



Speech by

**Hon. PETER BEATTIE**

**MEMBER FOR BRISBANE CENTRAL**

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Hansard 26 May 1999

**PUBLIC SECTOR ETHICS AMENDMENT BILL**

**Hon. P. D. BEATTIE** (Brisbane Central— ALP) (Premier) (11.30 a.m.): I move—

"That the Bill be now read a second time."

On behalf of my Government, I am pleased to introduce the Public Sector Ethics Amendment Bill 1999, which provides for the establishment of Queensland's, and Australia's, first Integrity Commissioner. The purpose of the Integrity Commissioner is to encourage community confidence in Government and public institutions by helping Ministers and other elected and appointed senior officials avoid conflicts of interests. This Government is committed to ensuring that Ministers and other public officials responsible for public resources meet high ethical standards.

Public officials now have an opportunity to proactively obtain advice about conflict of interest matters from an Integrity Commissioner and, in doing so, prevent conflicts from arising. The commissioner will be able to provide, on request, independent and confidential advice to assist Ministers and other public officials to resolve the often complex and unique ethical dilemmas that can confront them—the many grey areas. The commissioner's advice will carry protections from liability for those who seek the commissioner's advice in good faith and substantially comply with it.

Conflicts of interests can be very complex matters. Conflicts may be difficult to define and even more difficult to resolve in a way that satisfies everyone and protects the public interest. It can be overwhelming to work through these difficult situations alone. My Government believes that a source of voluntary, confidential and expert advice on ethical dilemmas can be a real benefit in resolving potential conflicts before they happen. To this purpose, Ministers and other public officials will be able to approach the Integrity Commissioner to obtain advice about whether the retention or acquisition of specific interests would give rise to an unacceptable conflict.

The position of the Integrity Commissioner was first canvassed in Labor's Good Government policy statement in the course of the 1998 State election. It has been 10 years since the Fitzgerald inquiry identified the need for high standards of integrity and ethical behaviour in the public sector in Queensland. Since then, the two Labor Governments in Queensland have been responsible for pioneering reforms such as the establishment of the Electoral and Administrative Review Commission, the passage of the first ethics legislation in Australia covering public officials and the introduction of the Whistleblowers Protection Act 1994.

To further contribute to providing good government and public administration in Queensland, my Government now intends to enhance the Public Sector Ethics Act 1994 by providing for an Integrity Commissioner. My Government wants to return public faith to our political processes, and we will lead by example in our quest to improve the quality of this State's political life.

I will now outline the main features of the Bill. The Bill inserts a new Part 7 into the Public Sector Ethics Act 1994 to establish a Queensland Integrity Commissioner. The Integrity Commissioner will be able to provide confidential advice, on request, about personal conflict of interest issues to designated persons who represent or are connected with the Government of the day or who exercise significant powers on behalf of the Government. These designated persons include the Premier, Ministers, Parliamentary Secretaries, Government members of parliamentary committees, statutory office holders,

a range of chief executive officers, and persons giving advice in the offices of Ministers or Parliamentary Secretaries [section 27(1)].

Designated persons also include senior executive officers or senior officers in public service departments, public service offices and Government entities, who may request the commissioner's advice provided each request is authorised in writing by the relevant chief executive [sections 27(1)(g) & (h);29(1)(b)].

Apart from giving advice on request about conflict of interest matters, the Integrity Commissioner may also give advice on request about issues concerning ethics and integrity generally to the Premier [section 28(b)].

To complement the proactive functions of the Integrity Commissioner, the commissioner will also be able to assist public understanding of public integrity standards by contributing to conferences, seminars and public discussion of policy and practice relevant to the commissioner's functions [section 28(c)].

Seeking advice from the Integrity Commissioner will be a voluntary matter. The Integrity Commissioner will not, in general, be a watchdog for conflicts of interests. The functions of the Integrity Commissioner do not empower the commissioner to conduct any independent investigation, decision making or enforcement, as this is currently the role of the Criminal Justice Commission and will remain so.

In drafting the Bill, effort has been made to encourage Ministers and others to seek advice in relation to conflict of interest matters where they may be in doubt. As a result, relevant documents on designated persons' requests for advice, and the commissioner's advice itself, will be exempt from the provisions of the Freedom of Information Act 1992. Such an approach recognises that the Integrity Commissioner's advice to a designated person is comparable to legal advice provided and protected in accordance with legal professional privilege. A designated person who requests advice about a conflict of interest matter will, however, be able to disclose the documents relating to their request, should they choose to do so [section 34(2)].

Generally, documents and information relating to a request for advice held by the Integrity Commissioner will be treated as confidential. In certain specified and limited instances, the Integrity Commissioner will be required to disclose documents and information to a designated person about a conflict of interest matter relating to another designated person [section 34]. For example, the Premier may request and be provided by the commissioner with a copy of the documents containing a request for advice and the advice given by the commissioner in relation to any designated person, other than senior executives and senior officers [section 34(4)(a)].

Likewise, a Minister may request and be provided by the commissioner with a copy of a request for advice and the advice given in relation to a chief executive or statutory office holder of an agency for which the Minister is responsible, and other designated persons among the Minister's office staff [section 34(4)(b)]. Similarly, a Parliamentary Secretary may request and obtain documents and information about a conflict of interest matter in relation to a designated person among the secretary's office staff [section 34(4)(c)].

A chief executive may also request and obtain a copy of a request for advice and the advice given by the commissioner in relation to a senior executive officer or a senior officer in an agency for which the chief executive is responsible [sections 34(6) & (7)].

In each case, the Premier, Minister, Parliamentary Secretary and chief executive are not empowered to further disclose the documents and information involved to any person other than the designated person who is the subject of the advice. Furthermore, the Integrity Commissioner is prohibited from disclosing documents and information in respect of a person who was previously a designated person [section 34(8)].

The purpose of the Integrity Commissioner is to provide advice on conflict of interest matters—not conduct investigations, nor act as an enforcement body. Where the commissioner forms the view that an actual and significant conflict of interests exists in relation to a designated person (other than a senior executive officer or senior officer) who has sought the commissioner's advice, the Integrity Commissioner must advise the Premier of the conflict of interest [section 34(4)(a)(ii)].

In forming such a view, the commissioner will have regard to fairness. Natural justice considerations will also be relevant. The Integrity Commissioner may only give copies to the Premier if the designated person has been advised of the commissioner's view and has been given seven days to resolve the conflict to the commissioner's satisfaction, but has failed to do so [section 34(5)]. This situation is unlikely to arise frequently in practice, as actual and significant conflicts of interests would normally come to attention when a Minister or chief executive registers or declares their relevant pecuniary and other interests in accordance with procedures laid down by the Parliament and the Public Service Act 1996, respectively.

Another means of encouraging Ministers and others to seek the Integrity Commissioner's advice, particularly those who may be uncertain as to whether a particular relationship or interest constitutes a conflict of interests, is to provide appropriate protections and immunity from further action. A designated person who complies with the conditions specified in the Act is not liable in a civil action or an administrative procedure for any action taken in compliance with the commissioner's advice [section 35]. This immunity is intended to ensure that the commissioner's advice on a matter is determinative, thereby discouraging, for example, false or groundless allegations of a conflict of interests and encouraging recourse to the commissioner for advice.

A person who was formerly a designated person continues to attract the protections available to them as a designated person after they cease to be a designated person. The protection provided by complying with the commissioner's advice, however, does not extend to acts or omissions of a designated person occurring before the person sought and received that advice [section 35(3)]. Qualified protection is also provided to the Integrity Commissioner from civil action or an administrative procedure in relation to the performance of the commissioner's functions [section 36].

To effectively fulfil the functions prescribed in the Bill, the Integrity Commissioner will be a qualified professional who has suitable knowledge, experience, personal qualities and standing within the community [section 37(2)]. Such attributes will ensure the commissioner gives Ministers and other public officials independent and tough-minded advice on a range of conflict of interest matters and other issues relating to ethics and integrity. The Integrity Commissioner is to be appointed by the Governor in Council under the Public Sector Ethics Act 1994 and not the Public Service Act 1996 [section 37]. The commissioner will hold office for a term of not longer than five years [section 37(3)] and, if necessary, the Governor in Council may terminate the appointment of the Integrity Commissioner in accordance with certain specific and strict criteria [section 41].

In summary, this Bill provides an innovative and appropriate enhancement to Queensland's system of government, and to encouraging those in public office and in positions of power in Government to observe the high ethics standards set by the Public Sector Ethics Act 1994. The Bill ensures that Queensland's Integrity Commissioner will be able to give frank, impartial and fearless advice on request to Ministers, Parliamentary Secretaries, chief executives and other public officials—in the interests of avoiding conflicts of interest, and the allegations of conflicts of interest which are so damaging to public confidence in a Government. This proactive measure will go a long way to improve public perceptions of integrity standards and honesty in Government.

Mr Speaker, as you will recall, when I became Premier I sought—obviously before the establishment of the Integrity Commissioner—independent advice from Professor Noel Preston of the Queensland University of Technology in relation to my own personal affairs. As a result of that advice, I sold shares that the family had in Telstra. I was prepared to do that because I am committed to this process.

This Government's vision for Queensland is for a "good government" framework to repair the damage done under previous National Party years and, as a result, make Queensland the leader in Australian public sector ethics. I commend the Bill to the House.

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