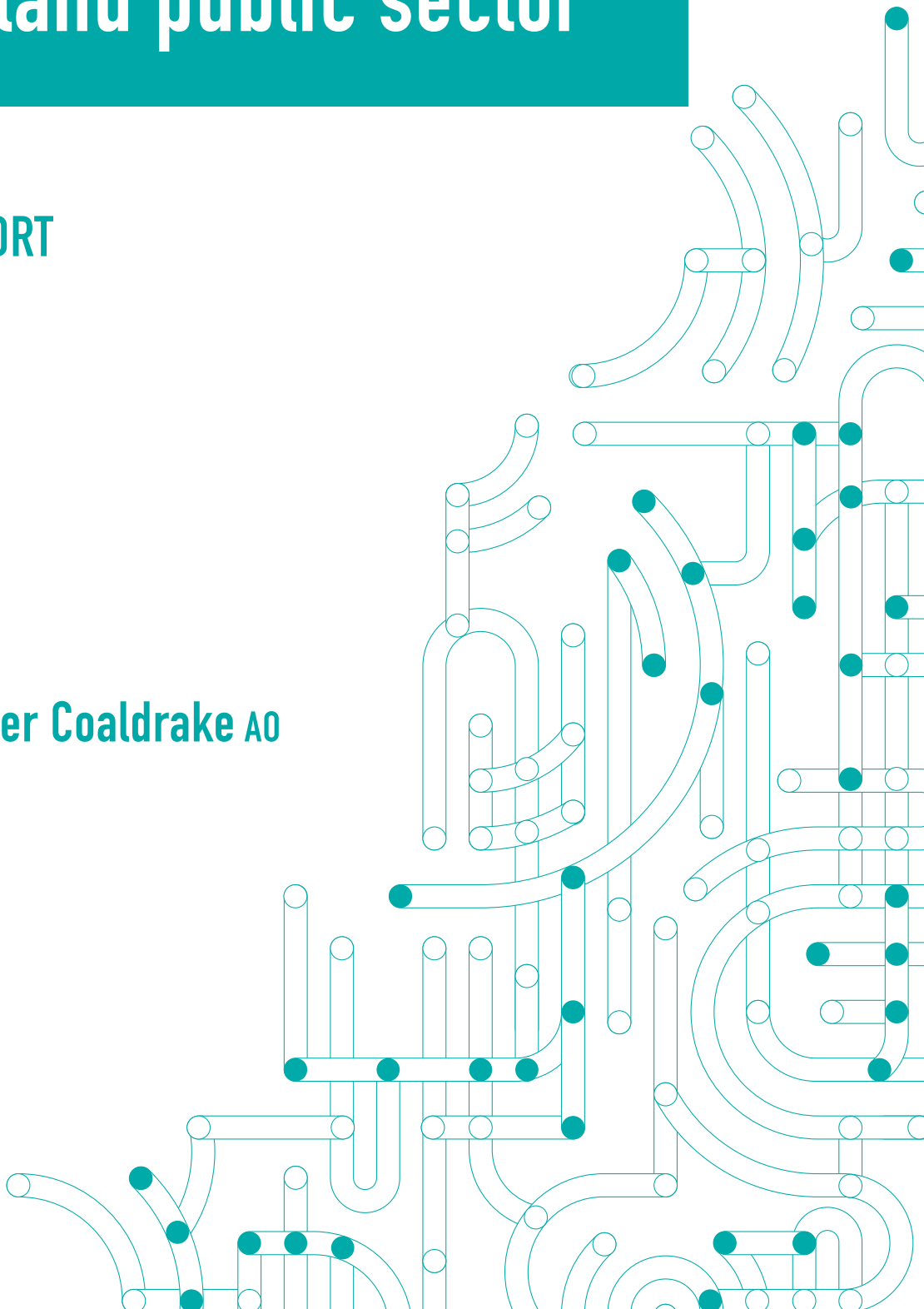
Review of culture and accountability in the Queensland public sector

INTERIM REPORT

21 April 2022

Professor Peter Coaldrake AO



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21 April 2022

The Hon Annastacia Palaszczuk MP
Premier of Queensland and Minister for the Olympics
1 William Street
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Dear Premier

Interim Report

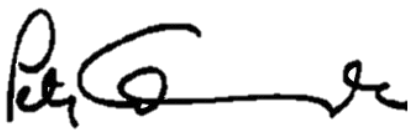
I am pleased to provide the **Interim Report** of the **Review of culture and accountability in the Queensland public sector**.

As you will see, the Report describes a complex patchwork of accountabilities within which the public sector is operating, and highlights a number of systemic issues that have become evident from public submissions and a range of interviews in the last two months.

This Interim Report will, I hope, encourage further comment and submissions. These will be welcome until close of business **Monday, 16 May 2022**.

With best wishes.

Yours sincerely



Professor Peter Coaldrake AO
Reviewer

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1. Purpose and context

This Review focusses on culture and accountability in the Queensland public sector. It has been 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, and the ways in which they have been aired, outside established channels in some cases, leave the impression that the system is not working as it should.

The Review has undertaken an extensive consultation process, having so far conducted approximately 60 interviews with various stakeholders and received some 200 submissions. The Review team has also conducted an extensive literature review, focusing on both academic commentary and reports of various reviews conducted both in Queensland and other jurisdictions.

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.' Fresh eyes reinforce her view.

In that context, the purpose of this Review is not to relitigate matters of dispute which have been or remain the subject of various separate processes. Rather, it is to look at the health of the system overall, 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 Indigenous disadvantage, domestic violence and drug abuse. 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.

Modernising Government

Both here in Australia, and overseas, there is a long history of governments seeking to make themselves more open and to modernise their administrative and operating systems. One of the features of this Review will be its focus on the relationship and allocation of responsibilities between Ministers and officials, one of the themes of the pioneering 1918 UK review of machinery of government led by Lord Haldane. Fifty years later, the Fulton Inquiry concluded that the UK civil service was still fundamentally the product of the nineteenth century, and its capabilities and organisation were no longer up to the task of supporting government. The need for a major focus on what nowadays we term 'capacity-building' was a core part of Baron Fulton's findings.

A few years later, the Royal Commission on Australian Government Administration, led by Dr H C Coombs, traversed much of the same territory, setting out a template for the modern public service. That initiative was followed by the Wilenski review in New South Wales and, over the next decade or so, by similar inquiries in most other States. Some of these were prompted by scandal, such as the 'WA Inc' inquiry in Western Australia, while in Queensland there was resistance to these reformist tendencies. That resistance was not broken until the Fitzgerald Inquiry – which had begun its work as a limited probe of police misconduct – turned into a consuming dissection of the body politic. In more recent times, the Thodey review of the Australian public service concluded that, while it is performing adequately, it is falling short of rising expectations and is unprepared for the challenges of an increasingly complex world.[i] In addition to such whole-of-government type reviews, over recent years we have seen at both federal and state levels a range of analyses probing the adequacy of various mechanisms and systems of oversight and accountability. The Review will draw on a number of outcomes of these analyses.

The Local Context

In Australia, and certainly in Queensland, the community always has had something of a 'love-hate' relationship with government. 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 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 underlying acknowledgement of the role of government is underlined in Queensland, with its vast geographical dimensions and major social, industrial and environmental variations. Indeed, the State government is Queensland'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, including devising place-based solutions or encouraging agencies to swarm their collective efforts with those of the local community. Any reform of statewide frameworks that might be entertained thus should not suppress local initiatives, with agencies and communities needing to be emboldened to work together to craft local solutions. The experiences of the pandemic, and an establishing pattern of more frequent natural disasters, are instructive for future approaches.

Queensland, while in earlier times slow to modernise its system of government, over the last several decades has developed a sophisticated though complex array of agencies with a focus on ensuring accountability and integrity. The Queensland arrangements in the broad sense also resemble those in other jurisdictions.

Our politics in Queensland have been dominated by long periods of strong and stable executive government exercised, since 1922, in Australia's only unicameral state parliament. The absence of an upper chamber, together with something of a frontier mentality, has helped to cultivate a 'winner takes all' style of politics in the northern state. However, experience both in Queensland and elsewhere over the years points to the danger of politics being conducted in an unrestrained manner. In any case, the community nowadays demands heightened performance and accountability and requires safeguards on the behaviour of government and the use of taxpayer dollars. None of this suggests, though, that there is any realistic prospect of ever changing from our unicameral arrangement. The solution lies not in re-establishing a second chamber in our parliament, but in strengthening existing mechanisms of scrutiny.

2. Clarifying definitions

At the outset, it is important that there be clarity about definitions. In providing this, 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. [ii] Acting with integrity involves the 'use of public power for officially endorsed and publicly justified purposes'.[iii] **'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.[iv] 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.[v] **'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.[vi] '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'. [vii] 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 will apply 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 is also 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.

3. The formation of Queensland's integrity patchwork

The Auditor-General is the oldest integrity institution in Queensland, the first incumbent having been appointed in 1860. The next major development came over a century later, with the establishment in 1974 of the Ombudsman, then known as the Parliamentary Commissioner for Administrative Investigations, whose task was to investigate the administrative actions of government departments and authorities.

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.[viii] The subsequent establishment of the Public Accounts Committee (**PAC**) by the Ahern Government was an important affirmation of Westminster-style principles of financial accountability. The National Party's prior opposition to the establishment of a PAC had led to the dissolution of its coalition with the Liberal Party, an event which 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 (later termed the Crime and Misconduct Commission and now the Crime and Corruption Commission) and the Electoral and Administrative Review Commission (**EARC**). The latter was charged with making 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, 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.[ix] EARC was also responsible

for recommending that Queensland adopt Freedom of Information (**FOI**) laws, which were enacted by the Goss Government and then subsequently modified in 2009.

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 advice about conflicts to Ministers and other 'designated persons', subsequent changes have expanded the scope of the role, including expanding the definition of 'designated persons' and assigning responsibility for the regulation of lobbying activity to that office.[x] The appropriateness of bolting on that latter role to an advisory body will be the subject of attention in this Review.

The PAC was dissolved in 2011. Its former functions have been split among portfolio committees, and again, the effectiveness of this change will be analysed.

4. The 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. This Review has heard a number of examples that could contribute to such erosion.

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 the Premier has reminded in establishing this Review, society has changed rapidly and people deserve a government which is 'fit for purpose'.

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 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 shared, 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 and the rewards too low, and that there is 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.

It is also the case that the Queensland public sector felt collectively beleaguered during the Campbell Newman premiership because of the loss of a large number of public sector jobs. And

it was the community's reaction to those job cuts which contributed to Annastacia Palaszczuk securing office. Her mantra was in sharp juxtaposition to that of her predecessor, she promising no job losses, no public service sackings and no sales of public assets. That was a winning election strategy, and one that was clearly important at the time to provide some certainty to a shaken public service. But it is not a position that can be sustained over successive terms of government, and in the face of rising expectations for government to perform better and be more responsive.

Comments from interviews and submissions made to the Review suggest a range of reasons for this unsteadiness on the part of the public sector: fear of unwanted career impacts and loss of employment status for unwelcome advice; pressure from some ministerial staffers for responses that minimise problems; and discouragement from providing written advice on difficult topics. Unpleasant human interactions, which are sadly evident in so many workplaces across our society, including government, also contribute. These are manifested in allegations of bullying and belittling, and the resulting or perceived isolation of 'difficult' people in the workplace.

If a pattern of compliant, or worse, fear-based behaviour becomes entrenched as the culture of any organisation, it puts that 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 engage the community being served, and can leave that government with a false sense of the quality of its own performance.

While we acknowledge that this problem 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, relations between ethnic groups including, in particular, 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.

5. The integrity patchwork

a) Auditor-General

Establishment and functions

In Westminster-derivative systems, the office of the Auditor-General assists in maintaining the accountability of the Executive to Parliament.[xi] As already noted, the position of the Auditor-General in Queensland dates back to 1860. 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 the new *Auditor-General Act 2009* (**A-G Act**).

The Queensland Audit Office (**QAO**) performs a number of types of audits, including audits of financial statements of public sector entities, audits of matters relating to the financial administration of a public sector entity at the request of the Legislative Assembly, and performance audits of public sector entities.[xii] The A-G Act imposes a limitation on performance audits of Government-Owned Corporations (**GOC**s), 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.[xiii]

In its Annual Report, the QAO notes that it liaises with the Crime and Corruption Commission (**CCC**) where relevant and as is permissible under their respective legislation.[xiv] The parliamentary Economics and Governance Committee provides oversight of the Auditor-General and QAO.

Considerations for this Review

An obvious consideration is that, in 2020, the Australasian Council of Auditors General ranked the Queensland Auditor-General sixth out of ten Australasian jurisdictions in terms of independence.[xv] In 2013, it had been ranked third.

The need to ensure the independence of the Auditor-General has long been recognised. A critical measure of independence derives from the *International Standard of Supreme Audit Institutions (INTOSAI) Guidelines and Good Practices Related to SAI Independence,* which defines the following core principles (**INTOSAI Principles**):

- 'the existence of an appropriate and effective constitutional/ statutory/ legal framework and of *de facto* application provisions of the framework';
- 'the independence of SAI heads… including security of tenure and legal immunity in the normal discharge of their duties';
- 'a sufficiently broad mandate and full discretion, in the discharge of SAI functions';

- ‘unrestricted access to information’;
- ‘the right and obligation to report on their work’;
- ‘the freedom to decide the content and timing of audit reports and to publish and disseminate them’;
- ‘the existence of effective follow-up mechanisms on SAI recommendations’; and
- ‘financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources’.

In New Zealand, acknowledgement of the need to confer such independence has been given expression by recognition of the Auditor as an Officer of the Parliament. EARC previously recommended against taking such a 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.

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.[xvi] 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 QAO strategic review made two other recommendations which would require legislative change in order to come into effect. These are:

- that the A-G Act be amended to allow more independence around employing staff (allowing staff to be employed under the A-G Act rather than the *Public Service Act 2008* (Qld)); and
- that the QAO have more independence around the setting of client rates and fees for services (which currently require approval from the Treasurer).

The QAO supports these recommendations and has proposed further recommendations aimed at improving compliance with the INTOSAI principles in a submission to this Review. Those matters include a proposal that the Auditor-General be given full discretion to conduct performance audits of GOCs, improving access to information, and further steps to improve financial and managerial autonomy.

The Final Report of this Review will further explore these issues.

b) Crime and Corruption Commission

Establishment and functions

In line with recommendations made in the Fitzgerald Report, the Criminal Justice Commission (**CJC**) was created in late 1989, to investigate police and public sector misconduct and work with

the police service to investigate organised and major crime. Its crime function 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) (**CCC Act**).

For the most part, the CCC is outside the scope of this Review. But there are two points of relevance. One relates to the interactions of the CCC with other integrity bodies, and the second to the threshold requirements for the referral of matters by agencies to the CCC, and the frequent referral back of those matters to the agencies from which they had emerged. From the perspective of those caught up by such processes, the movements back and forth and the inordinate length of time which elapses are frustrating, or worse.

Considerations for this Review

The CCC's corruption function is carried out subject to legislatively entrenched principles which include the principle of cooperation between the CCC and units of public administration (**UPA**s), capacity building of those UPAs, the public interest and the 'devolution principle', namely, that action to prevent and deal with corruption in a UPA should generally happen within the unit.[xvii]

The devolution principle has been described as one of the most controversial aspects of the Commission's corruption function.[xviii] It has previously been suggested that the practice is 'ineffective and significantly conducive to creating an environment which allows corruption to exist'.[xix] Indeed, the Review has been told of a perception amongst public servants that departmental investigations of devolved matters are very often carried out by close colleagues of the alleged perpetrators. On the other hand, there are strong arguments that investigation of non-serious allegations ought to be carried out in departments, allowing the CCC to carry out its legislative obligation to focus on more serious cases of corrupt conduct and systemic corrupt conduct. The question then arises whether the UPAs themselves have sufficient resources and capability to carry out the investigations which are referred to them. Submission made to the Parliamentary Crime and Corruption Committee's recent Review of the Crime and Corruption Commission's (**PCCC Review**) activities queried the capacity of UPAs to handle matters referred back to them, noted the widespread practice of departments contracting out investigations of devolved matters and the fact that this often occurred at great expense.[xx]

One solution proposed by Callinan and Aroney to the volume of complaints is to establish a committee of the Ombudsman or the Public Service Commission and for the CCC to act as a clearing house and process complaints in the first instance.[xxi] In a similar vein, 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. Any serious consideration of this proposal would have to be weighed against the fact that the CCC has reported that its internal assessment processes are working well, with 87 per cent of complaints being assessed within 30 days (as opposed to 39 per cent in 2017-18).[xxii]

Successive reforms have both narrowed and widened the definition of 'corrupt conduct', the most recent of which aimed at widening it. The existing requirement that conduct engaged in be for the benefit of, or detriment to, a person was removed and a list of examples of corrupt conduct were included.[xxiii]

Public officials are required to refer to the CCC any matter which could sit under the broadened definition of 'corrupt conduct'. In its submission to the PCCC inquiry, the Queensland Law Society (**QLS**) noted that the broad definition allows the CCC 'to investigate almost any grievance involving a public official'. The Review has been told that many public officials feel compelled to refer any matter which might possibly constitute 'corrupt conduct', however trivial, for fear of being seen as covering up corrupt conduct. The effect of this practice is exacerbated by the broad definition. During consultations, the Review heard a number of complaints about the lengthy timeframes in which matters are resolved. These concerns often stemmed from the fact that complaints are unnecessarily referred to the CCC and, in accordance with the devolution principle, referred back to the relevant department, or sometimes to another integrity body.

On the other hand, most agencies' submissions to the **PCCC Review** 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.[xxiv] This Review in its second phase will seek to better understand this clear divergence of opinion.

It is not possible to understand the referral arrangements without also appreciating the role of internal integrity units, usually known as ethical standards units.

The way in which departmental integrity units can be best utilised in a crowded integrity framework is a significant consideration for this Review. In their 2013 report, which obviously pre-dated the two most recent PCCC Reviews, Callinan and Aroney noted a lack of clarity in relation to the particular responsibilities held by each integrity agency:

> *Moreover, there is a tendency, because these numerous agencies have been established to concern themselves with integrity, for the managers within the public sector either to regard themselves as obliged to refer any possible misconduct, no matter how minor and no matter how implausible the complaint might be, to one or more of those bodies. The result is that managers may in practice be divested of, or abdicate, their fundamental duty to supervise staff. A culture of complaint-making evolves, in which office disputes can become elevated to a level which they do not warrant, the integrity units themselves*

> *become inundated with complaints, the times within which the complaints are dealt with become longer, and, ultimately, the integrity bodies become lost in a sea of (often trivial) complaints.*

A major focus of the second half of this Review's consultations will be on assessing whether, and to what degree, the above description remains apt. In doing so, the Review will consult with the CCC, departmental integrity units and other stakeholders. The Review will also pay close regard to the definition of the CCC's corruption function, and whether any steps are required to ensure that the CCC's public-sector anti-corruption role is strengthened.[xxv]

c) Information Commissioner

Establishment and functions

As identified earlier, the Goss Government introduced Freedom of Information laws as part of its administrative reform agenda. This followed the Fitzgerald Inquiry, then subsequent EARC *Report on Freedom of Information, December 1990*.

In 2007, the then Premier commissioned a report from an independent panel, led by Dr David Solomon AM, to review Queensland's FOI laws (**Solomon Report**). Central to those reforms 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'.[xxvi]

Considerations for this Review

The most recent strategic review 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 and the Office of the Information Commissioner. The Solomon Report remains an important record of the purpose and principles underlying FOI in Queensland. Some of the issues identified in that report, particularly those relating to culture, remain relevant today notwithstanding that the report precipitated a legislative and systemic overhaul of FOI in Queensland.

The 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.*[xxvii]

It is clear from such sentiments that culture, and a tone set from the top, is critical to giving effect to the spirit of the legislation. In this sense, of all the integrity functions, the Information Commissioner's role is especially influenced by the culture of government. That same culture is assuredly influenced by the spectre of exposure through the RTI mechanism. One way in which the Information Commissioner can oversight the culture within agencies is through the external review function, by which the Information Commission investigates and reviews decisions of agencies and Ministers made under the RTI Act, including 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'.

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 confidentiality to fend off legitimate questioning on even routine matters.

Although we have received comment about RTI and FOI in representations to the Review, there has not been an opportunity as yet to engage with the Information Commissioner prior to the lodgement of this Interim Report. That engagement will occur in the second phase of this work.

d) Integrity Commissioner

Establishment and functions

The position of Integrity Commissioner was established in 1999 under amendments to the *Public Sector Ethics Act 1994* (Qld). 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 was able to be carried out on a part-time basis with the support of one staff member.[xxviii]

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**), the Integrity Commissioner is responsible for the provision of a wider range of advice, namely any ethics or integrity matter, to a broader pool of 'designated persons'.[xxix] In addition, the Integrity Commissioner is now responsible for regulating lobbying activity, through the maintenance of the lobbying register, and carrying out certain educative functions.

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 analogue to the Integrity Commissioner in a comparable jurisdiction is the Ontario Integrity Commissioner. In addition to carrying out an advisory function, that role also maintains the lobbyist register.

Considerations for this Review

The Integrity Act provides for strategic reviews to be undertaken every five years. The first of these was conducted by this Reviewer in 2015 (**Coaldrake Report**). On 30 September 2021, Kevin Yearbury PSM published his Strategic Review of the Integrity Commissioner's Functions (**Yearbury Report**). The recommendations are currently being considered by the Ethics and Governance Parliamentary Committee, which has oversight of the Integrity Commissioner's functions.

While it is neither the purpose nor within the capability of this Review to analyse the Integrity Commissioner's functions with the same degree of detail as a strategic review, the Yearbury Report and submissions made in response to it provide important context on the current issues affecting the Integrity Commissioner's functions and the interests and concerns of various stakeholders. The key issues canvassed therein, along with further observations from the Review's consultations, are set out below. However, as the influence of lobbyists is a critical issue for the Review, discussion of lobbying-related issues are set out in a separate discussion in the 'Preliminary Observations' section of this interim report.

In the Annual Report for 2020-21, the Integrity Commissioner noted that legislative amendments have resulted in more than 10,000 people now falling within the definition of 'designated persons' entitled to seek the Integrity Commissioner's advice.[xxx] The true number cannot be quantified,

since the Integrity Act allows a Minister or Assistant Minister to appoint a person or class of persons. The ability of the Integrity Commissioner to carry out the advisory function is closely linked to resourcing. During 2020-21, the Integrity Commissioner had to impose 'interim service limits' due to a surge in demand for advice.[xxxi]

Concurrently with the increase in the Integrity Officer's purview, new bodies have been established, such as the Office of the Independent Assessor and ethical standards and integrity units within government departments. The Yearbury Report notes that the emergence of these bodies means that there is now a degree of duplication and overlap in advice available to certain groups of designated persons. A live issue is the availability of ethics advice for mayors and councillors and which should be the most appropriate source of that advice (i.e. the Integrity Commissioner, Department of Local Government, Racing and Multicultural Affairs, Local Government Association of Queensland, external firms and, in some respects, Office of the Independence Assessor).

A further source of overlap derives from the inclusion of members of the Legislative Assembly within the definition of 'designated persons' and the availability of the Clerk of the Parliament to furnish advice to the same class of persons. The Clerk's advice is focused on advising members about which interests need to be declared whereas the Integrity Commissioner advises on how they should manage conflict arising from their interests more broadly. The Final Report of this Review will have more observations about the challenges faced by the Integrity Commissioner in providing advice which is fit for purpose.

The Public Service Commission (**PSC**) is 'accountable for the financial, operational, and administrative performance of the office supporting the QIC, including the provision and management of human resources'.[xxxii] The PSC in turn is supported by the Department of the Premier and Cabinet (**DPC**) in relation to information technology services and a range of other support services. The Bridgman Report, Yearbury Report and Integrity Commissioner's annual reports have all raised issue with the appropriateness of these governance arrangements.

The impact of funding arrangements on the independence of integrity bodies was raised in a recent NSW Auditor-General report, *The effectiveness of the financial arrangements and management practices in four integrity agencies*. In it, the Auditor-General noted that the role of integrity agencies includes providing independent scrutiny of the executive government and that this can negatively impact the Government, individual Ministers or senior public servants. This gives rise to a risk that the planned work of integrity bodies could influence the decisions made about their funding. To mediate this risk, that Report recommends expanding Parliament's role in the budget process and ensuring greater transparency to Parliament about funding decisions as well as structured oversight by Parliament.

e) Ombudsman

Establishment and functions

In 1974 the role of the Ombudsman (then known as the Parliamentary Commissioner for Administrative Investigations) was established under the Parliamentary Commissioner Act 1974 (Qld). Of Swedish origin, the term 'Ombudsman' means, 'citizens' defender'. Indeed, for many 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 ethical and integrity issues. Today, the Ombudsman is now one of many integrity institutions whose operations provide an important check on the operations of agencies. 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; and
- provide advice, training, information or other help to agencies about ways of improving the quality of decision-making and administrative practices and procedures.[xxxiii]

The Ombudsman has oversight responsibilities under the *Public Interest Disclosure Act* 2010 (**PID Act**). The Office oversees the implementation of the PID Act, reviews the way public sector agencies deal with PIDs, educates public sector agencies about PIDs and provides advice about PIDs.

In 2006, 2014 and 2015 respectively, the Energy and Water Ombudsman, Health Ombudsman and the Queensland Training Ombudsman were established, each with separate and industry specific investigatory and complaints functions.

Considerations for this Review

The significantly more crowded integrity framework has arguably limited the scope of the Ombudsman's functions. 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 traditional investigative role. Since that point in time, however, the Review has been told that 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).[xxxiv]

In recent years, overlap of separate bodies' functions has been an issue, for example, 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 reviewer suggested legislative amendments to allow the Ombudsman and QAO to share complaint and investigation data, in order to avoid duplication of public resources. It is noted that a new section

91A was introduced in 2018,[xxxv] allowing the Ombudsman to disclose information obtained in the performance of a function of the Ombudsman to an agency (including Commonwealth agencies), if the agency has a proper interest in the information for the performance of its functions or where the disclosure would protect the health, safety or security of a person or property. The Review will be engaging with stakeholders to determine whether information-sharing and referrals need to be strengthened further.

In considering the scope of the Ombudsman's functions, the Review has had regard to recent developments in comparable jurisdictions. For example, in South Australia, the Crime and Public Integrity Policy Committee (CPIPC) held an inquiry into the functions and interrelationships of its integrity bodies, particularly its ICAC and Ombudsman, which resulted in significant legislative amendments aimed at reallocating functions between its ICAC and Ombudsman.[xxxvi] In short, those amendments have limited ICAC's functions to matters of serious and systemic corruption, referring its power to deal with maladministration and misconduct to the SA Ombudsman.

It is also noted that, in 2017, the *Ombudsman Act* 2001 (Qld) was amended so that its strategic reviews are to be conducted every seven years, as opposed to every five years.[xxxvii]

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.*[xxxviii]

The role of contracted service delivery providers has been a key theme in the Review's consultations. As such, the Review will be considering whether this proposal should be revisited.

In order to deliver on its stated objective of improving the quality of decision-making and administrative practices and procedures in agencies, the Ombudsman delivers training and advice to improve decision-making, complaints management, ethical conduct and public interest

disclosure management. Peter Bridgman in his '*A fair and responsive public service for all – independent review of Queensland's state employment laws*', commented:

> *The concern is that the Ombudsman's otherwise excellent efforts have not percolated to managers. The same observation can be made about the Public Service Commission's materials, many of which are also excellent: stakeholders repeatedly observed that the Commission puts out a guideline or other document and nothing changes. The challenge is not just to develop high quality materials. It is to achieve behaviour change. This disconnection between intended and actual effect is one driver of a perceived lack of responsiveness. The managerial chain of responsibility is one means of driving that change.*[xxxix]

The Review's work on culture will keep this important consideration in mind.

6. Preliminary observations

a) Public sector capability

Societies and communities everywhere face challenges, large and small, and government is expected to play a role in addressing them. But government, itself usually under its own cost pressures, can find its task very challenging. Nor does the portfolio-based vertical hierarchy of traditional government departments necessarily lend itself to the agility required to tackle large problems which defy neat boundaries. This has encouraged Ministers to rely on new sources of advice.

In that context, the role of the public sector in recent generations has been weakened by the rising influence of ministerial offices and the widespread use of external consultants. Governments have every right to engage consultants, especially in areas in which government lacks expertise or requires a genuinely fresh opinion. But what we have seen across multiple jurisdictions over the last few decades, including at some level here in Queensland, is the hollowing-out of the expertise of the public sector.

This has been particularly pronounced in the economic and infrastructure sectors in the age of public-private partnerships. While the intention might have been for the externalisation of advice to be a good deal for the taxpayer, in practice the opposite can be the case when skilled public officials walk out the door of government and step across the street to assume new roles in leading professional advisory firms.

Not only can the salary cost to the taxpayer be greater, but the public sector has lost valuable expertise and, in addition, has then needed to recruit separate new skills to manage projects. In this context, one Director-General has made the very sensible suggestion that a condition attached

to all major external consultancies should be the requirement to build in behind it the capability of departmental officials in the relevant project areas.

The need to rebuild public sector capability is not confined to the area of major projects, with persistent mention made during consultations about shortfalls in policy capacity and in human resource management. Capability-building and training, and futureproofing more broadly, will be the subject of further attention in the second stage of this Review.

The strong response of the public sector leadership and workforce to crisis is largely uncontested. In Queensland, this is seen through the almost inevitable annual natural disasters and, on an ongoing scale, the response to the Covid-19 pandemic. These crises see arms of government 'swarm' to meet the immediate needs of citizens for support, sustenance and survival. Quite rightly, such efforts are applauded by both the leaders of government and the community that benefits. Swarming, the technique of breaking away from established organizational structures to respond to a crisis, is a natural attribute of government. If a modern workforce is to be fit for purpose, it needs capabilities and encouragement to 'swarm' in response to the emerging and unpredictable crises that will be part of the usual business of government in the future.

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 Queensland Government had its first Equity Commissioner back in 1990, and in spite of good progress in appointments to Government Boards (52 per cent of Government Board members are now women), the slow progress of women through the leadership ranks of the public sector is disappointing, with appointments to Senior Executive Service (SES), Deputy Director-General (DDG) and Director-General (DG) roles still overwhelmingly male. Amongst DGs, women remain a tiny proportion. Also, outside the specialist Indigenous Affairs portfolio, First Nations appointments are rare. At the more senior levels, representatives of the State's culturally diverse community are also hard to find.

A modern workforce also needs to be continually evolving its digital capabilities both to deliver the services its clients expect and to continue to be an employer of choice for the most able candidates. This will require cross-government digital strategies and a willingness to use the masses of data already held on behalf of citizens and the investment capacity of government to become a technology leader. New ways of working – not just the recent shift to working from home – are part of the future-proofing recipe. Innovation, with the inevitable risk of failure, needs to be an integral part of public sector culture if it is to meet current and future needs. The alternative is to lose the best workforce entrants or early-career employees to private sector firms that offer flexibility, training and opportunities that government constrained by existing practice might fail to identify.

b) Ministerial staff

One of the more frequent concerns raised during consultations has been that of the perceived overreach of ministerial staff. The problem certainly does not occur in all portfolios and, to their credit, some Ministers are at pains to demarcate the respective obligations of their own staff with those of public servants. One Minister described what he saw as the appropriate demarcation: 'I am the politician. There is no need for you as a public servant to second-guess or presume the politics, that's my job. Your job is to give frank and fearless advice.'

Proper management of the interface between ministerial officers and departmental staff is a vexed issue that is hardly unique to Queensland. At the Commonwealth level, the Thodey review highlighted the need for better frameworks 'to ensure a clear understanding of the respective roles of ministers, their advisers, and the APS'. The work of Anne Tiernan and the Independent Review into Commonwealth Parliamentary Workplaces led by Kate Jenkins have reiterated the need for strong frameworks to guide the behaviour of ministerial staffers. In Queensland, there is a Code of Conduct for Ministerial Staff Members but awareness and observance of the Code is uneven. This Review in its next phase will be considering what steps, if any, are needed to ensure that the Code has teeth and is observed.

In its consultations, the Review was told on a number of occasions that one frequent overreach is when ministerial officers appropriate the authority of their Ministers in directing public servants to undertake certain tasks. These staffers are often faced with pressure to provide a 'quick answer' to departments bound by internal processes that impinge upon efficiency. There has also been some suggestion of an erosion of the important division between the protective instincts of staffers and public servants' obligations of impartiality. The tension appears to derive from the inherent conflict between the functions, values and objectives of ministerial officers as opposed to those which guide public servants. There is also the issue, inherent across jurisdictions, that significant numbers of ministerial staffers are enthusiastic young loyalists who have little other life experience aside from a university Labor or Liberal club or trade union office. The enthusiasm and energy they bring to these advice roles are to be admired, but their youthful vigour can be guided by experienced supervision.

The Review has also been made aware of senior public servants directing other public servants about the way in which information should be channelled to their Minister. Examples provided to the Review included instances of senior public servants directing employees to sanitise advice and alter recommendations to align with what was presumed to be the Minister's position. Another example included a Director-General taking steps to prevent a report from 'reaching the Minister's ears' so as to ensure that the Minister could continue to plausibly deny knowledge of the matter.

Having regard to the descriptions of ministerial staff overreach, it would be easy to assume that attempts by public servants to 'protect' the Minister must be the result of direct pressure from ministerial staffers or the Minister themselves.

However, our discussions suggest this is not always the case. Rather, it appears that in many instances it can be senior public servants who take it upon themselves to anticipate what the Minister wishes to be told or to assume that the Minister would want to be 'protected' from exposure to an inconvenient matter. The effect is to have a public service whose motivations are partly informed by a self-imposed obligation to 'protect' the Minister, which is at variance with its proper practice.

As already noted though, some Ministers do have a practice of speaking with their new departments to emphasise the importance of frank and fearless advice. The importance of this 'tone from the top' should not be understated.

c) Lobbying

The seeking of influence on policy is at the heart of how government is conducted. In that sense almost all decisions which any government makes are affected by some level of agitation, or what we describe these days as lobbying. As the community has become more sensitive to the need for the process of government to be sound, and to ensuring that undue influences are curbed, governments have moved to the establishment of lobbyists registers and ministerial diaries. While Western Australia was the first state to introduce a lobbying code of conduct and register, Queensland quickly followed in March 2009.[xl] Queensland was also the first state to take the subsequent step of requiring the release of information from ministerial diaries.[xli]

The Integrity Commissioner's 2020-2021 Annual Report has noted a pronounced rise across all activities relating to the lobbying functions including the administration of the Register of Lobbyists. This included a significant increase in recorded lobbying activity, from an average of 239 recorded contacts per year between 2010 and 2019 to 988 recorded contacts in the most recent financial year. Recent commentary also points to a perception that the way to obtain access to the Government, and to secure Government contracts, is to engage the services of one or two particular lobbying firms who carry out the vast majority of lobbying activity in Queensland.

Some potential areas for reform have been suggested to the Review. While the Lobbyists Code of Conduct, made under s 68 of the Integrity Act, 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 by lobbyists of the 'other' and 'commercial-in-confidence' categories to avoid the need to provide any further information. In the six months January to June 2021, lobbyists registered 19 per cent of their contacts as 'other' and 39 per cent as 'commercial-in-confidence'. [xlii] 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 artistic 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.[xliii]

Similar complaints have been made in respect of ministerial diaries, which often simply cite descriptions such as ‘meeting’ or ‘briefing’. The Yearbury Report makes recommendations about increasing transparency in respect of ministerial diaries.

Aside from concerns stemming from the activities of registered lobbyists, it is important to recognise that the substantial rise in recorded lobbying activity is only part of the picture. The legislative framework is such that certain activity which falls squarely within the definition of lobbying is not recorded because it is carried out by individuals and bodies that do not fall within the legislative definition of ‘lobbyist’ and are therefore not obliged to record their dealings. The Integrity Act excludes in-house lobbyists (i.e. 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. Recent media reports have suggested that the inverse, known lobbyists providing ‘consultancy services’ to Government and escaping regulation as a result, is also occurring.

The absence of regulation necessarily means that the influence of in-house lobbyists and persons operating within non-lobbying firms is difficult to quantify. Registered lobbyists have been variously estimated as representing around 20 per cent of the total number of people involved in lobbying. In any event, the limited scope of the Integrity Act gives rise to the possibility that obligations otherwise imposed on registered lobbyists might be avoided by those who are lobbyists in substance but not form. While the Integrity Act prohibits the payment of success fees, this prohibition only applies to those falling within the statutory definition of ‘lobbyist’. The Review was told on one occasion that an individual employed by a consulting firm had negotiated for the payment of a success fee in respect of lobbying work, and that this had been possible because they did not technically fall under the definition of a ‘lobbyist’.

A number of jurisdictions in Australia and internationally have considered or adopted an approach of increasing regulation, capturing in-house and consulting firm lobbyists and requiring further details to be recorded on lobbying registers.

What we can therefore be clear about is that the lobbyist register is not doing the job which was intended. There are some who respond in exasperation by suggesting that the register be abolished, while others are of the view that lobbying should be outlawed.

This Review makes no recommendation in this initial report about appropriate landing points on these matters, though begins from the point that lobbying activity is legitimate so long as its purpose and the level at which it is occurring is understood and, where reasonable, disclosed. At the end of the day, the responsibility lies with the Minister.

The case for further regulation also needs to be weighed against the costs and likely effectiveness of any revised regime. Related to this is the question of necessity. Government will function best if it understands the needs of those affected by its decisions but the escalation of professional lobbying implies it can only be understood by the intervention of third parties who, by their nature, undermine the ability and authority of both politicians and public servants to meet community needs.

Unfortunately, there is declining confidence that governments across the board are making the best decisions rather than decisions influenced by those with the most effective voice. In Queensland recently, this has been accentuated by the dual roles of some lobbyists – acting for clients to influence government, then acting for political parties to help them win elections. This can leave the public sceptical about even the strongest protections against conflict. The same applies to the practice of professional firms lobbying governments on behalf of clients while acting through a different arm as consultants on policy.

The Review also needs to consider whether the advisory and regulatory functions of the Queensland Integrity Commissioner should be located in the one agency and, if not, the most appropriate way to deploy these functions without creating a separate agency.

7. Next steps

The Final Report will explore a number of issues which the Review has not yet had the opportunity to fully consider and investigate. Those matters include the functions of the Office of the Independent Assessor and Information Commissioner, the efficacy of oversight by parliamentary committees and more consistent frameworks for the appointment of statutory officers. It will also seek to understand how and when the Government proposes to commence its review of the PID Act, including the roles of the CCC and other relevant entities, noting that the Government committed to undertaking this review in its response to the Parliamentary Crime and Corruption Committee's *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters*.[xliv]

The Final Report will make recommendations in respect of these and other matters, as well as the issues which have been traversed in this Interim Report. In developing its recommendations, the Review has a strong disposition against adding to the already congested and complex web of integrity bodies. The creation of additional agencies does not guarantee better accountability and would quite likely add to constipation. Recommendations will be aimed at improving synergies and bringing clarity to Queensland's integrity system, particularly from the perspective of the taxpayer.

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[i] D Thodey, G David, 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.

[ii] 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.

[iii] 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.

[iv] 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.*

[v] Ibid.

[vi] Quoted in Dr D Solomon AM, *The Integrity branch – parliament's failure or opportunity?,* Australasian Parliamentary Review, 2013.

[vii] Ibid.

[viii] Electoral and Administrative Review Commission, *Report on Review of Public Sector Auditing in Queensland* Serial No. 91/R3, September 1991, p 12.

[ix] Dr David Solomon AM, *What is the Integrity Branch?,* AIAL Forum No. 70.

[x] K Yearbury, *Strategic Review of the Integrity Commissioner's Functions,* 30 September 2021.

[xi] Electoral and Administrative Review Commission, *Report on Review of Public Sector Auditing in Queensland* Serial No. 91/R3, September 1991.

[xii] *Auditor-General Act 2009* (Qld), Part 3.

[xiii] Ibid, s 37A.

[xiv] Queensland Audit Office, *Annual Report 2020-21*, p 25.

[xv] Dr G Robertson, *Final Report on the Independence of Auditors General – A 2020 update of a survey of Australian and New Zealand legislation*, Australasian Council of Auditors General, 2020.

[xvi] P Smith, *Strategic Review of the Queensland Audit Office*, March 2017, p 14.

[xvii] *Crime and Corruption Act 2001* (Qld), s 34.

[xviii] Parliamentary Crime and Misconduct Committee, *Report No. 97 – Review of the Crime and Misconduct Commission*, June 2016, p 51.

[xix] Parliamentary Crime and Misconduct Committee, *Report No. 97 – Review of the Crime and*

Misconduct Commission, June 2016, p 59, quoting the Queensland Law Society, Submission No. 25, p 7.

[xx] Parliamentary Crime and Misconduct Committee, *Report No. 106 – Review of the Crime and Corruption's activities*, June 2021, p 79-80.

[xxi] 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 126-7.

[xxii] Parliamentary Crime and Misconduct Committee, *Report No. 106 – Review of the Crime and Corruption's activities*, June 2021, p 64.

[xxiii] *Crime and Corruption and Other Legislation Amendment Act* 2018 (Qld).

[xxiv] Parliamentary Crime and Misconduct Committee, *Report No. 106 – Review of the Crime and Corruption's activities*, June 2021, p 68.

[xxv] See the discussion of submissions to the Parliamentary Crime and Misconduct Committee, *Report No. 106 – Review of the Crime and Corruption's activities*, June 2021, p 30.

[xxvi] C Fenton, *Strategic Review of the Office of the Information Commissioner,* 2017.

[xxvii] Dr D Solomon AM, *The Right to Information*, State of Queensland, 2008, p 2.

[xxviii] *What Is The Integrity Branch,* Dr David Solomon AIAL Forum No. 70, p 29.

[xxix] *Integrity Act 2009* (Qld), s 7.

[xxx] Dr N Stepanov, *Queensland Integrity Commissioner – Annual Report 2020-21*, p 11.

[xxxi] Ibid, p 26.

[xxxii] Ibid, p 25.

[xxxiii] *Ombudsman Act* 2001 (Qld), s 6.

[xxxiv] *Public Service and Other Legislation Amendment Bill 2012; Public Service and Other Legislation Amendment Act* 2012 No. 22.

[xxxv] *Crime and Corruption and Other Legislation Amendment Act* 2018 (Qld).

[xxxvi] See the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act* 2021 (SA), assented to on 7 October 2021. See also the CPIPC Fifth Report, Second Session of the Fifty-Fourth Parliament, *Report into Matters of Public Integrity in South Australia.*

[xxxvii] *Court and Civil Legislation Amendment Act* 2017 (Qld).

[xxxviii] Legal Affairs and Community Safety Committee, *Inquiry into the Strategic Review of the Office of the Queensland Ombudsman,* November 2018, p 12 – 13.

[xxxix] P Bridgman, 'A fair and responsive public service for all – Independent Review of Queensland's State Employment Laws – May 2009', p 51.

[xl] D McKeown, *Who pay the piper? Rules for lobbying governments in Australia, Canada, UK and USA,* Parliamentary Library Research Paper, August 2014.

[xli] Independent Commission Against Corruption, New South Wales, *Investigation into the Regulation of Lobbying, Access and Influence in NSW*, June 2021, p 24.

[xlii] K Yearbury, *Strategic Review of the Integrity Commissioner's Functions,* 30 September 2021, p 54.

[xliii] CCC Submission – *Inquiry into the Report on the Strategic Review of the Functions of the Integrity Commissioner*, 31 January 2022.

[xliv] Parliamentary Crime and Corruption Committee *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters*, Report No. 108, 57th Parliament, Queensland Government Response.