

*Let the sunshine in*

# Review of culture and accountability in the Queensland public sector

FINAL REPORT  
28 June 2022

Professor Peter Coaldrake AO



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Dear Premier

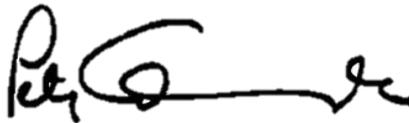
**'Let the sunshine in'**

It is my pleasure to provide to you the **Final Report** of the **Review of culture and accountability in the Queensland public sector**. It follows the **Interim Report** of 21 April.

I commend you and your Government on establishing this Review, and thank you for the opportunity to serve.

With best wishes.

Yours sincerely



Professor Peter Coaldrake AO  
**Reviewer**

# Contents

## ABBREVIATIONS

|  |           |
|--|-----------|
| <b>1. EXECUTIVE SUMMARY</b>                                | <b>1</b>  |
| <b>2. SUMMARY RECOMMENDATIONS</b>                          | <b>3</b>  |
| <b>3. PURPOSE AND CONTEXT, METHODOLOGY AND DEFINITIONS</b> | <b>4</b>  |
| Purpose and context  | 4         |
| Methodology  | 5         |
| Definitions  | 6         |
| <b>4. INTERSECTION OF CULTURE AND INTEGRITY</b>            | <b>8</b>  |
| <b>5. JOURNEY TO DATE</b>                                  | <b>10</b> |
| Modernising government                                     | 10        |
| The Queensland context                                     | 11        |
| The journey of the public service since Fitzgerald         | 14        |
| <b>6. FORMATION OF QUEENSLAND'S INTEGRITY PATCHWORK</b>    | <b>17</b> |
| <b>7. THE PERFORMANCE OF THE INTEGRITY PATCHWORK</b>       | <b>19</b> |
| Auditor-General  | 19        |
| Ombudsman  | 24        |
| Information Commissioner                                   | 27        |
| Integrity Commissioner                                     | 29        |
| Crime and Corruption Commission                            | 32        |
| <b>8. THE CASE FOR A CLEARING HOUSE FOR COMPLAINTS</b>     | <b>40</b> |
| <b>9. LOBBYING AND INFLUENCE</b>                           | <b>47</b> |
| <b>10. STRENGTHENING THE UNDERPINNING SYSTEM</b>           | <b>59</b> |
| Parliament   | 59        |
| Proactive release of Cabinet documents                     | 60        |

|  |           |
|--|-----------|
| Reliance on RTI exemptions   | 64        |
| Mandatory data breach notifications  | 66        |
| Whistleblowing   | 67        |
| Non-disclosure agreements (NDAs)   | 68        |
| Independence of appointments and funding                                   | 69        |
| Oversight of Local Government  | 71        |
| <b>11. RENEWING THE PUBLIC SECTOR: BIGGEST EMPLOYER, WHY NOT THE BEST?</b> | <b>73</b> |
| <b>CONSOLIDATED LIST OF RECOMMENDATIONS</b>                                | <b>91</b> |
| <b>ENDNOTES, APPENDICES &amp; SELECT BIBLIOGRAPHY</b>                      | <b>95</b> |

## **Acknowledgments**

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Special acknowledgement is extended for the superb efforts of the small team of people who have worked on both the Interim Report in April, and now this Final Report. They are Megan Applegarth, Romaine Carpenter, David Fagan, Peter Forster, Georgia Haydon, Miriam Johansen and Leigh Tabrett.

## **The Reviewer**

The reviewer is Emeritus Professor Peter Coaldrake AO. He is also currently the Chief Commissioner of the Tertiary Education Quality and Standards Agency (TEQSA), Australia's higher education regulatory agency, and Chair of the Board of the Queensland Performing Arts Trust.

Professor Coaldrake served almost fifteen years as Vice-Chancellor and CEO of Queensland University of Technology (QUT) until December 2017. Since then, he also has undertaken significant public reviews on behalf of both the Morrison and Palaszczuk governments. He is a dual Fulbright scholar, and served as Chair of Queensland's Public Sector Management Commission during the premiership of Wayne Goss.

# Abbreviations

| ABBREVIATION   | TERM   |
|----------------|--|
| <b>APGRA</b>   | Australian Professional Government Relations Association |
| <b>APS</b>     | Australian Public Service                                |
| <b>CAPE</b>    | Conduct and Performance Excellence                       |
| <b>CBRC</b>    | Cabinet Budget Review Committee                          |
| <b>CCC</b>     | Crime and Corruption Commission                          |
| <b>CEO</b>     | Chief Executive Officer                                  |
| <b>CJC</b>     | Criminal Justice Commission                              |
| <b>CMC</b>     | Crime and Misconduct Commission                          |
| <b>CPIPC</b>   | Crime and Public Integrity Policy Committee              |
| <b>CSRC</b>    | Committee System Review Committee                        |
| <b>DPC</b>     | Department of Premier and Cabinet                        |
| <b>EARC</b>    | Electoral and Administrative Review Commission           |
| <b>ESU</b>     | Ethical Standards Unit                                   |
| <b>FAC</b>     | Finance and Administration Committee                     |
| <b>FTE</b>     | Full Time Equivalent                                     |
| <b>FOI</b>     | Freedom of Information                                   |
| <b>GOC</b>     | Government-Owned Corporation                             |
| <b>GPC</b>     | Gladstone Port Corporation                               |
| <b>IBAC</b>    | Independent Broad-based Anti-corruption Commission       |
| <b>ICAC</b>    | Independent Commission Against Corruption                |
| <b>INTOSAI</b> | International Standard of Supreme Audit Institutions     |
| <b>LG</b>      | Local Government   |
| <b>MDBN</b>    | Mandatory Data Breach Notification                       |
| <b>MOG</b>     | Machinery of Government                                  |
| <b>NDA</b>     | Non-Disclosure Agreement                                 |
| <b>OIA</b>     | Office of the Independent Assessor                       |
| <b>OPS</b>     | Office of the Public Service                             |
| <b>OPSC</b>    | Office of the Public Service Commissioner                |

|              |   |
|--------------|---|
| <b>OPSPM</b> | Office of Public Service Personnel Management       |
| <b>PAC</b>   | Public Accounts Committee                           |
| <b>PCCC</b>  | Parliamentary Crime and Corruption Committee        |
| <b>PID</b>   | Public Interest Disclosure                          |
| <b>PS</b>    | Public Service                                      |
| <b>PSB</b>   | Public Service Board                                |
| <b>PSC</b>   | Public Service Commission                           |
| <b>PSMC</b>  | Public Sector Management Commission                 |
| <b>QAO</b>   | Queensland Audit Office                             |
| <b>QCAT</b>  | Queensland Civil and Administrative Tribunal        |
| <b>QCC</b>   | Queensland Crime Commission                         |
| <b>QHRC</b>  | Queensland Human Rights Commissioner                |
| <b>QLS</b>   | Queensland Law Society                              |
| <b>QPS</b>   | Queensland Police Service                           |
| <b>RTI</b>   | Right to Information                                |
| <b>RNFA</b>  | Referred/Devolved with no further advice            |
| <b>SAI</b>   | Supreme Audit Institutions                          |
| <b>SDPC</b>  | Service Delivery and Performance Commission         |
| <b>SDRIC</b> | State Development and Regional Industries Committee |
| <b>SES</b>   | Senior Executive Service                            |
| <b>UK</b>    | United Kingdom                                      |
| <b>UPA</b>   | Unit of Public Administration                       |
| <b>US</b>    | United States                                       |

# 1. Executive Summary

The title 'Let the sunshine in' for this Final Report is deliberate. It responds to widespread disaffection with the performance of governments and rising expectation that our politicians and their officials be more accountable and transparent in their dealings, and behave with integrity.

As well as its close association with the State of Queensland, the reference to sunshine is inspired by other attempts at opening government processes to public gaze. The US Congress passed its *Government in the Sunshine Act* in 1976.

This Review was prompted by a number of issues, some publicly ventilated, which together paint the picture of an integrity system under stress trying to keep check on a culture that, from the top down, is not meeting public expectations. The core of the system is its people who, overwhelmingly, seek to do a good job for the community they serve.

In that context our purpose is to look at the condition of the machinery overall as well as the effectiveness of the moving parts of an apparatus which has evolved over the thirty years since the cathartic Fitzgerald Inquiry. Its exposure of major corruption and institutional failure prompted a range of reforms designed to improve accountability of both the political and administrative arms of government.

Good intentions on the part of successive governments have since led to the establishment of new bodies, though predictable new challenges have emerged in the form of overlapping activity and mission drift or creep. Meanwhile some activities of bodies which have benefitted elsewhere from greater independence have not been the subject of similar focus here.

There are good reasons, from the public's perspective, for a dispersed system of integrity agencies. But constant attention is needed to keep it functional for purpose, understandable to the citizen who might use it and the managers who guide it. One opportunity this Review recommends is creation of a means for users to more easily navigate their way through a system too reliant on investigations rather than education. This necessarily changes some agencies' functions but, more importantly, will require behavioural change. That is also a much better option than to create additional integrity agencies.

The integrity bodies represent only part of a very large public sector but they are the traffic control system which enables citizens to have faith that their needs are being fairly addressed. The uneven approach of the various organisations, the turf wars over jurisdiction and valid questions about effectiveness can undermine that sense of fairness.

Key to achieving lasting positive change in any organisation, and certainly in government, is culture. And culture is shaped by leaders at all levels – the Premier of the day, ministers, MPs, Directors-General and senior executives. Their tone will be a precondition for success, whether that 'tone' be in the form of modelling behaviour, policy ambition and encouraging a contest of ideas, supporting the community in

times of crisis, or the manner in which authority is exercised and the voice of the public heard.

This Final Report canvasses areas where that tone has not reached the required pitch. In every case, whether the trivialising of parliamentary committees, lack of independence needed by integrity bodies or lack of clarity about decision making, this can be reversed by a commitment to openness, supported by accountability. Any good government, clear in purpose and open and accountable in approach, should have fewer integrity issues.

Part of the problem is an identifiable loss of capacity in the public service which has been accelerated by what is now an overreliance on external contractors and consultants. All of these matters are compounded by a culture too tolerant of bullying, unwilling to give life to unfashionable points of view and dominated by the occupational hazard of all governments, short-term political thinking. This has become ever more frustrating for the community.

This Review aspires to influence a cultural shift which encourages openness from the top, starting with Cabinet processes and a resulting shared focus on identifying and dealing with the challenges Queensland faces. Investing in good people and supporting them with an integrity system that enables a fair workplace committed to quality outcomes will help to rebuild the nobility of public service. Our best young people, indeed the best young people from around the world, should aspire to be part of Queensland's public sector, serving the needs of the community, and a government committed to identifying and enacting a long-term strategy for the State.

The role of influence has been a constant undertone to this Review. The current visibility of paid lobbying, with its impact on public perception, highlights a serious issue. The Review's recommendations widen the net of what activity is regulated but, importantly, match this with an expectation that ministers and their officials will offer more disclosure of the representations influencing their decisions. The Premier announced some changes to lobbying regulations on the eve of this Final Report, an action portrayed as urgently responding to community concerns. This Review welcomes the emphasis and looks forward to similar urgency in implementing its full package of recommendations.

In establishing this Review, the Premier identified the value of a fresh set of eyes on the culture of her government and its accountability mechanisms. This need is not entirely a Queensland problem. The complexity of issues governments face and the social and technology forces undermining community confidence are universal. The Premier's actions in inviting this scrutiny are the starting point for a renewed focus on both culture and accountability. It is now up to government to make this focus a wake-up call to support for a more open system of government with a well performing and highly valued public sector.

## 2. Summary Recommendations

1. The independence of the position of the Auditor-General be strengthened, extending its scope and according it status as an Officer of the Parliament.
2. Cabinet submissions (and their attachments), agendas, and decisions papers be proactively released and published online within 30 business days of such decisions.
3. Lobbying regulation be strengthened through a requirement to register all professionals offering paid lobbying services for third parties, more transparent description of meeting purposes, extension of ministerial diaries to include staff meetings with lobbyists and explicit prohibition of lobbyists “dual hatting” as political campaigners.
4. Development and continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior public service officers. The tone set at the top is essential.
5. The rejuvenation of the capability and capacity of the Queensland public sector be a major and concerted focus. This should emphasise a culture of performance and integrity. The Public Service Commission must accept its key role.
6. Establishment of a single clearing house for complaints, with capacity for the complainants and agencies to track progress and outcomes. Technology enablement and proper training of staff will be critical.
7. The Crime and Corruption Commission (**CCC**) to avail itself of the opportunity provided by the clearing house and the other cultural changes prompted by this Review to redouble its attention on serious corruption and major crime.
8. Those complaints against senior public sector employees which the CCC devolves must include ongoing oversight by the Public Service Commission and an independent Director-General.
9. Departments more robustly account for the benefits derived from engaging consultants and contractors, with regular monitoring by the Auditor-General.
10. Citizens’ privacy rights be protected by implementation of mandatory reporting of data breaches.
11. Whistleblowers be protected by the Government immediately activating its promised review of Public Interest Disclosure legislation.
12. Integrity bodies’ independence be enhanced by involvement of parliamentary committees in setting their budgets and contributing to key appointments.
13. The Ombudsman be provided with the authority to investigate complaints against private organisations carrying out functions on behalf of the government.
14. Stability of government and performance of public service be strengthened by appointment of agency CEOs (including Directors-General) on fixed term, five year contracts, unaligned to the electoral cycle.

### 3. Purpose and context, methodology and definitions

#### Purpose and context

The focus of this Review, established by Premier Anastacia Palaszczuk on 18 February 2022 with a four-month timeline, has been on culture and accountability in the Queensland public sector. This Final Report follows the presentation of an Interim assessment on 21 April 2022. The Terms of Reference, set out in full in Appendix 1, require the Review to consider both the accountability and integrity framework overall, but also its component parts and how those parts interact. Particular emphasis was placed by the Premier on matters of public sector culture and on ensuring that the framework:

- is contemporary, fit for purpose and future focussed;
- is effective in supporting an ethical public sector culture;
- is underpinned by robust systems including complaints mechanisms and training; and
- maintains the public's trust in the decisions of the Queensland Government.

The Review was prompted by a number of recent controversies and the issues they collectively raise go to matters of trust and to debates about the independence, transparency, integrity, accountability and impartiality of particular agencies and offices operating in what has become both contested and congested territory. The issues so raised are all symptomatic of pressures in and on the system. The manner in which they have been aired, outside established channels in some cases, leaves the impression that the system is not working as it should.

In establishing this Review, the Premier stated: 'It is always good to look at things with fresh eyes. The 21st century has brought rapid changes, not least in terms of technology. We need to address that. People deserve a government that is fit for purpose, geared to their needs and focused on them.'

In that context, the Review has not sought to relitigate matters of dispute which have been or remain the subject of various separate processes. Rather, it has been to look at the health of the system overall, and to assess how its component parts are working together to ensure that the business of government is being conducted in an open and accountable way. This means government conducting itself in a spirit of fairness, with a close eye on its ability and capacity to respond to the community's changing needs and with a constant focus on its own performance and its value-for-money to taxpayers and the broader community.

It is equally important that contemporary government be 'fit for purpose', the theme raised by the Premier herself in establishing the Review. The priorities and expectations of society are evolving and the community – despite its apparent loss of faith in leaders and institutions, including politicians, the media and the churches

– still looks to government as a mainstay for assistance, security and leadership, especially in times of crisis and profound dislocation. In particular, the community looks to governments at all levels to work together in providing essential services, to help mitigate the impacts of natural disasters and to address more intractable societal challenges such as domestic violence and drug abuse. Addressing First Nations opportunities is a fundamental challenge. Now and into the future, communities everywhere – including those in Queensland – will expect government to take a lead in guiding the massive adaptations which will be necessitated by the existential threat of climate change and the imperatives of a rapidly transitioning economy.

## Methodology

Central to our analysis have been the views and experiences of members of the public and external organisations who have observed or experienced the system. Equally important have been the observations of those who work at a variety of levels within it.

In all, the Review received 327 submissions and almost 100 meetings were held. All written submissions have been read and acknowledged. Many of those who made submissions, either written or oral, were extremely concerned that their confidentiality be respected. That assurance stands. Where a quote from an individual is referred to in this Report, the prior consent of that individual was obtained with the condition that they remain unable to be identified.

Some of the meetings we have held have been with those who have made submissions, often at their request. Others have involved ministers and Directors-General, both present and past, as well as office holders, public sector employees at all levels and including from integrity bodies, community groups, academics, ministerial advisers and representatives of the business sector.

In terms of the submissions themselves, we assessed the information carefully and made provisional assessments of the reliability of the things that we were told, having regard to whether those things were confirmed by other independent evidence, along with the probability that what was said was correct. Naturally, we considered the motivations of individuals to exaggerate and the possibility of self-interest or unconscious bias that could affect their recollections. This process was not like a court case where our findings depended upon accepting the honesty and reliability of one or a few key witnesses. Instead, we obtained and assessed a large volume of information and opinions from diverse sources.

The information that we were given was not sworn under oath. However, we doubt whether the matters upon which we rely, which came from many separate sources, would have been very different had we engaged in the long and laborious process of requiring those informing us to give sworn testimony. Had that course been adopted, then the Review would have been protracted, much more expensive and obviously legalistic. Still, this is a review and inquiry into the real state of play, of how a system and its component parts work and function together for the benefit of the community. We are confident that the information that has informed the Review's conclusions provides a reliable basis for those conclusions and a useful one for moving forward.

# Definitions

At the outset, it is important that there be clarity about definitions. As was indicated in the Interim Report, in doing so it is hard not to be sympathetic with the frustration expressed by the Hon Ian Callinan AC and Professor Nicholas Aroney in their *Review of the Crime and Misconduct And Related Matters* about the tendency nowadays to clothe simple terms with unnecessarily long and complex phraseology. For the purpose of this Review, **'integrity'** means honesty and fairness.<sup>i</sup> Acting with integrity involves the 'use of public power for officially endorsed and publicly justified purposes'.<sup>ii</sup> **'Accountability'** means answerability. To be accountable is to promptly and accurately inform the relevant authority or the public directly of the reasons for all significant or potentially controversial decisions and actions.<sup>iii</sup> It means being answerable in respect of those decisions. **'Transparency'** means openness. **'Impartiality'** means objectivity and fairness, making decisions and taking all action, including public appointments, in the public interest without regard to personal, party political or other immaterial considerations.<sup>iv</sup> **'Independence'** means freedom from external direction. That a body is 'independent' does not mean it can act in an unfettered way. While an independent body must be able to exercise its functions free from external direction, it must remain accountable for the way in which it performs its legislated functions and exercises its powers.

It is equally important to distinguish so-called 'integrity bodies' from the many other publicly funded agencies which contain an integrity function. Professor A J Brown distinguishes the two by using the language of 'core' and 'distributed' integrity institutions.<sup>v</sup> 'Core' integrity institutions are those which are established solely or primarily to carry out integrity functions whereas 'distributed' integrity institutions are 'embedded in the internal accountability and governance systems of every organisation'.<sup>vi</sup> It has been said that those core bodies constitute the 'integrity *branch*' while the 'integrity *system*' comprises the entire collection of bodies which have some integrity function.

This Review has applied the simple language of 'integrity bodies' to describe the Queensland Audit Office, Ombudsman, Crime and Corruption Commission, Office of the Information Commissioner and the Integrity Commissioner. The Public Service Commission, though sometimes described as an integrity body in the sense that it has obligations to set standards, also has other characteristics and functions that render it distinct from the core bodies.

The Electoral Commission, Office of the Independent Assessor, Racing Integrity Commission, Health Ombudsman, Human Rights Commission, Legal Services Commission, Office of the Energy and Water Ombudsman, State Archivist, Clerk of the Parliament and Queensland Civil and Administrative Tribunal (**QCAT**) each have integrity functions but are not considered 'core' integrity bodies. In addition, there are parliamentary committees which sit above a number of these institutions and which are tasked with carrying out an important oversight role. Another significant part of the broader patchwork is the departmental ethical standards or integrity units which support the work of their respective agencies.

Underlying all the above should be the expectation that all publicly funded bodies, and the people who work within them, will behave with integrity. However, and to underline the point already made, the presence of an integrity function in an organisation does not necessarily render it an integrity body.

This Review also was charged with examining ‘**culture**’ in the public sector, and understands this to mean the prevailing values, behaviours, attitudes, and norms shared by officers working within the public sector. These, of course, include the formally espoused ethical values set out in the *Public Sector Ethics Act 1994* (Qld) and the associated Codes of Conduct. It is understood that these hallmarks of culture evolve over time in response to specific operating conditions or circumstances, and paint a more nuanced picture of the prevailing working culture of the public sector.

Finally, the Review has defined ‘**public sector**’ as including any function funded by and operated on behalf of the taxpayer. This shorthand definition also aligns with the spirit of the Review’s Terms of Reference.

## 4. Intersection of culture and integrity

The purpose of an integrity system in government is to ensure its agents – ministers, their staff, the public service and boards and staff of other government-owned bodies – work fairly, honestly, openly and accountably in the interests of the public they serve, and not for the benefit of themselves or their interests. An integrity system needs both to articulate appropriate standards to guide behaviour and decision-making, and to operate an appropriate system of regulation, review and investigation of government agencies and their operations.

The specialist bodies which carry out these tasks, and their processes and performance, will always attract scrutiny, an essential element to keeping them aware of both their formal obligations and public expectations.

This makes the State's integrity system integral to the functioning of government. Integrity is not an adornment to the system but essential to it and should be seen as such by the public, even if sometimes discounted in its value by the actions of some players. 'Integrity' as a term might be understood differently in a range of contexts. But a question about the integrity of an individual, or a decision-making process, cannot simply be waved away. It requires resolution and, usually, a fresh approach to ease concerns. This is not necessarily a bad thing.

However, the integrity system is, like the rest of government, shaped by human behaviour which can be flawed; it needs regular checking, sometimes encouragement, sometimes restraint. Like all human systems, it can also be vulnerable: becoming captive to the views of long-serving individuals; seeking simplicity to resolve complexity; passing the buck on difficult complaints and losing the will to collaborate because of agency silos.

The public served by government, and institutions such as the media and others that hold government to account, need to be confident that the integrity system is functioning, and that the human systems are working. Denial of this by key participants – demonstrated by turf wars over jurisdiction or systematic workarounds – can erode that confidence. There is no shortage of examples.

Aside from the recent airings involving the Integrity Commissioner, former State Archivist and the Public Service Commissioner, examples frequently cited in representations to this Review include: concerns about the influence of lobbyists on decision-making; the overreach of some ministerial staff and their lack of accountability; the erosion of functions designed to hold government to account, such as the Auditor-General; the increased use of outside consultants and the subsequent loss of capacity in the public service.

All institutions need to adapt to the circumstances of their time and some of the above concerns are the consequence of changing priorities for governments across the board. This does not mean their advance should go unchecked.

As we move to the second quarter of the 21st century, those organisations that succeed are likely to be those

that are responsive to demands for more citizen involvement. Technology has made consumers more activist in their purchasing power, more demanding in their voting power and more informed about the impact of government decisions on them as individuals. These considerations are at the heart of the challenge for government in the 21st century – to satisfy the individual’s expectations to have their needs met and rights respected while maintaining an umbrella of service for the community.

A culture dedicated to service and accountability, and of course to performance, is essential to meet this challenge. And it is equally evident that many people in our public sector embrace that noble tradition in their daily activity. At the same time, representations made to this Review indicate the fraying of this culture on a number of levels. There is a view, repeatedly confirmed, that public service advice is too often shaped to suit what are assumed to be the preconceptions of the people receiving it, that the price for frank and fearless advice can be too high, sometimes devastatingly so, and the rewards too low. All this encourages a reluctance to depart from what is perceived to be the ‘official line’. The examples given are not isolated, nor are they confined to singular pockets of the government.

It is not suggested for a moment that such matters are a recent phenomenon or are confined to Queensland; many of them, in fact, have been raised in other public sector reviews over the years. But that does not lessen their relevance here and now, nor for the future.

The next section of the Report describes the journey of the Queensland public sector over recent years. Suffice it to say here that the collective impact of successive waves of reform and disruption over the past 30 years, combined with the many challenges of a profoundly changing and more demanding external environment, have had an unsettling and destabilising impact on what is now a beleaguered sector.

While this problematic situation is not restricted to Queensland, the addressing of it is essential to rebuilding of both trust and confidence in the public sector here. And neither trust nor confidence are built if there is trepidation, even fear, in providing advice which might differ from the official line. That in turn leads to cynicism within the very group of people upon whom the community and the government of the day rely to uphold a culture of service. Complex, sometimes lengthy decision-making and the need to balance various sources of advice and interpretations can look like obfuscation and readily lead to either intemperate use of power through bias for action or an aversion to actually making decisions. Accountability systems that are well understood and synchronised with sound public policy and decision-making reduce this risk.

This is all clearly exacerbated by the big agenda confronting governments now and into the future. By any measure, Queensland has a proud record of service delivery to its community. Yet there is lack of evidence to demonstrate how governments at any level will deal with the foreseeable, let alone unforeseeable, problems of a world that is increasingly volatile and challenged. The issues raised by climate change, shifting global security alliances, digital technology, the reconciliation with First Nations people, and the ageing of the population all must be tackled by government. But this can only be done in partnership with the community if there is mutual trust sustained by good culture, dedicated to service, accountability and performance.

## 5. Journey to date

### Modernising government

The notion of career public service has its origins in the 1854 Northcote-Trevelyan report on the British civil service.<sup>vii</sup> Commissioned amid concerns about inefficiency and patronage in government administration and a loss of community faith in the political process, Northcote-Trevelyan remains relevant for us today, and for this Review in particular. It enshrined the core values of a public service. These were, and remain, a commitment to integrity, propriety and objectivity, with officials appointed on merit and able to transfer their loyalty and expertise from one elected government to the next.

Subsequent United Kingdom (**UK**) reports, particularly those of Haldane in 1918<sup>viii</sup> and Fulton in 1968,<sup>ix</sup> built on that foundation. They set out the challenges of adapting a noble ideal to changing realities, and the imperative to build the capacity of government to deal with an increasingly complex world.

Building the capacity of government also provided the template for the similar inquiries established in Australia in the succeeding years, in particular those led by Dr H C Coombs<sup>x</sup> at the federal level and Dr Peter Wilenski in New South Wales.<sup>xi</sup> Most other States followed suit with similar reviews, though notably Queensland resisted those reformist tendencies until the Fitzgerald Inquiry in the late 1980s.<sup>xii</sup> That activity had begun as a limited probe of police misconduct, but turned into a consuming dissection of the body politic.

Since the 1980s, the balance of government reform attempts in Australia has mostly shifted from the broad-ranging and general in scope, to more targeted activity typically reflecting response to serious budget pressures, demands for efficiency and fairness, and a recognition that traditional approaches to service delivery may have outlived their usefulness. Underpinning some of the experiments in delivery has been an interest, though one pursued with mixed success, to adopt more business-oriented solutions to the challenges faced by government. This interest has embraced delivery of both services and major infrastructure. In turn, the contracting-out of services, or the entering-into of partnerships for large taxpayer-funded major infrastructure projects have required the development of new capacities and capabilities within government. Significant integrity risks for government have emerged. These include the capacity of government to interrogate the complex structures of global or local corporate actors and, in particular, to ensure adequate oversight of service quality or value-for-money to the taxpayer.

It is not within the competence of this Review to provide advice about the best financial or consumer outcomes from the public or private operation of what traditionally have been public services. However, public services everywhere require the capability to offer sound advice to the government of the day on various alternative approaches to such delivery. Much of the concern about the so-called 'hollowing-out of the public services across various jurisdictions, including Queensland, goes to the impact on government capability of what has become a continuing exodus of activities and officials to the private sector. The task of

rebuilding the capacity and capability of the Queensland public sector, so that governments of the day can competently deal with this range of complex challenges, is thus a significant matter for this Review.

Nor are the community's perceptions of integrity assisted when governments invoke 'commercial-in-confidence' to shield taxpayer gaze from the costs and immediate consequences of major decisions. We see this in the underwriting by various governments of new hospitals, transport systems, correctional centres or quarantine facilities.

There also has been a rising and now persistent emphasis on supporting the rights of people to express their specific needs and concerns and to be heard, and to be assured of fair treatment. It has been the interest in greater transparency and accountability to the community for the actions of government which has contributed to the development of integrity bodies in all jurisdictions.

The urgings continue for governments to be capable of adapting themselves for the times. Most recently, the 2019 review of the Australian Public Service (**APS**), led by David Thodey concluded that while it is performing adequately, the APS is falling short of rising expectations and is unprepared for the challenges of an increasingly complex world.<sup>xiii</sup> <sup>xiv</sup> Thodey highlighted the long running underinvestment in the APS's people, capital and digital capability. His team's report also highlighted the problems created by siloed approaches, rigid hierarchies and excessive processes that – taken together – create barriers to the effective delivery of services. These themes also are regularly echoed in the findings of auditors-general and other reviews conducted around the country. And, of course, all of them are relevant in Queensland and to this Review.

## The Queensland context

In Australia, and certainly in Queensland, the community always has had something of a 'love-hate' relationship with government. The Interim Report of this Review already has made this point. On the one hand we like to tear down our politicians and stereotype our public servants. Sometimes there is a case to do so if they are behaving poorly or failing to honour their policies or to deliver services the community has been promised. The opposition of the day, regardless of its political colour, also has a role to critique and hold to account, and needs the capacity to do so, while the media has both a responsibility and a natural disposition to probe and to ventilate. All of these features become exaggerated in a hyperpartisan environment with 24-hour news cycles and a voracious social media vying for attention.

On the other hand, the familiar refrain of 'getting government off our backs' is at odds with the reality that many segments of the community require more and more government support. Historically this ambition has been able to co-exist with a level of respect for frontline service delivery personnel, including teachers, nurses, doctors, ambulance staff, firefighters and other emergency workers. But as the Interim Report also observed we live in angry times, and people in those roles are increasingly subjected to abuse, rage and even physical violence as they go about performing their roles. The sources of this anger are complex and diverse, and both broadly social and individual. However, complex rules-based systems, risk-averse service

providers, jurisdictional silos and overlaps which inhibit responsiveness to individual needs, or which hamper resolution of problems, all contribute to frustration and dissatisfaction with 'government', broadly defined.

The tacit acknowledgement of the role of government is underlined in Queensland, with its vast geographical dimensions and major social, industrial and environmental variations. Indeed, the Queensland government is the State's largest employer, and its presence in regional centres and far-flung districts is essential in sustaining those communities. The combination of large geography and dispersed population also make the task of delivering government services more complex and more expensive than in a more condensed setting. Yet these variations of circumstances also provide an opportunity for innovation. This includes the opportunity to tailor local solutions within a statewide framework, and for agencies to swarm their energies. Indeed, state government agencies working together and with the broader community and other levels of government at times of natural disasters has become the expected norm, particularly since Queensland's 'summer of disasters' in 2010 – 2011 during the premiership of Anna Bligh. The experiences of the global pandemic, and an establishing pattern of more frequent natural disasters, are instructive for future approaches.

The 'golden age' of Westminster-derived parliaments passed more than a hundred years ago with the consolidation of the political party system. In Queensland, that downgraded role of parliament was accentuated by abolition of the Legislative Council in 1922. Upper houses elsewhere may have had only a modest track records as chambers of review, yet the potentially moderating influence of a second chamber has not been present in Queensland. This absence, taken together with something of a frontier mentality, has helped to cultivate a raw, unrestrained 'winner takes all' style of politics in the northern state. However, it would be idle, from any practical angle, to seriously consider the restoration of the upper chamber in Queensland.

Long periods dominated by one side or the other certainly have contributed to the unrestrained style of politics played in Queensland over many years. This feature has affected the relationship of the government to the public service in part because of the sense of invulnerability which has periodically infected government. It has also engendered in the public mind a perception that the political opposition of the day is sidelined, both undermanned and unprepared for the serious task of government.

For all these and other reasons, Queensland with limited expectation was initially slow to recognise the need to modernise its system of government. The expectations were the comparatively early establishment of an Ombudsman's role and a strengthening of financial accountability laws in 1977.

Yet this overall lack of official interest in the broader public sector reforms being counter framed in other Australian jurisdictions during the 1970s and 1980s did not mean any particular lack of respect for some elements of what was a very traditional system. The public service itself was firmly directed by its central agencies, in particular Treasury, the Public Service Board (**PSB**) and the Coordinator-General, the latter a role with oversight of major public works.

The infrequent pronouncements of public officials, typically about major projects or the performance of the State's education or health systems, carried weight. And there is an echo of that respect for the public service in the naming of the state capital's largest and most prominent bridge over the Brisbane River in honour of Sir Leo Hielscher, a long-serving Under Treasurer. Hielscher became feted in the community for keeping Queensland's finances safe; he was also lauded within government for building a first-class cadre of Treasury officials. Mostly males in those days, many of these Treasury officers went on to influential posts across and beyond government for the succeeding generation.

Quite apart from Treasury, and notwithstanding the lack of official interest in how the internal processes of government worked, the matter of professional training and development of staff, an activity which nowadays we would term 'capacity building', was a significant priority elsewhere. It was core business for the Public Service Board, and was also an important priority in several agencies which served Queensland's industry and regional base. These included the mainstay departments of primary industries, lands, forestry and main roads.

Notwithstanding these modernising pockets of activity, the public service for a very long period remained largely unattended, certainly untouched by the types of reforms becoming increasingly commonplace in other jurisdictions. For example, in Queensland, public servants continued to be recruited at base level from school. By the 1980s these were being supplemented by larger numbers of graduates from the State's universities and colleges. Advancement to higher levels, however, was by seniority, that is, on the basis of time served rather than by a merit process. Also, recruitment into the administrative stream from outside the service was unusual, and attraction of talent from beyond Queensland's borders was firmly discouraged.

By the 1980s the integrity of the system was breaking down. Public service appointments as far down as the middle classification grades were attracting political scrutiny, and allegations of payback were being made in relation to actions against discordant voices in the public service and police ranks. Some of these matters were being ventilated in the media. More attention, too, was being drawn by a range of public service appointments, including of some ministerial staff, to senior career positions within the State's bureaucracy.

Of course many public servants in Queensland during this earlier era were able to go about their business as usual and able to maintain their professional independence. But corrosive factors, some associated with the bad habits and ossification that tend to accompany longevity in political office, were impacting the integrity of the system.

At a government-wide level, the first serious recognition of the need to look closely at the way the Queensland public service was organised was provided by the Public Sector Review chaired by businessman Sir Ernest Savage. Reporting in 1987, Savage recommended the abolition of the longstanding Public Service Board, which historically had presided over a strongly centralised control of staff establishments but the influence of which was waning. In its place an Office of Public Service Personnel Management (**OPSPM**) was established in 1987 as an operating unit of the Premier's portfolio. It adopted a more passive role,

encouraging greater delegation to line agencies and characterising itself as providing assistance to agencies rather than direction. However, the new approach quickly led to a different set of concerns about weakening controls and less coherence of the system as a whole.

## The journey of the public service since Fitzgerald

The real propulsion for the overdue reform of the Queensland public sector was provided by the events surrounding and following the Fitzgerald Inquiry. The revelations before Fitzgerald confirmed to the community the concerns that Queensland's political system had decayed. In response the Ahern government committed itself to implementing the Fitzgerald findings 'lock stock and barrel'. It established the Electoral and Administrative Review Commission (**EARC**) and the Criminal Justice Commission (**CJC**) with bipartisan support. Then, in December 1989, Queenslanders opted for their first change of government in 32 years with the election of Wayne Goss as Premier. One of the particular priorities he identified for reform was the public sector itself.

The new government immediately set about overhauling the leadership of the public service. It reduced the number of portfolio departments from 27 to 18, threw open most departmental Chief Executive Officer (**CEO**) jobs. A number of the incumbents went on to retain their roles, and the interest of a new government to refresh its ranks was understandable. However, there was criticism of the way a number of the ousted officials were kept in limbo.

The body tasked with oversight of the public sector reform agenda was the Public Sector Management Commission (**PSMC**). This Reviewer, it should be declared, was appointed as its Chair and CEO.

Established in early 1990, the PSMC set about reviewing all portfolio departments, introduced new (for Queensland) human resource management standards, widened the coverage of public service grievance mechanisms and appointed Queensland's first public sector equity commissioner. The PSMC also initiated the establishment of a Senior Executive Service (**SES**), an unfamiliar concept in the northern state but one which had been around elsewhere for a decade or more. The SES was seen as a way of cultivating a cadre of senior public service leaders with appropriate management skills for the future and a commitment to working together to build whole-of-government perspectives.

The PSMC attracted its share of political criticism and, not least, resistance from public service unions sometimes unconvinced by the practical application of the merit principle, or the value of importing 'outsiders' to the senior ranks. There were also mutterings about the capacity of a sector unaccustomed to reform, to digest the pace and extent of changes being pursued.

The government of Rob Borbidge, which replaced the Goss administration in 1996, pushed back on the changes. It undertook another executive shakeout, removing some senior officials it believed had been too close to previous ministers and bringing back a number of other departmental leaders who had been replaced. Borbidge also sought to provide a message of reassurance by replacing the PSMC with an Office

of the Public Service (**OPS**). This involved returning more control to individual agencies under a philosophy of enabling local discretion and authority to departmental CEOs. Then within a short space of time it became the Office of the Public Service Commissioner (**OPSC**) under the premiership of Peter Beattie. In the meantime, the 'review' function of the PSMC had been shelved, and was not revived for another ten years when it was reintroduced as the Service Delivery and Performance Commission (**SDPC**) in late 2005.

In 2008, during the early part of Anna Bligh's premiership, the separate SDPC and OPSC were abolished and replaced by a new body, the Public Service Commission. It was given a brief to lead modernisation and renewal, modelling best practice and committing the public service to a range of key management principles.

The Public Service Commission (**PSC**) is still in place today, though its functions have evolved over the years, including its governance structure. And the priorities of such a wide-ranging leadership body in the future will be considered later in this Report.

The recurring pattern of developments over the 30 years since Fitzgerald has been one of reform and change, oftentimes met by upheaval and resistance. Initiated by Goss and reacted to by Borbidge, it continued less dramatically with Beattie, who reinstated some senior officials sacked in 1996 who now returned after stints in governments interstate or in local government. The pattern of disruption continued with the sweeping machinery of government changes made by the Bligh government, in which the number of portfolio departments was reduced from 22 to 13.<sup>xv</sup> That initiative also involved displacing and redesignating a number of directors-general as deputies in new mega-departments.

Campbell Newman, who replaced Bligh, had a sense of urgency and determination about putting a 'new broom' through a service which had worked for Labor administrations for most of the previous 20 years. Another major public service leadership shakeout occurred during his time in office and, over the next three years, 14 000 public service jobs disappeared.<sup>xvi</sup> The impacts rippled across the State.

The public service backlash against the Newman government contributed to the improbable election of Anastacia Palaszczuk, first leading a minority government in 2015 and then with a majority at the following election. And whereas Newman had promoted fundamental realignment of the role of the public service, Palaszczuk promised reassurance. She committed herself not to cut public service jobs or services and not to sell government assets. However, in what had become a familiar refrain she did remove a number of senior officials whom Newman had appointed. Nevertheless, the message which was conveyed to the broader public service was that stability was being returned.

Of course the skills to win office are not the same mix as those required to govern, and an unusual feature of the Palaszczuk ascension was that only four members of her first Cabinet had prior ministerial experience, and some not even prior parliamentary experience. And of course, most of the members of the government team were new as well. This all had an impact on the way the dynamics developed between ministers and their own offices on the one hand, and the public service on the other. Unions also played an influential role.

The core public service throughout both the Newman and Palaszczuk governments continued to receive regular wage increases under enterprise bargaining arrangements. However, the conditions of the senior executives under Palaszczuk's stewardship were adversely affected by an effective freezing of salaries from 2017 to 2021 and a reduction in SES contracts of employment to three-year terms. That combination of factors rendered the task of recruiting and retaining leaders more problematic.

Public sectors everywhere have been challenged by enormous changes in the external operating environment. That of Queensland has been buffeted by the collective disruptions of frequent machinery of government changes, decapitations of the public service leadership, the increasing influence of ministerial advisers, and the loss of talent to the outside world. The unsteadiness of the public sector, and particularly the public service within it, has contributed to an atmosphere of fear. That fear has been of the unwanted impacts and loss of employment status for unwelcome advice. It has been contributed to by pressure from ministerial advisers that minimise problems, and discouragement from providing written advice about difficult topics. These are manifested in allegations of bullying and belittling, and the resulting or perceived isolation of 'difficult' people in the workplace.

The outsourcing to the private sector of much work which hitherto had been within the domain of government also implied a loss of faith on the part of the political arm of government in its major source of professional advice. Dr Anne Tiernan has neatly described the collective response to these waves of disruption in Queensland as 'professional disorientation and bewilderment, of sadness and disappointment at how practices and conventions have deteriorated'.<sup>xvii</sup>

This is the historical context in which this Review has conducted its work.

## 6. Formation of Queensland's integrity patchwork

Queensland's integrity system was slow, then very fast, to develop as a system that is essential to accountable decision making. It is the means of checking behaviour when openness fails and is a powerful source of sunshine into the public sector.

The very first integrity role established in Queensland was that of the Auditor-General, in 1860, just a year after Queensland's official separation from New South Wales. The next major development came over a century later, with the establishment in 1974 of the Ombudsman role, originally known as the Parliamentary Commissioner for Administrative Investigations. The task of this office was to investigate the administrative actions of government departments and authorities. Of Swedish origin, the term 'Ombudsman' means 'citizens' defender'. Indeed, for several decades the Ombudsman was the only integrity institution, aside from the Auditor-General, and was the body with whom the public were able to engage in relation to matters of complaint and maladministration.

In 1977 the *Financial Administration and Audit Act 1977* (Qld) came into effect, modernising Queensland's system of financial administration by making departmental heads more directly responsible for financial stewardship.<sup>xviii</sup> The subsequent establishment of the Public Accounts Committee (**PAC**) by the Ahern Government was an important affirmation of Westminster-style principles of financial accountability. Infighting regarding the merits of establishing a PAC had led to the dissolution of the long-term coalition and typified the strength of resistance to the development of reformist approaches which, by that stage, were commonplace, across party lines, in other places.

The Fitzgerald Inquiry put an end to that historical resistance. Its outcome was the establishment of both the Criminal Justice Commission, with a primary focus on police conduct, and the Electoral and Administrative Review Commission (**EARC**). The latter was charged with making further recommendations to Government. Dr David Solomon has noted the influential role of EARC in advising on a broad range of fundamental topics including the independence of the Auditor-General, Queensland's electoral system, guidelines for the declaration of registrable interests, codes of conduct for public officials, whistleblower protection, state archives legislation and the judicial review jurisdiction of the Supreme Court.<sup>xix</sup> EARC was also responsible for recommending that Queensland adopt Freedom of Information (**FOI**) laws, which were then developed and enacted by the Goss Government.

The crime function of the CJC was later transferred to the Queensland Crime Commission (**QCC**), which existed from 1997 to 2000. In 2001, the two bodies were merged into the Crime and Misconduct Commission (or the **CMC**). The body which exists today, the Crime and Corruption Commission (**CCC**), came into being on 1 July 2014, following amendments to the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

The emergence of departmental integrity units, commonly referred to as ethical standards units (**ESUs**), also holds an important place within Queensland's integrity framework. Fulfilling a role in addition to a public

servant's line manager or supervisor, these bodies often serve as the first point of contact when a work performance or conduct matter arises. The emergence of these units also reflected on the depleting state of human resource management within departments.

One of the more recent developments has been the establishment of the Integrity Commissioner role in 1999 under amendments to the *Public Sector Ethics Act 1994 (Qld)*. Initially confined to the provision of ethics and conflict advice to ministers and other 'designated persons', subsequent changes have widened the scope of the role, including expanding the definition of 'designated persons' and assigning responsibility for the regulation of lobbying activity to that office.<sup>xx</sup>

In 2007 the then Premier, Anna Bligh, commissioned a report from an independent panel, led by Dr David Solomon, to review Queensland's FOI laws. Central to the Solomon reforms which emerged was the repeal of the *Freedom of Information Act 1992 (Qld)* and enactment of the *Right to Information Act 2009 (Qld)* (**RTI Act**) and *Information Privacy Act 2009 (IP Act)*. The RTI Act and IP Act were 'designed to promote easy and improved access to public sector information while simultaneously protecting personal information'.<sup>xxi</sup>

The PAC, established in Queensland in 1988 as an early emblem of reform locally, was dissolved in 2011. Its former functions were split among portfolio committees.<sup>xxii</sup>

No discussion of the development of the integrity framework in Queensland can ignore local government, the jurisdiction closest to the public and one derivative of state government. This Review has not focussed on that sector. However, the development of a new local government oversight body by the State government, the Office of the Independent Assessor (**OIA**), does raise issues relating to the functional independence of an integrity body.

The core integrity bodies which make up the Queensland patchwork now represent an investment of at least \$130 million per year in budget allocations and the fees they receive. Of course, that figure represents only a proportion of the total outlay on integrity activities across the sector.

# 7. The performance of the integrity patchwork

## Auditor-General

### Functions

In 2009, major amendments were enacted which were intended to enhance the independence of the Auditor-General. The *Financial Administration and Audit Act 1977* (Qld) was split, separating the audit provisions into a new *Auditor-General Act 2009* (**Auditor-General Act**). The Queensland Audit Office (**QAO**) performs a number of types of audits, including the traditional activities covering financial statements of public sector entities. There has been a more recent and greater emphasis in Queensland, as elsewhere, on undertaking what are termed ‘performance audits’ of public sector entities.<sup>xxiii</sup> The Auditor-General is appointed by the Governor-in-Council for a seven-year term. The Auditor-General Act also makes provision for the Auditor-General to be given appropriate access to documents, obtain information and evidence to facilitate audits.<sup>xxiv</sup>

In the most recent financial year, the Auditor-General formed 407 audit opinions about the reliability of public sector and local government entities’ financial statements. Some 18 reports were tabled in parliament, which made 80 recommendations.<sup>xxv</sup>

As part of its operations the QAO also participates in informal quarterly dialogue with other integrity agencies. In its annual report, it also notes that QAO liaises with the CCC as relevant and appropriate.<sup>xxvi</sup> Oversight of the Auditor-General and QAO is provided by the parliamentary Economics and Governance Committee.

### The independence of the Auditor General

An obvious consideration for this Review is that, in 2020, the Australasian Council of Auditors General ranked the Queensland Auditor-General sixth out of 10 Australasian jurisdictions in terms of independence.<sup>xxvii</sup> In 2013, it had been ranked third.

The need to ensure the independence of the Auditor-General has long been recognised. In Queensland the Auditor-General Act contains some important protections in this respect, protections which are all the more important given the State’s unicameral system. In particular, the legislation provides that the Auditor-General is not subject to direction by any person about the way in which that officer’s powers in relation to audit are to be exercised. Nor can there be direction regarding the priority given to audit matters.

While the Auditor-General is employed under legislation in that name, all the other staff of the QAO, including the Deputy Auditor-General, are employed under the *Public Service Act 2008* (Qld).<sup>xxviii</sup>

The Treasurer, in consultation with the parliamentary Economics and Governance Committee, develops the proposed budget of the audit office for each financial year.<sup>xxix</sup> To facilitate this, the Auditor-General must prepare, for each financial year, estimates of proposed receipts and expenditure relating to the audit office. In reality, because the QAO is considered a department under the *Financial Accountability Act 2009*, estimates

are provided to the Department of Premier and Cabinet (**DPC**) in the first instance, then passed on to Treasury. In 2019, amendments to the Auditor-General Act were made to enable sharing of protected information with the Treasurer and Queensland Treasury. The Auditor-General's submission to this Review observed that the 'Treasurer tabled this amendment in parliament without [the Auditor-General's] input or knowledge and after limited in-principle consultation'.

The Australasian Council of Auditors General, which calculates the independence of auditors general by reference to the extent to which they are protected from influence from the political executive, noted that this amendment 'impacted adversely on independence', resulting in a small overall decrease to the Queensland Auditor-General's independence.<sup>xxx</sup>

A critical measure of independence of Auditors-General across jurisdictions derives from the *International Standard of Supreme Audit Institutions (INT) Guidelines and Good Practices Related to SAI Independence*. For the purposes of this Review, the most recent strategic review of the QAO, conducted in 2017, identified that the QAO's arrangements fell short of these best practice principles most notably in three areas: 'the need for freedom from influence by the Executive in the Auditor-General's appointment and conditions of employment (INTOSAI Principles 1 and 2); and financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources' (INTOSAI Principle 8).<sup>xxxii</sup>

For its part the QAO has been advocating for changes that would strengthen its independence for some time. In 2013, it proposed a number of reforms in its submission to the former parliamentary Finance and Administration Committee (**FAC**) inquiry into the Auditor-General's independence. Those recommendations are set out in full at Appendix 2. They were informed by the recommendations of the Electoral and Administrative Review Commission (**EARC**) in 1991, recommendations from previous strategic reviews, and the eight INTOSAI principles described above. The FAC inquiry concluded its work in 2016 without the committee making any recommendations. However, in 2017, the strategic review report endorsed the QAO's 2013 suggestions and recommended they be implemented.<sup>xxxiii</sup>

In his submission to this Review, the Auditor-General stated '*QAO's submission to the FAC noted that while the Auditor-General's audit mandate is strong and I cannot be directed on how I conduct audits, opportunities exist for the executive government to exert influence over the financial and human resources available to me. Independence would be greatly enhanced if responsibility for these areas were aligned with the Speaker of Parliament and appropriate parliamentary committee, rather than the Premier*'. This is consistent with a 2020 report by the NSW Auditor-General, Margaret Crawford (**Crawford Report**) that found its government's approach to funding integrity agencies presents independence threats and does not sufficiently recognise that the roles and functions of integrity agencies are different to other agencies.

Some of the critical aspects of the QAO's proposal are discussed below.

## Specific Issues considered by the Review

### Officer of the Parliament

In New Zealand, acknowledgement of the need to ensure independence has been given expression by recognition of the Auditor as an Officer of the Parliament. EARC previously recommended against taking quite that step, preferring to promote other substantive protections such as ensuring the Auditor-General has statutory power to determine the number and remuneration of staff, establishing the independent statutory office of the Auditor-General as a corporation sole, and ensuring the staff of the QAO are not subject to public service employment legislation.<sup>xxxiii</sup>

More recent reviews of the Auditor-General's functions have reconsidered the idea. The most recent strategic review of the QAO in 2017 recommended that the Auditor-General be an Officer of the Parliament.<sup>xxxiv</sup> The QAO has also advocated for this change. Doing so also would bring the Auditor-General into line with the arrangements covering the Integrity Commissioner, Information Commissioner, Ombudsman, and CCC Parliamentary Commissioner.

The Australasian Council of Auditors General 2020 report on independence has noted that the ACT Auditor-General has, for the first time, overtaken New Zealand in terms of independence. This followed a raft of amendments in the ACT in 2020. One of these established the Auditor-General as an officer of the Legislative Assembly, appointed by the Speaker.<sup>xxxv</sup>

The Crawford Report states that, 'the term Officer of Parliament aims to provide a clearer relationship to Parliament and greater separation from the Executive Government'.<sup>xxxvi</sup> In Queensland, the Auditor-General's position lacks the unambiguous clarity that comes with an explicit legislative designation. For example, the Queensland Parliament's own website, states that '*The Auditor-General is not stated by the [Auditor-General Act] to be an 'officer of Parliament', but would be generally regarded as such*'.<sup>xxxvii</sup> 'Conventional' recognition of the officer-like status offers insufficient protection. The Auditor-General Act should explicitly recognise the Auditor-General as an Officer of the Parliament.

### QAO Staff

As far back as EARC's report of 1991, there was recognition in Queensland for the Auditor-General to have control over resourcing. In that same Report, EARC noted that it would be inappropriate for the then PSMC, as an agency of executive government, to have any jurisdiction over the Auditor-General's Office in respect of human resource management and organisational review matters.<sup>xxxviii</sup> On the other hand, EARC acknowledged that it would be equally inappropriate to give the Auditor-General unfettered power to determine staffing practices and conditions for audit staff. It should be accountable to the Legislative Assembly for those decisions. One of the QAO's 2013 proposals was '[e]stablishing the Auditor-General as the employer and employing QAO staff under the Auditor-General Act and not the Public Service Act'.

The 2017 Strategic Review found that 'the QAO cannot employ all the staff that it needs because, under

current legislative settings, the Auditor-General cannot offer adequate remuneration to attract and retain audit staff.<sup>xxxix</sup> It noted that ‘the lack of flexibility in the employment of staff, as well as being a major business issue, is a practical example of the consequences that flow from the QAO’s being part of the public service’.<sup>xl</sup> As a consequence, the Strategic Review recommended that the Auditor-General Act be amended ‘to provide for the Auditor-General’s employment of QAO staff under that Act rather than under the Public Service Act’. This proposed amendment has not occurred.

#### Treasurer Control over basic rates and fees

The Auditor-General may charge fees for an audit conducted. However, the Treasurer’s approval is required to decide the basic rates of fees which are charged.<sup>xli</sup> The 2017 Strategic Report recommended that the Auditor-General have more independence around the setting of client rates and fees, but the required legislative amendment to give effect to this recommendation has yet to be implemented. The Review supports this change being implemented.

#### Performance Audits of Government-Owned Corporations (GOCs)

The Auditor-General Act states that the object of any performance audit includes deciding whether the objectives of the public sector entity are being achieved economically, efficiently and effectively and in compliance with all relevant laws.<sup>xlii</sup> The Auditor-General is not able to question the merits of policy objectives of the State or a local government as part of this process. The Auditor-General Act also imposes a limitation on performance audits of GOCs, which can only be conducted if the Legislative Assembly, parliamentary committee, Treasurer or an appropriate minister requests the audit. That being so, the Auditor-General is permitted to ask the parliamentary committee, Treasurer or minister to make a request for a performance audit of a GOC.<sup>xliii</sup>

As the below *vignette* shows, the Auditor-General’s ability to scrutinise GOCs is an important integrity check. As such, the Review supports giving the Auditor-General discretion to initiate performance audits of GOCs.

#### ***How the Auditor-General improves accountability***

##### ***The Financial Audit Report – Transport 2021 (Report 10: 2021-22).***

In 2021, the QAO reported on financial audit results of seven entities in the Queensland transport sector. During the course of its audit, the QAO uncovered serious issues in respect of one of those entities, Gladstone Ports Corporation (**GPC**). In brief summary:

- during 2021, the position of chief executive officer was filled by three executives, including one who left the company within 3 months of appointment. The report noted that high turnover affected the governance structure, reporting, and the board's ability to enforce the desired decision-making culture, with officers needing to act in roles and higher duties for extended periods;
- the report noted that, while sometimes required to manage risk and protect interests, a lack of stability can, in turn, result in over reliance on professional services consultants;
- there was a lack of policy, guidance, or board oversight for the use and approval of settlement and release arrangements;
- failure to comply with internal policies were identified, arising from issues such as reporting failures and approval of transactions exceeding financial delegation limits.

In response, the QAO provided a series of recommendations, including recommendations to:

- update policies to provide guidance of payments through deeds of settlement and release;
- ensure appropriate processes are implemented to inform the external auditor and that shareholding ministers are informed of substantive matters including litigation, claims and transactions; and
- ensure the proceedings and resolutions of directors' meetings are approved and signed in a reasonable time frame.

The QAO also referred the matter to the Australian Securities and Investments Commission

## RECOMMENDATIONS

- The Auditor-General become an independent Officer of Parliament.
- The *Auditor-General Act 2009* (Qld) be amended to allow for the Auditor-General's employment of QAO staff under that Act rather than under the *Public Service Act 2008* (Qld).
- The Auditor-General be allowed to independently set basic rates for audit fees without the Treasurer's approval.
- The Auditor-General be given the discretion to undertake performance audits on government-owned corporations.
- Other outstanding recommendations from the 2013 FAC Inquiry and 2017 Strategic Review be implemented.

# Ombudsman

## Functions

Forty years ago the Ombudsman was the principal channel for the public to air grievances about maladministration in state government agencies. Now the field is crowded, and includes Ombudsman-type roles covering energy and water (2006), health (2014) and training (2015). Each of those has separate and industry specific investigatory and complaints functions.

The Ombudsman is an Officer of the Parliament and reports through the Legal Affairs and Safety Committee, with which it meets annually after the tabling of its annual report. The Ombudsman is authorised to investigate administrative actions of agencies, make recommendations to agencies about ways of improving the quality of their decision-making and administrative practices and procedures. The role also provides advice, training, information or other help to agencies about ways of improving the quality of decision-making and administrative practices and procedures.<sup>xliv</sup>

The Ombudsman also oversees public interest disclosures (**PID**). That means interpreting the relevant legislation, the implementation of the PID Act, reviewing the way public sector agencies deal with PIDs, educating public sector agencies about PIDs and providing advice more generally about PIDs.

### Considerations for this Review

The now significantly more crowded integrity framework has carved away some of the scope of the Ombudsman's original functions. However, with the introduction of the *Ombudsman Act* 2001 (Qld), the role of the Ombudsman in improving the quality of decision-making and administrative practice in agencies was given equal standing with its original and more traditional investigative role. Since that point in time, however, the role of the Ombudsman has steadily reduced from what it once was, with the exception of inheriting oversight of the *Public Interest Disclosure Act* 2012 from the Public Service Commission in 2012.<sup>xlv</sup>

The Ombudsman still plays an important role in the initial assessment of complaints to government. For many people it remains the first and obvious port of call. This is borne out by the traffic it receives. Some 74,000 people interact with the Ombudsman's web site every year, and some 10,000 of these are dealt with as complaints. However, some 65 per cent are advised to take their matter to another agency.

It is slightly ironic, too, that the office responsible for receiving complaints welcomes telephone visitors with a voice message prompting people to consider whether their complaints should be directed to other agencies. Seven alternative complaint services are then described by the voice message, before callers who have remained on the line are finally transferred to the Ombudsman's office.

Obviously the resourcing pressures contribute in a significant way to this situation, but it is a poor look for the government of the day. Such service is also far short of what might be regarded as the best practice efforts pursued elsewhere and does not meet the openness test this Review believes is relevant.

## Functions of the Ombudsman

The overlap of separate bodies' functions is an issue. The most recent strategic review identified that, in one year, three of the Ombudsman's five reports related to issues which were also investigated by the Queensland Audit Office. The strategic review of the Ombudsman's functions suggested legislative amendments to allow the Ombudsman and QAO to share complaint and investigation data in order to avoid duplication of public resources. A new section of the relevant legislation was introduced in 2018,<sup>xlvi</sup> allowing the Ombudsman to disclose information to other agencies, including Commonwealth bodies, where appropriate.

Developments in other jurisdictions also are relevant. For example, in South Australia (**SA**) the Crime and Public Integrity Policy Committee (**CPIPC**) published in 2021 the results of its inquiry into the functions and interrelationships of its integrity bodies, particularly its Independent Commission Against Corruption (**ICAC**) and Ombudsman. This resulted in amendments aimed at reallocating functions between those two bodies.<sup>xlvii</sup> Those amendments limit ICAC's functions to matters of serious and systemic corruption, referring its power to deal with maladministration and misconduct to the SA Ombudsman.

In Queensland the Ombudsman Act also was amended in 2017 so that its strategic reviews in the future be conducted every seven years, as opposed to every five years.<sup>xlviii</sup> A reversion back to five years would be consistent with the timeframes for strategic reviews required of other integrity bodies.<sup>xlix</sup> It would also provide the Ombudsman with a more frequent opportunity to raise matters which may require reform.

During the last strategic review, the Ombudsman suggested an amendment to s 10(c) of the *Ombudsman Act* 2001 (Qld) to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery. This was ultimately not supported by the strategic reviewer or the Government. The strategic reviewer noted that inclusion of such a provision would be better addressed in a more comprehensive whole-of-government review of the accountability framework for contracted service-providers. In response, the Ombudsman noted: *'I note the reviewer's recommendation. However, there is an emerging pattern across public sector agencies to outsource areas of government service delivery which have traditionally been within Ombudsman oversight. In my view, these changes put at risk the level of oversight available to such services. The delivery of some child safety services is a good example. It is still to be seen whether contracted service delivery will deliver the level of effective oversight the public has come to expect of the public sector through this Office.'*<sup>1</sup>

The role of contracted service delivery providers has been a recurring theme in this Review's consultations. The current Review does consider that the jurisdiction of the Ombudsman under s 10(c) should be widened to cover non-government organisations, and other providers of contracted services, who perform functions on behalf of agencies. It is understood that, while these organisations may be subject to contractual provisions requiring adherence to quality standard frameworks, it is imperative that the public maintain oversight of agency actions via the Ombudsman, and in particular, when those functions are contracted out.

## RECOMMENDATION

Section 10(c) of the *Ombudsman Act 2001* (Qld) be amended to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery.

# Information Commissioner

## Functions

The Information Commissioner is established as an Officer of the Parliament and is overseen by the Legal Affairs and Safety Committee.<sup>ii</sup> The Information Commissioner's main functions are: giving information and help to agencies and members of the public on matters relevant to the RTI; deciding applications including applications for extension of time; investigating and reviewing decision of agencies and ministers, including investigating whether agencies and ministers have taken reasonable steps to identify and locate documents applied for by applicants; and reviewing and reporting on agencies in relation to the operation of the RTI Act and the *Information Privacy Act*.<sup>iii</sup>

The Information Commissioner is also not subject to direction about the priority to be given to investigations and reviews. Staff in the Office of the Information Commissioner are not subject to direction by any person other than the Information Commissioner.<sup>iiii</sup>

## Issues

The most recent strategic review of the Information Commissioner was carried out by PwC in 2017. More recently, in November 2021 the Legal Affairs and Safety parliamentary committee published a report, *Oversight of the Office of the information Commissioner*. These two reports highlight some of the current issues affecting the Information Commissioner's role and the Office of the Information Commissioner. The 2008 Solomon Report also remains relevant for the way it set out the purpose and principles underlying right to information in Queensland. Some of the issues identified in that report, particularly those relating to culture, remain relevant today. Culture, and a tone set from the top, is critical to giving effect to the spirit of the legislation. In that sense, of all the integrity functions, it is the Information Commissioner's role which can be especially influenced by the culture of government. That same culture is assuredly influenced by the spectre of exposure through the Right to Information mechanism. The value of this should not be underestimated in creating a more open government. Decisions ultimately determined by the Information Commissioner influence the information available to citizens who themselves are a valuable check on accountability of government. One way in which the Information Commissioner can oversight the culture within agencies is through the external review function, by which the Information Commissioner investigates and reviews decisions of agencies and ministers made under the RTI Act. That includes determining whether agencies and ministers have taken reasonable steps to identify and locate documents sought by applicants.

However, we should not underestimate the level of apprehension, even fear, within departments about the consequences of being 'caught' by an RTI request. This situation fosters a culture predisposed to nondisclosure. A number of people who have made representation to this Review have referred to a 'fear' that documents procured through the RTI process may end up in newspapers or on television and, particularly, a concern that if 'frank and fearless' advice was given and not followed, a subsequent RTI request would result

in a headline indicating that ‘the minister ignores advice’. One submitter expressed a typical view:

*‘It is my experience that the public service agency I work for does not fully appreciate their role in ensuring ethical decision making or impartial advice to executives. Rather than act in the best interest of the community, decisions are often referred to the courier mail test’ ie. what would ‘look bad’ if the decision was to be printed in the courier mail. While how decisions reflect within the media is certainly part of the decision making framework for executives, these tests are being applied at a frontline and middle manager level, which effectively biases any options that are eventually presented to decision makers’.*

No minister in any government will want to be the subject of a ‘gotcha’ headline, and so the human response of officials concerned about this prospect is understandable. Looking beyond the juicy headline, however, it is also the case that the act of a minister ignoring the advice of officials should not be viewed as an exceptional matter. Certainly, it should not mean that a bow is automatically drawn, as it sometimes is, to imply corrupt conduct. A minister has an obligation in their decisions to balance the officials’ advice with other political or community considerations. In all of this, of course, the stakes involved for the minister ignoring officials’ advice are highest on matters of greater sensitivity, for example, disregarding scientific advice or overruling advice about the location or costing of a major infrastructure project. The community certainly tires very quickly when politicians, of any colour and in any jurisdiction, hide behind Cabinet or ‘commercial-in-confidence’ to fend off legitimate questioning on even routine matters.

The Review received 28 submissions specifically about RTI issues and the role of the Information Commissioner. Eight of those submissions were from members of the public who felt aggrieved by their experience with the RTI process. They propose improvements. Some 14 other submissions were received on the same topic by current or former public servants. Most were critical of the agency culture and the processes of responding to RTI requests. One senior executive captured the concerns by describing ‘attempts to suppress public records and subvert RTI processes’. Another longstanding officer described Departments as ‘hiding behind [RTI] legislation to prevent data release’. Another submission referred to an allegation that important operational reports which previously had been the subject of RTI requests by other political parties were now given a different name and sent to different recipients in order to avoid those reports being captured in future. That same submission referred to a practice of including information in ‘dashboard’ format because these are, apparently, difficult to access through RTI. All these indicate worrying patterns.

#### **From a former Chief Information Officer**

*‘I have had people scream in my face regarding keeping written records as they believed they had relationships with clients which meant it was a betrayal of trust to write down decisions. I am aware of [Deputy Directors-General] directing staff not to record anything. I had an [Assistant Director-General]*

*who electronically copied Class A cabinet submissions and then text them to uncontrolled parties “because she liked to work that way”. Again it was career threatening to tell her it is against both PRA and the Cabinet Handbook.’*

In 2008, the Solomon Report provided the following analysis of the ‘failure’ of Queensland’s original FOI legislation to bring about a ‘major philosophical and cultural shift’:

*‘It is not that the Government’s formally stated policy outcomes of open, accountable and participatory government have since changed... . . . Arguably though, what has changed has been the favourable policy momentum to sustain freedom of information law and practice in the spirit of the original draft of the Freedom of Information Act 1992. Absent this, and congruent political will, serial legislative amendments and contrary public sector cultural norming fill the space left behind.*

*If the activity of the post-Fitzgerald Inquiry period was the catalyst for many new administrative reform measures such as freedom of information, then definitive political leadership in setting a new information policy paradigm is what is required twenty years on to sharpen the blunt instrument that FOI has become’.*<sup>liv</sup>

It is to be hoped that acceptance of this Review’s recommendations, particularly the more ready release of Cabinet documents, and its comments on the need for greater scrutiny over what is deemed commercial-in-confidence, will provide the impetus for a cultural shift toward much more openness in government.

## Integrity Commissioner

### Functions

The Integrity Commissioner is an Officer of the Parliament and is subject to oversight by the Economics and Governance Committee. Originally confined to advice on conflict issues to a pool of ‘designated persons’ (comprising ministers and staff, chief executives, statutory officers and senior public servants), the role of the Integrity Commissioner was able to be carried out on a part-time basis with the support of one staff member.<sup>lv</sup> Since then, successive legislative amendments have resulted in the Integrity Commissioner exercising a broader and somewhat disparate set of functions. Under the current establishing Act, the *Integrity Act 2009* (Qld) (**Integrity Act**), those functions are: giving written advice to certain ‘designated persons’ and MPs about ethics, integrity or ‘interest issues’ (the **Advisory Function**);<sup>lvi</sup> maintaining the lobbyists register and managing the registration of lobbyists (the **Lobbying Function**); and raising public awareness of ethics and integrity issues by contributing to public discussion of these issues (**Education Function**).<sup>lvii</sup>

By virtue of these functions, the Integrity Commissioner occupies a role which is not replicated in other jurisdictions. For instance, while Tasmania has an Integrity Commissioner, its functions are broader because Tasmania has no equivalent to the CCC. In any event, the Tasmanian Integrity Commissioner does not carry

out lobbying regulation which is, instead, managed by the Department of Premier and Cabinet. In other States, lobbying registers are maintained by the Electoral Commission (New South Wales), Public Sector Commission (Victoria and Western Australia), and Department of Premier and Cabinet (South Australia). Perhaps the closest analogy to the Integrity Commissioner in a comparable jurisdiction is the Ontario Integrity Commissioner.

### ***Considerations for this Review***

The Integrity Act provides for strategic reviews to be undertaken every five years, the first of these having been conducted by this Reviewer in 2015. On 30 September 2021, Kevin Yearbury published the latest Strategic Review of the Integrity Commissioner's Functions (**Yearbury Report**), which identifies a number of important issues. Since the publication of the Interim Report, the Economics and Governance Committee published its report on the inquiry into the Yearbury Report (**Committee Report**). This Review considers that the Committee Report leaves important issues open and that it has failed to take up a number of opportunities for much-needed reform which Yearbury had presented in his report. A number of these are referred to elsewhere in this Report.

#### Realigning channels of integrity advice

Since the establishment of the office, legislative amendments have expanded the definition of 'designated persons' who are entitled to seek the Integrity Commissioner's advice, with the number now in excess of 10,000 people.<sup>lviii</sup> The true number cannot be readily quantified, since the Integrity Act allows a minister or assistant minister to appoint a person or class of persons. During 2020-21, the Integrity Commissioner has imposed 'interim service limits' due to a surge in demand for advice.<sup>lix</sup>

The Yearbury Report notes that the emergence of new ethics bodies, particularly the OIA and departmental ESUs, has resulted in some duplication of sources of advice available to certain persons. Yearbury's approach, supported by the Review, is to seek to limit the circumstances in which recourse to the Integrity Commissioner's advice is necessary, for example, by removing 'senior officers' from the pool of persons constituting designated officers. This would be an approach consistent with recognition of the important principle that each agency's CEO is accountable for ensuring their agency acts with integrity and for ensuring the ethical conduct of its employees. It is entirely appropriate that, in the first instance, an employee looking for ethical guidance should seek advice from within the department. If the head of the ESU or Director-General believes that independent advice should be sought, then they can proceed in obtaining it. The problem which exists currently, as the Yearbury Report states, is that public servants can unilaterally seek advice without the knowledge of their Director-General and in circumstance where the Integrity Commissioner is unable to verify any of the facts. The Review acknowledges the Economics and Governance Committee's support for Yearbury's recommendations aimed at rationalising the number of 'designated persons'.

## Governance Arrangements

The NSW Auditor-General has highlighted the impact of funding arrangements on the independence of integrity bodies. With regard to the Integrity Commissioner in Queensland, the PSC is 'accountable for the financial, operational, and administrative performance of the office supporting the QIC, including the provision and management of human resources'.<sup>lx</sup> The PSC in turn is supported by the Department of the Premier and Cabinet in relation to information technology services and a range of other support services. The Bridgman Report, the Yearbury Report, the Integrity Commissioner's own annual reports and this Review's Interim Report all have raised issue with the appropriateness of these governance arrangements.

In particular, the Yearbury Report noted that the governance arrangements 'are not commensurate with the independent nature of the Integrity Commissioner's role'.<sup>lxi</sup> As a consequence of these arrangements, staff within the office can be removed in response to PSC priorities. The inadequacy of this arrangement was thrown into sharp focus by the recent, highly publicised dispute between the Integrity Commissioner and Chief Executive of the Public Service Commission and consequent investigation by the CCC into associated allegations relating to the seizure of a laptop. That matter remains ongoing.

The Yearbury Report recommended the establishment of a formal Office of the Integrity Commissioner as an independent unit within DPC, with staff appointed directly to the office who would be managed autonomously by the Integrity Commissioner.<sup>lxii</sup> Notwithstanding the numerous calls to increase the independence and resourcing of the Integrity Commissioner, this recommendation was merely noted by the parliamentary committee, rather than explicitly supported. The Yearbury Report also recommends a particular structure for the new Office of the Integrity Commissioner, comprising five positions, two of whom would be responsible for the lobbyist register.

The parliamentary committee deferred consideration of this matter until after the State Government had considered the matter of a separate Office of the Integrity Commissioner.

Substantive matters relating to lobbying are covered in a separate chapter of this report. For the purposes of this discussion, the Review notes that a tension exists between the advisory and regulatory roles of the Integrity Commissioner. The conflicting functions lead to a difficult conundrum, noting that in best-practice international jurisdictions the commissioner responsible for regulating lobbying is given investigatory powers. Indeed, Yearbury declined to propose investigatory powers for the Integrity Commissioner on this basis. Communications between 'designated persons' and the Integrity Commissioner are confidential and privileged. Issues would arise if the Integrity Commissioner were required to investigate a lobbying matter involving a person to whom they had previously given advice.<sup>lxiii</sup> This tension in roles led the Clerk of the Parliament, Neil Laurie, to propose in his submission to this Review that consideration be given to splitting the advisory and regulatory functions.

This Review has spent considerable time considering whether the scope and distribution of the Integrity Commissioner's functions is appropriate. As is noted in other sections of this Report, the Review has been

reluctant to recommend the creation of additional integrity bodies and is indeed inclined to propose that an integrity advisor role and lobbying commissioner role be separately established. In light of this, the Review reaffirms the role of Integrity Commissioner as an Officer of the Parliament. However, for administrative purposes the Office of the Integrity Commission should be an independent unit within the Department of Premier and Cabinet. That way, the Integrity Commissioner can be responsible also for the advisory functions, with a Deputy Commissioner (as Director, Lobbying) responsible for the lobbying function.

## Crime and Corruption Commission

The overwhelming interest of this Review is not in the operations of CCC itself, but in its interactions with other integrity bodies across the Queensland patchwork.

### Functions

In its submission to this Review, the CCC observes that while the Commission has evolved, its core objective and services have remained largely the same, being to reduce the incidence of major crime and corruption in Queensland, and build organisational capability. To that end, the CCC has the following functions: investigating serious and organised crime; receiving, assessing and investigating serious allegations of corruption; developing strategies to prevent crime and corruption; conducting research and undertaking intelligence activities on crime, corruption, policing and other relevant matters; restraining and recovering suspected proceeds of crime; and administering Queensland's witness protection program.

There are four main avenues by which the CCC becomes aware of suspect corrupt conduct: through a direct complaint made to the CCC; through mandatory notification from a public official; as 'information' which could be received through routine agency audits, media articles, Crime Stoppers, or the CCC's own intelligence activities or sources; and as a 'matter', which could be received through court proceedings, referrals from the Coroner, or a public inquiry.<sup>lxiv</sup>

The CCC reports to the Parliamentary Crime and Corruption Commission (**PCCC**), which reports to Parliament on the operations and activities of the CCC. The Parliamentary Crime and Corruption Commissioner is an Officer of the Parliament.<sup>lxv</sup>

### Context

The CCC, by resourcing, powers and cultural inclination, is naturally the giant in Queensland's integrity landscape, expected to, and assuming, responsibility for the major integrity and corruption issues that arise. These roles both generate and attract justified controversy which has been part of the CCC's being for its three decades. Nor is such controversy unusual for such a body.

From its origins, the commission has had the dual tasks of combatting major crime as well as improving integrity – through investigation – across the public sector. The requirement is one of two which are clear in the CC Act, namely 'to continuously improve the integrity of, and to reduce the incident of corruption in, the public sector'.<sup>lxvi</sup>

This Review has sought not to engage with issues falling properly within the remit of the *Commission of Inquiry relating to the Crime and Corruption Commission*. However, a review of the efficacy of the integrity system would be incomplete without some consideration of the place of the CCC within it.

With this in mind, the Review observes that any single body responsible for the dual tasks of combatting major crime and improving integrity in such a broad range of disparate organisations as those which comprise the public sector faces a nigh impossible task. It will not be successful if it is *singly* responsible for that endeavour. Rather, it must work with other integrity bodies and, critically, departments and agencies in recognition of the important principle that chief executives and senior executives have a core responsibility for the ethical standards of their agencies.

Given its place at the heart of the integrity system, all the recommendations implemented from this Review will affect the functioning of the CCC. In particular, those of immediate impact are:

- the creation of a cross-government clearing house to receive, apportion and monitor complaints determining the appropriate agency for investigation and disciplinary action;
- establishment of the independence of the Auditor-General with enhanced powers to detect financial corruption in public sector entities, with a referral capacity to the CCC for serious matters;
- enhancement of the role of the PSC as a cultural leader, standard-bearer of best practice, and with lead stewardship of the rejuvenation of the public sector;
- a requirement that, if the CCC chooses to devolve a matter involving an SES3 officer and above (and equivalents), it must request the recently-proposed Public Sector Governance Council to appoint an independent Director-General to oversee the investigation; and
- an expectation that the CCC will avail itself of the benefits of these changes to concentrate its own focus on major crime and public sector corruption, avoiding duplication and maximising outcomes.

The Review also welcomes the Government's support of the PCCC recommendation that section 225 of the CC Act be amended, to require at least two persons to have a demonstrated interest and ability in community affairs, public administration or organisational leadership, to be qualified as Ordinary Commissioners. The Review trusts that this will be reflected in future appointments.<sup>lxvii</sup>

The Review's findings have resulted from a distillation of two relevant issues raised during its considerations. The first is the vexed question of how responsibility for corruption complaints should be apportioned between the CCC and agencies (which, under the CC Act, are known as units of public administration or **UPAs**) and whether the application of the devolution principle is, in practice, sound. The second relates to a perception of 'mission creep', that is, that the CCC diverts its attention to carrying out tasks that are either not a priority, or which another integrity body is better-placed to handle. While the two may appear mutually irreconcilable, they are manageable.

## Devolution

The CCC's corruption function is carried out subject to certain principles which are enshrined in the legislation. These include cooperation between the CCC and units of public administration (**UPAs**), capacity building of those UPAs, the public interest and the 'devolution principle'. This is the principle that action to prevent and deal with corruption in a UPA should generally happen within the unit.<sup>lxviii</sup> As the CCC receives more complaints than it can effectively manage itself, application of the devolution principle allows the CCC to adhere to its legislative obligation to focus on more serious or systemic cases of corrupt conduct.<sup>lxix</sup> If a large number of matters fall within the categories of cases which must be notified to the CCC, the effect is that a large number of matters initially referred to the CCC will be sent back to the agency from which they came. It was in this context that the Review has heard that the CCC is sometimes ungenerously referred to in the public service agencies as 'Australia Post', that is, receiving complaints and sending them on without taking ownership of many investigations themselves. However, noting that it is entirely proper for the CCC to focus on the more serious cases, regard must be had to the balance of what goes in to the CCC and what comes back and whether that allocation is appropriate.

### What goes in

This matter should, in theory, be determined by reference to the definition of 'corrupt conduct'. Successive reforms have both narrowed and widened the definition of 'corrupt conduct', the most recent of which aimed at widening it. The effect of the expanded definition has been discussed extensively in reviews of the CCC's functions by the Parliamentary Crime and Corruption Committee (**PCCC**). In its most recent report, *Report No. 106 – Review of the Crime and Corruption's activities (June 2021 Report)*, the PCCC did not identify that the broadened definition had any significant impact and the CCC reported a relatively low number of referrals based on the expanded definition.<sup>lxx</sup> Notwithstanding, some submitters to that review took issue with the definition. For example, the Queensland Law Society (**QLS**) noted that the broad definition allows the CCC 'to investigate almost any grievance involving a public official'.<sup>lxxi</sup> During this Review's consultations, a common refrain was, 'if in doubt, refer'. In other words, public officials feel compelled to refer any matter which might possibly constitute 'corrupt conduct', however trivial, for fear of being seen as covering it up.

The CCC provided the Review with some data relating to complaints. While the data relating to s 38 complaints (i.e. referrals by public officials) does show an increase in complaints since the definition was broadened, it cannot be assumed that the increase in s 38 complaints is directly attributable to the expanded definition and not reflective of another trend such as, most obviously, a genuine increase in corruption issues or an anxiety or fear of failing to report.

In its submission to this Review the CCC reiterated its view that the current definition of corrupt conduct is working well, and 'ensures trivial complaints are rarely captured by the jurisdiction of the CCC'. The CCC suggested that there is a risk in dismissing behaviour which may appear trivial but does in fact meet the definition of corrupt conduct.<sup>lxxii</sup> Further, the CCC referred to the use of 'section 40 agreements' to manage

high volume complaints.<sup>lxxiii</sup> Section 40 modifies the obligation under s 38 to notify every suspected instance of corrupt conduct, requiring UPAs to distinguish conduct depending on its seriousness. The section 40 agreements and support provided by the CCC guides the decisions made by UPAs. Serious corruption matters must be notified to the CCC immediately and left for the CCC to assess before the UPA can take action (within 14 days). Less serious corruption can be dealt with by the UPA. The lower-level matters do not need to be reported to the CCC but may be subject to CCC audit. While in the CCC's view the definition of corrupt conduct ensures trivial complaints are rarely captured by the CCC's jurisdiction, this is really the result of section 40, the effect of which is to narrow, in real terms, the number of corruption complaints that actually reach the CCC. This is notwithstanding what is perceived to be a very broad definition. That use of the s 40 provision is to be encouraged, both to assist the CCC to keep its focus on substantial matters and as a continual reminder to UPAs of their responsibility and authority to deal with integrity issues. They are at the heart of good government.

### What comes back

As the CCC receives more complaints than it can effectively manage itself, application of the devolution principle allows the CCC to adhere to its legislative obligation to focus on more serious or systemic cases of corrupt conduct.<sup>lxxiv</sup> Of the complaints received by the CCC, the CCC assesses the complaint and may: take no further action; refer the complaint to another agency to deal with, either to the subject UPA (the CCC oversees many of these devolved allegations where it is in the public interest to do so) or another oversight agency if more appropriate (e.g. Queensland Health Ombudsman, Queensland Human Rights Commission); conduct a joint investigation; investigate the complaint; or refer possible criminal activity to the police.<sup>lxxv</sup>

To illustrate, in the 2020/21 financial year 2,181 s 38 complaints (referrals from public officials) and 1,288 s 36 complaints (direct complaints to the CCC) were sent to the CCC.<sup>lxxvi</sup> The CCC commenced only 28 corruption investigations in the same financial year.<sup>lxxvii</sup> While it is entirely appropriate that the CCC concentrate its focus on a small fraction of cases, the CCC has in previous years conducted up to 75 investigations.<sup>lxxviii</sup> The CCC notes that more complex and time-consuming investigations which arise from time to time limit the ability to commence more investigations. The downward trend appears to be quite significant. However, it must be recognised that fewer investigations in the past years may have been influenced by the Covid-19 pandemic.

The CCC has reported its activity to 31 March this year as having received 2,839 corruption complaints and assessed 2,818 of them. It finalised ten corruption investigations, charged seven people with 67 criminal offences due to corruption and recommended 12 others for disciplinary action. It also conducted 94 days of crime hearings, and finalised 12 crime investigations. No charges have resulted as yet. These figures may not be compelling but the Review recognizes that investigative and legal process is ongoing and point-in-time statistics do not necessarily reflect long term performance which is a matter for a well-functioning parliamentary committee to consider.

While the CCC devolves many of the allegations it receives, it oversees a number of these devolved

allegations, either through 'merit and compliance review' or 'public interest review'. On the other hand, matters assessed as 'referred/devolved with no further advice' (**RNFA**) are sent back to agencies with no further review by the CCC. In 2020/21, 72 per cent of all matters received by the CCC and 88 per cent of s 38 matters were RNFA.<sup>lxxix</sup> RNFA matters are subject to audit by the CCC and form part of CCC intelligence holdings, which the CCC intelligence, audit, research and prevention functions are utilised to assess corruption risk, target CCC operations and develop public sector capability. The statistics around the number of RNFA matters appear significant. If 88 per cent of the matters which UPAs thought were serious enough to refer to the CCC were sent back with no oversight, then there would appear to be a mismatch between the seriousness of matters required to be reported to the CCC and the seriousness of matters that the CCC considers warrant its attention.

### **How should cases be allocated?**

The Review has heard a number of different views on this question. A typical one was the submitter who observed that:

*The CCC is not capable of dealing with public service matters. As noted above, the CCC named the fraud investigation into Malcolm Stamp Operation Xeric. Translated roughly, that means "Dry". That is the sort of approach taken by seconded police officers who care about organized crime but have little insight into the devastation being wrought by public service corruption.*

However, the CCC has in the past pointed out that it allocates more full-time positions to its corruption division than it does to its crime division.<sup>lxxx</sup> That same submitter suggested establishing an independent agency which can investigate and monitor the bureaucracy. This system would require investigation units that are independent of reporting lines to local statutory bodies / departments as 'the advent of investigators reporting to local executives is prone to conflicts of interest and diversion... from appropriate processes'.

Consideration of establishing yet another separate, independent body to carry out investigations of public affairs must be weighed against the desire not to add to an already complex system. On balance, the Review considers that the benefits to be gained from a new public service integrity body are outweighed by the detriments of adding complexity and further constipation of the overall integrity system.

Another submitter pointed to their department having a lack of responsibility:

*There is a perception that any responsibility the agency I work for has for ethical decision making, complaints handling etc. is the responsibility of the CCC. The CCC has a narrow framework and limited to no ability to conduct actual investigations. Complaints are referred to the CCC without any moderation, whom then reject the majority of them as out of scope. This is then considered closed by the agency I work for with limited to no follow up.*

This submission raises an important issue. While the CCC has an important corruption role, this should not be to the detriment of departments setting the standards of behaviour and dealing promptly with any failure to

meet those standards. When the Review met with a number of ESU representatives, they communicated their strongly-held view that investigations are a last resort, and that a greater focus should be directed to training, advice and taking steps to upskill managers in being able to manage issues which arise. The Review strongly concurs with this approach. Indeed, its aspiration is that a rejuvenated public sector will default to ethical behaviour, supported by both managers and technology that recognise risks ahead of becoming issues of concern. This is both a cultural and training issue which deserves urgent attention.

From all this, it can be taken that the Review is strongly focused on increasing capabilities within the public sector to manage issues before they require notification or investigation as being preferable. The Review concludes that the current allocation of responsibilities between the CCC and agencies is largely sound, subject to comments that follow in relation to the proposed clearing house. The CCC should be left to focus on the more serious matters and agencies should be encouraged to manage the less serious ones.

#### *Interference by close colleagues*

One matter remains, however, and that is the issue of alleged interference with investigations that are managed and dealt with in agencies. For example, one submitter stated:

*‘Any public interest disclosure (PID) or complaint of an ethical nature must go through several ‘chains’ of command before it can be escalated to the Director-General, or more appropriately to the CCC (Corrupt Conduct) and/or Queensland Ombudsman’s Office (maladministration). This is problematic if the person to whom the complaint relates is a director, senior director, [Executive Director], the [Chief HR Officer] or the Deputy Director-General of Corporate Services, in other words, there is a conflict of interest. The current situation is investigators report to the executives within the department, and where there is a conflict of interest, which is often the case, the result is a departure from appropriate investigative processes’.*

This is a cause for real concern. It is an important principle that where a conflict of interest might be seen to exist, the complaint should bypass the normal administrative/command hierarchy. While, in the long term, the Review considers that issues such as the one described will be avoided by the establishment of a clearing house, which will be discussed shortly, it proposes that a short-term solution is to require that, in circumstances where the CCC chooses to devolve a matter involving an SES3 and above (and equivalents), it must request the Public Sector Governance Council to appoint an independent Director General to oversee the investigation. Ideally, the CCC would take responsibility for as many serious matters involving senior personnel as possible. This is intended to avoid any potential interference through reporting lines. Such interference would be of serious concern. The Review is confident that an approach in which independent Directors-General being given responsibility for investigations can be one that is helpful.

The PSC, in its submission to this Review, noted that ‘in many cases it is not an optimum approach when the CCC refers allegations about the CEO or board member back to the agency to investigate its own senior personnel’.

When the suggestion that investigations are managed or carried out by close colleagues was put by the Review to a group of representatives of ESUs, the overwhelming response was that the issue has been raised ‘very rarely’ and that declaration and conflict of interest policy and procedure is strictly adhered to at all stages of complaint / case management. However, one ESU representative conceded that ‘perception is everything’. The Review notes that there is of course a risk of a perception of conflict in any devolved matter. On balance, as recommended, there is value in having independent oversight over the course of investigations into senior public servants.

### **Mission Creep**

The other theme which emerged from the Review’s consultations was the perception that the CCC has engaged in ‘mission creep’. There is a perception that the CCC sees itself as the conscience of the whole integrity sector. While there is no suggestion that the CCC is acting outside its legislative functions, after all, it has a broad prevention function and is required to assist in capacity-building within UPAs, the Review received a number of concerns about the CCC undertaking tasks which other integrity institutions might have been better placed to manage. Part of the issue likely derives from the relative size of each of the integrity agencies. The budget of the CCC exceeds that of the other core integrity bodies combined.<sup>lxxxii</sup>

It is entirely to be expected that the CCC should have such a major presence. However, the Review suggests that care should be taken not to overlap in the work of other agencies. One example is the conduct of audits. The CCC’s *Corruption Audit Plan 2021-2023* outlines audits to be conducted, such as an audit of recruitment processes and corruption risks relating to nepotism and undue influence. The CCC’s upcoming audits also include employee screening processes and complaint management practices.<sup>lxxxiii</sup> One Director-General, whose department has been nominated as the potential subject of a CCC audit, described the CCC audit process as a ‘perplexing crossover with the QAO’, noting that they are likely to end up asking the same base questions of the department that the QAO would. This, he said, seemed like an unusual thing for the CCC to focus on.

Shortly before this Review was finalised, the CCC released a briefing paper on *Influencing practices in Queensland*, in light of the ‘substantial increase in recorded lobbying activities in recent years’.<sup>lxxxiii</sup> The briefing paper expressly acknowledges the number of recent and ongoing inquiries considering these issues, including the Strategic review of the functions of the Integrity Commissioner, this Review, and other interstate reviews and investigations. The briefing paper states that the CCC proposes to undertake an audit to examine ‘the extent to which contact between lobbyists and government and opposition representatives are being accurately recorded by public authorities’. This is notwithstanding that the Integrity Commissioner conducts a very similar audit on an annual basis, albeit focussing more on compliance of lobbyists than public authorities. To an observer, this can look like double-handling. In any event, auditing work such as this would appear to be the natural bailiwick of a modern Auditor-General. In that context, the Auditor-General also should have the ability to refer serious matters to the CCC or police.

This Review does acknowledge that the CCC's investigatory powers render it uniquely able to tackle serious allegations about corrupt lobbying activity and does not dispute the important role for the CCC to play in this respect. At issue is the CCC's proposal to tackle an issue which is already subject to scrutiny on a number of different fronts. It risks delay, if the government of the day feels compelled to wait until the conclusion of each relevant review and investigation before it takes action. Such competition for turf tends to defeat rather than create the case for immediate actions that can serve the cause of openness.

A number of submitters also referred the Review to certain CCC reports which, it was suggested, demonstrated overreach of the CCC's functions. One such example was the CCC report *Investigation Arista: A report concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy*. The report considered the manner in which a gender equity strategy was initiated, implemented and reported within the Queensland Police Service. The CCC's findings in relation to discriminatory recruitment processes were later questioned by the Queensland Human Rights Commissioner (**QHRC**). That questioning was on the basis that the CCC's report had not sufficiently analysed whether the actions of the Queensland Police Service (**QPS**) in working towards a 50/50 gender balance were discriminatory in accordance with a proper interpretation of the *Anti-Discrimination Act 1991*. The argument was that the CCC report did not properly consider or analyse whether the practices were 'unlawful' or 'lawful' in accordance with the ADA, though the inference was left to be drawn that they were unlawful.<sup>lxxxiv</sup> The QHRC stated that, if the strategy did fall within the protection of the equal opportunity exemption, the CCC report should properly have focused upon which of the alleged discriminatory practices were lawful measures and therefore outside the scope of a corrupt conduct investigation.

This Review encourages the CCC to give priority to the matters that it is best positioned to handle (serious and systemic corruption), acknowledging that other bodies have the capacity to refer serious matters they identify to it. The CCC needs to protect itself against suggestions that it embarks on speculative and trivial inquiries at the expense of more serious cases. The proposal for a clearing house can be a valuable asset, both to assisting the CCC achieve the necessary focus and removing lack of clarity over how the integrity process is handled.

## RECOMMENDATION

Those complaints against senior public sector employees which the CCC devolves must include ongoing oversight by the Public Service Commission and an independent Director-General.

## 8. The case for a clearing house for complaints

A number of common concerns emerged throughout the Review's consultations: widespread confusion about how the 'patchwork' of integrity bodies fit together and the limits of their respective jurisdictions; complaints being passed from one agency or integrity body to another; and consequent timeliness issues. A complicating factor is the tracking and visibility of a complaint (both from a user and operator perspective) once it is in the 'patchwork', from where it begins to where it ends up, and which policies, directives and reporting obligations are enlivened once it enters the tangled web of Queensland's integrity system.

In light of these issues, the concept of having a single body responsible for the assessment, sifting, and delegation of matters to the appropriate agency or body is appealing. Having 'one door to government' for complaints takes away the onus which is currently placed on complainants to navigate their way through a system which can be very baffling.

This is also not an entirely novel approach. In South Australia, the Office for Public Integrity receives and assesses reports about corruption, misconduct and maladministration in public administration. It does so from inquiry agencies, public authorities and public officers, often referring those complaints to inquiry agencies (i.e. the Ombudsman) or back to public authorities or to determine that no further action be taken. To take a Queensland example, in 1996 the Brisbane City Council identified that a one-stop-shop for customers would support Council to become proactive in fulfilling customer needs. There is now a single phone number for the BCC, operated by staff who are trained to direct persons through appropriate channels. It is well regarded for its maturity. The proposal of this Review for a complaints clearing house in fact could be a prototype for a much wider approach to the handling and management of complaints across all State government agencies.

As noted in the Interim Report, the idea of a clearing house has also been raised previously in the context of Queensland's complex integrity patchwork. The Callinan and Aroney Report suggested that:

*...consideration might be given to the processing of complaints in the first instance by a committee of, say, the Ombudsman, the Public Service Commission and the CMC [now, the CCC]. Measures are, in our opinion necessary to ensure that the CMC attend to its much more important duties and functions.*

The proposal is not without its complexities. However, on balance, the Review recommends that consideration be given to the establishment of a technology-enabled clearing house to triage, assess and direct complaints. The Review appreciates that this proposal is likely to be strongly resisted. It must be acknowledged that a number of integrity bodies already assess and triage complaints and refer them on as they see fit. However, giving particular bodies unchecked authority over what matters they will deal with can lead to the perception, which has been shared with the Review, that integrity bodies selectively choose the matters they accept.

## The problems to solve

While admittedly complex, the disaggregation of Queensland's integrity functions has important benefits. It avoids integrity functions being monopolised by a single institution and provides 'checks and balances that mitigate against a single way of thinking and paradigm capture that can come with a centralisation of functions'.<sup>lxxxv</sup> However, disaggregation leads to two issues. First, it necessarily adds to complexity, and renders the system difficult for users to navigate. Second, it gives rise to the potential for disputes about jurisdictional boundaries to occur. This can be in the nature of 'turf wars' or the inverse, namely, agencies 'palming off' difficult or unwanted matters to another agency.

### Confusion among users of the system

The amount of attention that this Report dedicates to explaining the functions of just the *core* integrity bodies gives some indication of the complexity of a system which, in addition to the agencies, is supplemented by numerous sector and subject matter- specific bodies (such as the Health Ombudsman, Human Rights Commission or the Queensland Racing Integrity Commission). And of course, most departments have their own separate complaints mechanisms. The contribution of such other bodies should not be understated. The bewildering number of integrity agencies causes justifiable confusion among those attempting to navigate the system, including public servants. It can be utterly baffling for the average citizen seeking to utilise it.

One agency of the government (not a core integrity agency) shared with this Review its own complaints-handling system. It comprised an assessment form, ten pages in length, which attempted to set out the steps required to be manually undertaken in assessing and triaging a complaint. Each complaint has to be considered in terms of whether it will be required to be referred to the police, internal audit (for material loss), information protection units (for privacy breaches), human resources (for matters involving medical issues), the Ombudsman, a management action, or Crown Law (where a legal opinion is required). This is in addition to the assessments required for considering whether a matter should be referred to the CCC, whether it is a Conduct and Performance Excellence (CaPE) matter, whether the matter is a PID, and whether it involves a human rights complaint. The user of the system is on the end of the process.

Contacting the Ombudsman, as briefly described in the previous chapter, is equally challenging.

### Jurisdictional disputes

The Review has heard a number of complaints about what might be termed the division of responsibilities between integrity bodies and agencies. While section 40 agreements provide an important framework to the manner in which complaints are dealt with, submitters to the Review have complained about a lack of transparency around how the CCC determines which issues it will investigate itself and which issues it will 'devolve' back to agencies. It was suggested to the Review that the CCC 'cherry-picks' the matters it wishes to investigate. While not drawing any conclusions in this respect, it is obvious that a siloed approach to assessment of jurisdiction leads to a lack of transparency.

Complaints about referrals are not confined to the practices of the CCC or the Ombudsman. However, one particular example cited in relation to the latter did helpfully illustrate to the Review some of the challenges with the current practice:

*About four years ago, I tried to make a complaint about a senior officer. I followed the usual internal processes for escalation and got to a point where I needed to go to the Queensland Ombudsman. The QO referred me back to the complaints contact for my Department, and said I needed to go to them before they would address the complaint. The problem here was that the person about whom I was complaining was the Department's complaint contact I was referred to by the QO. Too many roadblocks. There needs to be a mechanism for escalation of complaints about senior officers that doesn't rely on the person complaining to go through the relevant senior officer/s.*

The clearing house would be well-positioned to refer complainants to the appropriate body, allowing agencies such as the Ombudsman to focus their efforts to investigating genuine complaints.

#### Other problems to manage

In addition to the problems arising from disaggregation, the clearing house would also solve the problem of alleged interference within agencies of genuine complaints, removing the assessment process from agencies. While it is still envisaged that the majority of matters would be directed to agencies, locating the assessment process within the clearing house would remove the possibility of matters being stifled before they can reach the appropriate body.

#### **What is envisaged**

##### The Structure

The clearing house would be a 'single door to Government' where members of the public and public servants alike can bring their grievances and complaints about alleged corruption, administrative decisions and other customer complaints. Having a one-stop-shop takes the obligation away from the complainant to navigate the complex and overlapping integrity system, at the same time reducing the incidence of complaints being rebuffed as 'out of jurisdiction' because the clearing house would direct complaints to the correct integrity body in the first instance.

It is proposed that the clearing house would assess complaints and determine whether:

- the complaint be referred to the CCC for investigation, in cases of serious corruption;
- the complaint be directed to the Ombudsman, for administrative decisions;
- the complaint be directed to subject-matter or sector-specific integrity bodies, such as the Human Rights Commission, the Health Ombudsman etc. in appropriate circumstances;
- the complaint be directed to departments/agencies, for lower-level corruption and HR complaints;

- the complainant be directed to appropriate online resources, such as departmental complaint forms, for lower-level complaints; or
- no further action be taken, in the case of vexatious or trivial complaints.

Combined with the recommendation which follows, relating to a single reporting scheme, the clearing house would have the ability to input the information obtained from the initial assessment process into a single reporting oversight mechanism. This would significantly reduce the burden currently borne by ESUs to report a single complaint in various different contexts.

The scale of this operation should not be underestimated and the clearing house will only be effective with commitment from the very top of government, including dedicated ministerial leadership. Inspiration could be drawn from other kinds of clearing house models. In addition to the South Australian OPI and Brisbane City Council models, other arrangements might provide guidance. For example, the Queensland Tertiary Admissions Centre (**QTAC**) was set up in the 1970's as a non-profit company with oversight from the participating institutions, to provide an efficient process for managing applications for university, TAFE and College entry from Qld and northern NSW students. Institutions had a role in setting selection parameters and retained responsibility for their own admissions policies, but a complex and very large application handling process, with multiple decision-parameters, was very successfully streamlined.

A likely effective model would be to establish the clearing house as a shared service, located in a single agency but with a practice and management oversight group drawn from the principal partners, namely the Ombudsman, CCC, PSC, ESUs and preferably a line agency. Working together but acknowledging roles, such a clearing house would have the authority and depth of knowledge and experience to manage the handling of complaints, and to inform the development of manuals of procedure, training and quality assurance needed for the success of the function. The training of staff would be one major and ongoing priority.

### The Technology

Integrity complaints are handled in compliance with an agency's internal timeframe and processes in addition to numerous others, depending on how they are triaged and assessed. There are inefficiencies inherent in the current triaging and reporting system leading to large amounts of manual labour in ensuring complaints are correctly handled and relevant reporting obligations are identified and followed. This creates the potential for human error and distracts those responsible for the management of those complaints from their core functions, namely, ensuring that complaints are dealt with in a timely and efficient manner. One representative of an ESU provided an illustration of this:

*... a single allegation of a reasonably serious theft or fraud allegation would first require a referral to the CCC ASAP (wait 14 days for the assessment), then PID reporting to the Ombudsman within 30 days, then referral to Police via an agreed protocol, then reporting every quarter to the PSC for the suspension*

*and external investigation costs (if used), possibly interim reports to the CCC and then review/outcome advice to the CCC, then outcome PID reporting to the Ombudsman, plus probably reporting of a material loss to the QAO. Plus, any necessary internal reporting for the agency.*

*Meanwhile the complainants are frustrated why 'nothing is happening', the subject officer feels treated unfairly due to delay, suspension costs are mounting, evidence is dissipating, and the public would question what value is being achieved here...*

*... When all of this is dealt with and the substance of the issue is actually addressed, if the complainant or subject officer is not happy with the outcome, there are myriad review, complaint and appeal mechanisms which can last literally for years, even if the case was dealt with perfectly (including legal costs to ensure it is defensible), absorbing resources. Plus there are audits from the CCC, Qld Ombudsman and QAO (on cases or broadly).*

Departmental and integrity agencies currently use separate technological systems to report or refer concerns or complaints on to the appropriate body. The Ombudsman uses an online portal called RAPID. The PSC uses the CaPE reporting portal. Some ESUs use the Resolve system.

The Review considers that steps should be taken by the government to explore methods of enabling the clearing house operation. This would be by way of a central reporting portal, accessible to integrity agencies, ESUs and members of the public. The purpose served would be to rationalise and streamline reporting and compliance administration to enable agencies to focus on their core business in a timely manner and reduce administrative burden.

In developing the central reporting system, the government will need to assess whether any of the existing internal digital / IT systems can provide the proposed functionality and to what extent certain systems need to be retired or replaced across government.

The portal should operate as a customer relationship management solution platform, to be used by the clearing house in initially inputting matters into the system. It is envisioned that, from the point of view of the clearing house and agencies, this will provide an interface which is capable of displaying:

- when a complaint was reported;
- how the complaint has been assessed along with associated assessment and triaging documentation;
- which agency the complaint is sitting with;
- the length of time in the system;
- which directives or policies it is subject to, and a functionality demonstrating whether those directives have been complied with and which are outstanding;
- prompts to the complaints handler as to what action is required next, and the timeframe;

- functionality to use the data recorded in the portal to inform other datasets without duplicating reporting functions – i.e., CaPE recording.

On a separate interface intended for complainants, a dashboard would need to be developed which records:

- how long their complaint has been in the system;
- what stage the complaint is at in its lifecycle, including an outline of next steps;
- links to central information about the relevant processes.

This activity is going to require investment and expertise. It will also need to juggle the need for visibility and respect of privacy. It will need to be a system capable of taking account of emerging technologies. New technologies, including artificial intelligence, may help in everything from tracking complaints to defining trends and predicting potential avenues for corruption.

Blockchain technology can assist in tracking individual complaints or the matters relevant to individual units and artificial intelligence can assist with defining trends and predicting potential avenues for corruption, supporting prevention rather than detection.

### **Matters to consider**

The Review is cognisant of the scale of this operation and the time that will be taken to establish its operations. The CCC, in its submission, expressed the view that the concept of a clearing house, comprising multiple agencies to triage matters, is unlikely to be helpful and will create a further layer of review and potentially an appeal process for decisions. That is considered a pessimistic view, and not one which serves the interests of consumers as much as it does the preferences of the current stewards of the system. And examples elsewhere do suggest that Queensland, with the necessary determination, can do much better by its citizens than it currently does in this regard. The point is that the functionality that is proposed is nothing more than an aggregation in real time of functions that are currently carried out in disparate agencies. The legal status of the clearing house would have to be settled upon, and it would need the authority to direct integrity bodies to accept the matters directed to them.

Consideration would need to be given to managing the PID process alongside, or as part of, the clearing house. Another matter to be resolved is the way in which the PID reporting process would fit alongside the clearing house.

## RECOMMENDATION

Consideration be given to the establishment of a technologically-enabled clearing house which will:

- act as a first point of contact for complainants to report concerns and complaints, including complaints about alleged corruption, administrative decisions, and customer complaints;
- assess each complaint and determine whether:
  - the complaint should be referred to an integrity body;
  - the complaint should be referred to an agency complaints-handling process or for departmental investigation; or
  - no further action be taken (for vexatious or trivial complaints); and
- operate through the creation and use of a central reporting portal, accessible to integrity agencies, ethical standards units and complainants, the purpose of which would be to rationalise and streamline reporting and compliance administration to enable agencies to focus on their core business in a timely manner and reduce administrative burden.

## RECOMMENDATION

The CCC avail itself of the opportunity provided by the clearing house and the other cultural changes prompted by this Review to redouble its attention on serious corruption and major crime.

## 9. Lobbying and influence

The seeking of influence on policy and other decisions is at the heart of how government is conducted and a natural part of the political process in a liberal democracy. Almost all decisions which any government makes are therefore affected by some level of agitation, activity which these days we loosely refer to as 'lobbying'. The task of government is to listen and sift advice, whether that be from organised pressure groups or individuals, and reach decisions which take on that advice, reflect its own instincts and, which it considers, are in the best interests of the community as a whole.

While almost all decisions of government entail some level of legitimate lobbying, the term itself dates back to the 19<sup>th</sup> century and derives from the lobbies and corridors around parliamentary chambers in the United Kingdom and the United States (**US**). These were the places where wheeling and dealing occurred before matters were formally presented.

These days, however, the 'lobbying' term has come to refer to paid advocacy by professionals on behalf of third parties, to activity conducted in private behind closed doors. It is therefore highly relevant for a Review such as this which is interested in an increased level of sunshine upon the operations of government.

From the community's perspective, the troubling change over recent decades has been the increased ability of professional lobbyists (sometimes self-described as government relations firms) to link external interests with the political system, securing substantial fees in return. In a world where influence is a commodity, the ability to influence is itself tradeable with the capacity to skew outcomes to benefit those who can hire the best connected lobbyists rather than produce the best result for the public benefit. In recent times, Queensland has seen the rise of lobbyists unquestionably attached politically to the governing side of politics with understanding of the system. That has helped secure outcomes that might not otherwise have been possible. The growth of lobbying activity reveals what this Review believes is a market failure: the failure of government itself to be able to deal with business and community interests without the involvement of a paid intermediary.

The growth of lobbying is entwined with the complexity of issues facing government, the increased hollowing-out of public sector capacity by use of external consultants and the sophistication of lobbyists themselves. A good number of these lobbyists have formerly held positions of influence in government. The solution is similarly entwined with a number of approaches, each aimed at making the activities of government less opaque, hence reducing the need for paid assistance to deal with the State.

This Review has taken the view that the onus rests with ministers and their staff to faithfully record lobbying interactions and publish them through the ministerial diaries. Registration and recording of lobbyists activities should cover third party lobbyists (as now) as well as those carrying out lobbying functions as part of their suite of professional services. More comprehensive ministerial diaries (recording ministerial staffers' interactions as well as ministers) will record other interactions with in-house lobbyists and peak bodies.

The Queensland Parliament's Economics and Governance Committee has reported on the most recent strategic review of the Integrity Commissioner's functions, conducted by Kevin Yearbury. A significant focus of Yearbury's review was lobbying regulation, yet that oversighting parliamentary committee simply noted the recommendations that would do most to increase transparency. Although that committee chose not to recommend such actions, there is a need to do so, perhaps in some respects going even further than recommended by Yearbury.

More recently, the CCC has signalled its intention to use its extensive powers to conduct an inquiry into lobbying. This latest intervention, the fourth on this issue by the CCC, is acknowledged. However, more immediate action is warranted.

## Context

Queensland's current lobbying regime was introduced after the public airing of a six-figure fee paid to a former federal minister and a former state minister for their efforts in securing an infrastructure contract from the state government. The resulting public controversy led to lobbying regulations that have continued to evolve to represent, arguably, the most robust regime of lobbying regulation in Australia. While Western Australia was the first state to introduce a lobbying code of conduct and register, Queensland quickly followed in March 2009.<sup>lxxxvi</sup> Queensland was also the first state to take the subsequent step of requiring the release of information from ministerial diaries.<sup>lxxxvii</sup> Queensland also stands alone in requiring that lobbyists record every contact with government, rather than maintaining a simple register of active lobbyists.<sup>lxxxviii</sup>

The comparative strength of Queensland's system, which deserves acknowledgement, does not necessarily make it fit for purpose. The international experience also is instructive, some jurisdictions such as Canada casting a much wider net. At the same time Canada does not record ministerial diaries in the same way as Queensland does. In any case, it is important to avoid the temptation of overregulation, as this can drive activity underground.

Lobbying has a role in informing good policy development, but it is necessary to ensure the practice does not curb or interfere with two elements which are 'central to good government': equal access to decision-makers; and ensuring decisions are free from undue influence.<sup>lxxxix</sup> Public perception that these elements are being interfered with leads to distrust, and a view that lobbyists 'in some way distort the political process'.<sup>xc</sup>

In Queensland, the most recent annual report of the Integrity Commissioner observed that:

*108 notifications were received relating to potential breaches of the lobbying provisions of the Act and the Lobbyist Code of Conduct. This heightened level of concern regarding the conduct of lobbyists (both registered and unregistered) corresponded with a significant increase in recorded lobbying activity, increasing from an average of 239 recorded contacts per year between 2010 and 2019 to 988 recorded contacts this past financial year (based on data recorded in the Lobbying Contact Register).*

Through data collected from the Queensland Lobbying Contact log, it is evident that lobbying activity increases prior to elections and that this represents a ‘risk window’.<sup>xci</sup> However, the level of that activity has not subsided thereafter; rather it has become a new base. Also, beyond the recorded influence of registered lobbyists is that of other operators whose practices fall within the legislative definition of ‘incidental lobbying’ or who operate in-house. If the aim of regulation is to temper undue influence and ensure equal access, it follows that the first step is to implement measures that allow the public to see exactly who is contacting government, how often and in what context. However, the report on ‘Australia’s National Integrity System: The Blueprint for Action’ (**NIS Report**) notes that tackling undue influence requires more than simple transparency: ‘Current lobbying regimes also do little to reinforce the responsibility and authority of decision-makers to resist undue influence, as opposed to place administrative requirements on lobbyists to record and publish their activity’.<sup>xcii</sup> The need to reassert the onus on ministers and other decision-makers has been central to the Review’s considerations, recognising that current conditions are relatively recent.

One former minister of a previous Queensland government was quite forthright to the Review in his admonition:

*It is an affront to all good government principles that those who have the ability to pay get priority... there is a need for greater clarity on how ministers engage. There are no rules.*

### **The activity of professional services firms**

The substantial rise in recorded lobbying activity is only part of the picture. The Integrity Act excludes in-house lobbyists, that is, those who lobby only in the furtherance of their own entity’s interests. It also does not capture lobbying activity carried out by persons within professional services firms (lawyers, accountants and consultants), in respect of which a legislative carve-out operates to characterise the activity as ‘incidental’ lobbying that does not need to be regulated. The NSW ICAC’s **Operation Eclipse Report** on *Investigation into the Regulation of Lobbying, Access and Influence in NSW* referred to estimates that regulated third party lobbyists account for 25 per cent or less of total lobbying activity.<sup>xciii</sup> Local opinion tends to confirm this estimate for Queensland. Of course, the absence of regulation necessarily means that the influence of in-house lobbyists and people operating within non-lobbying firms is difficult to quantify.

#### Conflicting Roles: ‘dual hats’

As beneficial as the services of professional consulting firms are to government, the lines become blurred when they carry out work for government while also working for their own clients. This issue is acknowledged by many of those in government with whom they come into contact and is known to insiders as ‘dual hatting’. The view put to the Review is that firms need to be transparent about what hat they are wearing, and when.

One major professional services firm described the focus of their business as being on the services they provide, as opposed to advocating for others. That being so, they did acknowledge that they do assist third party clients who are interested in accessing government grants, for example, who they would assist to submit applications for funding. They advised that this interaction would be at a Departmental level only, not through engaging with ministers of their offices.

In order to fully understand the integrity risks to which the lobbying activity of firms give rise, cognisance also should be given to the loss of expertise and capacity from the public service to the professional service sector. In its submission to the Integrity Commissioner Inquiry, Hawker Britton noted:

*It is of particular concern when companies contracted to government to provide policy support retain connectivity to their other commercial client services. This naturally creates conflicts of interest and the ability of these entities to trade off the information obtained within and during their period of government service.*<sup>xciv</sup>

Hawker Britton went on to suggest to that same Inquiry that consideration be given to what conflict avoidance mechanisms are required, noting that:

*...[t]here is nothing preventing an external consultant being engaged by government to perform a public policy development task and informing their own private commercial clients on government thinking, process and policy development. There is nothing preventing, nor any disclosure around, these firms further monetising their government contracts to provide advisory services to private clients for their own commercial gain. There is no register of what conflicts and clients held by these firms, nor any restrictions on their use of information for any period of time after a government contract is completed.*<sup>xcv</sup>

This may be overstated. The Yearbury Report observed that, '*[m]ost businesses of scale, and consultancy firms in particular, routinely have policies regarding the managing of conflicts of interest to ensure one client's information is not transferred to another and employees are quarantined from the respective assignments*'.<sup>xcvi</sup> Similarly, one accounting/consulting firm explained the strict assurance obligations and protocols that are imposed on any piece of work involving a third party. This Review supports the Yearbury Report's recommendation that firms specifically address conflicts of interest when submitting a proposal to undertake work. When considering Yearbury's proposal, the parliamentary committee referred to earlier was only able to state that it agreed with the intent of his recommendations.<sup>xcvii</sup>

#### Whether firms should be registered as lobbyists

The question remains whether there is sufficient justification for aligning the transparency obligations imposed on professional services firms who lobby and traditional third-party lobbyists. The NIS Report referred to earlier concludes that a necessary element is the extension of lobbying regulation to lobbying conducted by professional services firms and in-house lobbyists.<sup>xcviii</sup> Some international jurisdictions also have flagged a pathway to broader regulation (see Appendix 3). A report of the Brisbane Integrity Summit noted that the inclination towards further regulation must be balanced against the risk of creating a system that is '*impractical, unworkable and too broad*'.<sup>xcix</sup>

Cognisant of these competing considerations, the Yearbury report concludes that:

*A substantial additional cost to public administration and to business would likely be incurred by*

*expanding the definition of lobbyist to include in-house lobbyists and professionals. Such costs are considered disproportionately high compared to the net overall result in terms of the transparency objective, with ministerial diaries already disclosing meetings of this nature.*

On balance, this Review considers that lobbying activity conducted by professional firms ought to be captured, and included in any register of lobbyists and lobbying. The challenge lies in how to achieve that in a targeted and manageable way. Those who consulted with the Review overwhelmingly described an environment where the lobbying activities of some consulting firms are indistinguishable from those of registered third-party lobbying firms.

The Review considers that the register is important in increasing transparency of lobbying activities, not just lobbyists, and that its scope should be widened so that true transparency is achieved. **To that end, the legislative definition of ‘incidental lobbying’ should be amended so that individuals cannot escape regulation simply by virtue of their position of employment within an accounting or consulting firm.**<sup>c</sup>

The focus of regulation should be on the type of activity, and not the nature of the person’s employment. The Review is not concerned with work that is *truly* incidental, for example, a lawyer calling an officer of a department in order to clarify a point relevant to a client’s position. The Review *is* concerned with individuals situated within professional services firms whose entire work, or a substantial part thereof, comprises of contact with government representatives in an effort to influence State or local government decision-making for the benefit of their third party client. **All persons for whom a substantial part of their work involves representing the interests of a third party as a paid service should be required to register as lobbyists, including persons operating out of consulting and accounting firms.** The Review does not believe this should extend to peak bodies who represent entire sectors and industries rather than particular entities.

### **In-house lobbyists**

The inclusion of in-house lobbyists is similarly contentious. Ireland and Canada now regulate in-house activity. In Canada, the regulation applies if an entity employs an individual for whom a ‘significant part’ (roughly 20 per cent)<sup>ci</sup> of their duties falls within a broad list of activities considered to be lobbying (see Appendix 3).

At one level it is self-evident whose interests they represent.<sup>cii</sup> The Australian Professional Government Relations Association (**APGRA**) argues, perhaps predictably, that, ‘Given the top consideration when developing/refining regulation of lobbying should be transparency, the APGRA does not support the introduction of the establishment of a register of lobbyists for in-house lobbyists in Queensland. This is because it is very clear who in-house lobbyists are representing when they engage with government – either the company or organisation they work for’.

On the other hand, the Operation Eclipse Report notes that ‘professional in-house employees who routinely lobby government do not face the same registration obligations as third-party lobbyists. There is no principled

basis for their exclusion from this obligation'.<sup>ciii</sup> Further, a representative of one lobbying firm pointed out that the rationale for excluding in-house lobbyists was lost when the contact log was introduced because the idea behind the contact log was to allow the public to see who is lobbying government.

It is unrealistic to expect the lobbying contact log to be the single source of truth as to who is influencing government. There is no principled basis for increasing registration obligations if other mechanisms, in the case of Queensland ministerial diaries, represent a source of information additional to the contact log. This was Yearbury's view.<sup>civ</sup> If an increased administrative burden is to be borne by one group, the Review considers it should be ministers and staffers. The Review's consultations have revealed that significant lobbying activity, broadly defined, occurs with Chiefs of Staff and other ministerial staffers who are not currently required to publish diaries. The heightened obligations around ministerial diaries proposed by the Review, discussed below, alleviate this issue and ensure that the influence of in-house lobbyists is recorded in a publicly-accessible form.

### **The Lobbying Register and Contact Log**

While the Lobbyists Code of Conduct requires that lobbyists record the purpose of each contact they have with Government from a list of options contained in a drop-down menu, the Yearbury Report notes the increased use of the 'other' and 'commercial-in-confidence' categories to avoid the need to provide any further information. In the six months from January to June 2021, lobbyists registered 19 per cent of their contacts as 'other' and 39 per cent as 'commercial-in-confidence'.<sup>cv</sup> This Review also notes a preponderance of contacts described as the equally vague 'introduction' or 'development or amendment of a government policy or program'. This implies artful obscuring of the purpose of registered meetings.

The Yearbury Report recommends that lobbyists be required to provide a short explanation of the subject matter when selecting the 'other' category. In its response to Yearbury's recommendations the CCC recommended that the same requirement should apply to entries in the 'commercial-in-confidence' category.<sup>cvi</sup>

The Review team met with two major lobbying firms during its consultations. Both described design inadequacies in the lobbying contact log. Both take the approach of logging every 'contact', whether that be a text message, a meeting, or a phone call. They argued that the design of the current register, which records every contact as a 'meeting', can have the effect of suggesting that the extent of their contact with government is greater than it, in fact, is. It was suggested that the inability to differentiate the type of contact might be the reason for the prolific use of the 'other' category.

When asked about the CCC's proposal for the 'commercial-in-confidence' category to be amended, one firm emphasised that lobbying often takes place in a competitive environment and that excessive requirements drive operations underground to protect commercial interest. A consulting and accounting firm observed that they have no issue with their work with ministers and senior public servants being completely transparent because it occurs in line with structured processes which are highly regulated. They were concerned to

ensure that confidentiality be maintained in circumstances where, for example, they take policy ideas to ministers or their offices, if that were to result in their IP being revealed to competitors. Such ideas are again rarely involving third parties and therefore such transparency would trigger assurance obligations and protocols.

Following its own analysis of international jurisdictions, the NSW ICAC recommended that regulated lobbyists should disclose:

- date and location where face-to-face lobbying communications took place
- the name and role of the government official(s) being lobbied
- a description of their lobbying communications
- a description of the purpose and intended outcome of their lobbying communications
- whether lobbying was undertaken on behalf of another party.<sup>cvii</sup>

It is entirely consistent with this approach to require more detail around the purpose of meetings. The Yearbury admonition to require better explanation for the 'other' categories has value and the support of this Review. Likewise, this Review strongly supports the need for better explanation of 'commercial-in-confidence' which should be evidence-based, not a default position as it now appears to be. However, in recognition that other meeting 'categories' are similarly opaque, **the Review recommends that the drop-down menu be abandoned and supplemented with a field requiring a short description of the purpose and intended outcome of lobbying communications.** This should be supported by regular performance audits of its use by the Queensland Audit Office to establish whether the shield of confidentiality is needed. Where such audits identify serious or criminal issues, the Auditor-General should have the power of referral to the CCC.

Consideration might be given to changing that name of the register to the *Lobbying Register* (rather than the *Register of Lobbyists*) to reflect that the regulatory focus is on the substance (lobbying activity) rather than form (i.e. whether or not the person calls themselves a lobbyists or not).

### Ministerial Diaries

Ministerial diaries provide an important complement to the lobbying register, particularly in circumstances where not all lobbying activity is captured by the Act. The Yearbury Report noted that while there was consistency among ministers in recording the names of persons with whom they met, there was less consistency as to the purpose of meetings.

In response to the lack of detail, the Yearbury Report recommended that:

- a) the government provide more specific criteria as to the information that must be included in ministerial diaries as to the purpose of the meeting, including the possibility of a pre-set menu of options, and*

*b) the Leader of the Opposition's diary contain similar detail in respect of meetings with those employed within organisations and associations who represent that entity's own interests.<sup>cviii</sup>*

Again the relevant parliamentary committee noted this recommendation but did not explicitly recommend its implementation. The Review supports more specific information being included in ministerial diaries.

An analysis by this Review of one recent month's diaries kept by 17 ministers demonstrated that there is little, if any, contact at ministerial level by lobbyists of any form. Indeed, across that one month most ministers recorded between one-quarter and one-third of their meetings as interactions with people outside their offices or departments. Many of these were duplicated with other ministers. Almost half the ministers, across a four-week period, averaged less than one meeting a day with an external party. The Review does not suggest that the particular month surveyed was necessarily typical, though one inference could suggest inconsistency or incompleteness in the recordings contained in ministerial diaries.

In its submission to the Integrity Commissioner Inquiry, the CCC observed that the recommendation as to specific criteria in ministerial diaries was narrowly focused, and that analysis of lobbying contacts shows that the large proportion of contact occurs with ministerial staff where there is no corresponding publicly available diary. The CCC suggested that 'an electronic disclosure system (like that used for political donations in Queensland) would also assist in enhancing transparency, as would a requirement for the publication of contact with lobbyists and all government and opposition representatives, such as is done with departmental gifts and benefits registers'.<sup>cix</sup>

This Review reaffirms that the primary responsibility for accountability sits with ministers and their offices. Diaries are a tool of accountability. They need to be a more effective tool. More detailed and informative ministerial diaries are essential to this. **The diaries of ministers and their staff should include all external contacts designed to influence government decisions. The diaries should readily link to the lobbying register and should be more easily accessible and searchable by the interested public than the current system through which each minister's diary is published each month in PDF form.** This is a relatively simple IT systems fix that, in company with a broadening of the lobbyist definitions, will create a transparent system in which the public can have confidence and through which businesses, unimpeded, can go about their activities with government.

## IMPACTS OF PROPOSED CHANGES TO LOBBYISTS AND LOBBYING

- **Ministers and staff** – Required to disclose more detail about purpose of meetings with all parties. Diaries to be extended to capture ministerial staff, subject to audit by Auditor-General. Cabinet decisions public after 30 business days to give greater insight into influences of decision making.
- **Registered lobbyists** – Greater need to disclose purpose of meetings, can no longer lobby after working on party campaigns, interactions with ministerial staff recorded in diaries as well as on lobbying register. Activity subject to audit by Auditor-General.
- **Professional services firm employees who lobby** – Must register and log lobbying activity on lobbying register, greater need to disclose purpose of meetings, interactions with ministers and staff recorded in diaries, can no longer lobby after working on party campaigns. Activity subject to audit by Auditor-General.
- **Government relations staff employed inhouse in businesses** – Not required to register but interactions with ministers and staff recorded in diaries with greater need to disclose purpose of meetings and activity subject to audit by Auditor-General.
- **Representative organisations (including trade unions)** – Not required to register but interactions with ministers and staff recorded in diaries with greater need to disclose purpose of meetings and activity subject to audit by Auditor-General.
- **The public** – Greater visibility of who is influencing government and for what purpose. Confidence that access is fair and not influenced by political allegiances.

## ILLUSTRATIONS OF PROPOSED CHANGES

**CASE A:** A company wants to make representations to the government for regulatory waivers that will help it commence a project it says will employ 200 people in a regional area. It seeks a meeting with a minister but instead sees a ministerial adviser who later briefs the minister on the case for or against the decision. The company uses no lobbyist but its meetings are arranged by an executive responsible for government relations.

**Disclosure now:** None

**Future disclosure:** Ministerial office diaries record the meeting with more detailed description of the purpose of the meeting. If taken to Cabinet, supporting documents available 30 business days from date of decision.

**CASE B:** A company wants to make representations to the government for regulatory waivers that will help it commence a project it says will employ 200 people in a regional area. It employs a lobbyist attached to an international accounting/ consulting firm who seeks a meeting with a minister but instead sees a ministerial adviser who later briefs the minister on the case for or against the decision. The meetings are attended by company executives as well as the external lobbyist.

**Disclosure now:** None

**Future disclosure:** Lobbyist register records company's engagement of lobbyist and details of meetings as do ministerial diaries but with more limited and auditable use of 'commercial-in-confidence' designation. If taken to Cabinet, supporting documents available 30 business days from date of decision.

**CASE C:** A company wants to make representations to the government for regulatory waivers that will help it commence a project it says will employ 200 people in a regional area. It employs a lobbyist from a specialist lobbying firm who seeks a meeting with a minister but instead sees a ministerial adviser who later briefs the minister on the case for or against the decision. The meetings are attended by company executives as well as the external lobbyist.

**Disclosure now:** Lobbyist register records company's engagement of lobbyist and details of meetings as do ministerial diaries but classifies them commercial-in-confidence.

**Future disclosure:** Lobbyist register records company's engagement of lobbyist and details of meetings as do ministerial diaries but with more limited and auditable use of 'commercial-in-confidence' designation. If taken to Cabinet, supporting documents available 30 business days from date of decision.

## **Donations from Lobbyists**

Recent media reports have highlighted concerns around the practice of lobbyists giving political donations.<sup>cx</sup> In his submission to this Review, the Clerk of the Parliament submitted that banning donations from lobbyists would also be in the public interest to ensure that lobbyists are not used as a funnel for donations. The Review has not been made aware of particular examples suggesting that lobbying firms do ‘funnel’ funds from their clients to government. The firms we spoke to strongly refuted that they engage in such a practice. A search of the electoral donations register tends to affirm that position. That being so, the perception that this takes place is a matter of concern.

The government has already taken a position of banning donations from property developers and could address this concern by similarly banning donations from registered lobbyists or others engaged in lobbying which, under the proposals of this review, would be an expanded cohort. From its observations, the Review has faith in the electoral donations register, particularly its ‘live reporting’, to capture such activity. The combination of the electoral donations register, lobbying contact log and ministerial diaries can paint a picture of how influence is traded. That picture will be crystallised with the introduction of the Review’s recommendations.

## **Influence in campaigns: ‘dual hats’ again**

The skills of specialist lobbying firms have seen them operating both as lobbyists to governments and political consultants to the parties competing for government. This issue drew attention during the 2020 Queensland election when it was reported, and has since been confirmed, that the two largest lobby groups worked on the government’s re-election campaign. Similar circumstances have occurred in elections at local government level.

The appearance of guiding a political party to office one week and then advocating a client’s case for a government or council decision a few weeks later naturally raises suspicion which cannot be remedied by promises to impose ‘Chinese walls’. Suspicions about ‘dual hats’ may be heightened if subsequent government decisions favour clients of the firms engaged to run election campaigns.

This is offset, to some extent, by the apparent transparency: the lobbyists are registered, their interactions are recorded and the decisions are made public. Even so, the public is naturally sceptical about whether this is a fair way to conduct business. Most people would be incredulous at the proposition that a lobbyist working with a political leader in one capacity cannot later exercise special influence.

A sound approach would be for political parties and the lobbying firms themselves to recognise the damage to confidence in the system that arises from a willingness to create such conflicts. But this recognition of understandable community concern has been slow and can only be dealt with by regulation which prohibits professional lobbyists who work on a party political campaign from lobbying for a period before and after an election. Access to government is a privilege which, like all privileges, comes with expectations.

It is worthwhile noting that in its submission following the release of the Interim Report, the Australian Professional Government Relations Association stated that, 'APGRA and its membership have never supported dual roles of lobbyists due to the conflicts of interest and perceived conflicts that arise'. AGPRA maintains a code of conduct that regulates the conduct of APGRA members and which operates alongside the regulatory framework (including the Lobbyists Code of Conduct) which exists in Queensland. The APGRA Code explicitly prohibits practitioners from playing a senior management role in the conduct of an election and requires practitioners to keep their professional activity separate from their person involvement with a political party. This is a sensible approach but the Review proposes to go further and suggest that **if an individual plays a substantive role in the election campaign of a prospective government, they should be banned from engaging in lobbying for the next term of office.**

### Investigations and Sanctions

Increased regulation is relatively meaningless without provision for the investigations and the imposition of sanctions for breaches. The NIS Report, referred to earlier, notes that a necessary element of lobbying regulation is '*effective capacity for investigation and compliance activity in respect of professional lobbying, an element missing from several regimes – even Queensland's, otherwise often recognised as the strongest of Australia's current lobbying regimes*'.<sup>cxii</sup> The Yearbury report similarly states that '[s]anctions for unregistered lobbying are required if the regulation of lobbying is to be effective', ultimately finding that the absence of penalties or sanctions for unregistered lobbying impacts the effectiveness of the Act and recommending that the Act be amended to make unregistered lobbying an offence.<sup>cxiii</sup> While this recommendation was supported by the Integrity Commissioner,<sup>cxiii</sup> the oversighting parliamentary committee's response was merely to say that it noted the recommendation 'is designed to deter unregulated lobbying'.<sup>cxiv</sup> This Review considers this to be a further lost opportunity and reiterates the Yearbury Report's observations about the importance of sanctions.

In respect of investigatory powers, the imposition of such powers would give rise to a potential conflict for the Integrity Commissioner. This Review supports the proposal made by Yearbury in this respect, that is, to formalising the ability of the Integrity Commissioner to refer matters for investigation to the CCC. Yearbury further noted the point made by the CCC that this would require some legislative amendment to allow the Integrity Commissioner to refer to the CCC matters that might not technically amount to corrupt conduct but which may warrant investigation and that it would be preferable to establish the Integrity Commissioner as a public official.

## RECOMMENDATIONS

Lobbying regulation be strengthened by:

- requiring that all professionals offering paid lobbying services to third parties to register as lobbyists;
- abandoning the 'drop down' menu on the lobbying contact log in favour of a requirement that lobbyists provide a short description of the purpose and intended outcome of contact with government;
- requiring the publication of diaries of ministers and their staff. Diaries should record all external contacts designed to influence government decisions, should readily link to the lobbying register and should be easily accessible and searchable;
- an explicit prohibition on the "dual hatting" of professional lobbyists during election campaigns. They can either lobby or provide professional political advice but cannot do both;
- encouraging the Auditor-General to carry out performance audits of the lobbying register, ministerial diaries and public records to ensure recordkeeping obligations are being complied with.

# 10. Strengthening the underpinning system

## Parliament

The opening up of government processes to the sunshine of public gaze is the central theme of this Report. At the core of rising community disaffection about governments everywhere, including in Queensland, is the lack of interest by the political system to provide the openness which an increasingly informed and demanding community expects in the contemporary context.

That disaffection is regularly evident in the falling regard evident in surveys of community esteem for governments and political leaders. That trend, it is acknowledged, also applies with respect to various other institutions in our society.<sup>cxv</sup>

At the very essence of our system of responsible government is the ability to secure the accountability of our political leaders in the parliament. We also know that party and government dominance is a commonplace feature of Westminster-derived systems. And certainly that has been reinforced in Queensland over the years, with the unicameral arrangements.

This Review has focused overwhelmingly on the administrative side of government, but the administrative side takes its lead from the politicians who have been elected to parliament to serve the community.

There have been some attempts at strengthening the accountability of the Queensland parliament, and these were described earlier in this Report. However, there are strong indications that the ambition to modernise the operations of the parliament have run out of their mainly post-Fitzgerald steam.

The frequently colourful theatre of Question Time provides the most obvious opportunity to secure the accountability of governments and ministers. Its effectiveness, both in Queensland and elsewhere, has been heavily qualified by the imposition of party discipline. Yet Question Time is not the only opportunity for securing accountability. Two examples may suffice.

The first relates to the effectiveness of parliamentary committees, the performance of several of which may be inferred from earlier discussion in this Report. Nor does the Queensland parliament necessarily have the longest history with such bodies. And one of the most vital roles that is played by parliamentary committees is in the interrogation of annual 'budget estimates'. The Queensland parliament's own Committee System Review in 2010 did recommend a freer flowing process for such budget estimates, though both sides in office have subsequently truncated or limited the opportunities for debate.

The other matter deserving of comment relates to the resources which are provided to the Opposition of the day. This is an important consideration because the role of Opposition has an institutionally important role to critique and provide alternatives.

Relatedly, the inadequacy of Opposition resources was a sore point in pre-Fitzgerald times. And despite

some differences of approach amongst the various premiers since that time, it remains a problem to the present. It is not the place of this Review to make recommendations on matters relating to the operations of parliament. However, it is relevant to comment on matters that go to the effectiveness of accountability arrangements. It is also perhaps useful to provide a reminder of EARC's December 1991 report on the issue. It recommended that the staff establishment of the Opposition parties should be maintained at 20 per cent of the staff establishment of ministerial offices. Other figures have been proposed elsewhere since that time. A related issue, also one stemming back to practices pre-Fitzgerald, is the desirability for the resourcing of the Opposition to be determined by parliament and not the government of the day.

## Proactive release of cabinet documents

It is a commonsense proposition that citizens are likely to have more trust in their governments if they know that decisions that use taxpayers' funds, and that may affect their lives quite directly, are made in the open, and are subject to scrutiny. Since the Fitzgerald reforms Queensland governments have endorsed this notion, and enacted formal regimes designed to support access to government-generated information. The RTI and IP Acts are premised on a model of pro-disclosure known as the 'push model' whereby government routinely and proactively releases information and RTI applications become necessary only as a 'last resort'.<sup>cxvi</sup>

The utility of these regimes is, however, constrained by culture and practice. The 2008 Solomon Report noted that:

*History in Queensland, as in many other jurisdictions, has proven unambiguously that there is little point legislating for access to information if there is no ongoing political will to support its effects. The corresponding public sector cultural responses in administration of FOI inevitably move to crush the original promise of open government and, with it, accountability.*<sup>cxvii</sup>

The Solomon Report precipitated a legislative and systemic overhaul in Queensland, but its comments remain relevant today. It is clear from such sentiments that culture, and a tone set from the top, is critical to giving effect to the spirit of that legislation.

The need for cabinet to maintain confidentiality around its deliberations, particularly in their developmental stages, is well understood and respected. However, it can mitigate against the openness that the Government espouses, and which is so necessary to maintaining public trust in the quality and impartiality of decision-making.

Currently, Queensland releases some information about Cabinet meetings and decisions. One other nearby jurisdiction, New Zealand, has made clear commitments about proactive release, which have been in operation since January 2019.

The proactive release of Cabinet documents would be an important signal, from the very top, of an open and pro-disclosure culture. The Queensland Information Commissioner has noted that a scheme such as New

Zealand's is entirely consistent with a legislative 'push model' and supports the required culture.

Currently the Queensland Cabinet Handbook provides that '*[a]ccess to the Cabinet record and associated Cabinet documents is governed by strict protocols to protect the confidentiality and security of information, and the interests of current and previous governments and the ministers involved in Cabinet decision-making, regardless of political party*'.<sup>cxviii</sup>

In accordance with this principle, the RTI Act provides that information is exempt from release (for 10 years from the date the information was most recently considered by Cabinet) in several circumstances.<sup>cxix</sup> That exemption specifically applies to Cabinet submissions and any attachment, Cabinet briefing notes, Cabinet agendas, notes of discussions in Cabinet, Cabinet minutes, Cabinet decisions, and drafts thereof.<sup>cxx</sup> Notwithstanding these restrictions, the Premier may determine what Cabinet information should be released proactively, 'including submission/ decision summaries and attachments'.<sup>cxxi</sup> The decision as to which material is released is subject to a number of exceptions which include material whose disclosure could reasonably be expected to prejudice national security, privacy and trade secrets.<sup>cxxii</sup>

Appendix 4 provides an illustration of the kinds of records which are currently published in Queensland. Typically, the Cabinet records which are released are a single page, usually outlining the nature of a decision. Annexures to those records are sometimes included, although, these usually feature in decision papers which outline cabinet's decision to introduce a Bill into the legislative assembly and usually comprise the text of the Bill and associated explanatory material. In other words, the annexures do not add to the amount of information which is disclosed, as documents such as Bills and explanatory statements are published on the Queensland Legislation website as a matter of course.

It is clear that while some effort has been made to 'let the sunshine in' on Cabinet, Queensland lacks an overarching scheme which imposes strict obligations of proactive release.

Such schemes do exist elsewhere, and can work well. New Zealand has a comprehensive policy requiring the publication of Cabinet documents. Cabinet Circular CO (19) 4, which sets out these obligations, explicitly acknowledges that '*[d]emocracies thrive when citizens trust and participate in their government. Proactive release of information promotes good government and transparency and fosters public trust and confidence in agencies*'.<sup>cxxiii</sup>

To that end, New Zealand's policy provides that:

*'[a]ll Cabinet papers, and any attachments or appendices to those papers and associated minutes, must be released proactively and published online (excepting APH [Cabinet Appointments and Honours] material), unless there is good reason not to publish all or part of the material. This includes minutes resulting from the consideration of oral items at Cabinet'*.<sup>cxxiv</sup>

These documents are required to be published online 'within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release beyond 30 business days'.<sup>cxxv</sup>

In terms of the 'good reasons' not to publish, the policy states that a decision not to publish might be made 'for matters which relate to national security, have international implications, and/or commercial, or trade or travel sensitivities'.<sup>cxxvi</sup> All material which is proposed for release must undergo a due diligence process which considers a number of matters. These include privacy obligations, national security, potential liability (e.g. defamation or breach of contract), and whether there is a good reason to delay the proactive release due to sensitivities around timing. The policy also provides that '[w]here information is redacted, the reasons should be clearly stated'.

Appendix 5 provides an illustration of Cabinet documents released under the New Zealand scheme. The documents released under this scheme are often significantly longer and more detailed than those released under Queensland's program. Where redactions occur, these are limited and justified. For example, one document extracted in Appendix 5 also shows some small redactions on the basis of being 'confidential advice to Government' and 'free and frank opinions'.

Queensland and New Zealand both have unicameral parliaments and are similarly sized jurisdictions. Of course, one of them is a national jurisdiction. What is otherwise different, however, is the culture around disclosure. In conversation with the Review the Acting New Zealand Auditor-General and colleagues noted that the implementation of the cabinet documents regime did not feel like a big leap for them because there existed a mature freedom of information regime to which the public sector was already accustomed.

The benefits of a stronger commitment to disclosure in Queensland also were canvassed back in 1990, in EARC's *Report on Freedom of Information, Serial No. 90/R6, December 1990*. It recommended that FOI legislation oblige the Secretary of Cabinet to keep a public Register of the decisions taken by Cabinet. This notion had previously been rejected at the national level by the Senate Standing Committee on Legal and Constitutional Affairs on the basis that it would be necessary to incorporate a mechanism by which to omit references to sensitive decisions (such as an impending tax rate change) and that a partial register might convey a misleading impression of Cabinet activity.<sup>cxxvii</sup> EARC was not persuaded on either count: it noted that, '[t]he Register will ensure that the public is kept informed of matters that have gone before Cabinet, and the decisions taken in relation to those matters. It will enhance the opportunities for members of the public to become better informed and more involved in public affairs, and issues relating to the formulation of government policy'.<sup>cxxviii</sup>

The Cabinet Register was not taken up by the FOI legislation. The matter was reconsidered in EARC's 1993 review on government media and information services.<sup>cxxix</sup> A submission to that review by the Queensland Watchdog had acknowledged '*the present convention that cabinet's deliberations are confidential but does not accept the government's right to selectively control the release of cabinet's decisions for news management purposes. Nor can we respect cabinet's confidentiality when the government reserves its right to selectively leak submission details prior to cabinet*'.<sup>cxxx</sup>

The conventions around Cabinet processes traditionally have focussed on risks associated with the release of

Cabinet papers in advance of their consideration, and exposure of the details of actual Cabinet deliberations. Successive Court decisions have upheld the idea that documents detailing the deliberations of Cabinet are protected from disclosure.<sup>cxxxi</sup> The Review considers that the imperative for maintaining secrecy of Cabinet documents applies principally to those which record deliberations, rather than to those which are developed to assist the Cabinet in its considerations.

In examining the New Zealand regime, the risk that proactive release would inhibit the provision of free and frank advice was considered. That regime explicitly does not propose that ‘exploratory advice, ‘blue skies’ thinking or advice generated in the early and formative stages of a policy development process and intended to ensure the free and uninhibited exchange of ideas that is necessary for the development of robust policy advice should be released’.<sup>cxxxi</sup> The documents reviewed as examples of New Zealand’s approach show that a measured approach has been taken to redacting small sections of documents where free and frank advice is offered.

As with any proposal for increased transparency, there may be a risk that things would be ‘pushed underground’ to avoid disclosure. Any tendency to avoid disclosure upon the implementation of a transparency regime, would be a serious indictment on culture. The New Zealand Cabinet Paper, *Strengthening Proactive Release Requirements*, noted the risk of creating a ‘perverse incentive not to bring matters to Cabinet, or to bring matters as oral items rather than providing a paper’. That paper noted that the requirements which specify matters subject to Cabinet decision-making would not be affected by the policy and, in any event, the policy would apply to minutes of decisions resulting from consideration of oral items.<sup>cxxxi</sup>

New Zealand’s policy clearly states that ‘the possibility of a Cabinet paper being proactively released must not undermine the quality of advice included in the paper, and therefore the quality of the decision ultimately reached by ministers’. This is an important principle to abide by.

There is a risk that exceptions, such as commercial confidentiality, would be excessively relied upon due to a risk of litigation. The Review would envisage that a similar process of due diligence would be undertaken to consider the release of documents as that in New Zealand, which gives genuine consideration to risks of liability arising from publication. Of course, this system can always be abused, but a pattern of avoidance or abuse will ultimately reveal itself: the culture is as important as the policy.

## RECOMMENDATION

The Department of Premier and Cabinet develop a policy requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet, subject only to a number of reasonable exceptions which should be outlined in the policy.

## Reliance on RTI exemptions

The Review received a number of submissions which raised concerns about excessive reliance on legislative 'carve-outs' to prevent the disclosure of commercially sensitive information. A submission from Brisbane Residents United stated:

*There has been a disturbing trend in the public sector to use the Right to Information Act (2009) Qld to withhold rather than provide information. Information that was once freely available is now difficult to find, expensive and difficult to access. Government departments must be prepared to defend a decision publicly. Is it the right decision if it is justified on spurious grounds or has to be kept from the public? The term commercial in confidence is often misused.*

The RTI Act balances its pro-disclosure aim by ensuring that commercial sensitives and other confidentiality obligations are respected and protected. For example, schedule 3, s 8(1) of the RTI Act provides that information 'is exempt information if its disclosure would found an action for breach of confidence'. In recent years a series of decisions of the QCAT in its appeals jurisdiction have adopted a broader interpretation of the 'breach of confidence' exemption. Critically, in *Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66, it was held that the words 'breach of confidence' refer not only to an equitable breach of confidence but also a breach of contract arising from contractual obligations of confidentiality. The result is that the release of any documents which might give rise to a breach of contractual confidentiality would be prohibited by Schedule 3 of the RTI Act.

The following is a list of cases which have considered this issue, each of which have resulted in the relevant information being prohibited from disclosure.

***Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66**, which involved Queensland Health's invitation to private operators to bid for the design, construction, operation and maintenance of a private hospital on the Sunshine Coast. Pursuant to a Services Agreement, Ramsay Health was required to treat patients of the Sunshine Coast University Private Hospital while the new hospital was built. The Queensland Nurses and Midwives Union applied under the RTI Act for access to documents about the number of patients referred, breaches of patient care and summaries of patient complaints.

***Screen Queensland Pty Ltd v Information Commissioner* [2019] QCATA 122** in which Screen Queensland appealed against a decision of the Information Commissioner to grant access to information the subject of an RTI application by Glass Media Group. Glass Media had sought access to the total financial incentive amounts granted to the Walt Disney Companies to secure production of the fifth instalment of the *Pirates of the Caribbean* series, from the Queensland Government.

***Adani Mining Pty Ltd v Office of the Information Commissioner & Ors* [2020] QCATA 52**, which related to the proposed Carmichael mine and contemplation of the construction of an airport near the

mine site. A term sheet was signed between Adani, the Townsville City Council and Rockhampton Regional Council. The term sheet set out the terms on which the Townsville and Rockhampton councils would be willing to contract to facilitate the provision of financial assistance in the construction and operation of the airport. The ABC requested access to the term sheet.

***Walker Group Holdings Pty Ltd v Queensland Information Commissioner [2021] QCATA 30***, relating to land at Toondah Harbour which was declared a Priority Development Area under the *Economic Development Act 2012* (Qld). A number of parties including the Redland City Council and the relevant minister entered into a development agreement for the development of Toondah Harbour. Redlands 2030 Inc, a community group, applied to the Council for the release of documents which included the development agreement and the deed of variation.

***NBN Co Limited v Information Commissioner & Ors [2021] QCATA 40*** which was an appeal against a decision of the Information Commissioner to grant access to information considering the ‘general rollout information’ of the NBN network in the Maleny area, which had been the subject of an application by a member of the Maleny Action Group.

***Park v Information Commissioner [2021] QCATA 109*** which concerned an old paper mill which was sold to Moreton Bay Regional Council (MBRC) with a view to developing it as a university campus. In addition to the contract of sale, those parties entered into three further contracts regarding the sale. A development agreement was also entered into by MBRC and University of the Sunshine Coast. Each of these contracts were the subject of an application made by Mr Park under the RTI Act.

In each of *Ramsay*, *Adani*, *Walker* and *NBN Co*, the Information Commissioner had determined that the information *should* be disclosed. In each of these cases, this decision was overturned by reference (at least in part) to the broad interpretation of the Sch 3, s 8(1). *Screen Queensland* was decided on the Cabinet exemption ground, but the breach of confidence exemption was a separate ground for appeal.

The interpretation of Schedule 3, s 8(1) is now settled law and it is not appropriate, nor is it the intention of the Review, to critique the decisions of the Tribunal. However, the point to make is that agencies should not be quick to agree to confidentiality clauses which are proposed by sophisticated commercial parties to protect their own interests. An agency can exercise its discretion to disclose information even where that information qualifies for an exemption, but the RTI process cannot overcome a lack of transparency if expectations are not clear in the procurement process about the openness and accountability to the community that is required when dealing with government. Government procurement policies provide that confidentiality and commercial-in-confidence clauses should not ‘be used as a matter of course and only included where there is strong justification for confidentiality’.<sup>cxxxiv</sup> As was noted in a 2018 report of the Queensland Audit Office, ‘the public has a right to know how much public money government is spending, on what, and with which vendors’.<sup>cxxxv</sup>

## Mandatory data breach notifications

Mandatory Data Breach Notifications (MDBN) impose an obligation on an agency to advise an individual if their private information is disclosed, or lost. The Information Commissioner and Privacy Commissioner advised the Review that they have advocated for such a scheme in Queensland for a number of years. The 2017 Legislative Review of the RTI and IP Acts recommended that further research and consultation be conducted to establish whether there is justification for a mandatory breach notification.<sup>cxxxvi</sup> The Information Commissioner informed the Review that since that time:

- the Commonwealth have implemented a MDBN scheme in the *Privacy Act 1988* (Cth) which commenced in 2018;
- in February 2020, the CCC recommended, in its Operation Impala report, the introduction of MDBN scheme in Queensland and that the OIC be responsible for developing the scheme and receiving and managing notifications;<sup>cxxxvii</sup>
- New Zealand commenced a MDBN scheme in December 2020;
- in New South Wales, a Draft Exposure Bill was released for consultation in 2021;
- the OIC has received voluntary data breach notifications from some agencies and has provided additional resources to support notifications within and external to agencies.

The Information Commissioner made the following comments to the Review:

*Operation Impala, other reviews and community concern have raised awareness about the serious and irreversible impacts on vulnerable members of the community when their privacy is breached and they are not notified and given the opportunity to promptly take steps to protect themselves and their family, their identify and financial security. We have also seen the increased impact on vulnerable complainants such as domestic violence victims. It is often not possible for an agency to know if individuals are vulnerable and have additional risks from a privacy breach. For vulnerable members of the community such as domestic violence victims, a privacy breach can mean serious and irreversible harm, potentially a matter of life or death. It is critical that agencies have a strong culture of reporting privacy breaches both within and external to the agency as appropriate to ensure the agency can improve awareness and practices to minimise future risk of harm to the community, and ensure affected individuals have sufficient control over mitigating harm caused in a timely manner. Given the potential media and reputational impact this requires strong leadership. However consistently acknowledging that human error can occur and as an agency we must learn to always do all possible to protect the community's personal information, and our responsibility to be accountable and notify individuals and responsible bodies will build a culture of trust through transparency.*

*In our RTI and IP work we regularly note that there are two stories that can occur – what has occurred and the secrecy or perceived secrecy about disclosing the information sought or what the community expects to be shared. The ‘secrecy’ story is often the most compelling and recalled later on. Timely disclosure of information that should be released, in a range of circumstances, sends a clear message about expectations about transparency and accountability... this will only be effective if it is consistently modelled throughout the leadership of the agency, with a clear authorising environment for those expected to decide to disclose information through administrative access and proactive release.*

While it is beyond the scope or expertise of this Review to provide a detailed commentary on the proposed model, the Review has received submissions which raised concerns with the current approach to data handling.

## RECOMMENDATION

A MDBN scheme be established in Queensland, forthwith.

## Whistleblowing

Whistleblowing is the single most important method by which wrongdoing in or by organisations is brought to light, above internal audits and routine controls.<sup>cxxxviii</sup> The *Public Interest Disclosure Act 2010* (Qld) (**PID Act**) is intended to ensure that public interest disclosures (**PIDs**) are properly dealt with and that whistleblowers are protected. In 2017 the Ombudsman reviewed the PID Act, making 40 recommendations about potential reforms which have yet to be acted on by government. Particular themes in the Ombudsman report, such as the coverage of the Act to include persons such as volunteers and contractors and clarity on protection from reprisals, aligned with matters raised during the Review’s consultations and deserve particular emphasis.

The Review received 36 submissions about whistleblowing. One submitter to the Review contended that, *‘Despite PID protection, the systems designed to protect me failed, causing significant stress on myself and workplace. I was simply doing my job in reporting alleged corruption and meeting community expectations’*. The comments made by submitters are consistent with research showing that, while regulatory focus is usually on deliberate retaliation, collateral impacts such as stress, impacted performance and isolation are prevalent.<sup>cxxxix</sup>

In 2021, the PCCC’s Report on the *Inquiry into the Crime and Corruption Commission’s investigation of former councillors of Logan City Council; and related matters* (**PCCC Report**) recommended that the government review the effectiveness and appropriateness of protections afforded to public interest disclosers, including the roles of the CCC and other relevant entities.<sup>cxl</sup> While the Government accepted this

recommendation,<sup>cxli</sup> it is yet to confirm what form this review will take or when it will occur. This Review will not attempt to pass judgment on the CCC's actions, nor of the PCCC's assessment of them. However, the matter is important as it gives rise to the question of how integrity and other agencies must balance their obligations to protect public interest disclosers while also carrying out their investigation functions. It also illustrates the urgent need for reform of the PID Act.

The proposed review is an opportunity to give due consideration to the proposals made by the Ombudsman in 2017, and to consider recent developments in other jurisdictions which represent good practice. Particular regard should be given to the whistleblowing regime under the *Corporations Act* and new whistleblower legislation shortly to take effect in New Zealand. That legislation includes an expanded definition of the types of matters that can be disclosed, clear sanctions against retaliation or detriment to whistleblowers and an expanded role for the Ombudsman.<sup>cxlii</sup>

## RECOMMENDATION

The Government proceed with its promised review of PID legislation as a matter of urgency, and at least within the next six months.

## Non-disclosure agreements (NDAs)

NDAs can serve a legitimate purpose. For instance, they can be used to ensure that outgoing employees do not reveal sensitive or protected information. However, during consultations, concerns were raised about the use of NDAs in employee separation settlements and the potential for NDAs to be used to cover up bullying and other wrongdoing. This is consistent with guidance produced by the CCC which highlights concerns that NDAs are being used to 'conceal suspected wrongdoing, unjustified terminations or excessive separation payments'.<sup>cxliii</sup>

Due to their very nature, it has been difficult for this Review to make conclusive headway in understanding the effect NDAs have on public servants. As instruments they are certainly the subject of potential abuse in some other public sector entities, including universities. The practice of paying large sums of money to encourage silence points to cultural malaise.

The level of concern held by those who have raised the issue of NDAs and related payments suggests that their effect is deleterious in the workplace. It is an area where the Auditor-General may consider periodic monitoring of practice to be appropriate.

# Independence of appointments and funding

## Appointments of integrity bodies

One of the key functions of any integrity body is to scrutinise and report upon the actions of the executive government. It is important that these bodies are able to do so in as independent a manner as possible. Independence from the executive government over appointment of key officials and the financial management of integrity bodies is therefore key. Focus should be centred on how parliamentary oversight can be strengthened to enhance accountability and independence of Queensland's key integrity bodies over these processes.

The Committee System Review Committee (**CSRC**) in 2010 focused on the issue of appointments to key integrity bodies. The practice in Queensland requires for the consultation by Ministers of the relevant parliamentary committee on certain roles prior to their appointment. The requirement to 'consult' is often taken to mean no more than advising a committee of the proposed appointment, raising concerns that this reduces the role of the committee, and in effect parliament, in respect of the appointment process.<sup>cxliv</sup> The CSRC recommended that the requirement for bipartisan support of appointments is best practice and should be used for all officers where there is a requirement for consultation with a parliamentary committee.<sup>cxlv</sup>

The CCC is the only body requiring nomination of its chairperson, deputy chairperson, ordinary commissioner or CEO to be made with the bipartisan support of the relevant parliamentary committee.<sup>cxlvi</sup> Recently, however, the PCCC recommended to the Government that the definition of bipartisan support in its legislation be revisited to ensure its plain meaning is reflected in the context of its committee. It also suggested the consideration by government of developing a mechanism to ensure the appropriate consideration of nominees.<sup>cxlvii</sup> This is in line with the spirit of the CSRC recommendations, and ought to be revisited by government.

Practices for appointments to certain integrity bodies vary across jurisdictions, ranging from the power to veto certain appointments in New South Wales and Victoria. However, the important point is that public faith is lost when there is not a serious attempt by governments to work with Opposition to make appointments which have bipartisan concurrence if not outright support.

## Funding of integrity agencies

The importance of independent financial arrangements and management practices for key integrity bodies was highlighted in the Crawford Report. In New South Wales, the Department of Premier and Cabinet and Treasury are involved in processes leading to decisions about funding for integrity agencies<sup>cxlviii</sup> and managing access to funding. The Crawford Report stated that this approach to determining and administering annual funding for integrity agencies presents threats to their independent status, given the inherent risk that previous or planned work of integrity bodies may influence funding decisions.<sup>cxlix</sup> The NSW Government in response has recently committed to removing the relevant integrity agencies from Premier

and Cabinet financial management processes and establishing a specialist integrity agency unit within NSW Treasury to manage representations for budget and supplementary funding.<sup>cl</sup>

In 2018, Victoria enacted reforms to streamline parliamentary oversight of the Ombudsman, the Independent Broad-based Anti-corruption Commission (**IBAC**), the Information Commissioner and the Victorian Inspectorate. In line with these reforms, the Ombudsman, IBAC and the Victorian Inspectorate no longer appear under the Department of Premier and Cabinet's annual appropriation; instead, they are vested with full responsibility for the financial management and services supporting their annual appropriation allocation.<sup>cli</sup>

The ACT Electoral Commissioner's funding is determined in consultation with the Parliamentary Committee for the Electoral Commission. The treasurer can veto the sum agreed, but must provide reasons for doing so in a document tabled in parliament.<sup>clii</sup>

### *Funding of integrity agencies – Queensland context*

The following integrity agencies do not control the budget allocated by Government:

- Integrity Commissioner, with the PSC retaining authority and responsibility to provide resourcing and administrative report. In the Integrity Commissioner's 2020/21 Annual Report, it was noted that these arrangements operate in such a way as to place the Integrity Commissioner in a position of inherent vulnerability due to dependence on the PSC exercising its powers in a judicious manner. This is discussed further in the 'Integrity Commissioner' section of this Report.
- CCC, with the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, holding responsibility for the allocation of funds for the CCC budget. The CCC makes a budget submission to the Attorney-General which is then considered by the Cabinet Budget Review Committee (**CBRC**). In the PCCC's *Review of the Crime and Corruption Commission's Activities Report* in June 2021, the PCCC considered a recommendation by the CCC that a review be undertaken of the CCC's funding model to 'avoid possibility or perception of political interference by appropriation from Parliament'. This was not supported by the PCCC.<sup>cliii</sup>
- The Information Commissioner, whose office budget is approved by the Attorney-General. The Information Commissioner appears at parliamentary Estimates Committee hearings to respond to questions from Members of Parliament about the budget.
- As noted above, the Audit Office is required to submit its budget to DPC, which is then passed on to Treasury.

In submissions to this Review, the OIA, Auditor-General and the Clerk of the Parliament, were supportive of changes being made to increase autonomy over the availability of appropriate human and monetary resources to core integrity agencies.

## RECOMMENDATION

The independence of integrity bodies in Queensland be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive government.

## Oversight of Local Government

It is local government, represented by 77 local authorities and some 580 elected officials across the State, which is the level of government closest to the community. It is that which looks after local planning matters and delivers a range of essential public utilities. This Review is not focusing on local government, though is aware of recent developments about its oversight. In response to serious allegations surrounding the March 2016 local government elections, and separate serious failures to comply with governance and integrity policies and procedures, the CCC launched two investigations. The first of those, Belcarra, recommended sweeping reforms to conflict-of-interest obligations for councillors, and the latter, Windage, resulting in the imprisonments of some public officials.

A subsequent review by Dr David Solomon recommended the establishment of the OIA as an oversight body for the conduct of councillors. Complaints relating to councillor conduct had escalated from just two per year (prior to the institution of the OIA in 2011) to an average of more than 1000 per year since OIA's 2018 establishment.<sup>cliv</sup>

The OIA is a statutory authority established under the *Local Government Act 2009* (Qld) (**LG Act**), and reports to the Department of State Development, Infrastructure, Local Government and Planning (**DSDILGP**), with oversight by the State Development and Regional Industries Committee (**SDRIC**). The purpose of the OIA is to investigate and deal with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when devolved back to the OIA by the CCC, corrupt conduct.<sup>clv</sup> The OIA describes itself as: 'not a 'one-stop-shop', it is one part of the councillor complaints system. The OIA receives and deals with complaints, but it is the independent Councillor Conduct Tribunal and councils themselves which decide misconduct or inappropriate conduct matters'.<sup>clvi</sup>

The Review notes the current SDRIC inquiry into the functions of the Independent Assessor and the performance of those functions (**SDRIC Inquiry**) commenced in October 2021. This Review understands that a significant theme of the SDRIC Inquiry has been the personal impact on councillors of both OIA investigations and Councillor Conduct Tribunal disciplinary proceedings. One of the issues appears to be resource-related backlogs in the handling of complaints. The Review notes that the SDRIC Inquiry will specifically consider whether any amendments to the LG Act or changes to the functions, structures, or procedures of the OIA are necessary for its effective operation.

One of the issues which presumably is facing the SDRIC Inquiry is that the OIA is functionally independent of the DSDILGP, but it is dependent on DSDILGP for its budget and resourcing allocation. When the OIA was established in 2018, it was provided with 10 Full Time Equivalent (**FTE**) positions to manage an anticipated 160 complaints.<sup>clvii</sup> In its first seven months of operation, it received 824 complaints.<sup>clviii</sup> Since its inception, the OIA has consistently received in excess of 1000 complaints every year, noting that its jurisdiction expanded in 2020 to include the Brisbane City Council.<sup>clix</sup> It will be for the SDRIC Inquiry, and not this Review, to tackle these challenges.

# 11. Renewing the public sector: biggest employer, why not the best?

## Renewing the public sector workforce

The Queensland Government is the State's largest employer. There is an imperative for the Queensland Government to also become an employer of choice, as part of an ongoing commitment to overcoming the hollowing-out of public sector capability and knowledge, and the rebuilding of enduring public sector functions. Most Queenslanders have family members or friends who work in some capacity in the public service or regularly interact with its officers: how those individuals experience those interactions communicates a great deal about the government to a huge cross-section of Queenslanders.

## Fit for the future

The Thodey Review highlights some of the conflicting drivers of volatility in the future: digital disruption, which enables citizens to expect more of government and exert more pressure for action; a less stable geopolitical environment; automation and artificial intelligence transforming industry and service delivery; and declining trust in globalisation, and in major institutions, including governments.

In this unpredictable and contradictory environment, governments at all levels and of all political persuasions will face challenges which are increasingly complex, require high levels of expert analysis and thinking, and responses developed through co-ordination across existing structures, disciplines and levels of government. They will need a capacity to be both alert to global trends and threats, and to respond to local conditions and, in service delivery, to both individual needs, and communities whose whole existence is brought into question by changing resource uses and climate-related threats.

It is important to plan and act now, to equip the public sector workforce to meet these challenges. The submissions made to the Review and the extensive consultations undertaken paint a picture of a workforce that has been weakened over many years by a history of structural change, turnover of chief executives, loss of expertise, impermeable vertical hierarchies and a focus on rules rather than performance, and an increasingly unpleasant and disabling operating culture.

A program of intentional renewal will be needed to ensure that the public service has the breadth, depth and flexibility to meet its obligations for service to the community, and to the government of the day, into the future.

## RECOMMENDATION

The rejuvenation of the capability and capacity of the Queensland public sector be a major and concerted focus. This should emphasise a culture of performance and integrity. The Public Service Commission must accept its key role.

### The idea of service

At the heart of the public service is a noble idea: that people put their skills and effort to work ‘in the public interest, to serve their community’, and in doing so, they act with **integrity and impartiality, promoting the public good, delivering services for the benefit of the people of Queensland, upholding the system of government and making decisions responsibly and openly** (the core ethical principles of the *Public Sector Ethics Act 1994*)<sup>clx</sup>. In taking on this task, people accept that they may not be the best paid, or have the most comfortable or most glamorous jobs, and that they may often be challenged to measure their decisions and actions against these high standards – but they will be able to satisfy a highly valued personal desire, frequently expressed as wanting ‘to make a difference’.

While this ideal is still a strong driver for many staff, even those at the front line of service delivery – like teachers, nurses, and police and emergency services officers – may find that complexity of systems and client interfaces are taking a toll. Concerns to the Review reported from across the service demonstrate how readily this ideal can be tarnished, and replaced by behaviours designed to be more self-protective than service-oriented.

In addressing these matters, the Review is not seeking to reclaim an imaginary, idealised past. It is aiming to recognise the personal commitment of the vast majority of existing public servants, to speak to potential new employees, and to find ways to strengthen the public service and its place in the system of government. This is so that the government of the day and the people of Queensland can have confidence that the service is clear about its role and contribution, is ‘fit for purpose’ now, and has strong foundations for the future.

It hardly needs saying that this commitment to service, to acting with integrity and to stewardship of the system of government, needs to be modelled from the top, both professional and political. This means that the manner in which the ideals of service and stewardship are tested and realised in the changing contemporary and emerging contexts need on-going re-interpretation, nurturing and attention.

### A question of culture

Pressures impacting on the culture of the public service have already been canvassed in this report. Frequent agency restructuring, downsizing, and leadership changes over the last quarter of a century have led to uncertainty and confusion about purpose, roles, values and employment security. Public service officials can feel pressured, sometimes by ministerial staff, sometimes by more senior officers, to moderate

advice developed with a 'public interest' goal in mind, to fit with a perceived Ministerial preference – which may or may not be real – or to avoid giving advice on difficult issues in writing. Personal interactions with some ministers and ministerial staff, and indeed some senior officers, can be disrespectful, belittling, or bullying, and long-term detriment to careers real or apprehended.

These issues were brought into sharp focus following the CCC's Report in 2010, an *Investigation into the Alleged Misuse of Public Monies, and a Former Ministerial Adviser*. The report revealed that senior and very experienced public servants had been unduly influenced by a former Ministerial Chief of Staff. As a result, the advice that the department ultimately delivered to the minister was neither impartial nor in accordance with applicable policy and guidelines. It would appear that despite the resulting reforms seeking to clarify the relationship between ministerial offices and public officials, the issues which led to the circumstances in the CCC Report are still very much a part of the culture within which public service employees interact with ministerial offices.

The PSC recently developed, along with Griffith University, a training program dealing with the political and administrative interface. It was designed to support ministers, key advisers, Directors-General and their deputies to clarify expectations, responsibilities and accountabilities for effective public service leadership consistent with Westminster-style principles and best practice. Each cohort is required to complete three modules, consisting of 15 minute online, self-paced modules with additional suggested reading. One of the modules is common to each cohort, and discusses strategies for improving quality of advice, developing accountability and delivering strong networks and policy relationships.

The PSC recommended that this training be mandatory for Directors-General and ministers. At the commencement of the Review in March 2022 only two people had undertaken the training. When discussing the matter with Chiefs of Staff at a later date, some were aware of it; otherwise, the Review was told on many occasions by Directors-General and ministers alike that training on the interface between the public service and ministerial office was lacking. By the end of the term of this Review, nearly all those targeted by the training had undertaken it. The training is well-designed and relevant, and should be an excellent starting point. However, one-off on-line training is unlikely to drive lasting behaviour change. Training which is undertaken in face-to-face situations, and which blends public service and ministerial staff (and former ministers and senior officials) in workshop sessions, and which exposes the different pressures and power imperatives of ministerial and public service functions, will be most likely to build enduring understanding of the different roles and responsibilities, and working relationships which facilitate both respect and responsiveness.

If unreasonable deadlines, bullying interactions, and intemperate demands for action or for compliant advice become pervasive, a fear-based response becomes entrenched in the culture. It puts the organisation itself at risk. In the case of a government, it reduces the range of views available in decision-making, excludes the opportunity to truly canvas the diverse views of the community being served, and can leave that government

with a false sense of the quality of its own performance. That in turn leads to cynicism within the very group of people upon whom the community and the government of the day rely to uphold a culture of service. It can only reduce the desirability of government as a potential employer.

These problems are not new or unique to Queensland. They are one of the risks inherent in our system of government, which focusses attention on the power and risk carried by politicians and their staff, and tends to minimise those inherent in the public service, which is perceived as faceless and protected by advantageous employment conditions.

Changing this culture will take time and effort. Like the commitment to service, a culture of integrity and mutual respect needs to be demonstrated by both political and professional leaders. Codes of conduct for Ministers (in Appendix 1 of the Ministerial Handbook), their staff (in the *Ministerial and Other Office Holder Staff Act 2010*) and for public servants (in the *Public Sector Ethics Act 1994* and locally developed) are explicit, and should be an important focus of the induction and training for all parties. Behavioural change, however, is an on-going process. Opportunities to learn from 'on the job' examples, and regular feedback to both political and professional staff on how their interactions are perceived and received, are required. This reinforces the value the system places on respectful relations, and to encouraging adoption of new behaviours.

Senior professional staff and ministers need to set the example, to be willing to address breaches, and to support on-going training and discussion of the issue. Evidence that breaches are being effectively dealt with is a necessary step to making positive change. This process needs to be widely visible to public servants, and senior leaders need to take responsibility for the process.

## RECOMMENDATION

Development and continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior public service officers. The tone set at the top is essential.

### The impact of Machinery of Government (MOG) changes

Every new government is entitled to organise its Cabinet and public service in the way which best reflects its policy priorities and values. Those administrations in midstream also might see such changes as a means of achieving renewal.

The most common administrative way of government achieving these ends is by implementing what are known as machinery of government (**MOG**) changes. Making significant MOG changes has long been a pastime of governments in Australia, though these are used with less abandon in most comparable countries.

Successive waves of MOG changes in Queensland over the last ten years have led to the creation or

dissolution of mega-departments, sometimes in short succession. MOG movements obviously affect the number of ministers and reporting departments as well as the relationships among them. MOG changes also tend not to affect the core central agencies of Premier and Treasurer, nor the largest agencies like Health and Education though these may undergo their own internal seismic movements.

MOG changes mostly do not register on the public radar. But they do matter within government. They also matter to the community because they tend to affect those agencies whose role it is to deliver services on the ground to communities. MOG changes can be very expensive and disruptive, with one adviser suggesting that something as simple as an agency name change can cost in the vicinity of \$5 million to roll-out across the State. They also can be associated with ongoing turf wars, and can impede the building or maintenance of esprit de corps. Some MOG changes have become so predictable with shifting political winds that they have become cynically known as 'plug and play' arrangements, and the process of being regularly shifted around referred to as 'being MOGGED'. One Director-General offered a different metaphor, in describing the need to ensure that any changes made include a 'zip in' for when such functions are subsequently split again.

A 2022 QAO report focusses on these MOG issues, noting that the costs of implementing significant agency restructures are both direct and indirect and take many months to emerge. This Review accepts that the transfer of baseline functions, such as finance and payroll, may in fact take years.

The burden of MOG disruptions also tends to fall disproportionality on those agencies with a significant role in the regions, a relevant point in a vast-sized place like Queensland. In particular, the MOG burden can fall heavily on those agencies which deal on a daily basis with some of the most distressed, disadvantaged and vulnerable groups in the community. The history of MOG changes affecting Youth and Justice, Aboriginal and Torres Strait Islanders, and National Parks over the period 2012-2022 demonstrates the point (see Appendix 6 – MOG Changes).

Restructure is not in itself a tool for guaranteeing improved performance. Where there are questions about an agency's performance, they need to be addressed more directly through a specific purpose review, which can diagnose points of failure or weakness and recommend strategies for improvement. These may, of course, include restructuring. This should be a normal part of government business, and not depend on changes of government or ministerial personnel.

Neither is restructuring a substitute for strategy. Most of the big issues facing government, and certainly the most wicked problems, are not ones which can be tackled by single agencies or even single jurisdictions. And in a large State like Queensland some of these challenges at a local level will need local-level approaches crafted across various agencies. Emphasis needs to be placed not on the boundaries demarcating agencies, but on approaches which encourage different bodies to work together.

There is a natural tendency for governments to align agency responsibilities with ministerial interests, occasionally even hobbies. This Review optimistically urges that a level of self-restraint be applied by any government, limiting changes to those which are absolutely necessary, and where the benefits of the change

have been weighed against the costs and loss of momentum. To reiterate an earlier point, restructuring of agencies and changing boundary lines is no substitute for strategy and, in itself, no guarantee for delivering better services.

### **The turnover of Directors-General**

A feature of the recent past has been the rate at which agency leadership has been changed – by new governments, and as a consequence of multiple structural changes.

The situation is a far cry from the traditional Westminster assumptions about the permanence of a civil service leadership. Quite apart from the inevitable instability across government which arises from such frequent change at the most senior levels, these short periods of appointment and the complexity and reach of most departments must restrict the capacity of agency heads to lead, have impact and make good on significant change agendas.

#### **RECOMMENDATION**

Stability of government and performance of public service be strengthened by appointment of agency CEOs (including Directors-General) on fixed term, five year contracts, unaligned to the electoral cycle.

### **When rules replace responsibility**

The public service is hierarchically structured, and its actions and decisions are governed by a complex set of rules. These are designed to ensure the proper use of public funds, impartial and consistent decision-making, and the dominance of the public interest over self-interest. Within such bureaucratic systems, managerial discretion is obviously constrained – for example, on the hiring and firing of staff. While public sector reforms historically have sought to strengthen managerial skill, these core characteristics persist, and indeed are a valued cornerstone of the accountability system.

At the same time, the rules can become a hiding place for managers who are not skilled or willing to exercise the proper responsibility of their roles. They also may be people who find it easier to refer a problem to HR or ESU, rather than to deal with it themselves. Submissions to the Review suggested that a degree of confusion exists about the distinction between poor workplace behaviour requiring managerial advice, counselling or action, and ‘misconduct’ warranting referral to the CCC, or an ESU. This gives rise to a general level of anxiety about ‘getting it wrong’, and potentially becoming the subject of a prolonged investigation with the inevitable consequences for both career and well-being. It can also lead managers to believe that, in acting to deal with staff performance or behaviour, they may be seen to be stepping outside their powers, or being soft on ‘misconduct’, or worse, guilty of failing to meet their obligations to report. The ultimate outcomes can be timid management, poor performance management, and an inordinate amount of time and money spent on investigations. Both managers and staff can be so focussed on ‘abiding by the rules’ that they become

unable to address simple mistakes, solve problems, or lose sight of the policy or delivery outcomes they need to achieve.

Two key ideas emerge from this discussion. One is the need for a common, system-wide understanding of the difference between workplace behaviour that needs effective management and workplace behaviour that is potentially corrupt. The second is the need for managers to have more skills and confidence to carry out their managerial roles.

### **Building a commitment to performance**

The vast majority of people come to work every day, wanting to do a good job – to understand their role and its place in the larger purpose of their section or department; to have work appropriate to their skills; to know the values and expectations of their employer; to be safe; and to be treated with respect by colleagues and manager. They also want to have confidence that their managers will act both with integrity and professionalism, taking responsibility for the performance of individuals and their teams.

Many staff experience the present culture of the public service through their frontline managers. Many of these leaders are good at their jobs, and with people. But the public service culture, like that of any large organisation, is complex and uneven. The advice provided to this Review highlighted worrying features in some agencies or contexts. These included: bullying from above, moderating advice to suit a perceived preferred outcome, unreasonable deadlines, a fear of making mistakes; a desire to refer a problem rather than making a decision or finding a solution – all of these were reported as managerial responses. Data reported to the Review from one department, for example, showed that while a significant number of staff had experienced bullying, a much smaller number had reported it to a manager, believing that it was unlikely to be addressed or resolved.

Performance management is a fundamental building block in the integrity system. Here the story of Joel Barlow (also known as the Tahitian Prince) is instructive. It is summarised in Appendix 7. Barlow was employed by Queensland Health through an employment agency as a contractor. He had a criminal record and was wanted for questioning in New Zealand relating to a fraud. He provided a fabricated academic record to the Department. There were questions about his performance from very early on in his career at Queensland Health, but he was nevertheless successively promoted and given higher levels of responsibility. He ultimately committed 65 fraudulent transactions that totalled \$16.69 million. At every point in his story there were warning signs, and failures to act; but at the most basic level, rigorous appointment and performance management could have averted the whole sorry saga.

At its most fundamental level, creating a performance culture requires both clarity of purpose (what are we here for?) and clarity about specific public good outcomes sought (what would good look like?). Also required are: the design of roles and management of people and resources to achieve those goals; good quality training and skills development; and a capacity to set targets and measure progress towards outcomes. The sense of purpose which drives performance commences, of course, with the big policy agendas adopted by

the government of the day. In the absence of clarity about those agendas, managing performance becomes moot. Departmental performance can be easily derailed by being driven to respond to ministers whose priorities are inevitably affected by short-term media deadlines.

Managing a team at any level involves both management of its technical elements and of staff behaviour and performance. Management of people is a daily, even hourly, professional task, requiring both interest and skill. No-one should supervise staff without both initial training and regular skill-upgrading. A manager who deals with problems promptly and appropriately generates confidence and trust in their workforce.

### **Public sector appointments**

Confidence in recruitment and selection processes is important in fostering trust both outside of and within the public sector and counters the risk of politicisation. It also contributes to the perceptions of fairness within the workplace, which can have significant implications for employee morale and organisational commitment.

The processes in place for selection and appointments for chief executive and equivalent statutory positions were described as consisting of ‘so many frameworks that you can’t see through the window’ by a senior stakeholder with extensive experience working in statutory authorities.

Throughout the course of this Review, information was provided regarding the lack of central oversight of the broader leadership cohort across the Queensland public sector and the wide variation in the accountability frameworks for each statutory appointment – most notably, in relation to appointment processes, terms of appointment, performance measures, and termination mechanisms. A degree of difference in these mechanisms is to be expected given the wide range of roles and functions of departments and statutory bodies, lack of consistency between their respective legislative frameworks and the spectrum of independence applied to each.

Clarifying the appropriate accountability mechanisms in place for statutory body executive appointments in particular has been on the government reform agenda since 2015, when an independent review of statutory appointments, led by Andrew Chesterman, was conducted. This was aimed at providing a consolidated view of the range of leadership positions across the Queensland public sector.<sup>clxi</sup> The review was to critically analyse the appointment frameworks, accountability, independence and performance mechanisms for CEO positions to make recommendations about the appropriateness and rationale of identified differences.<sup>clxii</sup> It also focussed on the development of an operating model outlining the relationships among ministers, Director-Generals and statutory authority leaders.

It is not clear whether the recommendations of that review were subsequently published, or that any substantial reform arose from them. However, a recent report of the Queensland Audit Office suggests that recruitment processes for government boards is not consistently in line with best practice.<sup>clxiii</sup> The QAO conducted an examination of the four departments responsible for the largest government boards: Queensland Treasury, the Department of Health, the Department of Employment, Small Business and

Training, and the Department of Regional Development, Manufacturing and Water. It refers to the existence of a whole-of-government guidance for statutory boards published by the Department of Premier and Cabinet, which has not been reviewed for 12 years, as well as a guide developed by Queensland Treasury for board appointments to government owned corporations, Queensland Rail and Seqwater.

The QAO recommended that the Department of Premier and Cabinet work with Queensland Treasury to develop an overarching framework to bring recruitment processes for boards in line with better practice. The QAO noted that the current processes do not effectively identify the skills needed or appointing people within a reasonable timeframe.

It is far from the terms of this Review to undertake a detailed analysis relating to appointment processes, mechanisms for removal, accountability and performance requirements of each Queensland government body, including statutory offices, boards, committees and authorities. This is especially the case given that much of that work has already been done. However, it is suggested that as part of this Review's recommendation relating to the rejuvenation of capability and capacity, those earlier recommendations arising from the Queensland Audit Office be implemented, specifically, that the Departments of Premier and Cabinet and Queensland Treasury develop a whole-of-government framework to bring recruitment processes for boards, and equivalent appointments to senior roles across government in line with better practice.

In doing so, the Government also should consider whether the framework should take the form of a principles-based '*good practice guide*' on making senior public sector appointments. Such a guide would support departments and statutory authorities and cover: job creation; recruitment and selection; involvement of ministers; decisions to appoint; declarations of interests; removal and/or termination of the position; duration of the role; induction; and ethics and accountability. Reference also could be usefully made to the Victorian Government's whole-of-government 'Board appointment, remuneration and diversity guidance', published in 2021, which the QAO refers to as in line with better practice principles.

### **A focus on people – agency HR functions**

The tendency of managers to 'hand off' these responsibilities to HR functions was raised repeatedly in commentary to the Review, along with a concern about the 'hollowing-out of HR expertise and influence across government. The significant number of external investigations on staffing matters recorded in PSC data appears to support this view.

Effective management and leadership of human resources is fundamental to leadership roles at all levels, and to agency performance. Ensuring the HR function has direct access to Directors-General, and not subordinate to a senior corporate services role, can sharpen this focus. Also of assistance will be a rigorous approach to specifying roles, then recruiting, managing and developing skills and leadership. These are core elements in building both integrity and capacity. Human resource functions need to manage the transactional business of employment efficiently, provide enabling support to managers on organisational design and staff management, and develop the capacity in managers to uphold the ideals of integrity and services.

HR-focussed leadership roles should not become the default people-managers for unskilled or unwilling managers.

### **A focus on people – the role of the PSC**

What became clear to the Review through its consultations, including with the PSC CEO, is that any renewal of the public service workforce will depend on the strengthening of the PSC itself. That would include its capacity to enable the focus on human capital development and leadership, robust data systems, and more effective agency human resource functions.

The Bridgman Review recommended the establishment of a Governing Council for the PSC, to be comprised of the chief executives of the Department of Premier and Cabinet and Queensland Treasury and the Public Service Commissioner. These would be joined by two other members who are other departmental chief executives.<sup>clxiv</sup> The Review understands that in proposed new legislation the Governing Council will comprise the existing members,<sup>clxv</sup> as well as the capacity for the Director-General of the Department and Premier and Cabinet (the proposed new Chair) to appoint other chief executives or special commissioners as additional members.

In the past, the governing board of the PSC also had external members, who obviously could bring valuable commercial or community insights to the table. The fact that there is at present no such external membership is more than disappointing and harks back to the days when Queensland was suspicious of the value of any outside input. The Review considers that at least two external members be included in the new PSC Governance Council; this is not because the public service does not have the talent, but because the Government wants to assure itself, and the public, that its work is informed by the best in national and international thinking about maximising impacts from a vast human resource.

The position of PSC has a significant role to play in oversight of Director-General appointment processes, in monitoring performance systems for the highest levels of staff, and in contributing to the development of leadership across these service. However, its role does not presently 'cut through'.

To be effective the PSC needs to model, for agencies and the sector as a whole, what excellence in HR practice and leadership is: efficiency in carrying out its transactional functions; skill at working with agencies to identify training gaps and priorities, and developing quality training to meet those needs; a commitment to a performance culture, and openness to self-scrutiny and review; an awareness of operating conditions in setting system-wide employment standards, and in promoting ethical behaviour. Facilitating interchange between agencies, and with external employers, is one important way to refresh both existing staff and gain new energy and expertise.

In a climate where skilled workforce is in short supply, a major graduate intake program, designed to attract a high performing cohort annually, to gain experience in a range of agencies over an identified period, is also an important way to inject new energy into the sector. The PSC should plan and design this program in

consultation with agencies, and should facilitate its implementation and evaluate the outcomes after three years. At the present time, some agencies make a gallant attempt to inject new blood, but sector-wide the initiative lacks ambition. It is also one of the very few recommendations in this Review where a significant new investment is necessary. But it is just that, an investment in the future.

The PSC gathers a great deal of data about the state government's workforce, including the Working for Queensland 'climate/attitude' survey, which dates back to 2013. As might be expected, this survey probes many of the issues which contribute to workplace culture, such as discriminatory practices, responsiveness to domestic and family violence, and bullying and sexual harassment. A weakness of the survey is that only some agencies invite open-ended qualitative comment, and where they do, the comments remain in the hands of the Director-General. The Review is clear that every staff member should have the opportunity to provide such qualitative comments, and good managers will want to receive them, and then take action to address them. A commitment to openness and integrity also requires that these results be shared openly with staff. Any other approach undermines accountability and generates a culture of cynicism which ultimately undermines performance.

Overall the Review found that PSC data are not always published in a form which makes public use easy, when compared with the clarity and ease of access of such data in some other jurisdictions. Publicly available data is an important tool of both accountability and performance, particularly relating to feedback on workplace culture, the gender and cultural composition of the workforce, the salary levels, and rates of separation and contracts terminated before completion. The Review considers that the PSC should be urged to look closely at published data sets from other jurisdictions and, in keeping with the main theme of this Review, ensure that the data is available in the public arena.

### **Consultants, contractors and public sector capacity**

Providing quality analysis, advice, service design and delivery, and project management are core skills for a contemporary public service. The Review found that this capacity has been progressively eroded over time. In part this has been contributed to by the growing influence of the ministerial offices of incoming governments fearful of relying on a public service 'captured' by the values and policies of a different government. In part, too, there sometimes has been a policy preference for advice drawn from private sector professional sources. In other cases, the justification for seeking external advice has stemmed from the pace of change (for example, in IT systems procurement and implementation) making it difficult, if not impossible, for the public sector to maintain an adequate level of expertise across all its primary and enabling activities.

The longer-term impact has been circular: the more work is outsourced, the less capacity is developed within the ranks of the public service, and the more public service roles default to 'contract management' rather than the hard but rewarding graft of policy analysis, testing and costing of options, making and defending recommendations, or the challenges of on-time on-budget project management.

Government 'spend' on consultancies and contractors is one consideration, and the Queensland government

came under fire when it was revealed in 2018/19 that the total spend on consultancies was \$67 million. Procurement policy currently requires that each agency publish a list of contracts it has awarded over the value of \$10, 000 – covering a range of broad categories such as contractor or labour hire. The reported spend for five agencies in 2020 was \$147,934,000 – a significant but short-term additional contribution to their agency’s skills and capacity. The government’s current guide on this topic ‘Engaging and managing contractors and consultants’ places emphasis on the requirement for a ‘strong argument’ for engaging a consultant before the process begins, typically one pertaining to the skills and expertise not being available within the public sector. By contrast, the equivalent guidelines in the Victorian Public Service provide decision-making principles and practical guidance which refer specifically to the need to preserve certain key ‘enduring public service functions’. These are characterised as: policy and program development, implementation and evaluation; business case development; business strategy and organisational development; external stakeholder/community engagement and facilitation and internal meeting and event facilitation.

The Victorian example properly focusses on efficiency in the use of public resources and a ‘cultural and strategic emphasis on secure employment, building capacity, and sharing resources, learnings and expertise across the [public service]’. A complex project relying on new or emerging skills and technologies or international best practice not yet present or fully developed in government, or to bring experience of new models and thinking to a problem, are good reasons for seeking outside advice. Undertaking tasks which should be core business for public servants, such as writing a business case for an initiative against comprehensive Treasury Guidelines, or to fill a short-term skills or labour gap, are not. And there is a need for agencies to examine in more detail both the total cost of this expenditure, the purposes for which is being committed, and what it reveals about internal capacity.

Agencies commissioning outside expertise need to be confident they hold ‘in house’ enough knowledge of the problem and possible solutions to know if they are purchasing the best outcome for the people of Queensland and that, in the process, they are protecting the memory and basic capacity the government needs on an ongoing basis.

Without this capacity, the government is potentially captive to advice and solutions which serve many interests, none of which is fully aligned with ‘the service of the Queensland public’. These may include private sector profit, the up-selling of further services and solutions, and even support for partner businesses or specific interest groups. It would be naïve to think that all of these will be in the best interests of the taxpaying public, and they will certainly put a premium on the price of any solution.

Building on a model already existing in at least one Department, the system in Queensland should adopt a requirement that every consultancy should demonstrate how they will build capacity in the officials in the relevant project area. And how that capacity is maintained and improved capacity should be measured.

This relates to the earlier point about the benefits of encouraging public service staff to undertake roles in

other organisations – across the public service itself, in academia and in professional services firms, as well as in offering career incentives to encourage staff to take up such opportunities.

## RECOMMENDATION

Departments to more robustly account for the benefits derived from engaging consultants and contractors, with regular monitoring by the Auditor-General.

### Enhancing the role of the Senior Executive Service

The Senior Executive Service (**SES**) is the core leadership group for the public service, and the most likely source of future Directors-General. As such, it is a critical resource for the vitality and future of the service.

Contract and salary decisions over recent years saw the contract period for Senior Executive Service officers reduced from five years to three, and salaries held static for nearly four years, although general public service salaries have not been so restricted. This has implications for whether people feel sufficiently valued for their leadership roles, and for retention and recruitment.

Feedback to the Review suggested that the current SES operates more in terms of departmental silos than as a sector-wide initiative. This limits both the range of experience senior offices can gain, as well as their opportunities to make a broader contribution to government. Broadened perspectives are valuable to their individual careers, and immensely important in developing systems-level thinking and co-ordination across the service.

Encouraging movement across agencies, where people possess the skills or potential, is important. Equally, experience outside government, and interstate or internationally, might be used to drive development of the skills available to government. Increasingly senior public servants interface with counterparts of entities with international, and often global reach, and Queensland needs its professional leadership to be equipped for and competitive in these interactions.

Managing interchange and similar arrangements in the past has often failed, either because they have become a one-way street with a loss of talent, or because the roadblocks to the success of those arrangements have become concrete walls. Yet they can be an important element of renewal. The same should apply to robust exchange between central and line agencies, and with ministerial offices. The latter tend to be discounted these days, yet the health of any public sector should benefit from people within it who have different blends of experience. The hyperpartisanship of our times unfortunately infects the respectability traditionally associated with such detachments as valuable career steps.

Given all these challenges facing governments, an important task in renewing the public service is to rebuild the capacity for policy analysis and thinking. The SES is an experienced and talented group, whose

leadership and intellectual contribution should be activated in pursuit of this goal. As a first step, and building on projects such as Communities 2032 and the Economic Strategy already being overseen by the Leadership Board, the Review suggests that the Leadership Board commission the Senior Executive Service to scope out a broader forward policy agenda for government. The issues so addressed might include: the challenges of climate change, including flood mitigation; digital capacity and smart services; energy transitions and their impacts on traditional industries and communities; preservation of significant natural resources; and protection from international fraud and cyber-crime. The setting of timelines would assist the progression of such measures.

One of the factors that contribute to the current silo-based perspective of the SES is the ascendant view that the Directors-General are the CEOs, and that the PSC should exercise only the lightest of touches. The views expressed by many of those who have contributed to this Review, including Directors-General themselves, is that it has become too light. In that respect the PSC's leadership position, as an energy source for good ideas and as an authoritative voice guiding the best ways for the public sector to embrace the challenges ahead, has weakened.

### **Capturing all the talent**

Contemporary workplaces seeking to maximise talent and thinking, and forge connections with the communities they serve, actively need to recruit from the whole cross-section of the available population. The value of diversity at leadership levels, in Board rooms and in the executive, are widely understood and have been positively demonstrated. The Queensland Government appointed its first Equity Commissioner, Dr Glyn Davis AC, back in 1990. In spite of good progress in appointments over the years to Government Boards (over 50 per cent of Government Board members are now women),<sup>clxvi</sup> the slow progress of women through the leadership ranks of the public sector is disappointing, with appointments to SES, Deputy Director-General and Director-General roles still overwhelmingly male. Amongst Directors-General, only four are women out of 21 positions. The Gender Equity Scorecard for 2021<sup>clxvii</sup> reveals that women are the overwhelming majority of both temporary and part-time employees, and it is very obvious that they cannot progress to a proportionate share of the leadership roles from this starting point, certainly not without much more deliberate action.

The Special Commissioner for Equity and Diversity provided feedback to the Review from her research on women in leadership. Women identified the reduced number of women Directors-General as a disincentive and suggested that this process needs to be scrutinised to ensure that it is transparent and merit-based. Obviously potential impediments include the lack of mobility and promotion opportunities, and unattractive short-duration contracts. Perceptions of interference and micro-management from ministerial offices were also identified as disincentives. This is important data in suggesting action to make the system more open to women. The problem is not with women, but with the systemic and cultural barriers limiting their progress.

A significant issue for Queensland, as for all Australian Governments, is the presence of First Nations people in staff cohorts. It is appropriate for the public service of today to be fully alert to the role that state

governments have played historically in perpetuating the injustice and entrenching disadvantage for First Nations people. The current context is provided by the State's commitment to truth-telling and Treaty. This requires a particular effort to search for talented First Nations people to employ and engage. It also requires government to become more skilled and effective at incorporating First Nations perspectives into their deliberations, policy and program design, as well as developing protocols for interactions with staff and stakeholders. An examination of data on First Nations employment across the sector provided to the Review by the PSC (September 2021) shows that, while First Nations staff are approaching 2 per cent of the total staff cohort, there are still some Departments which include no First Nations staff at any level. A genuine and concerted effort to change this is needed.

The Review also acknowledges the PSC's 'State of the sector workforce report', but recommends the type of data published by the Victorian Public Service Commission as leading practice in depicting workforce trends.

### **The particular challenge of regions**

Historically, it has been a strength of Queensland that governments of both political persuasion have sought to pay attention to the needs of regions, and public servants have been challenged to consider the 'regional impact' of any significant policy or program proposals. Senior staff working in regions have commented to the Review that the siloed and hierarchical structure of government can mitigate against 'best-fit' outcomes in smaller communities. Policy and procedures tend to emanate from head office in Brisbane and to be shaped around single Departmental responsibilities (eg., Health, Education) in a way that can make co-ordination and design of local solutions, and individual case management, really challenging.

While there are examples where local officers have managed to break through these barriers, facilitating local co-ordination across departments requires serious attention. A particular challenge for the Government as a whole is to consider how changing climate and energy outlooks are likely to impact the future options for some significant regional communities.

A number of specific points and themes emerged from the various discussions the Review held with regional directors and their representatives from across a span of agencies and locations. One of the most prominent of those themes was the recognition that agencies and communities have learned to work well together over the years in times of crisis and natural disaster. However, when those times of difficulty recede, so too the temptation has been to fall back into more traditional, siloed paradigms. This arises oftentimes from structural constraints rather than a lack of willingness on the part of the agencies to collaborate.

Concerns were also expressed that legislation sometimes prohibits the sharing of information among public sector agencies and that this becomes a key barrier to collaboration. Relatedly there is the consequence of frustration faced by staff with insufficient information, doubling up on the efforts of other service providers. This latter issue has been particularly stark in the wake of Covid-19, as well as other natural disasters, which have generated huge amounts of inter-agency collaboration and goodwill over a sustained period of time. The perception from within the public sector is that the community has increased expectations of government

as a result of these periods of consultation.

There was also feedback from regional leaders that while the political will to create change in service delivery is present, establishing sustainable systems to create long-term change is not as common. In a similar vein, some suggested that the centralisation of management in government may serve to disempower regions responding to issues.

Tenure and security of contract also were raised by regional leaders as a barrier preventing people from aspiring to reach senior leadership positions. The loss of staff to the private sector, offering more pay, certainty and flexibility, is an issue felt particularly in the regions. One consequence is that the government is not seen as the employer of choice that it might have been in past times. Notwithstanding these issues, there was positive commentary in relation to regional experiments and approaches to collaboration.

The Review is aware of the discussion paper being prepared for the Leadership Group of Directors-General on the topic of *Enhancing System Stewardship for Regional Delivery*. That work provides one important foundation for future progress. That project seeks to promote the establishment of place- or regional-based structures to facilitate collaborative governance which identify specific regional issues and invests in cross-sectoral skills development. The work leverages the experiences of regional leadership networks and seeks to improve regional planning, job sharing across agencies to attract talent, shared professional development opportunities, collective approaches to mental health support for public servants, and promoting economic participation across diverse groups.

### **Digital capability: a key to fit-for-purpose**

A coherent digital strategy is key to the performance of any organisation, especially one of the scale and reach of the Queensland Government. This Review's interest in both culture and accountability has led it to try to use the digital tools available to the public as a means of holding government to account. Unfortunately, they are – in general terms – comparatively lacking.

In terms of both the provision of government data and preparation for a fit-for-purpose digital future, the Government nevertheless has made progress, and along the way encountered the usual major challenges, over a lengthy period of time. Three current or recent initiatives deserve comment.

The Open Data Policy Statement<sup>clxviii</sup> outlines the Government's commitment to managing the release of government data to optimise use and reuse of open data for the benefit of the Queensland people. It provides that government agencies are required to make non-sensitive data open by default on Queensland's Open Data Portal. A link is provided on the Open Data Portal to the 'open data strategies' of each agency.<sup>clxix</sup> Out of the 21 core government agencies, only eight agencies have kept these strategies current and up to date. Whilst it appears that agencies are continuing to publish data in line with their strategies, this does indicate that progress is slow in developing coordinated actions plans in line with its Open Data Policy Statement.

The Digital1st Strategy (2017 – 2021)<sup>clxx</sup> identified that the then-Department of Science, Information

Technology and Innovation<sup>clxxi</sup> was accountable for the whole-of-government ICT reform agenda and initiatives. At agency level, however, Directors-General are accountable for their agency's digital strategy and ICT investments, as well as ensuring appropriate value for money and monitoring ICT risks. Under the Strategy, a Directors-General ICT Council was established, and a Digital Governance Framework was developed which publishes digital and ICT policy, as well as best practice guidelines, aimed at supporting agencies in their digital agendas. An ICT Dashboard now provides an overview of all major government ICT projects currently underway.

Whilst that Dashboard provides useful information in tracking government digital projects, it is difficult to measure the tangible outcomes of those projects. The Digital1st website had a 'news' section, which it can be assumed was being used to report on projects being delivered across the government giving effect to the Digital1st Strategy. Despite the Strategy being 'active' from 2017 – 2021, it does not appear that its 'news' website was updated after October 2017.<sup>clxxii</sup>

Many of the recommendations in this Review have focussed on the need for citizens to have better 'line of sight' of how government works, how decisions are made, how agencies and indeed ministerial offices perform, as a basis for both trust in government, and for the improvement of systems of accountability and integrity, as well as service delivery. Nevertheless, the use of smart technologies to enable service delivery appear to be lagging behind those in other states. This is an aspect where the State should aim for ambitious development – for smarter services and, indeed, for more interesting and challenging work for Queenslanders.

## **THE JOURNEY FROM HERE**

The following initiatives could be considered to give practical effect to the recommendations that have been made in this and other relevant chapters of this Final Report:

### **Fit for the future**

- The Leadership Board consider the value of appointing one of its own to plan and manage this renewal process, including identifying priority actions and reporting on progress over at least the first twelve months. The PSC Governing Council should help guide this process.

### **Culture – service with integrity**

- The Codes of Conduct for Ministers, Ministerial Staff and Senior Officers be reviewed by the responsible bodies to ensure alignment with the findings of this Review.
- Entirely fresh training in the codes be developed, to be mandatory on induction, and to be renewed as changes occur.
- PSC, working with agency human resources and ethical standards units, develop training and development tools on ethical decision-making to assist senior officers to strengthen their skills.

### **Interaction with ministers and ministerial offices**

- That at least annually, ministerial staff and senior officers who interact with ministerial offices undertake joint training, building on the codes of conduct, but designed to clarify demands on, and limits to, both sets of roles, to examine current examples, and build communication skills. Relevant ministers (and where appropriate, former ministers and officials) should be invited to contribute to these sessions.
- Leadership for the development of this training should be facilitated across government by the PSC.

### **Improving stability**

- That before Government approves changes to machinery of government, it seek a considered assessment of the likely costs of the change, the impact on service delivery and customers, and a realistic assessment of the time such changes would take to be fully implemented.
- That SES employment be stabilised by contract terms being unaligned with the election cycle.

### **Rebuilding capacity – the use of consultants and contractors**

- That agencies be required to publish a more detailed account of both their use of contractors and consultants, including reasons for the appointment, a clear description of work undertaken, and the benefits derived.
- That a requirement of appointment as a consultant include a commitment to build skills/capacity in the client agency as one outcome of the consulting process, and that the agency satisfy itself as to the outcome of that process.
- With a view to protecting core government capacity, Queensland Treasury and the Auditor-General will review the Queensland government's current advice to agencies on the use of contractors and consultants, to place emphasis on identifying core capacity which should be retained and developed within the public sector.

### **The role of the PSC**

- The PSC be tasked and operate as a key system leadership, oversight, and enabling body.

### **SES – a focus on the future**

- Developing cross-agency collaboration through large, whole-of-government projects focussed on the future.
- Encouraging secondment and exchange within and external to the public sector.
- Creating a 'policy conference' to develop an exchange with a range of sources of advice and opinion
- Address the challenges of achieving greater collaboration amongst agencies in the regions.

# Consolidated list of recommendations

## RECOMMENDATIONS – AUDITOR-GENERAL

- The Auditor-General become an independent Officer of Parliament.
- The *Auditor-General Act 2009* (Qld) be amended to allow for the Auditor-General’s employment of QAO staff under that Act rather than under the *Public Service Act 2008* (Qld).
- The Auditor-General be allowed to independently set basic rates for audit fees without the Treasurer’s approval.
- The Auditor-General be given the discretion to undertake performance audits on government-owned-corporations.
- Other outstanding recommendations from the 2013 FAC Inquiry and 2017 Strategic Review be implemented.

## RECOMMENDATION – OMBUDSMAN

Section 10(c) of the *Ombudsman Act 2001* (Qld) be amended to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery.

## RECOMMENDATION – CCC

Those complaints against senior public sector employees which the CCC devolves must include ongoing oversight by the Public Service Commission and an independent Director-General.

## RECOMMENDATION – CLEARING HOUSE

Consideration be given to the establishment of a technologically-enabled clearing house which will:

- act as a first point of contact for complainants to report concerns and complaints, including complaints about alleged corruption, administrative decisions, and customer complaints;
- assess each complaint and determine whether:
  - the complaint should be referred to an integrity body;
  - the complaint should be referred to an agency complaints-handling process or for departmental investigation; or
  - no further action be taken (for vexatious or trivial complaints); and
- operate through the creation and use of a central reporting portal, accessible to integrity agencies, ethical standards units and complainants, the purpose of which would be to rationalise and streamline reporting and compliance administration to enable agencies to focus on their core business in a timely manner and reduce administrative burden.

## RECOMMENDATION – CCC

The CCC avail itself of the opportunity provided by the clearing house and the other cultural changes prompted by this Review to redouble its attention on serious corruption and major crime.

## RECOMMENDATIONS – LOBBYING

Lobbying regulation be strengthened by:

- requiring that all professionals offering paid lobbying services to third parties to register as lobbyists;
- abandoning the 'drop down' menu on the lobbying contact log in favour of a requirement that lobbyists provide a short description of the purpose and intended outcome of contact with government;
- requiring the publication of diaries of ministers and their staff. Diaries should record all external contacts designed to influence government decisions, should readily link to the lobbying register and should be easily accessible and searchable;

- an explicit prohibition on the “dual hatting” of professional lobbyists during election campaigns. They can either lobby or provide professional political advice but cannot do both;
- encouraging the Auditor-General to carry out performance audits of the lobbying register, ministerial diaries and public records to ensure recordkeeping obligations are being complied with.

### **RECOMMENDATION – CABINET**

The Department of Premier and Cabinet develop a policy requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet, subject only to a number of reasonable exceptions which should be outlined in the policy.

### **RECOMMENDATION – MANDATORY DATA BREACH NOTIFICATION**

A MDBN scheme be established in Queensland, forthwith.

### **RECOMMENDATION – WHISTLEBLOWING**

The Government proceed with its promised review of PID legislation as a matter of urgency, and at least within the next six months.

### **RECOMMENDATION – INDEPENDENCE OF INTEGRITY BODIES**

The independence of integrity bodies in Queensland be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive government.

### **RECOMMENDATION – INTERFACE FOR INTERACTIONS**

Development and continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior public service officers. The tone set at the top is essential.

### **RECOMMENDATION – STABILITY FOR LEADERSHIP**

Stability of government and performance of public service be strengthened by appointment of agency CEOs (including directors-general) on fixed term, five year contracts, unaligned to the electoral cycle.

### **RECOMMENDATION – CONSULTANTS AND CONTRACTORS**

Departments to more robustly account for the benefits derived from engaging consultants and contractors, with regular monitoring by the Auditor-General.

### **RECOMMENDATION – REJUVENATION**

The rejuvenation of the capability and capacity of the Queensland public sector be a major and concerted focus. This should emphasise a culture of performance and integrity. The Public Service Commission must accept its key role.

# Endnotes

- <sup>i</sup> See I Callinan QC, N Aroney, *Review of the Crime and Misconduct Act and related matters: report of the Independent Advisory Panel*, State of Queensland, 2013, p 8.
- <sup>ii</sup> C J Sampford, *Parliament, Political Ethics and National Integrity Systems*, Australian Journal of Professional and Applied Ethics, 2011 citing J. Pope, *Confronting Corruption: The Elements of a National Integrity System (The TI Source Book)*, Berlin, Transparency International, 2000.
- <sup>iii</sup> Informed by the Fitzgerald Principles of parliamentary transparency and accountability, as set out in the Australia Institute's *Open Letter: Accountability and Transparency in Queensland*.
- <sup>iv</sup> Informed by the Fitzgerald Principles of parliamentary transparency and accountability, as set out in the Australia Institute's *Open Letter: Accountability and Transparency in Queensland*.
- <sup>v</sup> Quoted in David Solomon, *The Integrity branch – parliament's failure or opportunity?*, Australasian Parliamentary Review, 2013.
- <sup>vi</sup> David Solomon, *The Integrity branch – parliament's failure or opportunity?*, Australasian Parliamentary Review, 2013.
- <sup>vii</sup> S H Northcote, C E Trevelyan, *Report on the Organisation of the Permanent Civil Service*, United Kingdom Government, 1854.
- <sup>viii</sup> R B Haldane, *Ministry of Reconstruction Report of the Machinery of Government Committee*, United Kingdom Government, 1918.
- <sup>ix</sup> J Fulton, *Fulton Report on the Civil Service*, United Kingdom Government, 1968.
- <sup>x</sup> H C Coombs, P H Bailey, E Campbell, J E Isaac, P R Munro, *Royal Commission on Australian Government Administration*, Watson Ferguson & Co., 1976.
- <sup>xi</sup> P Wilenski, *Directions for Change: An Interim Report, Review of New South Wales Government Administration*, New South Wales Government, 1977.
- <sup>xii</sup> G E Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Government Printer, Brisbane, 1989.
- <sup>xiii</sup> D Thodey, G Davis, B Hutchinson, M Carnegie, G de Brouwer and A Watkins, *Our Public Service Our Future – Independent Review of the Australian Public Service*, Commonwealth of Australia, 2019.
- <sup>xiv</sup> The Review also notes the Inquiry report of the Senate Finance and Public Administration References Committee into the current capability of the Australian Public Service, published in November 2021, which in large part built upon the assessment of the 2018-19 Thodey Review.
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- <sup>ii</sup> *Right to Information Act 2009* (Qld), s 123.
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- <sup>iiii</sup> *Right to Information Act 2009* (Qld), s 146
- <sup>liv</sup> David Solomon, *The Right to Information*, State of Queensland, 2008, 13 – 14.

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<sup>lvi</sup> 'Ethics or integrity issues' is defined in s 9 of the *Integrity Act 2009* (Qld) to mean 'an issue concerning ethics or integrity and includes a conflict of interest issue'. 'Conflict of interest issue' is, in turn, defined under s 10 to mean 'an issue about a conflict or possible conflict between a personal interest of the person and the person's official responsibilities'. 'Interest Issues' is defined under s 11 to mean 'ethics or integrity issues relevant to the member for, or in, the register of members' interests, or the register of related persons' interests, kept under the Parliament of Queensland Act 2001, section 69C'.

<sup>lvii</sup> *Integrity Act 2009* (Qld), s 7(1).

<sup>lviii</sup> Queensland Integrity Commissioner, *Annual Report 2020-21*, p 11.

<sup>lix</sup> Queensland Integrity Commissioner, *Annual Report 2020-21*, p 26.

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<sup>lxi</sup> Kevin Yearbury, *Strategic Review of the Integrity Commissioner's Functions*, 30 September 2021, p 69.

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<sup>lxiii</sup> Kevin Yearbury, *Strategic Review of the Integrity Commissioner's Functions*, 30 September 2021, p 51 – 52.

<sup>lxiv</sup> Crime and Corruption Commission, Submission to the *Review of culture and accountability in the Queensland public sector* (16 May 2022), p 7.

<sup>lxv</sup> *Crime and Corruption Act 2001* (Qld), s 303.

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<sup>lxvii</sup> Parliamentary Crime and Corruption Committee, Report No. 106, 57th Parliament, *Review of the Crime and Corruption Commission's activities - Queensland Government Response*.

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<sup>lxx</sup> Parliamentary Crime and Corruption Committee, *Report No. 106 – Review of the Crime and Corruption's activities*, June 2021, p 68.

<sup>lxxi</sup> QLS Submission, 56th Parliament Inquiry Into The Crime And Corruption Commission's Performance Of Its Functions To Assess And Report On Complaints About Corrupt Conduct - Incorporated Into Review Of The Crime And Corruption Commission's Activities

<sup>lxxii</sup> Crime and Corruption Commission, Submission to the *Review of culture and accountability in the Queensland public sector* (16 May 2022), para 82.

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<sup>lxxiv</sup> *Crime and Corruption Act 2001* (Qld), s 35(3).

<sup>lxxv</sup> Crime and Corruption Commission, Submission to the *Review of culture and accountability in the Queensland public sector* (16 May 2022), para 41.

<sup>lxxvi</sup> Crime and Corruption Commission, Submission to the *Review of culture and accountability in the Queensland public sector* (16 May 2022), table 2 (p 17) and table 3 (p 18).

<sup>lxxvii</sup> Crime and Corruption Commission, Submission to the *Review of culture and accountability in the Queensland public sector* (16 May 2022), table 5 (p 20).

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<sup>lxxix</sup> Crime and Corruption Commission, Submission to the *Review of culture and accountability in the Queensland public sector* (16 May 2022), para 48.

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<sup>lxxxi</sup> This is based upon a review of Annual Reports and other public materials.

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- <sup>lxxxvi</sup> D McKeown, 'Who pay the piper? Rules for lobbying governments in Australia, Canada, UK and USA' (Research Paper, Parliamentary Library Parliament of Australia, August 2014).
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- <sup>xcv</sup> Hawker Britton, Submission No 3 to Economic and Governance Committee, Parliament of Queensland, *Inquiry into the Report on the Strategic Review of the Functions Of The Integrity Commissioner*, p 14.
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- <sup>xcvii</sup> Economics and Governance Committee, Parliament of Queensland, *Inquiry into the report on the strategic review of the functions of the Integrity Commissioner* (Report, June 2022), p 37.
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- <sup>ci</sup> New South Wales Independent Commission Against Corruption *Investigation into the Regulation of Lobbying, Access and Influence in NSW* (June 2021), p 60.
- <sup>cii</sup> M Baird, "Transforming politics: tough new rules for lobbyists", media release, 13 May 2014 cited in D McKeown, 'Who pay the piper? Rules for lobbying governments in Australia, Canada, UK and USA' (Research Paper, Parliamentary Library Parliament of Australia, August 2014).
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- <sup>cl</sup> New South Wales Government Response to the final report of the Legislative Council Public Accountability Committee entitled Budget process for independent oversight bodies and the Parliament of New South Wales (February 2021), dated 9 May 2022.
- <sup>cli</sup> See the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019*, s 1(d) and related provisions.
- <sup>clii</sup> Audit Office of New South Wales, *The effectiveness of the financial arrangements and management practices in four integrity agencies* (Special Report, October 2020), p 12.
- <sup>cliii</sup> The PCCC stated that “the committee notes the model in operation for ICAC is different to Queensland, but so is the governance and role of ICAC. In particular, ICAC is not responsible to a Government Minister, unlike the CCC which must report to the Minister on the CCC’s efficiency, effectiveness, economy and timeliness”.
- <sup>cliv</sup> Office of the Independent Assessor, Submission to State Development and Regional Industries Committee, *Inquiry into the functions of the Independent Assessor and performance of those functions*, November 2021, p 5.
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# Appendix 1: Terms of Reference

## Terms of Reference: Review of culture and accountability in the Queensland public sector

### Background

The Queensland public and successive Queensland state governments have been well served by its public sector ethics and integrity framework, which emphasises the commitment of both the Queensland Government and public servants to achieving high standards of professional and ethical conduct.

The 21<sup>st</sup> century has witnessed the rapidly evolving nature of public administration as it responds to new policy and service delivery challenges, the need to embrace digitalisation, and the changing nature of public sector work and workplaces.

A contemporary public sector needs a continued focus on culture and accountability. Most Australian jurisdictions periodically review their ethics and integrity arrangements, just as the Federal Government did in 2019 as part of an independent review into the Australian Public Service.

The Queensland integrity framework was considered in the context of the 2019 independent review of Queensland's state employment laws (the Bridgman Review).

The second phase of the Queensland Government's response to the Bridgman Review is focused on the modernisation of the *Public Service Act 2008*, including extending the protections and obligations under that Act to other public sector employees. This phase will address recommendations that relate to public sector ethics.

The Queensland Government is commencing a review to refresh its focus on culture and accountability in the Queensland public sector.

### Scope

The aim of the review is to ensure the Queensland Government has a culture and accountability framework that:

- is contemporary, fit for purpose and future focused
- is effective in supporting an ethical public sector culture
- is underpinned by robust systems including complaints mechanisms and training
- maintains the public's trust in the decisions of the Queensland Government.

To achieve this aim, when making recommendations the review should have regard to the:

- culture of the public sector in ensuring ethical decision making and impartial advice to the Executive
- nature of the interactions and interdependencies between integrity bodies, the Queensland public sector and the Executive
- legislation underpinning the existing ethics and integrity framework
- adequacy of systems to prevent ethical, accountability and integrity issues arising
- adequacy of ethics training and communication and relevant policies
- timeliness of processes to resolve ethical and integrity complaints.

For clarity:

- the review will focus on system level reform and will not seek to resolve individual complaints
- for the purposes of this review, the 'Queensland public sector' encompasses public service agencies and public sector entities as defined in the *Public Sector Ethics Act 1994* except for local government (and their entities), the parliamentary service and universities.

### **Process**

The review will be conducted by an independent reviewer.

The reviewer may request additional expertise be provided to assist the review.

The review will have regard to relevant research, including commissioning its own research.

The review will involve consultation with key Queensland integrity bodies and others as determined by the reviewer.

### **Timing**

An interim report will be provided to the Premier and Minister for the Olympics within two months of commencing the review.

A final report will be provided within four months of commencing the review.

The reports will be made public immediately upon receipt.

## Appendix 2: QAO Submission

### Opportunities to further strengthen independence

The following table represents the opportunities to strengthen the Auditor-General's independence. This is as included in QAO's submission to the FAC inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence.

Each opportunity is classified against one of the 8 principles of auditor independence established by INTOSAI. They are also classified based on whether they:

- symbolically reflect the relationship between the Auditor-General and the Parliament
- substantively enhance the functional and organisation independence of the Auditor-General
- clarify the existing audit mandate of the Auditor-General
- provide for the administration of the QAO.

| INTOSAI Principle  | Area of Independence  | Nature         |
|--|---|----------------|
| <b>Principle 1 - The existence of an appropriate and effective constitutional/statutory/legal framework</b>  |   |                |
| 1. Recognising the Auditor-General as an 'independent officer of the Parliament' in the AG Act.  | Role and status of the Auditor-General and relationship with the Parliament | Symbolic       |
| 2. Requiring the Auditor-General and Deputy Auditor-General to take an oath of office administered by the Speaker or, if there is no Speaker or the Speaker is unavailable, the Clerk of the Parliament.                               |   | Symbolic       |
| 3. The Queensland Independent Remuneration Tribunal determining the remuneration and allowances to be paid to the Auditor-General. This would also need to be recognised in the Queensland Independent Remuneration Tribunal Act 2013. |   | Substantive    |
| 4. The Auditor-General being entitled to take leave upon giving notice to the Speaker or the Chair of the parliamentary committee, rather than requiring the approval of the Minister.   |   | Substantive    |
| 5. The parliamentary committee appointing the strategic reviewer and deciding the terms of reference for the review under Part 4 of the AG Act.  |   | Substantive    |
| 6. Requiring the strategic reviewer to provide their report on the review directly to the parliamentary committee, rather than the Minister.   |   | Substantive    |
| <b>Principle 2 - The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties</b>  |   |                |
| 7. Requiring the parliamentary committee to manage the selection and appointment process for the position of Auditor-General.  | Role and status of the Auditor-General and relationship with the Parliament | Substantive    |
| 8. Requiring the Auditor-General to be appointed by Governor-in-Council on address by the Legislative Assembly.  |   | Symbolic       |
| 9. Restricting the Auditor-General's employment in the public sector for two years after their term.   |   | Substantive    |
| 10. Recognising in the AG Act that a person acting in the role of Deputy Auditor-General may also act as Auditor-General in the absence of both the Auditor-General and Deputy Auditor-General.  |   | Administrative |

| INTOSAI Principle   | Area of Independence  | Nature        |
|---|---|---------------|
| <b>Principle 3 - A sufficiently broad mandate and full discretion, in the discharge of SAI functions</b>  |   |               |
| 11. Clarifying the Auditor-General's mandate for auditing trusts created and/or used by public sector entities in performing their functions.   | Mandate and powers provided to the Auditor-General                          | Clarification |
| 12. Amending the AG Act to enable Parliament to request but not require the Auditor-General to conduct audits of matters relating to the financial administration of public sector entities.  |   | Substantive   |
| 13. Providing the Auditor-General with the discretion to initiate performance audits of government owned corporations.  |   | Substantive   |
| 14. Reviewing other Queensland legislation to ensure any requirements for the Auditor-General to conduct audits are consistent with the discretion provided to the Auditor-General under the AG Act.  |   | Substantive   |
| <b>Principle 4 - Unrestricted access to information</b>   |   |               |
| 15. Identifying that the Auditor-General's powers to access information is not limited by any rule of law relating to legal professional privilege. Disclosure of information to the Auditor-General should not otherwise affect the operation of the rule of law relating to the privilege.  | Mandate and powers provided to the Auditor-General                          | Substantive   |
| 16. Giving the Auditor-General discretion in deciding whether to make information available to a commission of inquiry.   |   | Substantive   |
| <b>Principle 8 - Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources</b>   |   |               |
| 17. Establishing the Auditor-General as a corporation sole under the AG Act.  | Administrative autonomy of the office of Auditor-General                    | Substantive   |
| 18. Establishing the Auditor-General as the employer and employing QAO staff under the AG Act and not the Public Service Act.   |   | Substantive   |
| 19. Giving the Auditor-General authority to appoint the staff necessary to exercise the Auditor-General's functions.  |   | Substantive   |
| 20. Enabling the Auditor-General to determine the remuneration and other terms and conditions for the appointment of QAO staff.   |   | Substantive   |
| 21. Involving the parliamentary committee in the process for setting the QAO's budget, including: <ul style="list-style-type: none"> <li>- requiring the Auditor-General to provide the annual estimates for the QAO to the parliamentary committee</li> <li>- the estimates being considered by the parliamentary committee and tabled in Parliament with such modifications the committee thinks fit</li> <li>- including the annual estimates for the QAO in the Appropriation Bill for the Parliament</li> <li>- adopting the same process for any supplementary funding requested by the Auditor-General during the year.</li> </ul> |   | Substantive   |
| 22. Removing from the AG Act the requirement for the Treasurer to approve the basic rates of audit fees.  |   | Substantive   |
| 23. The Auditor-General providing the QAO's annual report to the Speaker or Clerk for tabling in Parliament, instead of to the Minister.  | Role and status of the Auditor-General and relationship with the Parliament | Symbolic      |
| 24. Appointing the external auditor of the QAO by resolution of the Parliament on the recommendation of the parliamentary committee.  |   | Substantive   |
| 25. Requiring the external auditor of the QAO to report on the results of audits performed directly to Parliament or to Parliament through the parliamentary committee.   |   | Substantive   |

## Appendix 3: Lobbying Jurisdictional Analysis

| Issue  | Comment on comparison to Queensland Integrity Act 2009 (Qld)   | Ireland Regulation of Lobbying Act 2015   | Canada Lobbying Act 2008  |
|--|--|---|---|
| <b>Commissioner</b>                                      | <p>Section 6 establishes the role of the Queensland Integrity Commissioner, an Officer of the Parliament. The Integrity Commissioner is appointed for a term of five years (with potential reappointment)<sup>1</sup> by the Governor in Council, and a prescribed appointment procedure must be followed.<sup>2</sup></p> <p>Pursuant to s 7, the Integrity Commissioner's functions include: '(c) to keep the lobbyists register and have responsibility for the registration of lobbyists under chapter 4'.</p> | <p>The Standards in Public Office Commission is responsible for registration and regulation of lobbying.<sup>3</sup></p>  | <p>The Act establishes the role of a Commissioner of Lobbying who holds office for a term of seven years, and is eligible for reappointment for a further term of seven years.<sup>4</sup> The Commissioner has the rank and powers of a deputy head of a department.<sup>5</sup> Staff of the Commissioner are appointed under Canada's public service employment legislation.<sup>6</sup> The Commissioner maintains the registry which records all of the returns which are described below.<sup>7</sup> The Commissioner may audit the returns to verify the information contained in them.<sup>8</sup></p> |
| <b>Registration &amp; recording of lobbying activity</b> | <p>The Integrity Commissioner must keep a register of registered lobbyists. Pursuant to s 49(3):</p> <p><i>(3) The lobbyists register must contain the following particulars for each registered lobbyist—</i></p> <p><i>(a) the lobbyist's name and business registration particulars;</i></p> <p><i>(b) for each person (listed person) employed, contracted or otherwise engaged by the lobbyist to carry out a lobbying activity—</i></p> <p><i>(i) the person's name and role;</i></p> <p><i>and</i></p>      | <p>The Act provides that a person carries on lobbying activities if the person:</p> <p><i>(a) makes, or manages or directs the making of, any relevant communications on behalf of another person in return for payment (in money or money's worth) in any of the circumstances in which subsection (2) applies to that other person,</i></p> <p><i>(b) makes, or manages or directs the making of, any relevant communications in any of the circumstances in which subsection (2) applies to the person, or</i></p> | <p>The Act regulates third party lobbyists (described as consultant lobbyists) and in-house lobbyists separately.</p> <p>In respect of consultants, section 5 requires an individual to file with the Commissioner a return setting out certain information if the individual, <u>for payment</u>, arranges a meeting for another person and a public office holder or undertakes to communicate with a public office holder in respect of:</p> <p><i>(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,</i></p>                 |

<sup>1</sup> Integrity Act 2009 (Qld), s 75.

<sup>2</sup> Integrity Act 2009 (Qld), s 74.

<sup>3</sup> Regulation of Lobbying Act 2015, s 9.

<sup>4</sup> Lobbying Act 2008, s 4.1.

<sup>5</sup> Lobbying Act 2008, s 4.2

<sup>6</sup> Lobbying Act 2008, s 4.3

<sup>7</sup> Lobbying Act 2008, s 9(1)

<sup>8</sup> Lobbying Act 2008, 9(2)

| Issue | Comment on comparison to Queensland Integrity Act 2009 (Qld)   | Ireland Regulation of Lobbying Act 2015  | Canada Lobbying Act 2008   |
|-------|--|--|--|
|       | <p>(ii) if the person is a former senior government representative or a former Opposition representative, the date the person became a former senior government representative or a former Opposition representative;</p> <p>(c) the name of each current third party client of the lobbyist;</p> <p>(d) the name of each third party client for which the lobbyist has carried out a lobbying activity within the 12-month period before the lobbyist most recently gave the integrity commissioner the particulars under this division or section 53;</p> <p>(e) other particulars prescribed under a regulation.</p> <p>Pursuant to s 41, a lobbyist is an entity that carries out a lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client.</p> <p>An entity carrying out incidental lobbying activities is not a lobbyist. An entity carries out <b>incidental lobbying activities</b> if the entity undertakes, or carries on a business primarily intended to allow individuals to undertake, a technical or professional occupation in which lobbying activities are occasional only and incidental to the provision of professional or technical services.</p> | <p>(c) makes any relevant communications about the development or zoning of land under the Planning and Development Acts 2000 to 2014.<sup>10</sup></p> <p>Subsection (2) goes on to state that the subsection applies where:</p> <p>(a) the person has more than 10 full-time employees and the relevant communications are made on the person's behalf,</p> <p>(b) the person has one or more full-time employees and is a body which exists primarily to represent the interests of its members and the relevant communications are made on behalf of any of the members, or</p> <p>(c) the person has one or more full-time employees and is a body which exists primarily to take up particular issues and the relevant communications are made in the furtherance of any of those issues.</p> <p>It provides certain exceptions, for example, communications by an individual relating to his or her private affairs, trade union negotiations, diplomatic communications and communications that could pose a threat to the safety of a person or security of the State.<sup>11</sup></p> <p>Lobbyists' details to be included on the Register are:</p> <p>(a) the person's name,</p> | <p>(ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,</p> <p>(iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act,</p> <p>(iv) the development or amendment of any policy or program of the Government of Canada,</p> <p>(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or</p> <p>(vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada.<sup>16</sup></p> <p>Section 7 sets out the obligations of in-house lobbyists in filing returns. This obligations applies to corporations or organisations who employ one or more individuals whose duties include communicating with public office holders on behalf of the employer in respect of matters such as the development of legislative proposals, making or amendment to regulations, development of policy programs and the award of any grant or financial benefit, if those duties constitute a 'significant part' of the duties of one employee.<sup>17</sup> A rule of thumb has emerged that 20% constitutes a 'significant part'.<sup>18</sup></p> |

<sup>10</sup> Regulation of Lobbying Act 2015, s 5(1).

<sup>11</sup> Regulation of Lobbying Act 2015, s 5(5).

<sup>16</sup> Lobbying Act 2008, s 5(1).

<sup>17</sup> Lobbying Act 2008, s 7.

<sup>18</sup> Operation Eclipse Report, page 60.

| Issue | Comment on comparison to Queensland Integrity Act 2009 (Qld)  | Ireland Regulation of Lobbying Act 2015  | Canada Lobbying Act 2008   |
|-------|---|--|--|
|       | <p><i>Examples of entities for subsection (6)—</i></p> <ul style="list-style-type: none"> <li>• <i>an entity carrying on the business of providing architectural services as, or by using, a practising architect under the Architects Act 2002</i></li> <li>• <i>an entity carrying on the business of providing professional engineering services as, or by using, a registered professional engineer under the Professional Engineers Act 2002</i></li> <li>• <i>an entity carrying on the business of providing legal services as an Australian legal practitioner or a law practice under the Legal Profession Act 2007</i></li> <li>• <i>an entity carrying on the business of providing accounting services as, or by using, an accountant who holds a practising certificate issued by CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants</i></li> </ul> <p><b>Note:</b><br/>It has been suggested that the Act already requires a business, such as a consulting/ accounting firm, to register and report its lobbying activity (see for example footnote 25 of the Yearbury report). This is because section 41 defines a lobbyist as ‘an entity that carries out a lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client’. Consulting/ accounting firms only escape the definition when representing their own interests (i.e. carrying out in-house lobbying) or if the lobbying is ‘incidental to the provision of professional or technical services’. This analysis does not appear to pay due regard to the scope of the ‘incidental lobbying’ carve out which covers situations</p> | <p><i>(b) the address (or principal address) at which the person carries on business or (if there is no such address) the address at which the person ordinarily resides,</i></p> <p><i>(c) the person’s business or main activities,</i></p> <p><i>(d) any e-mail address, telephone number or website address relating to the person’s business or main activities,</i></p> <p><i>(e) any registration number issued to the person by the Companies Registration Office, and</i></p> <p><i>(f) (if a company) the person’s registered office.<sup>12</sup></i></p> <p>Under the scheme, lobbyists must make returns every 4 months, which must state:</p> <p><i>(a) where any of the communications concerned were made on behalf of another person (in this section referred to as a “client”), the relevant information relating to the client,</i></p> <p><i>(b) the designated public officials to whom the communications concerned were made and the body by which they are employed or in which they hold any office or other position,</i></p> <p><i>(c) the subject matter of those communications and the results they were intended to secure,</i></p> <p><i>(d) the type and extent of the lobbying activities carried on,</i></p> <p><i>(e) the name of the individual who had primary responsibility for carrying on the lobbying activities,</i></p> <p><i>(f) the name of each person who is or has been (whether before or after the passing of this Act) a designated public</i></p> | <p>The requirements for both consultants and in-house lobbyists to file returns are broadly similar, and require as follows:</p> <ul style="list-style-type: none"> <li>• the name and business address of the employer (for in-house) or individual and, if applicable, the name and business address of the firm where the individual is engaged in business;</li> <li>• (third-party lobbyists) the name and business address of the client and the name and business address of any person or organization that, to the knowledge of the individual, controls or directs the activities of the client and has a direct interest in the outcome of the individual’s activities on behalf of the client;</li> <li>• (in house lobbyists) if the employer/ client is a corporation, the name and business address of every subsidiary of the corporation;</li> <li>• where the client/ employer is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;</li> <li>• if the client/ employer is funded in whole or in part by a government or government agency, the name of the government or agency, as the case may be, and the amount of funding received;</li> <li>• particulars to identify the subject-matter of the expected communication with the</li> </ul> |

<sup>12</sup> Regulation of Lobbying Act 2015, s 11.

| Issue | Comment on comparison to Queensland Integrity Act 2009 (Qld)  | Ireland Regulation of Lobbying Act 2015  | Canada Lobbying Act 2008  |
|-------|---|--|---|
|       | <p>where 'the entity undertakes, or carries on a business primarily intended to allow individuals to undertake, a technical or professional occupation in which lobbying activities are occasional only and incidental to the provision of professional or technical services'. The Act goes on to provide examples of this, including 'an entity carrying on the business of providing accounting services as, or by using, an accountant who holds a practising certificate issued by CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants'.</p> <p>Regardless of the merit of this argument, it is apparent that accounting/ consulting firms avail themselves of a wide reading of this provision in order to justify their exclusion from lobbying obligations. Indeed, the Integrity Commissioner has explicitly stated that '...entities providing professional services which would otherwise meet the definition of lobbying activity are currently not required to be registered as lobbyists or to record contact with government representatives in the lobbyists register. For example, if an employee of a multinational professional services firm met with a government representative on behalf of a third-party client, neither the firm nor the employee are required to be registered as lobbyists and the activity is considered to be 'incidental lobbying'.<sup>9</sup></p> <p>Lobbyists record details of their contacts on the Contact Log.</p> | <p><i>official employed by, or providing services to, the registered person and who was engaged in carrying on lobbying activities, and</i><br/> <i>(g) any such other information relating to carrying on lobbying activities as may be prescribed under subsection (7).<sup>13</sup></i></p> <p>By subsection (7), the Minister may prescribe any additional information the Minister considers appropriate having regard to the public interest in there being an appropriate level of scrutiny.</p> <p>The client's 'relevant information' includes:<br/> <i>(a) the client's name,</i><br/> <i>(b) the address (or principal address) at which the client carries on business or (if there is no such address) the address at which the client ordinarily resides,</i><br/> <i>(c) the client's business or main activities,</i><br/> <i>(d) any e-mail address, telephone number or website address relating to the client's business or main activities,</i><br/> <i>(e) any registration number issued to the client by the Companies Registration Office, and</i><br/> <i>(f) (if a company) the address of the client's registered office.<sup>14</sup></i></p> <p>In certain circumstances person may make an application to the Commission to determine whether the public interest would be served by the delaying making the information available. These circumstances include where the making</p> | <p>public office holder to arrange a meeting, and any other information respecting the subject-matter that is prescribed;</p> <ul style="list-style-type: none"> <li>• the fact that the undertaking does not provide for any payment that is in whole or in part contingent on the outcome of the matter or the individual's success in arranging a meeting;</li> <li>• particulars to identify any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract;</li> <li>• if the individual/ employee is a former public officer holder, a description of the offices held, which of those offices, if any, qualified the individual as a designated public office holder and the date on which the individual last ceased to hold such a designated public office;</li> <li>• the name of any department or other governmental institution in which any public office holder with whom the individual communicates or expects to communicate or with whom a meeting is, or is to be, arranged, is employed or serves;</li> <li>• particulars to identify any communication technique that the individual uses or expects to use in connection with the communication with the public office holder, including any</li> </ul> |

<sup>9</sup> Queensland Integrity Commission, Submission No. 8 to the *Inquiry Into The Report On The Strategic Review Of The Functions Of The Integrity Commissioner* (February 2022).

<sup>13</sup> *Regulation of Lobbying Act*, s 12(4).

<sup>14</sup> *Regulation of Lobbying Act*, s 12(5).

| Issue                 | Comment on comparison to Queensland Integrity Act 2009 (Qld)   | Ireland Regulation of Lobbying Act 2015   | Canada Lobbying Act 2008   |
|-----------------------|--|---|--|
|                       |  | available of the information could reasonably be expected to have a serious adverse effect on the financial interests of the State, business interests generally, or cause a material financial loss to the person to whom the information relates. <sup>15</sup>   | appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion (i.e. grass roots communication).   |
| <b>Contraventions</b> | No offences for matters such as unregistered lobbying.   | <p>The Act prescribes a number of ‘contraventions’, namely:</p> <ul style="list-style-type: none"> <li>• Section 8(1) (i.e. the requirement to register), contravention of which is an offence;</li> <li>• Failing to make a return under s 12, contravention of which is an offence and which may lead to a fine or imprisonment for a term not exceeding 2 years;</li> <li>• Providing information known to be inaccurate or misleading to the Commission;</li> <li>• Failing to comply with s 19(4) (i.e. the exercise of investigation powers)</li> <li>• Obstructing an investigation under s 19.</li> </ul> | <p>Under s 14(1), an individual who fails to file a return as required or who knowingly makes a false or misleading statement in any return is guilty of an offence and is liable, on proceedings by way of indictment, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding two years, or to both.<sup>19</sup></p> <p>An individual who contravenes any other provision of the act is guilty of an offence.</p> |
| <b>Investigations</b> | The Integrity Commissioner has no power to conduct investigations. Notionally, the Integrity Commissioner could refer matters to the CCC investigation, provided they meet the threshold of ‘corrupt conduct’. | Section 19 confers a power on the Commission to authorise an investigation if it reasonably believes that a person may have committed a contravention. Under section 19(4), an authorised officer carrying out an investigation may:  | The Commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance  |

<sup>15</sup> Regulation of Lobbying Act, s 14.

<sup>19</sup> Lobbying Act 2008, s 14(1)

| Issue                               | Comment on comparison to Queensland<br><i>Integrity Act 2009</i> (Qld)  | Ireland<br><i>Regulation of Lobbying Act 2015</i>  | Canada<br><i>Lobbying Act 2008</i>   |
|-------------------------------------|---|--|--|
|                                     |   | <ul style="list-style-type: none"> <li>• require any person to provide any information or explanation reasonably required;</li> <li>• require any person to produce any document or other thing, reasonably required;</li> <li>• require a person to attend before the authorised officer to answer questions and make a declaration of the truth of the answers to the questions;</li> <li>• enter and search premises (requiring consent or a warrant to enter a dwelling house);</li> <li>• inspect and take copies of any document or other thing produced or found on a search.<sup>20</sup></li> </ul> | <p>with the Code or the Act, as applicable.<sup>21</sup> The Commissioner may:</p> <ul style="list-style-type: none"> <li>• in the same manner and to the same extent as a superior court of record, <ul style="list-style-type: none"> <li>○ summon and enforce the attendance of persons before the Commissioner and compel them to give oral or written evidence o oath, and</li> <li>○ compel persons to produce any documents or other things that the Commissioner considers relevant for the investigation; and</li> </ul> </li> <li>• administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.<sup>22</sup></li> </ul> <p>After conducting an investigation, the Commissioner shall prepare a report including the findings, conclusions and reasons for the Commissioner's conclusions.<sup>23</sup></p> |
| <b>Post-separation restrictions</b> | For 2 years after a person becomes a former senior government representative or former Opposition representative, the person must not carry out a related lobbying activity for a third party client. <sup>24</sup> | A person who has been a relevant designated public official is prohibited from carrying on lobbying activities, or being employed by a person carrying on lobbying activities for a period of one year from the day they ceased to be a designated public official. <sup>25</sup>  | Section 10.11 provides that '[n]o individual shall, during a period of five years after the day on which the individual ceases to be a designated public office holder' carry on the type of lobbying activities described in the Act.   |

<sup>20</sup> Regulation of Lobbying Act 2015, s 19(4).

<sup>21</sup> Lobbying Act 2008 S 10.4(1)

<sup>22</sup> Lobbying Act 2008, s 10.4 (2).

<sup>23</sup> Lobbying Act 2008, 10.5 (1)

<sup>24</sup> *Integrity Act 2009* (Qld), s 70.

<sup>25</sup> Regulation of Lobbying Act, s 22.

| Issue                  | Comment on comparison to Queensland Integrity Act 2009 (Qld)                                 | Ireland Regulation of Lobbying Act 2015  | Canada Lobbying Act 2008   |
|------------------------|--|--|--|
| <b>Code of Conduct</b> | Section 68 provides that the Integrity Commissioner may approve a lobbyists code of conduct. | Section 16 of the Act provides that the Commission may produce (and from time to time revise) a code of conduct for persons carrying on lobbying activities. | Pursuant to s 10.2, the Commissioner is responsible for developing a Lobbyist's Code of Conduct. |

## New Zealand

New Zealand has no formal register of lobbyists. In 2012, the Green Party attempted to introduce the *Lobbying Disclosure Bill* to establish a register of lobbyists, require compliance with a Code of Conduct, and require lobbyists to file annual returns with the Auditor-General. The bill was voted down by Parliament and it has been suggested that the main reason for the bill's failure was the difficulty in defining what was a lobbyist is.<sup>26</sup>

In January 2019, New Zealand's cabinet began releasing summary information from their Ministerial diaries. Diaries are published within 15 business days following the end of each month and the information published comprises: date, time (start and finish), brief description, location, who the meeting was with, and the portfolio. The New Zealand approach is distinctive because it includes internal meetings. Excluded from this scheme is:

- *material related to a Ministers' personal, party political, or parliamentary/constituency roles;*
- *incidental activities;*
- *meetings related to consultation between government parties, consistent with s9(2)(f)(iv) of the Official Information Act;*
- *meetings with other MPs relating to a constituency matter or other matter that might breach personal privacy;*
- *travel and logistic information;*
- *details of meeting locations that are a private home address.*<sup>27</sup>

The cabinet paper noted that, '*Cabinet has already taken a decision to release Cabinet material proactively, which enhances the transparency of the Cabinet decision-making process. Proactive release of summary information from ministerial diaries would complement that by providing an insight into Ministers' other meetings*'.<sup>28</sup>

<sup>26</sup> Catherine Strong and Fran Tyler, 'New Zealand media camouflage political lobbying' (2017) 23(2) *Pacific Journalism Review* : Te Koako 144, 146.

<sup>27</sup> New Zealand Cabinet, 'Proactive Release of Ministerial Diary Information' (Cabinet Paper).

<sup>28</sup> New Zealand Cabinet, 'Proactive Release of Ministerial Diary Information' (Cabinet Paper).

# Appendix 4: Examples of Cabinet Releases, Queensland

At time of writing, the most recent Cabinet decisions to have been updated are dated February 2022.

## Queensland Cabinet Documents released February 2022 (example of limited disclosure)

### Search results

Your search for documents released in 2022-Feb returned 1 record/s.

#### [Racing Integrity Amendment Bill 2022](#)

The Racing Integrity Act 2016 established the Queensland Racing Integrity Commission an independent statutory body, with a range of functions regarding the integrity of the racing industry, including greyhound, thoroughbred horse, and harness horse racing codes. The Racing Integrity Amendment Bill 2022 makes key policy changes: establishment of an independent external Queensland Racing Appeals Pa

## Queensland Cabinet Documents released November 2021 (example of higher disclosure)

### Search results

Your search for documents released in 2021-Nov returned 15 record/s.

#### [Appointment to the Controlled Operations Committee](#)

The Controlled Operations Committee (the Committee) is established under section 232 of the Police Powers and Responsibilities Act 2000 (the Act). The Committee consists of an independent member, the Commissioner or the Commissioner's nominee and the Crime and Corruption Commission chairperson or the chairperson's nominee. The Committee's functions include: to consider, and make recommendations ab

#### [Appointments Parole Board Queensland](#)

Parole Board Queensland (the Board) is an independent statutory body that makes decisions about a prisoner's release into the community under supervision. The Board decides prisoners' applications for release into the community on parole, and amends, suspends or cancels parole orders for prisoners who have been released to parole. The highest priority in making parole decisions is the safety of th

#### [Police Service Administration and Other Legislation Amendment Bill 2021](#)

The Police Service Administration and Other Legislation Amendment Bill 2021 (the Bill) modernises the legislative framework governing Protective Services and amends the identification requirements for police officers acting as public officials under the Nature Conservation Act 1992, the Forestry Act 1959, the Recreation Areas Management Act 2006 and the Marine Parks Act 2004 (Queensland Parks and

#### [Appointments to Gladstone Area and Mount Isa Water Boards](#)

The Gladstone Area Water Board (GAWB) and the Mount Isa Water Board (MIWB) are category 1 water authorities established under the Water Act 2000 (the Water Act). The Water Act states that a water authority must have a board of directors. The board is responsible for the way in which the water authority performs its functions and exercises its powers. The enabling legislation requires the water aut

#### [Appointments Board of Directors of Wet Tropics Management Authority](#)

The Wet Tropics of Queensland World Heritage Area is managed under the Wet Tropics World Heritage Protection and Management Act 1993 (the Act) and the Commonwealth Wet Tropics of Queensland World Heritage Area Conservation Act 1994 (the Commonwealth Act). These Acts implement Australia's international duty for the protection, conservation, presentation, rehabilitation and transmission to future ge

#### [Evidence and Other Legislation Amendment Bill 2021](#)

In June 2021, a discussion paper titled Shielding confidential sources: balancing the public's right to know and the court's need to know was released seeking feedback on the development of shield laws to better protect journalists' confidential sources. The Evidence and Other Legislation Amendment Bill 2021 (the Bill) amends the Evidence Act 1977 (Evidence Act), Criminal Code, Magistrates Act 19

#### [Appointments to the K'gari \(Fraser Island\) World Heritage Advisory Committee](#)

The Department of Environment and Science (DES) represents the Queensland Government in assisting the Commonwealth to meet Australia's obligations under the World Heritage Convention. Responsibilities are detailed in the Australian World Heritage Intergovernmental Agreement, and include the appointment of property-specific advisory committees comprising the best cultural, scientific, technical and

#### [Queensland's position on Minimum Age of Criminal Responsibility](#)

Across Australia, a child under 10 years of age cannot be prosecuted for a criminal offence (minimum age of criminal responsibility). A rebuttable presumption, known as *doli incapax*, exists for children between 10 and 14 years of age. In Queensland, the presumption requires the prosecution to prove, beyond a reasonable doubt, that the child had the capacity to know that the child ought not commit

#### [Consultation summary report Review of the Animal Care and Protection Act 2001](#)

On 8 December 2020, the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities announced that the Department of Agriculture and Fisheries (DAF) would conduct a full review of the Animal Care and Protection Act 2001 (ACPA). The review will ensure the legislation keeps pace with contemporary animal welfare standards, practice and community expectations. On 4

#### [Amendments relating to directions to rectify building work](#)

The Queensland Building and Construction Commission's (QBCC) compliance and enforcement powers include the ability to direct a person to rectify defective or incomplete building works or remedy consequential damage. From 1 October 1999, the rectification period, within which a person must comply with the direction, was legislated in the Queensland Building and Construction Commission Act 1991 (QBC

#### [Appointment of the Privacy Commissioner](#)

Section 141 of the Information Privacy Act 2009 (the Act) states there is to be a Privacy Commissioner and the Privacy Commissioner is a member of the staff of the Office of the Information Commissioner. Section 142 of the Act provides that the Privacy Commissioner's role is that of a deputy to the Information Commissioner, with particular responsibility for matters relating to the Information C

#### [Environmental Protection \(Ministerial Designations\) Amendment Bill 2021](#)

The Environmental Protection Act 1994 (EP Act) regulates activities that cause environmental harm, including environmental nuisance and prescribes when an activity that causes serious or material environmental harm, environmental nuisance or that contravenes a noise standard will be unlawful. The EP Act also provides for where certain types of environmental nuisance are excluded from being an offe

#### [Appointment of the Racing Integrity Commissioner of the Queensland Racing Integrity Commission](#)

The Queensland Racing Integrity Commission (QIRC) is an independent statutory body established under the Racing Integrity Act 2016 (the Act). The Commission has a range of functions regarding the integrity of the racing industry and welfare of racing animals, including the greyhound, thoroughbred horse and harness horse racing sectors. Under Section 17 of the Act, the main functions of the Commiss

#### [Reforms arising from the review of the Racing Integrity Act 2016](#)

The Racing Integrity Act 2016 (RI Act) established the Queensland Racing Integrity Commission (QRIC), an independent statutory body with a range of functions regarding the integrity of the racing industry, including the greyhound, thoroughbred horse and harness horse racing codes. QRIC was established as a body which would be independent of Racing Queensland and the racing industry. A review of th

#### [Amendments Justice Legislation \(COVID-19 Emergency Response—Permanency\) Amendment Bill 2021](#)

Under section 7 of the Governors (Salary and Pensions) Act 2003 (the Act), former Governors, who held office for at least five years are entitled to a lifetime pension of 35% of their Governor's salary. The Minister may also approve a pension for a Governor who leaves office with less than five years' service because they are incapable of performing the duties. A surviving partner of a deceased fo

Of the 17 cabinet records released for November 2021:

- every document is a single page;
- with one exception, the only documents to contain attachments were the records relating to bills to be introduced into the Legislative Assembly, which each included the text of the bill, the explanatory notes and statement of compatibility. The Evidence bill contained two additional attachments:
  - Results of Consultation Report *Shielding confidential sources: balancing the public's right to know and the court's need to know*; and
  - Coronial implementation progress update.
- the one exception referred to above was the paper relating to the Review of the Animal Care and Protection Act, which attached a consultation outcomes report which Cabinet approved for public release.

## Example of a typical Queensland cabinet document

### Queensland Government

Cabinet – October 2021

#### Appointment of a member to the Appeal Costs Board

#### Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

1. Section 6 of the *Appeal Costs Fund Act 1973* (the Act) establishes the Appeal Costs Board (the Board).
2. The role of the Board is to administer the Appeal Costs Fund (the Fund). The purpose of the Fund is to assist in the payment of costs incurred by litigants through no fault of their own in certain circumstances, such as when decisions are upset on appeal or proceedings are rendered abortive. The Fund is financed by way of a fee imposed on initiating processes in civil and criminal proceedings in the Magistrates, District and Supreme Courts.
3. Section 6(2) of the Act provides that the Board is to consist of three members, appointed by the Minister:
  - a Chairperson;
  - a member representative of and nominated in writing by the Bar Association of Queensland; and
  - a member representative of and nominated in writing by the Queensland Law Society.
4. Cabinet noted the intention of the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence to appoint Mr Jonathan Horton QC as a member to the Appeal Costs Board for a term commencing from the date of ministerial advice to the nominee to and including 30 June 2024.
5. Attachments:
  - Nil.

# Annexure 5: Examples of Cabinet Releases, New Zealand

New Zealand's cabinet papers are published on each Department website. As such, it is difficult to provide a comparison to Queensland's system of centralised publication. Below are some illustrations of disclosures made by certain departments.

## New Zealand Example 1 - Ministry of Business, Innovation & Employment

A search of documents within the categories, 'cabinet minute' and 'cabinet paper' within a date range 01/01/2022 – 01/06/2022 produced **128 results**. It can be seen from the first page of results that the documents are longer than the one-page documents typically published in Queensland.

|  |  |   |
|--|--|---|
|  <p><b>Extending COVID-19 related corporate governance relief for businesses and other legal entities – M...</b></p> <p>Published: 31 May 2022</p> <p>Cabinet approved the submission to the Executive Council to extend COVID-19 corporate governance relief for six months.</p>         | <p>Type<br/>Cabinet Minute</p> <p>File<br/>PDF, 197KB, 3 pages</p> | <p>Topics<br/>Support for business, Regulating companies and other entities, Business</p> |
|  <p><b>Extending COVID-19 related corporate governance relief for businesses and other legal entities</b></p> <p>Published: 31 May 2022</p> <p>Cabinet paper seeking approval for submission to the Executive Council to extend COVID-19 corporate governance relief for six months.</p> | <p>Type<br/>Cabinet Paper</p> <p>File<br/>PDF, 164KB, 10 pages</p> | <p>Topics<br/>Support for business, Regulating companies and other entities, Business</p> |
|  <p><b>A National Quarantine System: Options for the ongoing COVID-19 response and future pandemic prepared...</b></p> <p>Published: 20 May 2022</p> <p>Cabinet noted the steps required to develop a stable, flexible and enduring national quarantine system.</p>                     | <p>Type<br/>Cabinet Minute</p> <p>File<br/>PDF, 204KB, 6 pages</p> | <p>Topics</p>   |
|  <p><b>Options for accelerating MIQ network transition – Minute of Decision</b></p> <p>Published: 20 May 2022</p> <p>Cabinet agreed to accelerate the MIQ Moderate Transition due to significant changes in COVID-19 border and community settings.</p>                                 | <p>Type<br/>Cabinet Minute</p> <p>File<br/>PDF, 281KB, 8 pages</p> | <p>Topics<br/>Immigration</p>   |
|  <p><b>A National Quarantine System: Options for the ongoing COVID-19 response and future pandemic prepared...</b></p> <p>Published: 20 May 2022</p> <p>Cabinet paper setting out the steps required to develop a stable, flexible and enduring national quarantine system.</p>         | <p>Type<br/>Cabinet Paper</p> <p>File<br/>PDF, 561KB, 23 pages</p> | <p>Topics<br/>Immigration</p>   |
|  <p><b>Options for accelerating MIQ network transition</b></p> <p>Published: 20 May 2022</p> <p>Cabinet paper proposing that the MIQ Moderate Transition is accelerated due to significant changes in COVID-19 border and community settings.</p>                                       | <p>Type<br/>Cabinet Paper</p> <p>File<br/>PDF, 302KB, 26 pages</p> | <p>Topics<br/>Immigration</p>   |
|  <p><b>Maintaining MIQ in the short-term</b></p> <p>Published: 20 May 2022</p> <p>Cabinet paper seeking funding to support the delivery of Managed Isolation and Quarantine over the next financial year.</p>   | <p>Type<br/>Cabinet Paper</p> <p>File<br/>PDF, 749KB, 19 pages</p> | <p>Topics<br/>Immigration</p>   |

The below excerpt of the Cabinet Minute *A National Quarantine System: options for the ongoing COVID-19 Response and Future Pandemic Preparedness* shows how redactions are managed.

**IN CONFIDENCE**

**SWC-21-MIN-0214**

- 8 **agreed** to provide for the cost of the PBC noted in paragraph 7 above;
- 9 **agreed** to the development of a Detailed Business Case for long-term contracts with three sites (DBC1), including upgrades (earthquake strengthening and ventilation improvements) and Confidential advice to Government for the purpose of providing core quarantine capacity for the next few years;
- 10 **approved** the following changes to appropriations to give effect to the decisions in paragraphs 8 and 9 above, with a corresponding impact on the operating balance and net core Crown debt:

| Vote Building and Construction<br>Minister for COVID-19 Response  | \$m – increase/(decrease) |         |         |         |                    |
|---|---------------------------|---------|---------|---------|--------------------|
|   | 2021/22                   | 2022/23 | 2023/24 | 2024/25 | 2025/26 & Outyears |
| Multi-Category Expenses and Capital Expenditure:<br>Isolation and Quarantine Management MCA<br>Departmental Output Expenses:<br>Operational Support (funded by revenue Crown) | 16.600                    | -       | -       | -       | -                  |

- 11 **agreed** to securing and upgrading core sites, with approximately 500 rooms based on current configuration, Free and frank opinions Confidential advice to Government subject to the completion and Cabinet approval of DBC1;
- 12 **noted** that, in order for good faith contractual negotiations with the sites described in paragraph 11 above to occur, the Ministry of Business, Innovation and Employment (MBIE) requires confirmation of the funding envelope available, which is sought as a tagged contingency to provide the financial parameters for the negotiations;
- 13 **agreed** to establish tagged operating and capital contingencies associated with the COVID-19 Response Portfolio of up to the following amounts to provide for the delivery of paragraph 11 above:

|   | \$m – increase/(decrease) |         |         |         |         |         |
|---|---------------------------|---------|---------|---------|---------|---------|
|   | 2021/22                   | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Long-term contracts - Tagged Operating Contingency  | -                         | 36.574  | 184.586 | 184.586 | 108.092 | -       |
| Upgrades (earthquake strengthening and ventilation improvements) and Confidential advice to Government Tagged Capital Contingency | -                         | 72.8000 | -       | -       | -       | -       |

- 14 **invited** the Minister for COVID-19 Response to report back to Cabinet in early 2022 with:
- 14.1 final costings of the proposed options alongside DBC1;
- 14.2 the outcome of the further work described in paragraph 11 above;

## Appendix 6: Summary of MOG Changes

The following tables track the movement of three broad areas through successive MOG changes: (1) children and youth justice; (2) Aboriginal and Torres Strait Islander and multicultural affairs; (3) national parks.

### Children/ Youth Justice

| Department Name  | Changes   |
|--|---|
| <b>2020</b>  |   |
| Department of Children, Youth Justice and Multicultural Affairs  | <p><i>Renamed from Department of Child Safety, Youth and Women</i></p> <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Department of Youth Justice (this subsequently abolished as a department once amalgamated)</li> <li>• Multicultural Affairs</li> </ul> <p><b>Loses –</b></p> <ul style="list-style-type: none"> <li>• women (moved to Department of Justice and Attorney-General)</li> <li>• violence prevention (moved to Department of Justice and Attorney-General)</li> <li>• youth (moved to Department of Environment and Science)</li> </ul> |
| <b>2019</b>  |   |
| Separate Department of Youth Justice – <b>established as a new department</b>                            | <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Youth justice</li> </ul>   |
| <b>2017</b>  |   |
| Department of Child Safety, Youth and Women – <b>established as a new department</b>                     | <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Responsibility for child safety</li> <li>• Office for Women and Domestic Violence Reform</li> <li>• Responsibility for youth</li> <li>• Youth Justice Services</li> <li>• Working with Children Check</li> <li>• Responsibility for the provision of corporate and executive services to child safety, Office for Women and Domestic Violence Reform and youth</li> </ul>  |
| <b>2015</b>  |   |
| Communities, Child Safety and Disability Services;   | <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Multicultural Affairs</li> </ul>   |
| <b>2012</b>  |   |
| Department of Communities, Child Safety and Disability Services – <b>established as a new department</b> | Renamed from the Department of Communities.   |

## Aboriginal and Torres Strait Islander/ Multicultural Affairs

| Department Name   | Changes  |
|---|--|
| <b>2020</b>   |  |
| Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships | <p><i>Renamed from Department of Communities, Disability Services and Seniors</i></p> <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Department of Aboriginal and Torres Strait Islander Partnerships (this subsequently abolished as a department once amalgamated)</li> </ul> <p><b>Loses –</b></p> <ul style="list-style-type: none"> <li>• community services (moved to Department of Housing and Public Works)</li> </ul>   |
| Department of Children, Youth Justice and Multicultural Affairs                                   | <p><i>Renamed from Department of Child Safety, Youth and Women</i></p> <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Department of Youth Justice (this subsequently abolished as a department once amalgamated)</li> <li>• <b>Multicultural Affairs</b></li> </ul> <p><b>Loses –</b></p> <ul style="list-style-type: none"> <li>• women (moved to Department of Justice and Attorney-General)</li> <li>• violence prevention (moved to Department of Justice and Attorney-General)</li> <li>• youth (moved to Department of Environment and Science)</li> </ul> |
| <b>2017</b>   |  |
| Department of Aboriginal and Torres Strait Islander Partnerships                                  | No change  |
| Department of Local Government, Racing and Multicultural Affairs                                  | <p><i>Renamed from Department of Infrastructure, Local Government and Planning</i></p> <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Responsibility for racing</li> <li>• <b>Multicultural Affairs Queensland</b></li> <li>• Responsibility for the provision of corporate and executive services to Multicultural Affairs Queensland</li> </ul>  |
| <b>2015</b>   |  |
| Aboriginal and Torres Strait Islander Partnerships  | <p><b>Loses –</b></p> <ul style="list-style-type: none"> <li>• Multicultural Affairs</li> </ul>  |
| Communities, Child Safety and Disability Services   | <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Multicultural Affairs Queensland</li> </ul>   |
| <b>2012</b>   |  |
| Department of Aboriginal and Torres Strait Islander and Multicultural Affairs                     | <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Multicultural Affairs Queensland and the associated executive support services from the Department of Communities, Child Safety and Disability Services</li> <li>• Aboriginal and Torres Strait Islander Services (ATSIS) and the associated executive support services from the Department of Communities, Child Safety and Disability Services</li> </ul>   |

## National Parks

| Department Name  | Changes   |
|--|---|
| <b>2020</b>  |   |
| Department of Environment and Science  | <p><b>No changes to national parks</b></p> <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• youth</li> </ul> <p><b>Loses –</b></p> <ul style="list-style-type: none"> <li>• Arts Queensland</li> <li>• Corporate Administration Agency</li> <li>• support to the State Library of Queensland</li> </ul>   |
| <b>2017</b>  |   |
| <p>Department of Environment and Science</p> <p>Note: Department of National Parks, Sport and Racing was <b>abolished</b> Queensland Parks and Wildlife was amalgamated with the above department.</p> | <p><i>Renamed from Department of Environment and Heritage Protection</i></p> <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• <b>Queensland Parks and Wildlife Service</b></li> <li>• Responsibility for the provision of corporate and executive services to Queensland Parks and Wildlife Service</li> <li>• Responsibility for science excluding the Office of the Queensland Chief Scientist</li> <li>• Office of the Queensland Chief Scientist</li> <li>• Responsibility for the provision of corporate and executive services to Science including the Office of the Queensland Chief Scientist</li> <li>• Arts Queensland</li> <li>• Corporate Administration Agency</li> <li>• Responsibility for the provision of support to the State Library of Queensland established under <i>the Libraries Act 1988</i></li> </ul> |
| <b>2015</b>  |   |
| National Parks, Sport and Racing   | <i>Renamed from National Parks, Recreation, Sport and Racing</i>  |
| <b>2012</b>  |   |
| Department of National Parks, Recreation, Sport and Racing   | <p><b>Gains –</b></p> <ul style="list-style-type: none"> <li>• Office of Racing from the Department of Employment, Economic Development and Innovation</li> <li>• Queensland Parks and Wildlife Service and the associated executive support services from the Department of Environment and Heritage Protection</li> <li>• That part of the Department of Communities, Child Safety and Disability Services responsible for sport and recreation services including the Queensland Academy of Sport and the associated executive support services</li> </ul>   |

## Appendix 7: The Tahitian Prince

In 2004, Barlow was employed by Queensland Health through an employment agency as an AO3 contractor. Prior to commencing his work at Queensland Health, he had obtained a criminal record and was wanted for questioning in New Zealand in relation to a fraud. He had provided a fabricated CV to Queensland Health which was not verified and did not provide an official academic transcript.

Over the following years, he worked in various positions. In September 2007, Barlow began performing higher duties as an Acting AO7 Principal Finance Officer (PFO), gaining responsibility for Queensland Health 'grants cost centres'. 12 days later, he established an entity as a QHealth vendor and began authorising fraudulent payments to it using a 'general purpose voucher'. Relatively early in his employment, staff began voicing concerns about Barlow's poor attendance and work performance. Despite this, he was permanently appointed as PFO in May 2009. He then began making payments from the Minister's Grants in Aid (MGIA) cost centre, a discretionary fund for the Minister of Health to provide one-off payments to fund health-related priorities. While he obviously lived beyond his means, he told colleagues that he was a wealthy Tahitian Prince but that he had to work in order to access his trust fund.

In 2009 there was a restructure to Queensland Health which caused 'pressures and chaos' and a period during which Barlow's team was unsupervised. Barlow's capacity to continue his fraudulent activities was assisted by poor financial practices and the lack of supervision.

On 5 August 2010, the CMC received an anonymous email complaint that Barlow was defrauding Queensland Health and was due to leave Australia to start a new 'life of luxury' in Paris. The CMC officer determined that the complaint was not a 'category 1' complaint (i.e. the most serious complaint that the CMC itself would manage) because 'it did not specify that a substantial amount of money was being defrauded, did not allege that the fraud was being committed by a very senior officer, and did not indicate that the fraud was systemic'. Because it was made anonymously, there was no way to contact the complainant to seek further information.

Criminal history checks were not done as QHealth's ESU included a seconded police officer who could do them. Barlow's complaints history was not checked, as this was the responsibility of Queensland Health under the complaints management process in place at the time. As a result of the determination that the matter was not 'category 1', the complaint was devolved to Queensland Health on an 'outcome advice' basis (i.e. the CMC was to be advised of the outcome once the matter was finalised).

The ESU investigator sought advice about the capacity of Barlow to misappropriate funds. It was common knowledge that he used multiple names, lived an extravagant lifestyle beyond his means, bought expensive gifts for colleagues, claimed to be royalty and that there were persistent concerns about his conduct, attendance and work performance. None of this relevant contextual information was captured or communicated to the ESU case officer. In August 2010 the ESU office finalised the matter on the CMC's complaints management database as '**not substantiated**'. After this point, a number of Barlow's colleagues continued to complain about his work performance and conduct. He also gave a number of gifts to staff while the frauds were occurring. In December 2010, he was promoted and given higher duties at an AO8 level.

In December 2010 an internal audit of corporate credit cards identified numerous suspicious payments by Barlow. On 21 June 2011, Internal Audit provided a report to the ESU. In relation to the suspicious purchases, Internal Audit found that, where documents were supplied, the documents indicated on face value that the transactions were of an official nature. It appears that no further action was taken.

Separate to the investigations about his fraud, way back in 2007, Queensland Health's ESU had received a complaint alleging that Barlow had misused an official Queensland Health vehicle. The matter was reported to the CMC as a matter of routine, and referred back to Queensland Health. Due to an excessive delay, Barlow was not notified of this allegation until December 2010 and the

investigation not finalised until January 2011. It is not clear why this complaint was not picked up during the ESU's investigation about the fraud complaints.

Some time before July 2011, the QAO conducted a routine audit of Queensland Health expenditure transactions, including a sample of 25 grant transactions. The audit sample included one of Barlow's fraudulent payments. The QAO sought further documentation. None was provided. The QAO wrote to Queensland Health, identifying the issues with Barlow's payment, including that (1) no documentation, such as a contract with the client to reflect the original approval of the funding had been provided; (2) there was no documentation to verify whether the grant recipient was being monitored to ensure the terms of the grant were being adhered to; (3) the terms of the grant exceeded Barlow's delegated authority. QHealth responded, acknowledging the need for improvement and scheduled an audit of grant funding which to commence in December 2011.

Complaints about the quality of his work continued. Notwithstanding all the concerns or dissatisfaction with Barlow being expressed at every level, the managers at QHealth, rather than performance-manage him, appeared to reward his poor behaviour. For example, one officer said he was told Barlow was allowed to come into work late so he could write his royal correspondence in the mornings.

On 16 November, Barlow sent his superior an urgent request for payment of \$11 million, deliberately catching him when he was in a hurry. On 8 December a finance officer received a copy of spreadsheets and, while trying to determine why his budget was significantly overspent, identified the \$11 million payment. He made some inquiries and searched for the recipient vendor, identifying that it was registered to Barlow. Later that day, QHealth made a complaint to the QPS which commenced the investigation into Barlow's activities. Further investigation identified this transaction to be the latest in a series of 65 fraudulent transactions totalling \$16.69 million.

*This summary is based upon the CMC Report, 'Fraud, financial management and accountability in the Queensland public sector - An examination of how a \$16.69 million fraud was committed on Queensland Health'.*

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