment or unit is declared by regulation to be subject to the jurisdiction of a misconduct tribunal) with official misconduct to be dealt with by a misconduct tribunal (section 50).

If, in the case of a public servant, the view is taken that a charge of official misconduct should be laid then the person's appointment in the unit of administration would need to be prescribed (prescribed public servants) to 'trigger' the ability for the CMC (or the chief executive of the department) to lay the charge for official misconduct.

Under the *Misconduct Tribunals Act 1997*, the tribunal may, if a charge of official misconduct is proved, order the prescribed person (i.e. a member of the police service or public officer):

- be dismissed
- be reduced in rank or salary
- forfeit, or have deferred, a salary increment or increase to which the person would ordinarily be entitled;

In addition to the sanctions that apply generally to public officials, there are specific sanctions that apply where public servants engage in unacceptable behaviour.

The *Public Service Act 2008* provides that a public service officer's chief executive may discipline the officer if the chief executive is reasonably satisfied the officer has

- performed the officer's duties carelessly, incompetently or inefficiently
- been guilty of misconduct
- been absent from duty without approved leave and without reasonable excuse
- contravened, without reasonable excuse, a direction given to the officer as a public service officer by a responsible person
- used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the officer's duties
- contravened, without reasonable excuse, a provision of this Act or an obligation imposed on the person under a code of conduct. See section 187.

Disciplinary action may include termination of employment, reduction of classification level and a consequential change of duties, transfer or redeployment to other public service

employment, forfeiture or deferment of a remuneration increment or increase, reduction of remuneration level or imposition of a monetary penalty or a reprimand (section 188).

A chief executive may suspend a public service officer from duty if the chief executive reasonably believes the officer is liable to discipline under a disciplinary law (section 189).

The *Whistleblowers Protection Act 1994* also specifies that a public officer must not cause detriment to another person because the person has made a public interest disclosure. A public officer who takes a reprisal commits an indictable offence.

## Queensland Police Service

The *Police Service Administration Act 1990* provides that without limiting the range of disciplines that may be imposed by the prescribed officer by way of disciplinary action, such disciplines may consist of:

- dismissal
- demotion of rank
- reprimand
- reduction in an officer's level of salary
- forfeiture or deferment of a salary increment or increase
- deduction from an officer's salary payment of a sum equivalent to a fine of two penalty units (\$200).

There are three categories of behaviour that can lead to dismissal in Queensland – breach of discipline, police misconduct and official misconduct.

Breach of discipline is defined by the *Police Service Administration Act 1990* as a breach of that Act, the *Police Powers and Responsibilities Act 2000*, or a direction of the Commissioner given under the *Police Service Administration Act 1990*, but does not include misconduct. The officer is directed to appear before a Deputy Commissioner, who gives findings and reasons. The officer then has the opportunity to comment on the findings and reasons prior to a sanction being imposed. The Deputy Commissioner can then impose a sanction, which may be dismissal.

If dissatisfied, the officer can seek a review of the decision by the Police Service Review Commissioner.

Police misconduct is defined by the *Crime and Misconduct Act 2001* as conduct, other than official misconduct, of a police officer that:

- (a) is disgraceful, improper or unbecoming a police officer
- (b) shows unfitness to be or continue as a police officer
- (c) does not meet the standard of conduct the community reasonably expects of a police officer.

Police misconduct is dealt with by QPS in the same way as a breach of discipline, but with CMC oversight. The officer

or the CMC may appeal to the Misconduct Tribunal (soon to be superseded by the Queensland Civil and Administrative Tribunal (QCAT)).

Official misconduct is defined by the *Crime and Misconduct Act 2001* as conduct that could, if proved, be:

- (a) a criminal offence
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

The CMC can have charges of official misconduct dealt with by the Misconduct Tribunal (soon to be superseded by QCAT). There is no appeal from the Tribunal, but a dissatisfied party may seek judicial review (to ensure that all relevant factors, and no irrelevant factors, were taken into consideration).

Some states have provisions which allow for dismissal on the grounds that the Police Commissioner has lost confidence in a particular police officer (New South Wales, Tasmania, Western Australia and Victoria). Queensland does not have such a ground.

Are current disciplinary proceedings sufficient to deal with the wide range of unacceptable behaviour that public officials could potentially engage in?

How can the current regime of sanctions for unacceptable behaviour be further enhanced to allow for appropriate responses?

How could the police disciplinary procedures be improved?

Should the Commissioner of Police have the power to dismiss an officer the Commissioner has lost confidence in?

## Part six

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# Conclusion

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With the privilege of serving the people of Queensland comes special responsibilities.

These responsibilities must be clear and readily available to decision makers.

Where there is any doubt, decision makers must have avenues to seek expert advice.

There must be a clear focus on preventing inappropriate behaviour and finding it when it happens.

Finally, where these standards are breached, there must be appropriate sanctions to deal with the broad range of possible misconduct and provide sufficient deterrence.

This paper seeks to open up a wide-ranging discussion about these integrity and accountability issues in Queensland.

It provides an understanding of where our measures fit within the national framework and clearly shows Queensland has some of the highest levels of integrity and accountability measures of any jurisdiction in Australia.

Queenslanders are asked – how can the current framework be strengthened and improved to ensure our State continues to lead the nation in delivering open and accountable government?

The outcomes of this paper will set the agenda for the future of the State of Queensland.

This is an opportunity for the community to have their say on the way forward for our State, to ensure Queensland continues to set new benchmarks in integrity and accountability.

Are there any other ways Queensland's integrity and accountability framework can be strengthened and improved?

## Part seven

# What do you think?

As outlined above, Queensland currently has a wide range of openness, integrity and accountability mechanisms but we must always be looking for better ways to ensure the highest standards of ethical behaviour.

The Queensland Government wants to hear your views on these issues.

The key question is...

### How can Queensland's integrity and accountability framework be improved and strengthened?

While this paper covers a number of specific areas of the Queensland integrity and accountability framework, comments need not be limited to these areas. If there are any ways in which you believe the current system can be improved, the Queensland Government wants to know.

Specifically questions that arise in this paper are:

#### Guidelines for decision makers

1. Queensland has an extensive range of codes of conduct in place – are any key individuals or groups missed?
2. Should the codes be strengthened in any way? If so, how should they be strengthened?

#### Pecuniary interests registers and managing conflicts of interest

3. Should the requirements for disclosure and managing conflicts of interest be set out in legislation?
4. How could safeguards to ensure conflicts of interest are appropriately managed be improved?
5. The Premier has committed to require that all Government Members of Parliament be required to meet with the Integrity Commissioner annually to discuss their pecuniary interests and how they intend to manage any potential conflicts of interest which may arise – should this requirement also apply to opposition and independent Members of Parliament?

#### Gifts and hospitality

6. Should policies regarding gifts and hospitality be the same for Ministers, Members of Parliament and public sector employees?

#### Political donations

7. Should donations to political parties be banned altogether? If so, how should political parties be funded?

8. If donations from an individual, corporation or organisation (including trade unions) were to be capped at a certain amount per year, what should the amount be:

- \$1500?
- \$1000?
- another amount?

9. Should there be a ban on all Members of Parliament taking part in exclusive political fundraising functions with members of the private sector?
10. How should this be regulated to ensure it does not limit legitimate grassroots fundraising?
11. Should Members only be allowed to attend fundraisers where the price for attendance is less than a certain amount?
12. Should there be a cap on the amount of money political parties can spend on an election campaign?
13. Should there be a specific limit on expenditure on political advertising?

#### Lobbying

14. The Queensland Government has announced it will ban success fees, using the Canadian model – are there any additional changes to regulating lobbyists that would enhance integrity and accountability in public administration?
15. Is the Department of Premier and Cabinet the appropriate body to oversee the Lobbyist Register? If not, who should oversee the register?
16. Should the Contact with Lobbyists Code be expanded to include other provisions which lobbyists must adhere to?
17. Should a person be required to sign a copy of the Contact with Lobbyists Code to indicate their acceptance of its requirements before they can be placed on the Register of Lobbyists?
18. Should the government require that lobbyist-client contracts contain certain standard provisions?
19. Should registration on the Register of Lobbyists be subject to a good character requirement? Who should assess applications to determine whether an applicant is of good character?

#### Procurement processes

20. Government contracts are governed by strict procedures and legislation – are there any further ways in which accountability and transparency can be enhanced?

21. Should probity auditors be required for all contracts above a financial threshold or should this requirement be assessed on the basis of risk?
22. Should probity audit reports be made public following appointment of the successful tenderer?

#### Transparency

23. Is information about the decision making processes of Government sufficiently available?
24. How else could this information be made available to the public?

#### Prevention

25. How could prevention measures be enhanced?
26. Are there any other ways the CMC could assist public sector agencies to build capacity to prevent inappropriate conduct?
27. Is there a more effective way that the CMC could deal with complaints regarding police misconduct?
28. How could the current legislative protections for whistleblowers be enhanced?

#### Are the mechanisms to find unacceptable behaviour sufficient?

29. Are the current systems and processes in place to manage investigations appropriate?
30. Should the CMC have jurisdiction over Government Owned Corporations which operate in a non-competitive environment?

#### Sanctions for unacceptable behaviour

31. Are current disciplinary proceedings sufficient to deal with the wide range of unacceptable behaviour that public officials could potentially engage in?
32. How can the current regime of sanctions for unacceptable behaviour be further enhanced to allow for appropriate responses?
33. How could the police disciplinary procedures be improved?
34. Should the Commissioner of Police have the power to dismiss an officer the Commissioner has lost confidence in?

#### Further suggestions

35. Are there any other ways Queensland's integrity and accountability framework can be strengthened and improved?

## How to make submissions

Copies of this green paper are available on the Department of the Premier and Cabinet website [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au) or you may contact the department to obtain a copy on **07 3227 7869**.

Submissions are invited from all stakeholders and interested people or organisations.

A submission should include the name and contact details of the person making the submission. A submission on behalf of an organisation should indicate at what level the submission has been authorised (e.g. chair, CEO).

Submissions or parts of submissions may be published by the Department of the Premier and Cabinet. The department reserves the right not to publish confidential correspondence, or correspondence that is irrelevant or defamatory or otherwise unsuitable for publication. If you believe that your correspondence (or part of it) should not be made public, clearly write "confidential" on each page and, in a brief covering letter, explain why the correspondence should be treated confidentially. The department will then consider your request for confidentiality.

Submissions can be made via email at [integrityandaccountability@premiers.qld.gov.au](mailto:integrityandaccountability@premiers.qld.gov.au) or sent to **Integrity and Accountability Green Paper**  
PO Box 15185 City East  
Brisbane Qld 4002  
Fax: 07 3224 2030

Submissions close on 16 September 2009

If you require further information you may contact the Department of the Premier and Cabinet on telephone **07 3227 7869** or via email at [integrityandaccountability@premiers.qld.gov.au](mailto:integrityandaccountability@premiers.qld.gov.au)

## Appendix A – integrity framework for Australian jurisdictions

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
Commonwealth	<ul style="list-style-type: none"> <li>• <i>Public Service Act 1999</i></li> <li>• <i>Criminal Code Act 1995</i></li> <li>• <i>Parliamentary Privileges Act 1987</i></li> <li>• <i>Parliamentary Service Act 1999</i></li> <li>• <i>Law Enforcement Integrity Commissioner Act 2006</i></li> <li>• <i>Ombudsman Act 1976</i></li> <li>• <i>Auditor-General Act 1997</i></li> <li>• <i>Privacy Act 1988</i></li> <li>• <i>Freedom of Information Act 1982</i></li> </ul>	<ul style="list-style-type: none"> <li>• The <i>Public Service Act 1999</i> provides that the Australian Public Service must comply with the Code of Conduct. The Code provides that the APS behave honestly and with integrity, act with care and diligence, etc. Sanctions for a breach of the Code include: termination of employment; reduction of classification; re-assignment of duties; reduction of salary; deductions from salary by way of fine; or a reprimand.</li> <li>• Abuse of public office is an offence under the <i>Criminal Code Act 1995</i> which applies to Commonwealth public officials and carries a term of imprisonment of 5 years.</li> <li>• The <i>Parliamentary Privileges Act 1987</i> provides that a House may impose terms of imprisonment or fines on Members for contempt of Parliament.</li> <li>• Under the <i>Parliamentary Service Act 1999</i>, parliamentary service employees must behave honestly and with integrity, act with care and diligence and must disclose, and take reasonable steps to avoid, conflicts of interest in the course of Parliamentary Service employment. Failure to do so can result in: termination of employment; reduction in classification; reassignment of duties; reduction of salary; deductions from salary, by way of fine; a reprimand.</li> <li>• Under the <i>Law Enforcement Integrity Commissioner Act 2006</i>, the Law Enforcement Integrity Commissioner may deal with corruption issues by: investigating; referring to the law enforcement agency for investigation; managing an investigation of the corruption issue that is being conducted by the law enforcement agency; or overseeing an investigation of the corruption issue that is being conducted by the law enforcement agency.</li> </ul>	<p><u>The Law Enforcement Integrity Commissioner (LEIC)</u></p> <p>The LEIC is established under the <i>Law Enforcement Integrity Commissioner Act 2006</i>, and is responsible for preventing, detecting and investigating serious and systemic corruption issues in the Australian Federal Police and the Australian Crime Commission.</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
New South Wales	<ul style="list-style-type: none"> <li>• <i>Crimes Act 1900</i></li> <li>• <i>Police Act 1990</i></li> <li>• <i>Public Sector Employment and Management Act 2002</i></li> <li>• <i>Public Finance and Audit Act 1983</i></li> <li>• <i>Ombudsman Act 1974</i></li> <li>• <i>Independent Commission Against Corruption Act 1988</i></li> <li>• <i>Police Integrity Commission Act 1996</i></li> </ul>	<ul style="list-style-type: none"> <li>• Part 4A of the <i>Crimes Act 1900</i> creates corruption type offences which apply to public servants, police officers and councillors and are punishable by seven years imprisonment. Courts are empowered to order the repayment of corruptly obtained benefits and disqualify those convicted from holding civic office for seven years after conviction. Larceny or embezzlement by members of the public service are also offences each punishable by 10 years imprisonment.</li> <li>• The <i>Police Act 1990</i> allows the Police Commissioner to take action against an officer for misconduct or unsatisfactory performance. Sanctions include reduction in rank, salary or pay or any other action the Commissioner see as necessary. Section 200 makes bribery and corruption by police officers offences punishable by seven years imprisonment and/or a fine of 200 penalty units. Section 207A gives the Police Commissioner power to carry out integrity testing of officers. The Act also provides for the Commissioner to receive direction from the Police Integrity Commissioner.</li> <li>• The <i>Public Sector Employment and Management Act 2002</i> provides a non-exhaustive definition of misconduct and grants the Director of Public Employment power to issue procedural guidelines for the handling of incidences of misconduct. Department heads are also granted the power to take disciplinary action if an officer is convicted of an offence punishable by 12 months imprisonment.</li> <li>• Section 61 of the <i>Public Finance and Audit Act 1983</i> makes misappropriation of money or property by a public officer an offence.</li> <li>• Under the <i>Ombudsman Act 1974</i>, the Ombudsman has the power to investigate complaints made against the conduct of a public authority and to report serious misconduct to the responsible Minister, the head of a public authority or to the Premier's department.</li> </ul>	<p><u><a href="#">Independent Commission Against Corruption (ICAC)</a></u></p> <p>Established under the <i>Independent Commission Against Corruption Act 1988</i></p> <p>The aims of the ICAC are to protect the public interest, prevent breaches of public trust and guide the conduct of public officials.</p> <p>ICAC is empowered under the ICAC Act to: investigate, expose and prevent authorities or public officials; and educate public authorities, public officials and members of the public about corruption.</p> <p><u><a href="#">Police Integrity Commission (PIC)</a></u></p> <p>Established under the <i>Police Integrity Commission Act 1996</i>.</p> <p>The principal functions of the PIC are to detect, investigate and prevent police misconduct, and as far as practicable, is required by law to turn its attention to serious police misconduct by NSW police officers.</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• <i>Police Integrity Act 2008</i></li> <li>• <i>Whistleblowers Protection Act 2001</i></li> <li>• <i>Crimes Act 1958</i></li> <li>• <i>Ombudsman Act 1973</i></li> </ul>	<ul style="list-style-type: none"> <li>• Under the <i>Police Integrity Act 2008</i>, the Office of Police Integrity does not make findings of guilt or innocence about criminal or disciplinary offences. Generally, once an investigation has concluded, OPI will send a report of the investigation with recommendations about what should happen to the Chief Commissioner of Police. OPI can recommend that: <ul style="list-style-type: none"> <li>- no further action be taken;</li> <li>- a member or members be exonerated; or</li> <li>- disciplinary or criminal proceedings against an individual or individuals be commenced; or</li> <li>- a combination of the above.</li> </ul> </li> <li>• In some circumstances where evidence exists that a criminal offence may have occurred, OPI will refer the matter to the Director of Public Prosecutions.</li> <li>• The purpose of the <i>Whistleblowers Protection Act 2001</i> is to encourage and facilitate disclosures of improper conduct by public officers and public bodies (e.g. members of parliament, councillors, council employees and public servants), provide protection for individuals who make such disclosures, and provide for the matters disclosed to be properly investigated and dealt with. The conduct must be so serious that, if proven, it would constitute a criminal offence or reasonable grounds for dismissal in order for the protections under the Act to be available.</li> <li>• The <i>Crimes Act 1958</i> provides that the common law offence of misconduct in public office has a 10 year maximum term of imprisonment.</li> </ul>	<p><u>Office of Police Integrity (OPI)</u></p> <p>Established under the <i>Police Integrity Act 2008</i>.</p> <p>The OPI is an independent police anti-corruption and oversight organisation. Its role is to ensure that Victorian Police maintain the highest ethical and professional standards, and is empowered to detect, investigate and prevent police corruption and serious misconduct.</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
Western Australia	<ul style="list-style-type: none"> <li>• <i>Police Act 1892</i></li> <li>• <i>Corruption and Crime Commission Act 2003</i></li> <li>• <i>Criminal Code Act 1913</i></li> <li>• <i>Public Sector Management Act 1994</i></li> <li>• <i>Public Interest Disclosure Act 2003</i></li> <li>• <i>Parliamentary Commissioner Act 1971</i></li> <li>• <i>Auditor General Act 2006</i></li> <li>• <i>Financial Management Act 2006</i></li> </ul>	<ul style="list-style-type: none"> <li>• Under the <i>Police Act 1982</i>, a finding of misconduct against a police officer can result in the following sanctions: reprimand; fine; reduction to lower rank; reduction in salary; suspension from duty; or discharge/dismissal.</li> <li>• Under the <i>Corruption and Crime Commission Act 2003</i>, the Corruption and Crime Commission (CCC) is empowered to investigate allegations of misconduct by WA police officers and public officers including officers employed in local government. Misconduct occurs if a public officer acts corruptly, takes advantage of their position in order to obtain a benefit or cause detriment, or commits an offence punishable by two or more years' imprisonment. When a complaint is made, the CCC can do one of three things: (i) refer the complaint to the appropriate authority; (ii) refer it to the Parliamentary Commissioner or Auditor-General; or (iii) investigate or take action without the involvement of any other independent agency or appropriate authority.</li> <li>• The <i>Criminal Code Act 1913</i> provides a suite of offences relating to corruption and abuse of office, e.g. corruption, falsification of records, bargaining for public office. These offences carry a maximum term of imprisonment of seven years.</li> <li>• Under the <i>Public Sector Management Act 1994</i>, where a member of the WA public sector commit breaches of discipline (e.g. misconduct), that member can be: reprimanded; transferred; fined; have his/her monetary remuneration or level of classification reduced; dismissed.</li> <li>• The <i>Public Interest Disclosure Act 2003</i> enables people to make disclosures about certain types of wrongdoing within the State public sector, local government and public universities without fear of reprisal.</li> </ul>	<p><u><a href="#">Corruption and Crime Commission (CCC)</a></u></p> <p>Established under the <i>Corruption and Crime Commission Act 2003</i>.</p> <p>The CCC accepts and can investigate allegations of misconduct by Western Australian police officers and public officers including officers employed in local government.</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
<p><b>South Australia</b></p>	<ul style="list-style-type: none"> <li>• <i>Whistleblowers Protection Act 1993</i></li>   <li>• <i>Criminal Law Consolidation Act 1935</i></li>   <li>• <i>Police Act 1998</i></li>   <li>• <i>Public Sector Act 2009</i></li>   <li>• <i>Public Sector Management Act 1995</i></li>   <li>• <i>Ombudsman Act 1972</i></li>   <li>• <i>Freedom of Information Act 1991</i></li> </ul>	<ul style="list-style-type: none"> <li>• The <i>Whistleblowers Protection Act 1993</i> is designed to provide protection from civil or criminal liability for any person who wishes to inform about possible improper or illegal actions, including such actions by the public service. Where this type of information is disclosed to the Ombudsman in relation to actions by public officers, the Ombudsman can assess the information and decide on appropriate action, .e.g investigate the matter if within the Ombudsman’s jurisdiction or refer to another agency for investigation.</li>   <li>• The <i>Criminal Law Consolidation Act 1935</i> provides that corruption and abuse of public office are offences, the maximum term of imprisonment for which is 7 years.</li>   <li>• Under the <i>Police Act 1998</i>, members of the SA police service are subject to a Code of Conduct. Breach of the Code can result in: termination; suspension; reduction of remuneration; transfer; reduction in seniority; fine; reprimand, etc.</li>   <li>• Under the <i>Public Sector Act 2009</i>, a finding of misconduct against an SA public official can result in: reduction of remuneration; termination; or disciplinary action (i.e. reprimand or suspension without pay).</li>   <li>• The ethical framework for the SA public sector is provided by Part 2 of the <i>Public Sector Management Act 1995</i>, and applies to all public sector employees and agencies. There are three broad elements that underpin ethics and standards of conduct in the SA public sector: integrity; respect; and accountability. Disciplinary action can be taken under the Act where a public sector employee behaves improperly or fails to comply with the Act, including: reprimand; order that the leave entitlement be reduced by a specified amount; suspension; order that the salary of the employee be reduced by a specified amount for a specified period.</li> </ul>	<p>N/A</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
<p><b>Tasmania</b></p>	<ul style="list-style-type: none"> <li>• <i>Parliamentary (Disclosure of Interests) Act 1996</i></li>   <li>• <i>Police Service Act 2003</i></li>   <li>• <i>Public Interest Disclosure Act 2002</i></li>   <li>• <i>Criminal Code Act 1924</i></li>   <li>• <i>Ombudsman Act 1978</i></li> </ul>	<ul style="list-style-type: none"> <li>• The <i>Parliamentary (Disclosure of Interests) Act 1996</i> requires members to disclose interests by establishing a system of returns that are required to be lodged and a register that records these interests. Section 24 makes failure to lodge a return or provide information or the act of disclosing false or misleading information contempt of Parliament. Parliament may admonish the Member, impose a fine not exceeding \$10,000 or suspend the member for any period it determines.</li>   <li>• Section 42 of the <i>Police Service Act 2003</i> establishes a code of conduct requiring police officers to behave with honesty and integrity in the course of their duties. Section 43 provides a list of sanctions that may be imposed by the Police Commissioner if the code of conduct has been breached, ranging from a direction that the officer receive counselling to the power to recommend to the Minister that the officer be demoted or their appointment terminated. Police officers can be compelled to provide financial statements if there are reasonable grounds to suspect the officer has engaged in behaviour that is corrupt, unethical or likely to constitute an indictable offence. Soliciting or accepting bribes are offences.</li>   <li>• The <i>Public Interest Disclosure Act 2002</i> creates protection for public officers or contractors engaged by a public body to make public interest disclosures about improper conduct or detrimental action to the Ombudsman, Commissioner of Police or Speaker of the House.</li>   <li>• Under the <i>Criminal Code Act 1924</i> it is an offence for Members of Parliament to receive bribes. Chapter IX of the code details corruption type offences including corruption of public officers; extortion by public officers; the possession by public officers of a personal interest in a government contract; corrupt discharge of the duties of a valuator and the issue of false statutory certificates by a public officer. Bargaining for public office, judicial corruption and disclosure of official secrets are also offences under the Code.</li>   <li>• The <i>Ombudsman Act 1978</i> grants the Ombudsman power to investigate complaints against public bodies and officers and, in the event of a finding of misconduct, may report the matter to the responsible minister or principal officer in a statutory authority.</li> </ul>	<p>N/A</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
<p><b>Northern Territory</b></p>	<ul style="list-style-type: none"> <li>• <i>Public Sector Employment and Management Act 2002</i></li>   <li>• <i>Police Administration Act 2009</i></li>   <li>• <i>Criminal Code Act 1983</i></li>   <li>• <i>Ombudsman Act 2009</i></li> </ul>	<ul style="list-style-type: none"> <li>• The <i>Public Sector Employment and Management Act 2002</i> applies to the NT public sector and provides that where a breach of discipline (e.g. improper conduct, provides false or misleading information), amounts to misconduct, the public official may be dismissed. For other breaches of discipline, a public official can: be formally cautioned; be fined; be required to forgo a benefit or entitlement arising from the employment; have his/her salary reduced; be suspended; be transferred; or have his/her employment terminated.</li>   <li>• The <i>Police Administration Act 2009</i> provides that sanctions may be imposed for breaches of discipline by NT police officers, including: counsel and caution; fine; reduction of rank or salary; transfer; suspension; order to pay restitution or compensation; dismissal.</li>   <li>• Under the <i>Criminal Code Act 1983</i>, the offence of official corruption applies to any person employed in the public service and carries a term of imprisonment of 7 years. Official corruption includes corruptly asking for, receiving, obtaining or agreeing/attempting to receive or obtain, any property or benefit of any kind for himself or herself. Likewise, abuse of office applies to the public sector, and is an offence which carries a term of imprisonment of 2 years. If the act is done or directed to be done for the purposes of gain, the person is liable to imprisonment for 3 years.</li> </ul>	<p>N/A</p>

Jurisdiction	Legislation	Sanctions	Anti-corruption bodies
<p><b>Australian Capital Territory</b></p>	<ul style="list-style-type: none"> <li>• <i>Public Interest Disclosure Act 1994</i></li>   <li>• <i>Criminal Code 2002</i></li>   <li>• <i>Government Procurement Act 2001</i></li>   <li>• <i>Auditor-General Act 1996</i></li> <li>• <i>Financial Management Act 1996</i></li> <li>• <i>Freedom of Information Act 1989</i></li> <li>• <i>Ombudsman Act 1989</i></li> </ul>	<ul style="list-style-type: none"> <li>• The <i>Public Interest Disclosure Act 1994</i> provides a vehicle for people to report wrongdoing in the ACT public sector - a public interest disclosure or “whistleblowing”. Disclosures can be made about conduct which is, for example dishonest, impartial, a breach of the public trust, etc. This conduct could be: a criminal offence; a disciplinary offence (i.e. grounds for disciplinary action under a Territory law); or reasonable grounds for terminating the services of a public official.</li>   <li>• Abuse of public office is an offence under the <i>Criminal Code 2002</i> which applies to ACT public officials and carries a penalty of 500 penalty units, a term of imprisonment of 5 years, or both.</li>   <li>• The <i>Government Procurement Act 2001</i> provides that members of the ACT Government Procurement Board (which must include 3 public employees), commit an offence if they abuse their position on the board i.e. the person uses information gained because of being a member of the board and does so with the intention of dishonestly obtaining a benefit. The offence carries a maximum penalty of 5 years imprisonment.</li> </ul>	<p>N/A</p>

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