

SUBMISSION ON THE COMMONWEALTH INTEGRITY COMMISSION - PROPOSED REFORMS

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Submission by the Queensland Integrity Commissioner

This submission is in response to the request for views on the Commonwealth Integrity Commission model outlined in the Federal Attorney-General's consultation paper, following the Commonwealth government's announcement that it will establish a Commonwealth Integrity Commission ('CIC') to strengthen integrity arrangements across the federal public sector.

The CIC will be established as an independent statutory agency, led by a commissioner and two deputy commissioners. The CIC will comprise a law enforcement integrity division and a public sector integrity division.

Key Points from this Submission

1. The key goal of integrity systems is the promotion of ethical behaviour by public officials.
2. Promoting a positive culture plays a critical role in preventing corruption.
3. In Queensland a multi-agency framework exists to promote and manage integrity. This framework encapsulates both the compliance approach and the ethical standard-setting approach, and aims to strike a balance between the two, while protecting against misconduct and corrupt conduct, and also promoting good conduct.
4. The Queensland Integrity Commissioner ('QIC'), as an independent integrity advisor, is one component of this framework.
5. The proposed model would be enhanced by broadening its focus to include an independent integrity advisor, and this is more likely to have a greater impact on culture in a more positive, meaningful, and sustainable way.
6. The addition of an independent integrity advisor to the proposed model would also serve as a critical and important preventative mechanism by way of, in some instances, disrupting and halting the chain of events that lead to acts of misconduct and corruption.
7. Adding an independent integrity advisor to the model would further encourage public confidence in government institutions by helping public officials resolve matters in favour of the public interest, before they become problematic.

Background

In Australia and internationally, the public expect the highest standards of behaviour from government, public institutions, and officers.¹

There are several integrity and accountability models and frameworks implemented nationally and internationally, however, all have one primary goal – the promotion of ethical behaviour by public officials.

The broader models encapsulate both a compliance approach and an integrity approach. This strikes a balance between the two approaches and protects against misconduct and corrupt conduct, whilst promoting good conduct.²

Queensland Integrity Model

In Queensland, a broad, multi-agency framework exists to promote and manage integrity. The QIC is one component of this framework.

The QIC's purpose is essentially fourfold:

- To advise members of the Legislative Assembly, including Ministers, all statutory office holders, senior public officials, individuals appointed or elected to multi-member decision-making bodies, such as Queensland government boards and local councils, and other designated persons under the *Integrity Act 2009 (Qld)* ('the Act'), on ethics and integrity issues.
- To maintain the lobbyists register and to have responsibility for the registration of lobbyists.
- To raise public awareness of ethics and integrity issues relevant to the functions of the integrity commissioner.
- To set standards on ethics and integrity issues, where requested.

The primacy of the public interest is made clear at section 4 of the Act, and this sets the tone for the QIC's functions. However, the QIC has no investigative powers. There are other agencies specifically resourced and empowered to conduct investigations and combat corruption and misconduct, such as the Crime and Corruption Commission and the Queensland Ombudsman.³

Independent Advice and Standard Setting Integrity Body

The advisory functions of the QIC involve providing ethics and integrity advice, and advice on interest issues⁴ to the more than 5000 'designated persons'⁵ across the Queensland public sector, who fall under the Act.

In providing advice, the main areas are those that relate to the three key areas of corruption:

¹ B. Filipiak, & M. Dylewski (2017) 'Similarities and differences in the phenomenon of integrity in OECD countries', *The IEB International Journal of Finance*, 15, 100-23.

² B. Filipiak, & M. Dylewski (2017) 'Similarities and differences in the phenomenon of integrity in OECD countries', *The IEB International Journal of Finance*, 15, 100-23.

³ T. Smith, *Corruption The abuse of entrusted power in Australia* (The Australian Collaboration: A consortium of National Community Organisations, 2010); N. Preston (2011) 'Integrity Queensland style: and the importance of being fore-warned and fore-armed' 13 *Australian Journal of Professional and Applied Ethics* 1, 4–13.

⁴ *Integrity Act 2009 (Qld)*, s10.

⁵ *Integrity Act 2009 (Qld)*, s12.

- conflicts of interests
- acceptance of gifts and hospitality, and
- the impact of influence and personal favours.

The overwhelming majority of requests relate to either conflicts of interests, or conflicts arising because of dual roles. These can then be broken down further into key sub-issues such as:

- conflicts of interest arising between the public official's personal interests and official duties
- conflicts of interests arising between official duties and the public official's related parties or entities
- conflicts arising between dual responsibilities (for example, when a public official holds two public offices, or is also employed in the private sector), and
- post-separation employment quarantine rules and their application.

The standard applied to all decisions of the QIC is based on the perception of a reasonable person, fully informed about a scenario or set of facts. Irrespective of the situation, the QIC is compelled to resolve all issues in favour of the public interest.

Clear separation of compliance and advice bodies in Queensland

As set out above, the QIC has no investigative powers or functions. Functions such as monitoring, compliance, and enforcement are the responsibility of separate agencies.

This separation of responsibilities is desirable as the level of personal disclosure by designated persons, as well as the confidence and trust placed in the QIC by them, inherently tends to distort fact and character assessment. Such distortions may affect the functions of a body also tasked with monitoring and enforcement.

The QIC's separation and clear lack of investigative and enforcement functions is also aimed at engendering greater confidence and trust in those seeking advice.

Confidential integrity advice mechanisms and preventing misconduct and corruption

The provision of a dedicated integrity advisory agency, is a critical and important preventative mechanism that can disrupt and halt a detrimental chain of events, leading to corruption or misconduct. Further, it is in the public interest for designated persons to be able to confidentially seek advice on ethical issues, without fear of retribution, in times of uncertainty, so that any issues are resolved in favour of the public interest.

As evidenced by the significant rise in demand for advice services provided by the QIC, the advisory service of the QIC is currently extremely well utilised.

In the 2017-18 financial year, the QIC saw a four-fold increase in the number of requests for advice, rising to 216 requests from an average of 58 per year since the inception of the QIC 18 years ago. This upward trajectory is continuing with request numbers almost doubling again in the current financial year. It is predicted advice requests will total 360-400 for the 2018-19 financial year.

The significant rise in demand for advice requests may indicate the need for such a service. Further, the timeliness of the pronounced rise may indicate a response to heightened expectations from the public, a greater commitment to ethics and integrity by those responsible to the public, and heightened ethical awareness more generally.

Enhancing culture through the promotion of best practice standards

As well as the advisory functions and maintenance of the lobbyist register, the QIC has a statutory obligation to promote public confidence by raising awareness of ethics and integrity issues. One avenue used by the QIC to achieve this is through education, including developing resources for various sectors.⁶

In developing resources, the QIC has a behavioural-cultural focus,⁷ that aims to raise awareness of best practice standards and positive behaviour.⁸

Ideally, by providing best practice standards the intention is that such standards will become a 'normative mechanism', that is, norms that are prevalent and observed.⁹ The provision of clear examples of what good behaviour looks like also has the favourable side-effect of making any departure from the norms more visible and manageable in the public interest.¹⁰

Summary

The QIC is uniquely placed to provide insight into the important role that education and ethically sound advice play in preventing misconduct and corruption.

The proposed model would be enhanced by broadening its focus to include an independent integrity advisor. This is more likely to impact on culture in a proactive, positive, meaningful, and sustainable way.

The addition of an independent integrity advisor to the model would also have the benefit of adding a critical and important preventative mechanism by way of, in some instances, disrupting and halting the chain of events that lead to misconduct and corruption. This is particularly the case for the three key areas of corruption: undisclosed or poorly managed conflicts of interest, acceptance of inappropriate gifts and hospitality, and personal favours.

Further, a less narrow approach would facilitate specialisation and diffuse overall prevention, administration, monitoring, compliance, and enforcement responsibilities. It would also minimise the risk of 'regulatory capture', where an agency becomes overly sympathetic to those it is meant to regulate.

Allowing public officials to seek advice on complex ethical and integrity issues, is a key element in preventing corruption and misconduct before it manifests, and is akin to a proactive model, rather than a reactive one.

⁶ *Integrity Act 2009* (Qld), s7(1)(d).

⁷ K. Chon-Kyun, 'Anti-Corruption Initiatives and E-Government: A Cross-National Study (2014) 14 *Public Organizations Review*, 385-396, 387.

⁸ A. Graycar & A. Masters, 'Preventing malfeasance in low corruption environments: twenty public administration responses (2018) 25 *Journal of Financial Crime* 1, 170-186, 173-4; J. Estanisluou (2014) *Good governance and anti-corruption*, Institute for Solidarity in Asia, Makati City.

⁹ K. Chon-Kyun, 'Anti-Corruption Initiatives and E-Government: A Cross-National Study (2014) 14 *Public Organizations Review*, 385-396, 387.

¹⁰ A. Graycar & A. Masters, 'Preventing malfeasance in low corruption environments: twenty public administration responses (2018) 25 *Journal of Financial Crime* 1, 170-186, 173-4; J. Estanisluou (2014) *Good governance and anti-corruption*, Institute for Solidarity in Asia, Makati City.