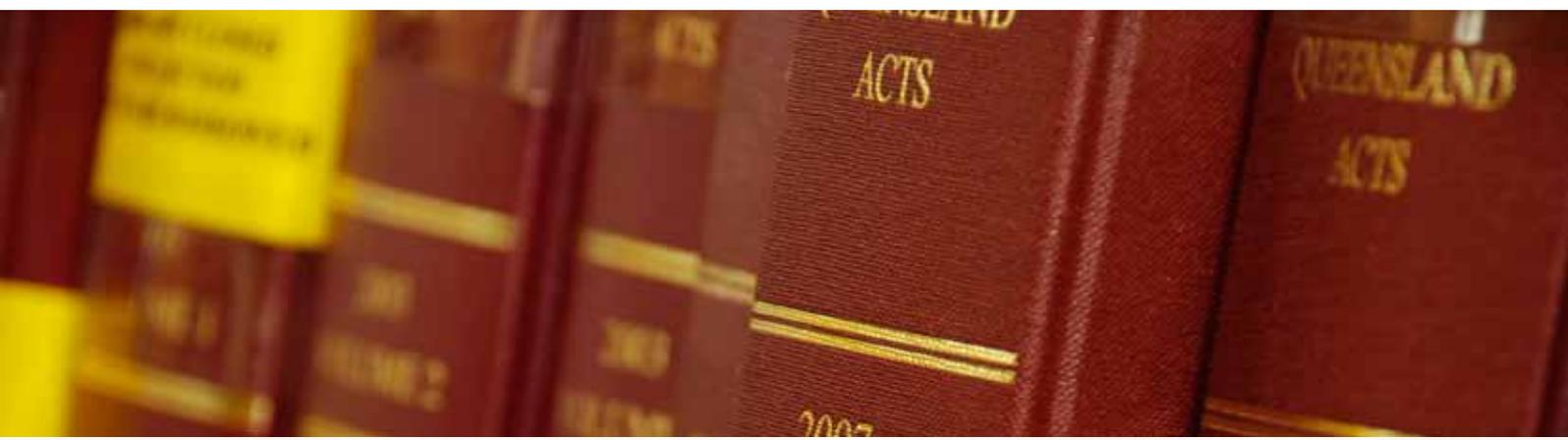
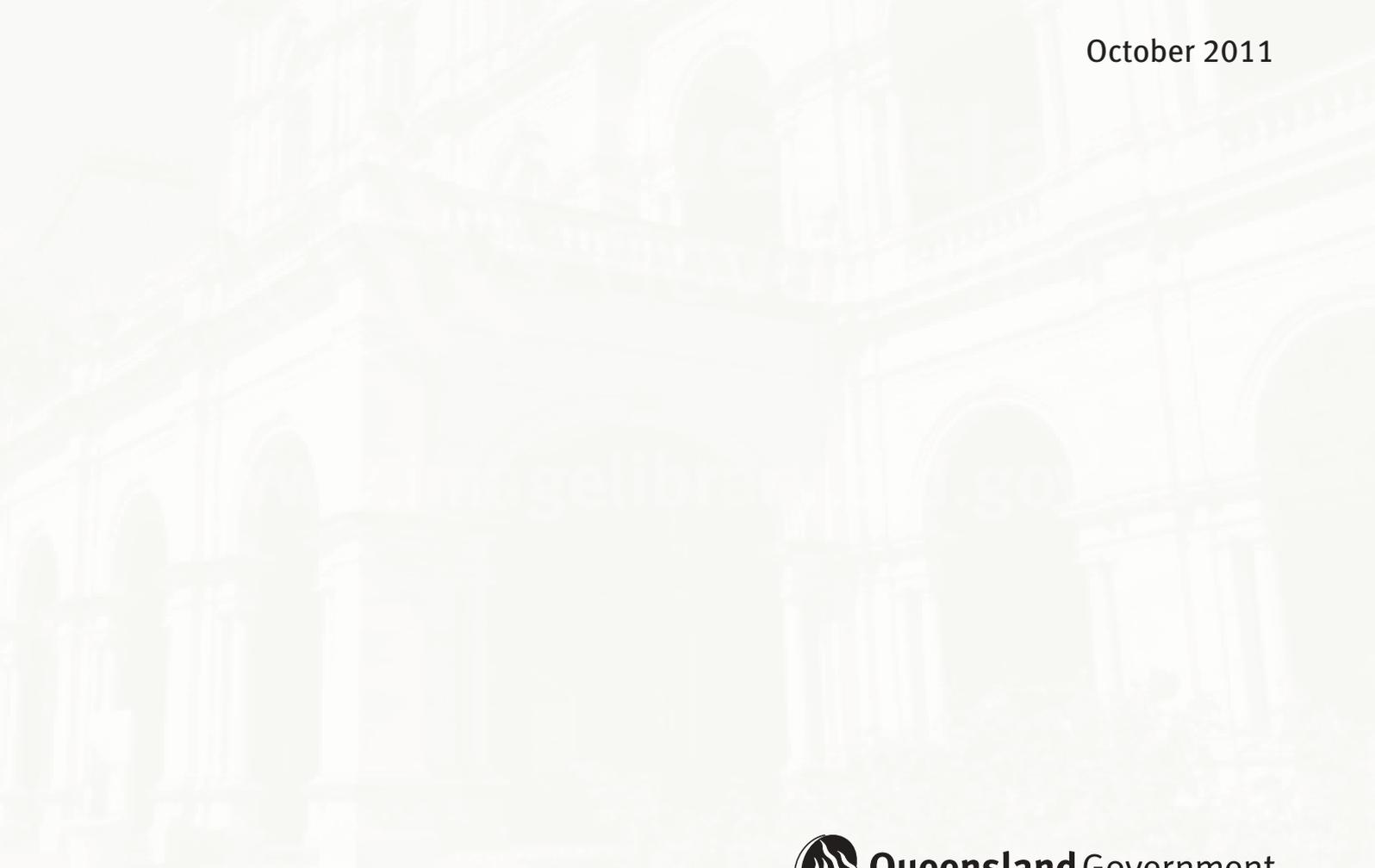


Review of the *Integrity Act 2009* Issues paper



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Key questions for consultation

The Queensland Government wants to hear your views on the operation of the *Integrity Act 2009* (the Integrity Act). In particular:

1. Do you consider that the role and functions of the Integrity Commissioner are appropriate or are there ways in which they could be improved?
2. Are there any specific issues that the government needs to consider regarding the operation of the Integrity Act?
3. Do you think that Members of Parliament should be required to meet with the Integrity Commissioner (at least once a year) to discuss ethics and integrity issues?
4. What are your views on how the lobbyist provisions (Chapter 4 of the Integrity Act) are working in practice? Do you consider that there is a need to further clarify the operation of the Integrity Act in the context of town planners?
5. Do you consider that the sanctions for lobbyists who breach lobbying provisions are adequate and appropriate?
6. Are the post-separation employment requirements for senior government representatives appropriate?
7. Is there any further material required to guide contact between government, the lobbying industry and former senior government representatives?
8. Do you consider that nationally uniform lobbying regulations would be appropriate?
9. How can the Queensland Government, local government and the Integrity Commissioner continue to work together to implement the integrity framework under the Integrity Act?

Background

In 2009, the Premier announced a thorough review of integrity and accountability issues in Queensland. Widespread consultation was conducted with the public through release of the discussion paper *Integrity and Accountability in Queensland* in August 2009, and through a series of online and discussion forums around Queensland during August and September 2009.

The government's response to this review was released in November 2009 in the *Response to Integrity and Accountability in Queensland*. This paper set out sweeping reforms to Queensland's integrity and accountability framework, which included both legislative and administrative improvements. This program of reform has meant that in many ways, Queensland leads the nation on integrity and accountability.

The first stage of the reforms resulted in the commencement of the Integrity Act on 1 January 2010 and included such landmark reforms as:

- introducing Australia's first legislative regime for the regulation of the lobbying industry
- expanding the role of the Integrity Commissioner to include responsibility for oversight of the lobbying industry
- banning the payment of success fees
- expanding the jurisdiction of the Crime and Misconduct Commission to cover government owned corporations.

The second stage of integrity and accountability reform was implemented via the Integrity Reform Bills, which were passed by the Parliament in September 2010. These Bills covered matters such as:

- introducing a new legislative framework for the employment of Ministerial and Opposition staff, separate to the public service, through the *Ministerial and Other Office Holder Staff Act 2010*
- reforming the whistleblowers protection regime, through the new *Public Interest Disclosure Act 2010*
- creating new legislative requirements for Members of Parliament and statutory office holders to declare their interests
- amending the *Civil Liability Act 2003* to allow for apologies without admission of legal liability
- amending the *Public Sector Ethics Act 1994* to allow the introduction of a single code of conduct for the public service.

Building on the Queensland Government's comprehensive suite of integrity and accountability measures, in May 2011, the *Electoral Act 1992* was amended to, among other things:

- limit political donations to candidates endorsed by a political party and to each political party

- cap campaign expenditure by political parties, third parties and candidates.

Also in May 2011, the Parliament passed the *Parliament of Queensland (Reform and Modernisation) Amendment Act 2011*, which introduced historic reforms to the parliamentary committee system to strengthen and support the role of the Legislative Assembly in scrutinising legislation and executive government.

A comprehensive summary of the recent reforms to Queensland's integrity and accountability framework is at Appendix C.

As part of the government's ongoing commitment to integrity and accountability, a review of the Integrity Act is now being undertaken to identify any potential areas of improvement, including with respect to the operation of the lobbying regulations.

Free and open access to the institutions of government is a vital element of our democracy. Consequently, lobbying may be undertaken by many people in the community in relation to a broad range of matters. In effect, lobbying can be any communication by a member of the community seeking to express their views or interests to a government representative on a matter that is subject to a decision of government.

The public has a clear expectation that lobbying activities will be carried out ethically and transparently, and that government representatives who are approached by lobbyists are able to establish whose interests the lobbyists represent so that informed judgments can be made about the outcome they are seeking to achieve.

It is important to recognise that professional lobbyists play a legitimate role in the democratic process by assisting individuals and organisations to communicate their views on matters of public interest to government, and so may help to improve outcomes for individuals and the community as a whole.

Current regulation of the lobbying industry in Queensland provides that government representatives must not knowingly permit an entity to carry out a lobbying activity for a third party client with the government representative unless the entity is a registered lobbyist. This means that if a government representative is aware that an entity seeking to carry out a lobbying activity is not a registered lobbyist, the government representative must give the entity's details to the Integrity Commissioner as soon as practicable. There is no barrier to meeting with lobbyists who are listed on the Register of Lobbyists and who are not subject to the post-separation employment restrictions.

Introduction

The commencement of the Integrity Act in January 2010 marked the culmination of a widespread review of Queensland's integrity and accountability framework. However, ensuring that Queensland has the most open and accountable system of government is an ongoing process. Given the Act has now been in operation for over 18 months, it is timely that its operation now be reviewed.

The purpose of this review is to examine the practical application of the Integrity Act in order to identify and resolve any issues arising during implementation. Specifically, it will be to assess the effectiveness of the operation of the Act, taking into account the practical experience of key stakeholders including, for example, lobbyists, local government and other government representatives, in applying the requirements of the Act. The Terms of Reference for the review is at Appendix A.

While the introduction of the Integrity Act has contributed to a stronger and more transparent integrity and accountability framework, feedback from the community and stakeholders regarding the practical operation of the Act is an important tool in evaluating the longer term efficacy of the current regulatory regime.

Accordingly, in early 2011, the Queensland Integrity Commissioner, Dr David Solomon AM (the Integrity Commissioner) wrote to a range of key stakeholders, including registered lobbyists, government departments and local governments, inviting them to make submissions to him regarding the operation of the lobbying scheme and the lobbying provisions in the Integrity Act. A total of 35 responses were received by the Integrity Commissioner, and a range of recommendations made by Dr Solomon as a result. Both the submissions and the Integrity Commissioner's recommendations can be viewed online at www.integrity.qld.gov.au/page/tools/whats-new.shtml#recommendations.

The issues raised by the Integrity Commissioner in his recommendations have been taken into account in preparing this issues paper, along with other recent related reports such as the New South Wales Independent Commission Against Corruption (ICAC)'s report *Investigation into corruption risks involved in lobbying* (the ICAC Report). Rather than dealing individually with each of the Integrity Commissioner's recommendations, the issues paper canvasses broad topics in order to encourage general discussion and assist stakeholders in making submissions to the review.

The government is committed to ensuring that the Integrity Act is strengthened and improved where necessary, and is therefore seeking feedback on the issues raised in this paper and any other issues considered relevant to the operation of the Integrity Act.

The Integrity Act is available online at www.legislation.qld.gov.au/Acts_SLs/Acts_SL_I.htm.

Queensland's Integrity and Accountability Framework

The Integrity Act

The Integrity Act introduced Australia's first legislative regulation of the lobbying industry (replacing the previous *Queensland Contact with Lobbyists Code*) and ban on the payment of success fees to lobbyists. The Act commenced on 1 January 2010.

The Integrity Commissioner's role

The Integrity Act expanded the role of the Integrity Commissioner to include responsibility for maintaining the Register of Lobbyists, and enhanced the independence of the office by making the Integrity Commissioner an officer of the Parliament. This means that the Integrity Commissioner now reports to the Parliament through the Finance and Administration Committee, rather than directly to the Premier.

The Integrity Commissioner is empowered under the Integrity Act to give ethics or integrity and conflict of interest advice to designated persons. Designated persons include Ministers, Parliamentary Secretaries, their staff, all Members of Parliament, statutory office holders, chief executive officers (CEOs) and senior public servants whose request for advice is supported by their CEO. The Integrity Act also includes an expanded role for the Integrity Commissioner to meet with and give advice to Members of Parliament on ethics and integrity issues in relation to their declarations of financial interests.

The Integrity Act sets out the framework for the giving of such advice, including how requests for advice on ethics or integrity issues may be made by designated persons, the requirements for the giving of such advice by the Integrity Commissioner, and the Integrity Commissioner's obligations to disclose ethics and integrity information under the Integrity Act.

Lobbying

The Integrity Act also provides the legislative framework for the regulation of the lobbying industry, which is overseen by the Integrity Commissioner. It provides a statutory basis for the Register of Lobbyists, whereby lobbyists are required to apply to be listed on the Register prior to undertaking lobbying activities with government. Government representatives (which includes the Premier or another minister, a Parliamentary Secretary, a councillor, a public sector officer, a ministerial staff member and a Parliamentary Secretary staff member) are not permitted to allow lobbying activity except by registered lobbyists.

Post-separation employment

Post-separation employment requirements apply under the Integrity Act. Former senior government representatives (former Ministers, Parliamentary Secretaries, ministerial and Parliamentary Secretary office staff and senior executives within the public sector) are restricted from lobbying in areas with which they had official dealings for two years after ceasing to hold public office or employment in the public sector.

The Integrity Act also prohibits the payment of success fees to lobbyists for achieving favourable outcomes from government.

Further information regarding the broader legislative framework is at Appendix B.

The Integrity Commissioner's Review

The Integrity Commissioner undertook a review of the lobbying provisions in the Integrity Act in early 2011. The Integrity Commissioner indicated the review was prompted by “a number of concerns and developments” in relation to the scheme. Key stakeholders were notified of the review, and a total of 35 submissions were received.

Taking into account the submissions made by stakeholders, as well as the recommendations made by ICAC in the ICAC Report, the Integrity Commissioner has made a range of recommendations about the lobbying scheme and the operation of the Integrity Act generally.

The Integrity Commissioner made eight recommendations with regard to lobbying:

1. That the lobbyists registration scheme be made to meet public expectations of transparency and integrity by requiring the registration of some of those third party lobbyists that are excluded at the moment and by making special provision to ensure that in-house lobbyists are also covered, though not by precisely the same regime as third party lobbyists. In the alternative, the Integrity Commissioner recommends that section 41(6) should be amended to include the sentence “but such an entity does not carry out incidental lobbying activities when one of the reasons a client has engaged the entity is for the entity to seek to influence State or local government decision making.”
2. That section 41(3)(b) of the Integrity Act be amended to provide an exemption only for representatives of employers and employees and professional bodies such as the Queensland Law Society and that there be no general exemption for entities constituted to represent the interests of members.
3. That subsections 41(3)(d) and 41(6) be deleted from the Act. Sections 41(3)(d) and 41(6) collectively provide that an entity that carries out “incidental lobbying activities” is not captured by the lobbying provisions and therefore not required to register on the Register of Lobbyists. Under section 41(6) an entity carries out “incidental lobbying activities” 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.
4. That there be a requirement (added to section 71) that a government representative must not allow themselves to be lobbied by an unregistered entity unless that entity undertakes to observe the relevant parts of the Lobbyists Code of Conduct in its dealings with the government.
5. That section 42(1)(e) of the Integrity Act be deleted and instead its provisions be included under section 42(2) as matters that are not lobbying activity.
6. That a sanctions regime be introduced for breaches of section 71(1) and (2) of the Integrity Act.
7. That section 72A be amended to make it clear that a “responsible person for a government representative” has an obligation to disclose to the Integrity Commissioner, if requested, information about contacts that amount to lobbying, whether by registered lobbyists or otherwise.
8. That section 72A should include a note pointing out that the *Public Records Act 2002* requires that records must be made and kept of all contacts where entities seek to influence government decision making, whether the entity is registered or not.

With regard to the operation of the Integrity Act generally, the Integrity Commissioner made four recommendations:

1. The Integrity Act should be amended to allow some former designated persons (former Members of Parliament and Ministers, former statutory office holders, former chief executives and former staff of Ministers and Parliamentary Secretaries) to seek advice from the Integrity Commissioner about post-separation issues for a period of two years after they cease to be designated persons.
2. The Integrity Act should be amended to include a part detailing the post-separation obligations of former senior government representatives. The part should include sanctions for breaches of the Act.
3. The Integrity Act should be amended to allow the Integrity Commissioner the option of providing advice to a “relevant officer” where the officer’s chief executive has not provided the authority required by section 15(3).
4. The Integrity Act should be amended to give the Integrity Commissioner authority to review all declarations of interest with which he must be provided under a statute. If the Integrity Commissioner identifies a conflict or possible conflict, the Commissioner should be entitled to raise the issue directly with the officer concerned. If the issue is not resolved satisfactorily, the Integrity Commissioner should be permitted to raise the matter with the relevant Minister.

Further information regarding the Integrity Commissioner’s review, including key stakeholders’ submissions, can be viewed online at www.integrity.qld.gov.au/index.shtml.

Key issues

The role of the Integrity Commissioner

In recognition of the importance of the role of the Integrity Commissioner in Queensland's integrity framework, the Integrity Act enhanced the functions and independence of the Integrity Commissioner, including providing for the Integrity Commissioner to be an officer of the Parliament.

The Integrity Commissioner is responsible for giving advice on integrity and ethics issues and for maintaining the Register of Lobbyists. The functions of the Integrity Commissioner are detailed in the Integrity Act and include:

- giving written advice to Ministers, Members of Parliament, senior public servants and others about ethics or integrity issues, including conflicts of interest
- meeting with, and giving written or oral advice to, Members of Parliament on ethics and integrity issues regarding their declarations of financial interests
- keeping the Register of Lobbyists and having responsibility for the registration of lobbyists
- raising public awareness of ethics or integrity issues by contributing to public discussion of these issues relevant to the Integrity Commissioner's functions.

The Integrity Act expanded the types of advice that the Integrity Commissioner could give from advice regarding conflict of interest issues only, to include ethics or integrity issues, including a conflict of interest issue. The expansion of the Integrity Commissioner's role was an important measure in further strengthening Queensland's integrity regime.

The Integrity Commissioner will now report to the Parliament through the Finance and Administration Committee. In addition, the responsibilities of the Integrity Commissioner will be relevant to the new Ethics Committee (which examines any matters referred to it with respect to complaints about the ethical conduct of particular members or alleged breaches of parliamentary privilege) and the Committee of the Legislative Assembly (which has oversight and responsibility for the business of the Legislative Assembly, including the ethical conduct of Members of Parliament, including the Register of Members' Interests and the Code of Ethical Conduct for Members).

With regard to the giving of advice, the Integrity Commissioner has also recommended that some former designated persons (former Members of Parliament and Ministers, statutory office holders, chief executives and staff of Ministers and Parliamentary Secretaries) be permitted to seek advice from the Integrity Commissioner on post-separation issues for a period of two years after they cease to be designated persons. Such an amendment would have benefit in facilitating compliance with the post-separation employment restrictions, however it would

have an impact on the workload and resourcing of the Integrity Commissioner.

Also in relation to the Integrity Commissioner's ethics and advice function, regular meetings with Members of Parliament assist in ensuring that integrity matters remain at the forefront of considerations of Members, and assist them in managing any potential conflicts. In conjunction with the existing ability of Members of Parliament to request a meeting with the Integrity Commissioner, the Integrity Act could be amended to require that all Members meet annually with the Integrity Commissioner to discuss ethics and integrity issues.

1. Do you consider that the role and functions of the Integrity Commissioner are appropriate or are there ways in which they could be improved?
2. Are there any specific issues that the government needs to consider regarding the operation of the Integrity Act?
3. Do you think that Members of Parliament should be required to meet with the Integrity Commissioner (at least once a year) to discuss ethics and integrity issues?

The regulation of lobbying

Queensland already has one of the strongest systems of lobbying regulation in Australia. Lobbying activities are regulated under Chapter 4 of the Integrity Act. Section 41 of the Act defines a lobbyist as "an entity that carries out lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client."

Certain entities are excluded from this definition. They include non-profit entities such as charities, churches or environmental societies that do not conduct activities for the profit or gain of individual members, or any lobbyists engaged on behalf of such entities. The Integrity Act therefore does not restrict non-profit entities from undertaking their activities in pursuit of community goals. In addition, entities (and their employees) that conduct lobbying activities for the purpose of representing the entity's own interests are excluded from the definition of lobbyist.

Lobbying activity and contact is defined under section 42 as "contact with a government representative in an effort to influence State or local government decision-making." Certain contact is excluded under section 42(2), such as contact with a committee of the Legislative Assembly or a local government. Contact includes contact via telephone, email, writing and face-to-face meetings.

Under the Integrity Act, the Integrity Commissioner is empowered to keep a Register of Lobbyists. The Register is published on the Integrity Commissioner's website and must contain certain particulars for each registered lobbyist.

The Act sets out the processes for applying for registration and enables the Integrity Commissioner to refuse to register a lobbyist and cancel registration in certain circumstances.

Lobbying by an unregistered entity is prohibited under section 71 of the Integrity Act. Specifically, an entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client, and government representatives are not permitted to allow lobbying activity except by registered lobbyists.

The Integrity Act also allows the Integrity Commissioner to approve, after consultation with the relevant parliamentary committee, a Lobbyists Code of Conduct. This code specifies the standards of conduct expected of lobbyists and consistent with the Act, is designed to ensure that contact between lobbyists and government representatives is carried out in accordance with public expectations of transparency and integrity.

The payment of success fees is also banned under section 69 of the Integrity Act and a penalty applies where a lobbyist receives or agrees to receive such fees. Success fees, in relation to a lobbying activity, means an amount of money or other reward, the giving or receiving of all or part of which is contingent on the outcome of the lobbying activity or of lobbying activities including the lobbying activity.

Queensland's lobbyist regime aims to facilitate dealings with government in a transparent and accountable manner. Lobbyists assist in government decision-making by ensuring that people's interests are effectively represented and communicated to decision-makers. This enhances the quality of the information available to the decision-maker and can lead to better quality decisions. The regime must therefore continue to strike a balance between facilitating valuable communications with decision-makers, and maintaining transparency.

In-house lobbyists

The current regulatory scheme applies to what is known as "third party lobbyists", that is, lobbyists who carry out lobbying activities for a third party client or whose employees or contractors carry out a lobbying activity for a third party client. Third party lobbyists are subject to the lobbying requirements in the Integrity Act.

The application of the lobbying regime to government specialists employed directly by corporations (in-house lobbyists) is an issue that has been raised both by ICAC and by the Integrity Commissioner. In the ICAC Report, it was noted that regardless of whether lobbying activity is part of ordinary professional work, it is nevertheless lobbying and carried out "behind closed doors." Accordingly, ICAC's view is that all lobbying should be subject to scrutiny in order to allow access to information and reduce public suspicion about lobbying.

The Integrity Commissioner agrees with this view and considers that the lobbying registration scheme should be extended to require registration of some of those third party lobbyists that are currently excluded and that special provision should be made to ensure that in-house lobbyists

are also covered, though not by precisely the same regime as third party lobbyists.

The potential application of the lobbying regulations to in-house lobbyists was specifically considered during the development of the Integrity Act. The decision was made not to extend the scope of the Act beyond the professional third party lobbyist sector, given that transparency already exists in relation to in-house lobbyists who are clearly representing their employer's interests in dealings with government.

This view was shared by the Commonwealth Government in its response to a report by the Senate Standing Committee on Finance and Public Administration in 2008, titled *Knock, Knock... Who's there? The Lobbying Code of Conduct*. In that report, the Committee recommended that coverage of the lobbyists code at the Commonwealth level should be extended to include unions, industry associations and other businesses conducting their own lobbying activities.

However, the Commonwealth Government considered that "concerns about transparency do not arise in relation to 'in-house' lobbyists and employees of peak industry bodies, trade unions and religious organisations, as it is clear whose interests they represent when they lobby government representatives."

In any extension of the obligations under the Act, it is important to consider the underlying concern of making clear whose interests are represented by a third party lobbyist. This concern would not arise in relation to, for example, a professional body such as the Queensland Law Society, or a religious organisation, as it is clear whose interests are represented.

The Queensland Government is seeking public commentary on this issue so that we can strike a balance between casting the net too widely, which could render the lobbyist register meaningless, and too narrowly, which could exclude categories of people who should be included.

Consistent with the current position in Queensland, other Australian jurisdictions do not regulate the lobbying activities of in-house lobbyists. Consistency across jurisdictions assists business in complying with lobbying regulations, reduces administrative costs and assists in preventing inadvertent breaches by lobbyists.

The Queensland Government welcomes your feedback in relation to the issue of in-house lobbyists.

Incidental lobbying activities

Entities that carry out incidental lobbying activities are excluded from the definition of a lobbyist under section 41 of the Integrity Act. Under section 41(6), an entity carries out such activities "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." Examples of entities are provided and include, for example, an entity carrying on the business of providing architectural services as, or by using, a practising architect under the *Architects Act 2002*.

Such entities have been excluded on the basis that an entity that undertakes a business primarily directed towards the delivery of technical or professional services, such as architecture, engineering, legal practice or accountancy, will not generally undertake lobbying activity as a core part of its services and should therefore not be captured.

However, this provision is not intended to provide a blanket exemption from the registration requirement for all of the types of professions listed in section 41(6), irrespective of the nature of the lobbying activities in which they engage. Rather, whether an entity is conducting only incidental lobbying activities in a particular case will depend on whether the lobbying activities are occasional only and incidental to the provision of the professional or technical services by the entity to their client.

This assessment will necessarily involve a subjective judgement by the relevant government representative as to whether an entity is engaging in lobbying activity that is incidental only.

In this regard, concerns have been raised by stakeholders regarding the lack of clarity around what necessarily constitutes incidental lobbying activities and that the nature of such an assessment is subjective. Feedback indicates that this has been a particular issue in the context of town planning, with differing views held amongst local councils as to when contact constitutes incidental lobbying.

Accordingly, the Integrity Commissioner has recommended that the Integrity Act should be amended to clearly state that the making of a decision about planning or the giving of a development approval under the *Sustainable Planning Act 2009* (the Sustainable Planning Act) is contact that is not a lobbying activity.

Currently, such contact is included under section 42(1) as a lobbying activity and is therefore regulated under the Integrity Act.

In support of the Integrity Commissioner's recommendation, it could be argued that town planners already operate in a highly regulated environment and that such regulation already achieves the aims of the Integrity Act in relation to the regulation of lobbying activities. For example, town planners are already governed by a code of practice and are required to act in the public interest, and development application processes are currently adequately regulated by the *Sustainable Planning Act 2009*, as well as the *Local Government Act 2009* and *Local Government (Operations) Regulation 2010*.

It could also be argued that a substantial part of the planning role involves the pre-application process in that town planners prepare the application and ensure that all relevant information is before the assessment manager, rather than being engaged in actual lobbying activity in an effort to influence decision making.

The Queensland Government has previously indicated it was not the intention of the Act to capture planning professionals engaging in professional planning activities and services.

4. What are your views on how the lobbyist provisions (Chapter 4 of the Integrity Act) are working in practice? Do you consider that there is a need to further clarify the operation of the Integrity Act in the context of town planners?

Sanctions

The Integrity Commissioner administers the Register of Lobbyists under the Integrity Act, and has responsibility for deciding registration applications from lobbyists. Accordingly, the Act empowers the Integrity Commissioner to refuse or cancel a registration.

For example, the Integrity Commissioner may refuse to register a person where:

- the application includes a materially false or misleading representation or declaration
- the entity or proposed listed person has previously failed to comply with obligations under the Lobbyists Code of Conduct or a requirement under Chapter 4 (Regulation of lobbying activities) of the Act
- another ground the Integrity Commissioner considers sufficient.

The Integrity Commissioner may also cancel a lobbyist's registration where:

- the registrant was registered because of a materially false or misleading representation or declaration
- the registrant or listed person has failed to comply with obligations under the Lobbyists Code of Conduct or a requirement under Chapter 4 of the Integrity Act
- other grounds that the Integrity Commissioner considers sufficient to cancel a registration.

In the interests of natural justice, the refusal or cancellation can only occur after a show cause process takes place, in which lobbyists are provided with reasons for the proposed refusal or cancellation and given the opportunity to make representations to the Integrity Commissioner. In addition, the grounds mentioned as reasons for cancellation of a registration may also be grounds for issuing a warning or suspending a registrant's registration.

In the ICAC Report, it was noted that a range of penalties including reprimand, fine, striking off or other penalty, are likely to be useful across the entire spectrum of lobbyists. This view is also supported by the Integrity Commissioner.

In response to the ICAC Report, the *NSW Government Lobbyist Code of Conduct* has been amended to require the Director-General to remove a lobbyist from the Register if they have been found guilty of that offence and to extend the discretion to remove lobbyists from the Register in other cases.

In Queensland, this could involve implementation of graduated sanctions, such as administrative fines, which the Integrity Commissioner would be empowered to impose

in addition to his ability to issue warnings or suspensions under the Integrity Act, taking into account the seriousness of the nature of the conduct in question.

5. Do you consider that the sanctions for lobbyists who breach lobbying provisions are adequate and appropriate?

Post-separation employment

Post-separation employment for senior government representatives is restricted in Queensland.

Section 70 of the Integrity Act prohibits former senior government representatives from conducting related lobbying activities for two years from the date they cease to hold public office. A person is a former senior government representative under section 45 of the Act if the person was one of the following people: the Premier or another Minister; a Parliamentary Secretary; a councillor; a public sector officer who was a chief executive, senior executive or senior executive equivalent; a ministerial staff member; a Parliamentary Secretary staff member; and is no longer a government representative.

Additionally, a government representative must not knowingly permit a former senior government representative of less than two years to undertake related lobbying activities. A similar ban is imposed on Ministers and Parliamentary Secretaries by the Ministerial Code of Ethics on business meetings.

“Related lobbying activity” is defined in the Integrity Act as activities which relate to the former senior government representative’s official dealings for two years prior to ceasing to hold public office. This is to ensure that former senior government representatives are unable to gain inappropriate personal benefit by using information gained through previous employment in areas for which they previously had some official responsibility.

Other jurisdictions have similar restrictions in place. For example, South Australia imposes a two year restriction whereas the Commonwealth restriction is 18 months for Ministers or Parliamentary Secretaries and 12 months for other specified people. In Tasmania, such a ban applies for 12 months.

In New South Wales, the *Lobbying of Government Officials Act 2011* prohibits a former Minister or Parliamentary Secretary from engaging in lobbying in the 18 months after they cease to hold office. The Act makes it a criminal offence if the former Minister or Parliamentary Secretary lobbies a government official in relation to an official matter dealt with by them, in relation to their portfolio responsibilities, during the 18 months before they ceased to hold office.

New South Wales is the only jurisdiction which legislates for sanctions in relation to lobbying by former Ministers or Parliamentary Secretaries.

The issue of post-separation employment was raised by the Commonwealth Government in a discussion paper released

in July 2010 titled *Possible Reforms to the Lobbying Code of Conduct and Register of Lobbyists*. In that paper, it was noted that criticism of former Ministers has not been limited to their lobbying activities in areas related to their portfolio responsibilities. Rather, lobbying in other areas has also resulted in disapproval. The paper states that “*the criticism has centred on lobbyists allegedly making improper use of their contacts in government, rather than their knowledge of particular issues.*”

The Commonwealth Government recently amended its Lobbying Code of Conduct to require registered lobbyists to disclose previous employment as a government representative, including the date that the person became a former government representative.

The Integrity Commissioner has also suggested that the post-separation obligations of former senior government representatives, which are currently applied under government policy, should be detailed in the Integrity Act and that sanctions should be included for non-compliance.

The current administrative regime provides flexibility in responding to emerging issues and ensuring that requirements keep pace with public expectations, which would be difficult to achieve via legislation. The objective of regulation in this area is to provide an accountable and transparent framework rather than a prohibitive regime that could be seen as overly restrictive.

Enshrining post-separation employment obligations and sanctions in legislation could be overly onerous and difficult to both monitor and enforce. An alternative could be to adopt a similar approach to the Commonwealth and require registered lobbyists to disclose previous employment as a government representative, including the date that the person became a former government representative.

6. Are the post-separation employment requirements for senior government representatives appropriate?

7. Is there any further material required to guide contact between government, the lobbying industry and former senior government representatives?

National uniformity

In his recommendations to government, the Integrity Commissioner also noted that a number of the submissions received during his review advocated more uniformity across Australian jurisdictions in the requirements for registration of lobbyists and post-separation employment requirements for senior government representatives.

Similarly, ICAC noted in the ICAC Report that the transnational structure of lobbying entities, including representational, corporate and peak bodies and the administrative burden caused a lack of harmony between systems among states and at the federal level. ICAC also noted that many witnesses supported a harmonised national system of lobbying registration.

Nationally consistent regulation of lobbying could have a range of benefits including:

- clarity of obligations and requirements across jurisdictions, both for registered lobbyists and government representatives
- reduction of the cost and administrative burden of registering in each jurisdiction, including if, for example, nationally consistent regulation was in the form of a single national register for lobbyists
- removal of unnecessary red tape for lobbying firms wanting to operate across jurisdictions
- reduction of instances of inadvertent breaches where lobbyists, including lobbying firms, predominately operating in one jurisdiction may be genuinely unaware of the different requirements in another jurisdiction.

8. Do you consider that nationally uniform lobbying regulations would be appropriate?

Recordkeeping

Good recordkeeping enhances accountability in government and is an important measure in ensuring transparency and accountability in Queensland's lobbying system.

Public agencies have a legal obligation to keep comprehensive records under the *Public Records Act 2002* (the Public Records Act). Section 7 of that Act requires that a public authority make and keep full and accurate records of its activities, as well as have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records. The Public Records Act establishes a comprehensive regime in relation to the making, managing, keeping and preserving of public records in Queensland.

The *Information Standard 40 'Recordkeeping'* (IS40) is the primary recordkeeping policy for state and local government in Queensland. The IS40 has been issued by the Queensland State Archivist to assist public authorities in meeting their recordkeeping obligations under the Public Records Act. Under IS40, public agencies are required to:

- comply with legal, administrative, cultural and business recordkeeping requirements
- establish and maintain reliable recordkeeping systems
- ensure that full and accurate records are adequately documented, preserved and made accessible for as long as those records have value.

In its *Good Decision-Making Guide*, the Queensland Ombudsman details the many benefits of good recordkeeping, including that it improves decision-making by providing decision-makers with detailed information on which to base their decisions, and enables an agency to establish how a particular decision was made, in the event it is challenged or is the subject of external or internal review. The Guide states that this can act as an important protection

for an agency by providing it with the means to explain why a certain decision was made.

Accurate recordkeeping is therefore a key component of any transparent lobbying regime. The Public Records Act, supported by IS40 and other relevant guidelines, already provides for a comprehensive government recordkeeping scheme. In support of this, the Queensland State Archivist in her submission to the Integrity Commissioner dated 20 April 2011, stated that

"By complying with Principle 7 of IS40, public authorities will achieve the objective of ensuring that lobbying is conducted in accordance with public expectations of transparency and integrity."

The Integrity Commissioner has suggested that section 72A of the Integrity Act could be amended to include a note pointing out that it is a requirement of the Public Records Act that records must be made and kept of all contacts where entities seek to influence government decision-making, whether the entity is registered or not.

9. How can the Queensland Government, local government and the Integrity Commissioner continue to work together to implement the integrity framework under the Integrity Act?

Conclusion

The Integrity Act is one of the core pillars of Queensland's integrity and accountability framework. It provides a legislative basis for the regulation of lobbying in Queensland, in addition to the provision of ethics and integrity advice to designated persons by the Integrity Commissioner.

The Act plays an important role in ensuring that government acts with the highest standards of integrity and accountability.

However, the integrity reform process is ongoing. It is important that the operation of the Integrity Act remains current and effective.

It is therefore timely to look at how the Integrity Act has been operating over the past 12 months. Your views on the effectiveness of the Act, including any issues that have arisen during implementation are important to us and will be used to help inform any legislative or administrative changes.

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

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

It is the intention of the Department of the Premier and Cabinet to publish via its website all submissions received. If you do not wish for your submission to be made public, please clearly indicate that it is being provided on a confidential basis.

The Department of the Premier and Cabinet is committed to protecting the personal information of individuals, in accordance with the *Information Privacy Act 2009*. If you provide a submission in an individual capacity we will not publish your name and address unless you indicate otherwise.

The Department of the Premier and Cabinet reserves the right not to publish material which infringes the privacy of individuals or could raise concerns for individuals or organisations.

Submissions

Submissions can be made via email at integrityactreview@premiers.qld.gov.au or sent to:

Review of the Integrity Act

PO Box 15185
Brisbane Qld 4002

You can also make a submission online at www.getinvolved.qld.gov.au

Submissions close on 19 December 2011.

If you require further information you may contact the Department of the Premier and Cabinet on telephone **07 3224 2974** or via email at integrityactreview@premiers.qld.gov.au

Appendix A – Terms of Reference for the Review of the Integrity Act

Background

The introduction of the Integrity Act followed an extensive review of integrity and accountability in Queensland which focused on a broad range of integrity and accountability issues. These included the regulation of lobbying, strengthening the role of the Integrity Commissioner and expanding the Crime and Misconduct Commission's powers allowing it to investigate government owned corporations.

However, ensuring that Queensland has the most open and accountable system of government is an ongoing process and the Queensland Government is committed that its integrity framework remains current and effective. Given the Integrity Act has now been in operation for over 12 months, it is timely that its operation be reviewed to ensure that the practical effect of the legislation is consistent with the government's policy objectives.

Purpose of the review

The review will be an operational review, to examine the practical application of the Integrity Act in order to identify and resolve any issues arising during implementation. Specifically, it will be to assess the effectiveness of the operation of the Act, taking into account the objectives of the Act; the views of the Integrity Commissioner; and the practical experience of key stakeholders, including, for example, lobbyists and government representatives, in applying the requirements of the Act.

Conduct of the review

The review will be conducted by the Department of the Premier and Cabinet, as lead agency for the Integrity Act.

An issues paper will be developed by the government for public consultation and the Integrity Commissioner will be consulted throughout the review, initially to assist in identifying any specific issues that may have to be considered as part of the review.

Public consultation

It is proposed to release the Issues Paper for public consultation at the beginning of October 2011 with submissions due by the end of December 2011. The Issues Paper will also be sent to key stakeholders, including the Integrity Commissioner, for consultation.

Parliamentary Committee oversight

The Integrity Commissioner, as an independent officer of the Parliament, is subject to the oversight of the Finance and Administration parliamentary committee. Although the operational review will be undertaken by the government rather than the Parliament, the Premier will write to the relevant parliamentary committee advising them of the process to ensure they are kept informed of developments in this portfolio.

Timeline

July – September 2011	Development of an issues paper and preliminary consultation with the Office of the Integrity Commissioner
Early October 2011	Issues paper released
End December 2011	Public submissions close
December 2011 – March 2012	Public submissions analysed and final report prepared

Appendix B – The broader legislative framework

The Integrity Act sits within a broader integrity and accountability legislative framework in Queensland. This framework assists in ensuring that Queensland stays at the forefront of open and accountable government.

The *Constitution of Queensland 2001*, *Parliament of Queensland Act 2001*, *Local Government Act 2009*, *Local Government Electoral Act 2011* and *Electoral Act 1992* broadly provide for the operation of the Legislative Assembly, the establishment of the system of local government in Queensland and the framework for the conduct of elections.

Queensland has a range of bodies, underpinned by legislation, which are responsible for overseeing and auditing the behaviour of the public sector. These include the Crime and Misconduct Commission, Queensland Ombudsman and the Queensland Audit Office (established under the *Crime and Misconduct Act 2001*, the *Auditor-General Act 2009* and the *Ombudsman Act 2001* respectively). These bodies assist in ensuring that government acts with integrity and do so via their investigatory functions.

Standards of integrity and accountability for the Parliament, the Executive and the public sector are underpinned by relevant policies, guidelines and legislation. These include the *Public Sector Ethics Act 1994*, *Public Service Act 2008* and *Police Service Administration Act 1990*, which each provide a legislative foundation for ensuring that Queensland has an ethical public service.

Other legislation underpins Queensland's integrity and accountability framework. For example, the *Criminal Code Act 1899* has a range of offences that apply in circumstances where a person has engaged in corrupt behaviour in the public sector including the offence of official corruption and the misdemeanour of abuse of office. The *Public Interest Disclosure Act 2010* (which reforms the *Whistleblowers Protection Act 1994*) applies to public officers who disclose wrongdoing in the public sector. The principal object of the Act is to promote the public interest by protecting such persons who disclose: unlawful, negligent or improper conduct affecting the public sector; danger to public health or safety; or danger to the environment.

The *Financial Accountability Act 2009* further provides for accountability and transparency in government through the preparation of and regular reporting against the government's stated broad objectives for the community and charter of fiscal responsibility.

The government owned corporation sector is governed by the *Government Owned Corporations Act 1993* which makes provision for a structural reform process (corporatisation) for nominated government entities.

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

Appendix C – Recent reforms to Queensland’s integrity and accountability framework

Since the review of integrity and accountability was announced by the Premier in 2009, a range of both legislative and administrative improvements have been implemented to enhance and improve Queensland’s integrity system. These include:

2009	New post-separation employment restrictions were introduced for Ministers, Parliamentary Secretaries, ministerial staff and senior public servants, limiting their ability to conduct business meetings and lobby government representatives after leaving public employment.
	The Queensland Contact with Lobbyists Code was implemented to create a Register of Lobbyists and regulate the conduct of third party lobbying of government representatives.
	The <i>Parliament of Queensland Act 2001</i> was amended to reform and restructure the parliamentary committee system to align with the portfolio structures within the government.
	The Right to Information reforms commenced, replacing the Freedom of Information regime and improving access to government-held information.
	The <i>Auditor-General Act 2009</i> was enacted which reinforced and enhanced the independence of the Office of the Auditor-General.
	The <i>Criminal Code 1899</i> and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Bill 2009 was passed which amended: <ul style="list-style-type: none"> • the <i>Criminal Code Act 1899</i> to create a new offence of misconduct in public office carrying a maximum penalty of seven years imprisonment • the <i>Public Service Act 2008</i>, <i>Police Service Administration Act 1990</i> and other legislation to enable disciplinary proceedings to continue against public servants and police officers after ceasing public service employment • the <i>Public Sector Ethics Act 1994</i> to allow all Members of Parliament to seek the advice of the Integrity Commissioner.
	The Attorney-General made a formal referral to the Crime and Misconduct Commission in November 2009 requesting a review of police disciplinary process. The Crime and Misconduct Commission released its report <i>Setting the Standard: A review of current processes for the management of police discipline and misconduct matters</i> on 21 December 2010, which is currently under consideration by the government.
2010	The <i>Integrity Act 2009</i> was enacted which: <ul style="list-style-type: none"> • established new legislative regulations over the lobbying industry, under the oversight of the Integrity Commissioner • banned the payment of success fees to lobbyists • provided the Integrity Commissioner with an expanded role as an independent officer of the Parliament • amended the <i>Government Owned Corporations Act 1993</i> to provide the Crime and Misconduct Commission with jurisdiction over government owned corporations.
	A new public service gifts and benefits policy was issued by the Public Service Commission and the Ministerial Handbook was amended to implement a consistent \$150 retail threshold for the declaration of gifts.
	The Public Service Commission issued a policy requiring new ministerial staff members and public servants to disclose their previous employment as a lobbyist.
	The Parliamentary Register of Members’ Interests, ministerial gift register and departmental gifts registers were published online.
	The government introduced regular People’s Question Time sessions to address issues of community interest which are broadcast live on the internet.
	The Review of the Parliamentary Committee System Committee was established as a select committee of the Parliament on 25 February 2010 to report on how Parliamentary oversight of legislation could be enhanced. The committee delivered its report <i>Review of the Parliamentary Committee System</i> on 15 December 2010.
	A new Ethical Standards Branch was established and staffed within the Public Service Commission, which has developed training materials for a new compulsory ethical decision-making program and strengthened the role of the Public Sector Ethics Network.

	<p>The State Procurement Policy was reformed to expand the application of the policy, increase transparency requirements for awarded contracts and require the engagement of independent probity auditors or advisors for high risk procurements.</p>
	<p>The new <i>Ministerial and Other Office Holder Staff Act 2010</i> was enacted, which established a stand-alone framework for the employment of Ministerial and Opposition staff.</p>
	<p>The new <i>Public Interest Disclosure Act 2010</i> was passed, which reformed the <i>Whistleblowers Protection Act 1994</i> based on the recommendations of the Whistling While They Work project.</p>
	<p>The Integrity Reform (Miscellaneous Amendments) Bill 2010 was passed which amended:</p> <ul style="list-style-type: none"> • the <i>Public Sector Ethics Act 1994</i> to allow the adoption of the single code of conduct for the public service from 1 January 2011 • the <i>Parliament of Queensland Act 2001</i> to provide statutory obligations for Members of Parliament to declare their personal interests • the <i>Integrity Act 2009</i> and other legislation to require statutory office holders to declare their personal interests • the <i>Civil Liability Act 2003</i> to allow the issuing of apologies without admission of legal liability • the <i>Public Service Act 2008</i> and other legislation to implement the second phase of a post-separation disciplinary regime for all public servants and reflect the enhanced role of the Public Service Commission to promote an ethical culture in the public service.
	<p>The government released its inaugural report of responses to recommendations of the Crime and Misconduct Commission in December 2010.</p>
	<p>The government released the paper <i>Reforming Queensland's Electoral System</i> on 20 December 2010 that set out the government's policy on political donations and campaign financing reform to be implemented in 2011.</p>
2011	<p>In March 2011, the Premier announced the appointment of an independent expert panel to conduct a review of the Queensland police complaints, discipline and misconduct system. The panel's report contained 57 recommendations for both broad and specific changes to the current system. Following public consultation, the government has released its response to the report. Of the 57 report recommendations, the government supports, supports in principle or supports with amendment all but one recommendation. The new model for dealing with police complaints and discipline makes the system simpler, more effective and more transparent.</p>
	<p>The <i>Parliament of Queensland (Reform and Modernisation) Amendment Act 2011</i> was passed; the first step in implementing landmark reforms to the parliamentary committee system and hence the operation of the Queensland Parliament. The new system will strengthen and support the role of the Legislative Assembly in scrutinising legislation and executive government.</p>
	<p>In May 2011 the government amended the <i>Electoral Act 1992</i> to, among other things:</p> <ul style="list-style-type: none"> • limit political donations to candidates endorsed by a political party and to each political party • cap campaign expenditure by political parties, third parties and candidates.
	<p>The government released a new procurement guideline titled <i>Use of probity auditors and advisors in procurement</i> to assist government agencies in their application of the new state procurement requirements with respect to the engagement of probity auditors and advisors.</p>

