

Oversight of the Queensland Integrity Commissioner 2011

Report No. 13

Finance and Administration Committee

February 2012

Finance and Administration Committee

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Abbreviations

ALP	Australian Labor Party
CEO	Chief Executive Officer
DPC	Department of the Premier and Cabinet
FAC	Finance and Administration Committee
IEPPC	Former Integrity, Ethics and Parliamentary Privileges Committee
ICAC	New South Wales Independent Commission Against Corruption – an inquiry into corruption risks involved in lobbying. ¹
LGAQ	Local Government Association Queensland
MP	Member of Parliament
PSC	Public Service Commission

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified.
Conflict of interest issue	A conflict of interest issue, involving a person, is an issue about a conflict or possible conflict between a personal interest of the person and the person's official responsibilities. ²
Designated person	Each of the following persons is a designated person: a member of the Legislative Assembly; a statutory office holder; a chief executive of a department of government or a public service officer; a senior executive or senior officer; a chief executive of, or a senior officer equivalent employed in, a government entity who is nominated by the Minister responsible for administering the entity; a ministerial staff member who gives, or a person engaged to give, advice to the Minister; a parliamentary secretary staff member who gives, or a person engaged to give, advice to a Parliamentary Secretary. ³
Ethics or integrity issue	An ethics or integrity issue is an issue concerning ethics or integrity and includes a conflict of interest. For a request by the Premier, an ethic or integrity issue includes standard setting for ethics or integrity issues. ⁴
Information	Includes a document. ⁵
The Act	<i>Integrity Act 2009</i>
The Code	Lobbyist Code of Conduct
The Commissioner	The Integrity Commissioner
The Committee	Finance and Administration Committee

¹ Queensland Integrity Commissioner, Annual Report 2010-11: 11.

² *Integrity Act 2009*, section 10(1)

³ *Integrity Act 2009*, section 12

⁴ *Integrity Act 2009*, section 9

⁵ *Integrity Act 2009*, section 13

Role of the Finance and Administration Committee

The Finance and Administration Committee is a portfolio committee of the Legislative Assembly with the following areas of responsibility:

- Premier and Cabinet;
- Reconstruction;
- Treasury;
- Finance;
- Arts; and
- Public Works and IT.

In relation to its areas of responsibility, the Committee:

- examines bills to consider the policy to be enacted;
- examines the estimates of each department;
- examines bills for the application of the fundamental legislative principles set out in the *Legislative Standards Act 1992* (section 4);
- considers the lawfulness of subordinate legislation;
- assesses the public accounts of each agency within the areas of responsibility in regard to the integrity, economy, efficiency and effectiveness of financial management by:
 - examining government financial documents; and
 - considering the annual and other reports of the auditor-general;
- considers the public works of each agency within the areas of responsibility in light of matters including, but not limited to the:
 - suitability of the works for the purpose,
 - necessity for the works,
 - value for money of the works,
 - revenue produced by, and recurrent costs of, the works, or estimates of revenue and costs,
 - present and prospective public value of the works,
 - procurement methods used for the works, and
 - the suitability of the works in meeting the needs in and achieving the stated purpose of the works.

The Committee also has oversight functions in relation to the Auditor-General and the Integrity Commissioner.

Chair's Foreword

The Finance and Administration Committee was allocated oversight responsibilities of the Queensland Integrity Commissioner in June 2011. Prior to this date, this was the responsibility of the former Integrity, Ethics and Parliamentary Privileges Committee.

The Committee met with the Integrity Commissioner in August and November 2011 and he also provided additional information as required. The Committee also reviewed the Integrity Commissioner's annual report which was tabled on 30 September 2011.

The Committee is aware that the Department of the Premier and Cabinet is currently undertaking a review of the *Integrity Act 2009* and that the Integrity Commissioner has provided submissions to that review.

On behalf of the Committee, I would like to thank all the Queensland Integrity Commissioner and his staff who assisted the Committee throughout the course of the inquiry.

Finally, I would like to thank the other Members of the Committee for their continuing hard work and dedication in completing the work of the Committee.

Wayne Wendt MP
Chair

Recommendations

The Committee has made the following recommendations:

1. The Committee recommends that the Act is amended to allow the Commissioner to provide advice in circumstances where the chief executive has not given the necessary authority to the officer.
2. The Committee recommends 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 a lobbying activity as recommended by the Integrity Commissioner.
3. The Committee recommends that the 'occasional' and 'incidental' exception be removed from section 43 of the Act as recommended by the Integrity Commissioner.
4. The Committee recommends that the government consider amending the Act to include a part dealing with post-separation obligations for former senior government representatives, and that this part include, if appropriate, sanctions for breaches of the Act as recommended by the Integrity Commissioner.

1. Introduction

1.1 Recommendations in this report

The recommendations in this report are addressed to the Premier and Minister for Reconstruction, as the responsible minister.⁶

1.2 Integrity Commissioner's responsibilities

The Integrity Commissioner's functions include:

- giving written advice to designated persons on ethics or integrity issues;⁷
- meeting with, and giving written or oral advice to members of the Legislative Assembly;
- maintaining the lobbyists register and registering new lobbyists; and
- raising public awareness of ethics or integrity issues by contributing to public discussion of these issues relevant to the Integrity Commissioner's functions.⁸

1.3 Committee's responsibilities regarding the Integrity Commissioner

In addition to the jurisdiction conferred by the *Parliament of Queensland Act 2001*, the *Integrity Act 2009* (the Act) provides that the Committee is required to:

- monitor and review the Integrity Commissioner's performance of the functions conferred by the Act;
- report to the Legislative Assembly on any matter concerning the Integrity Commissioner, the Integrity Commissioner's functions or the performance of the Integrity Commissioner's functions that the Committee considers should be drawn to the Assembly's attention;
- examine each annual report tabled in the Legislative Assembly under the Act and, if appropriate, comment on any aspect of the report and to make recommendations;
- to examine each strategic review report tabled in the Legislative Assembly and if appropriate, to comment on any aspect of the report and to make recommendations;

⁶ *Parliament of Queensland Act 2001*, section 107 ministerial response to committee report.

⁷ (a) a member of the Legislative Assembly; (b) a statutory office holder; (c) a chief executive of a department of government or a public service office; (d) a senior executive or senior officer; (e) a chief executive of, or a senior officer equivalent employed in, a government entity who is nominated by the Minister responsible for administering the entity; (f) a ministerial staff member who gives, or a person engaged to give, advice to a Minister; (g) a parliamentary secretary staff member who gives, or a person engaged to give, advice to a Parliamentary Secretary; (h) without limiting paragraph (f) or (g), a person, or a person within a class of person, nominated by a Minister or Parliamentary Secretary.

⁸ *Integrity Act 2009*, section 7

- report to the Legislative Assembly any changes to the functions and procedures of the Integrity Commissioner the Committee considers desirable for the more effective operation of the Act; and
- other functions conferred on the Committee by the Act.⁹

The Act (s74) requires that the Committee be consulted on the selection process and the appointment of the Integrity Commissioner.¹⁰ However, the current Integrity Commissioner was appointed in June 2009, which was prior to the commencement of the Act on 1 January 2010.¹¹

The Committee has a role in the strategic reviews of the Integrity Commissioner. The Act (s86) requires a review to be conducted at least every five years of:

- the Integrity Commissioner's functions; and
- the Integrity Commissioner's performance of those functions to assess whether they are being performed economically, effectively and efficiently.¹²

After consultation with the Committee and the Integrity Commissioner, the Governor in Council will appoint a strategic reviewer and decide the terms of reference for the strategic review.¹³ Each review must be undertaken by an appropriately qualified person, who is to provide a report on the review.¹⁴

The Act requires that a strategic review of the Integrity Commissioner's functions is conducted within four years after the commencement of that section of the Act.¹⁵ The first strategic review must be conducted by January 2014.

Once tabled, the strategic review report is deemed to be referred to the Committee.¹⁶

The Act (s82) also requires agreement from a majority of members of the Committee, other than a majority consisting of government members, before the Integrity Commissioner may be removed from office.¹⁷

⁹ *Integrity Act 2009*, section 89

¹⁰ *Integrity Act 2009*, section 74

¹¹ *Integrity Act 2009*, section 74

¹² *Integrity Act 2009*, section 86(8)

¹³ *Integrity Act 2009*, section 86(6)

¹⁴ *Integrity Act 2009*, section 86(4)

¹⁵ *Integrity Act 2009*, section 86

¹⁶ *Integrity Act 2009*, section 88

¹⁷ *Integrity Act 2009*, section 82

1.5 Amendments to the *Integrity Act 2009*

In 2010 the Government introduced a series of amendments to the *Integrity Act 2009* resulting in the following changes:

- Sections 15(2) and 16 were amended to allow the Premier to seek advice about standard setting for ethics or integrity issues without reference to a particular designated person;
- Sections 29(1)(b), 32(1)(b) and 22, 28 and 39(1)(b) were amended to permit the Integrity Commissioner to disclose to the Premier, Leader of the Opposition and Chief Executive Officers actual or perceived ethics or integrity issues involving other designated persons in particular circumstances;
- The examples included in section 41(5) dealing with entities that may undertake incidental lobbying were replaced to clarify that activity already subject to regulation should not be subject to additional regulation under the lobbying provisions of the Act;
- Section 42 was amended to exclude making a statutory application from the definition of a lobbying activity;
- Section 66A was amended to allow the Commissioner to issue a warning, or suspend a lobbyist from the lobbyists register, as alternatives to cancelling their registration;
- Section 71(3) was amended to require government representatives to notify the Commissioner where unregistered lobbying is identified;
- Section 72A was amended to authorise the release of information, including personal information, by a government representative, to the Commissioner to monitor lobbying activity in Queensland;
- Chapter 4A was inserted to establish the requirement for a declaration of interest by nominated statutory office holder be provided to their Minister and to the Commissioner;
- Sections 80 and 81 were amended to require the Commissioner to lodge a declaration of interest;
- The Act was also amended to require the Commissioner to disclose in the annual report any non-compliance with the requirement for statutory officers to provide declarations of interests and to identify anyone at fault.¹⁸

¹⁸ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 8-9.

1.6 Conduct of the Inquiry

The former Integrity, Ethics and Parliamentary Privileges Committee (IEPPC) previously had oversight responsibilities in relation to the Integrity Commissioner. The IEPPC were due to meet with the Integrity Commissioner in June 2011 and, in advance of that meeting, had provided questions on notice and received responses. Due to the changes to the Queensland Parliament's Committee system which occurred in June 2011, that meeting was postponed. The IEPPC resolved to make that information available to the Finance and Administration Committee.

The Committee held public hearings with the Integrity Commissioner on 3 August 2011 and 30 November 2011 to discuss his responses to the questions on notice, his functions and performance under the *Integrity Act 2009* and the Annual Report 2010-11.

Subsequent to its public hearing on 30 November 2011 the Committee wrote to the Integrity Commissioner seeking additional information and clarification on a number of issues. The Integrity Commissioner also provided the Committee with a copy of his response to the Department of the Premier and Cabinet's Issues Paper on its review of the *Integrity Act 2009*.

Copies of the hearing transcripts are available from the Committee secretariat or on the Committee's web page at: <http://www.parliament.qld.gov.au/work-of-committees/committees/FAC/inquiries/current-inquiries/IntegrityCommissioner>

2. Issues considered by the Committee

The Integrity Commissioner advised the Committee that advice on integrity matters primarily related to concerns regarding conflicts of interest issues and there were also a significant number of requests for advice in relation to restrictions on post separation employment. He also provided advice on lobbying issues.¹⁹

2.1 Advice to designated persons

Section 12 of the Act states that each of the following persons is a designated person:

- A member of the Legislative Assembly;
- A statutory office holder;
- A chief executive of a department of government or a public service office;
- A senior executive or senior officer;
- A chief executive of, or a senior officer equivalent employed in, a government entity who is nominated by the Minister as being responsible for administering the entity;

¹⁹ Dr Solomon, Transcript 3 August 2011: 1

- A ministerial staff member who gives, or a person engaged to give, advice to a Minister;
- A parliamentary secretary staff member who gives, or a person engaged to give, advice to a Parliamentary Secretary;
- A nominee with a signed notice.²⁰

A designated person (the advisee) may, by written request to the Integrity Commissioner, ask for the Integrity Commissioner's advice on an ethics or integrity issue involving the person.²¹ The advisee may also, by written request to the Commissioner, ask for advice on an ethics or integrity issue as provided for in sections 16 to 20 of the Act.²² If the advisee is a relevant officer, the advisee must also give the Commissioner a signed authority from the chief executive of the department, public service office or government entity in which the advisee is employed, authorising the advisee to ask for the advice.²³

The Integrity Commissioner informed the Committee that this situation has a number of drawbacks. Firstly, it may cause (and in some cases has caused) a significant delay in obtaining the advice even though the matter about which the advice is sought may need to be resolved quickly. Secondly, it may inhibit seeking advice because the relevant officer does not want their chief executive to know about the issue. Thirdly, the chief executive may refuse to provide the necessary authority in circumstances where the officer (and the agency) would have been better served if the advice had been obtained.²⁴

The Commissioner nominated three occasions since July 2009 where the necessary authority had not been provided. The Commissioner also informed the Committee that there may be other instances that were not drawn to his attention.²⁵

The Commissioner suggested that the subsection should give the Integrity Commissioner the option of providing advice in circumstances where the chief executive has not given the necessary authority to the officer.²⁶

The Commissioner also suggested that the definition of a designated person be extended to include candidates for political office as well as sitting MPs. The Commissioner assumed that candidates would be defined to include people standing as independents who have declared publicly that they intend to nominate. He advised that increasing the number of designated persons in this way would be unlikely to significantly affect the workload of the Integrity Commissioner but it could provide candidates with useful advice in keeping within the objectives of the Act.²⁷

²⁰ *Integrity Act 2009*, section 12

²¹ *Integrity Act 2009*, section 15(1)

²² *Integrity Act 2009*, section 15(2)

²³ *Integrity Act 2009*, section 15(3)

²⁴ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: 2

²⁵ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: 2

²⁶ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: 2

²⁷ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 5

2.1.1 Committee comments

The Committee supports the Commissioner's approach of broadening the definition of a designated person to include all MPs and endorsed candidates for political office. In keeping with broadening the scope of the Commissioner's advisory powers, the Committee also agreed to recommend that amendments be made to provide the Commissioner with discretion to respond to requests from officers who do not have the signed authority of their chief executive officer.

The Committee agreed that if an employee is seeking advice, public confidence is best served by providing that advice. In this context the Committee heard from the Commissioner that increasing the number of designated persons in this way would be unlikely to significantly affect the workload of the Integrity Commissioner but it could provide candidates with useful advice, in keeping with the objects of the Act.²⁸ To this end, the Committee makes the following recommendations:

Recommendation 1

The Committee recommends that the Act is amended to allow the Commissioner to provide advice in circumstances where the chief executive has not given the necessary authority to the officer.

2.2 Register of Members' Interests

In late 2009, during the discussion on the Green Paper on Integrity and Accountability, the Premier indicated that she wanted all ALP MPs to meet with the Integrity Commissioner once a year to discuss their declaration of interest. To facilitate these meetings the *Integrity Act 2009* was amended to include a new Part 3 (Meeting with and advice for Members of the Legislative Assembly on interests issues) and in Chapter 3 (Advice on ethics or integrity issues). This has resulted in two annual reporting rounds of meeting with all Labor MPs.²⁹

In 2010, the Integrity Commissioner met with every Government MP (including the Premier and each Minister), and reported that most discussions were based on MPs publicly available declarations of interest, and that meetings were consistently 'brief and uneventful'.³⁰ However, he advised the Committee that there had been clear boundaries established in relation to any potential overlap in relation to his role and that of the Registrar of Interests, ie the Clerk of the Parliament and that he has continued to refer MPs to the Clerk if they sought views on whether particular matters should be included in their statements of interests.³¹

²⁸ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of *Integrity Act 2009*: 4-5

²⁹ *Integrity Act 2009*, sections 22 – 23, and Chapter 3

³⁰ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 11

³¹ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to IEPPC dated 6 June 2011: 4

The Commissioner confirmed his current view is that it would be counterproductive to make such meetings mandatory.³² He considers that these meetings are desirable because they serve as a reminder to MPs of the existence and availability of the Integrity Commissioner if they need advice. They also serve to remind MPs of their responsibilities, in particular, to keep their declarations of interest up to date.³³

The Commissioner noted that the suggestion in the Issues Paper, circulated by the DPC, is that MPs should discuss ethics and integrity issues. This would present some difficulties because under the Act as it stands, the Commissioner can only provide advice on such issues in writing, when asked in writing. The Commissioner confirmed that no formal advice can be provided unless it is requested in writing, and that this remains his preferred approach.³⁴

2.2.1 Committee comments

The Committee considers that this issue needs to be carefully considered by DPC in their review of the Act. The Committee considers that timely advice on ethics and integrity issues should not be impeded by the processes put in place for provision of that advice. The Committee is aware that this issue was included in the Integrity Commissioner's submission to that review.

2.3 Lobbyists code of conduct

The Integrity Commissioner advised the Committee that about half of his time in 2010-11 was spent on lobbying responsibilities, as a result of meetings held with local government councillors and/or officials to brief them on lobbying provision in the Integrity Act.

The Integrity Commissioner noted that, in relation to lobbying, his concerns related to getting local government to realise the obligations they have under the Act and ensuring that lawyers and accountants know that they are not exempt, when they are involved in lobbying activities, as they seem to believe at the moment.³⁵ The Integrity Commissioner also advised the Committee that while lobbying provisions under the Act rely on self-reporting by those persons who are being lobbied, he and his office are being proactive in this area by utilising his power to access records of government departments, statutory offices and local government to ensure that proper records of contact with lobbyists are being kept.³⁶

³² Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 5

³³ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: 4

³⁴ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 5

³⁵ Dr Solomon, Transcript 3 August 2011: 1

³⁶ Dr Solomon, Transcript 3 August 2011: 2

The Committee asked about Queensland's performance in relation to regulating lobbying activities in a national context.³⁷ The Commissioner commented that Queensland's system compares favourably to other Australian jurisdictions but will shortly be out performed by Western Australia.³⁸

The Lobbyists Code of Conduct (the Code) is designed to make it easier for government and local government representatives to appreciate the nature of the lobbying activity to which they are being asked to respond. The Code includes two important prerequisites to any lobbying activity. Firstly, when making initial contact, lobbyists have to make it clear that they are listed on the lobbyists register, identify who they are representing, the nature of the issue they wish to raise, and the reasons for the approach. Secondly, if the listed lobbyist is a former government representative, they must indicate when they became a former government representative, and that the matter they wish to lobby about is not banned by the Act as a 'related lobbying activity'.³⁹

The Commissioner expressed the view that there are two distinct problems with the lobbying provisions of the Act – the limited reach of the Act; and the interpretation and application of several of its provisions.⁴⁰

With reference to the limited provisions of the Act, the Commissioner concluded that even by the relatively limited aims of ensuring that lobbying is conducted in accordance with public expectations of transparency and integrity – the purpose of the lobbying provisions in the Act were unsuccessful. He considers that the schemes are too narrowly focussed on relatively few lobbyists, they don't provide for adequate and timely disclosure of lobbying activities, they ignore the lobbying of non-government legislators and they contain no real mechanisms for supervision or policing, and very few sanctions for breaches of various codes and laws.⁴¹

The Integrity Commissioner suggested that the first issue to be addressed is whether it is sufficient to limit the regulation of lobbyists to the comparatively few lobbyists who are third party professional lobbyists. He advises that these constitute a relatively small proportion of those who lobby government. He considers that lobbyists who work in-house for large corporations or who work for industry associations, constitute a far greater proportion of the lobbying industry than third party lobbyists. To affirm this point the Commissioner refers to Canadian figures that suggest that third party lobbyists may only represent one-fifth to one-eighth of the lobbyists who engage with government.⁴²

³⁷ Mr Stevens MP, Transcript 30 November 2011: 1; Hon Boyle MP, Transcript 30 November 2011: 2; Ms Bates MP, Transcript 30 November 2011: 4; Mr Crandon MP, Transcript 30 November 2011: 5

³⁸ The *Integrity (Lobbyists) Bill 2011* was introduced to the WA Legislative Assembly on 9 November 2011. For further information refer: <http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=45FAB3AF18255085482579430017B23F> [1 February 2012]

³⁹ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 6-7

⁴⁰ Dr Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 6

⁴¹ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 6

⁴² Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 6

Consequently, in his submission to the DPC, the Commissioner recommended:

- That the lobbyist 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 by making special provision to ensure that in-house lobbyists are also covered – though not by precisely the same regime as third party lobbyists;
- That section 41(3)(b) of the Act be amended to provide an exemption 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;
- That there be a requirement added to section 71 of the Act establishing that a government representative must not allow themselves to be lobbied by an entity that is not required to register because it is exempt under section 41, unless that entity undertakes to observe the relevant parts of the Lobbyists Code of Conduct in its dealings with the government.⁴³

The purpose of the last recommendation is to cover in-house and other lobbyists who are not required to register under the Act. It would mean that they nevertheless have to abide by the requirements of the Lobbyists Code of Conduct, including any requirement that is inserted into the Code, that lobbyists must notify the Integrity Commissioner of any lobbying meetings with government representatives.⁴⁴

Whilst the Commissioner has not received any complaints about the conduct of registered lobbyists, and confirms that no cancellations have been made, the Commissioner explained that currently, the only people who can be penalised directly under the Act are lobbyists who do not obey the Code.⁴⁵

Under the Act, the Commissioner has the power to remove, suspend and/or warn registered lobbyists. The provisions relating to public servants and local government employees forbidding them from dealing with unregistered lobbyists are regulated under the disciplinary aspects of the *Local Government Act 2009* and the *Public Service Act 2008*.⁴⁶

Currently there are no provisions relating to unregistered lobbyists in the Act. The Commissioner and the Local Government Association of Queensland (LGAQ) suggest that penalties for local government employees and public servants who breach the provisions of the Act should be written into the Act.⁴⁷

⁴³ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 6-7

⁴⁴ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 6-7

⁴⁵ Dr Solomon AM, Transcript 30 November 2011: 2

⁴⁶ Dr Solomon AM, Transcript 30 November 2011: 2

⁴⁷ Dr Solomon AM, Transcript 30 November 2011: 2

The Integrity Commissioner confirmed that the number of registered lobbyists in Queensland has increased considerably, from approximately 60 or 70 in 2010 to approximately 140 to date. In addition to these increased numbers the Commissioner added that there are others who should be registered who are not and that under the Act, the Commissioner is limited to writing to unregistered lobbyists to encourage them to consider whether they have breached the Act. The Commissioner suggests that managing this situation would be more effective if the Act included a penalty for unregistered lobbying.⁴⁸

The Commissioner expressed the view that the kinds of people who have to register as lobbyists, who are third-party professional lobbyists, represent only about one-fifth to one-eighth of the total number of people who actually lobby state and local governments. For example, the Act excludes people or businesses representing themselves as they are not regarded as lobbyists, so when BHP or Qantas or Virgin approach the government using their own in-house employees or their board members or executives, that is not regarded as lobbying.⁴⁹

The Committee sought the Commissioner's opinion in respect of non-profit organisations and the equitability of registration obligations.⁵⁰ The Commissioner confirmed that individuals representing non-profit organisations are not deemed lobbyists under the Act.⁵¹ The Commissioner also reminded the Committee that the NSW Independent Commission Against Corruption (ICAC) recommended that all bodies, including the churches, should have to register as lobbyists if they are going to be conducting lobbying activities.⁵² He advised the Committee that whilst he is concerned about the exclusion of a whole range of entities from being lobbyists, he does not consider non-profits to be a major concern.⁵³

The Commissioner advised that:

Government backbenchers may exercise influence over the shape of legislation through backbench committees, or through contact with Ministers. Also, they can and do sometimes influence "the development or amendment of a government policy or program" – s.42(1(b)). This is understood by many entities seeking to change law or government policies or programs. Accordingly, many MPs who are not Ministers or Parliamentary Secretaries are lobbied by a range of entities seeking to influence legislative or policy outcomes. However, such contact between lobbyists and MPs is not conducted in accordance with public expectations of transparency and integrity. It is not open to public scrutiny. Indeed, it is not regulated at all. Nor are those actually lobbying MPs required to account in any way for their activities. There is no public record required to be kept of any contacts between lobbyists and such MPs.⁵⁴

In my view, there is a clear public interest in regulating the lobbying of all Members of Parliament rather than, as is the case at present, limiting that regulation to contact with the Executive Government.⁵⁵

⁴⁸ Dr Solomon AM, Transcript 30 November 2011: 2

⁴⁹ Dr Solomon AM, Transcript 30 November 2011: 2

⁵⁰ Ms Bates MP, Transcript 30 November 2011: 4; Mr Crandon MP, Transcript 30 November 2011: 4

⁵¹ Dr Solomon AM, Transcript 30 November 2011: 4

⁵² Dr Solomon AM, Transcript 30 November 2011: 3

⁵³ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: 3

⁵⁴ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 7

⁵⁵ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 7

It should be noted that in the field of local government, the Act covers all elected local councillors, as well as the Mayor and council staff.⁵⁶

It should further be noted that section 42(2)(b) provides that “contact with a member of the Legislative Assembly, or a councillor, in his or her capacity as a local representative on a constituency matter” is not a lobbying activity. Therefore, that aspect of the work of MP’s (and of councillors under the regulations that already apply) would not be covered or comprised in any way by this proposal.⁵⁷

Committee members acknowledged that they regularly receive emails and are lobbied by various groups in relation to Bills before the House.⁵⁸ In response, the Commissioner reiterated that, at present, if people are lobbying on their own behalf, or representing a non-profit organisation, their actions are excluded under the Act.⁵⁹

The Integrity Commissioner, in his submission to DPC, suggested that in order to clarify this further, the words ‘or a Member of Parliament’ need to be added after the words ‘government representative’ in section 42.⁶⁰

2.3.1 Town planners

The Commissioner outlined that the regulation of town planners is also an area of concern and the source of much confusion. At present, section 42(1)(e) specifies that a decision about planning or the giving of a development approval under the *Sustainable Planning Act 2009* is a matter about which there can be lobbying activity for the purposes of the Act. This means that where clients use town planners, or engineers or architects to try to persuade councils or their staff to give approvals and they do so on more than an occasional basis, they must register as lobbyists. The Integrity Commissioner considers that if they do not register, then the council staff will probably be in breach of section 71(2)⁶¹ in allowing an unregistered lobbyist to lobby them.⁶²

The Commissioner advised the Committee that a significant anomaly arises under the Act in that developers who use their own staff to lobby for planning and development approvals are not lobbyists for the purposes of the Act but where third parties are engaged, the same activity is considered to be lobbying and is regulated under the Act.⁶³

⁵⁶ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 8

⁵⁷ Dr Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 8

⁵⁸ Mr Wendt MP, Transcript 30 November 2011: 3

⁵⁹ Dr Solomon AM, Transcript 30 November 2011: 3

⁶⁰ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 8

⁶¹ S71(2) specifies that a government representative must not knowingly permit an entity that is not a registered lobbyist to carry out a lobbying activity for a third party client with the government representative.

⁶² Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 8

⁶³ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 8

The Commissioner notes, however, that planning and approval processes under the *Local Government Act 2009* and the *Sustainable Planning Act 2009* are already highly regulated. The LGAQ, planners and other professionals agree that there is nothing to be gained from additional regulation of this activity using the lobbying provisions of the Act. The Commissioner confirmed that the application of the lobbying provisions in the Act would be unnecessarily burdensome for local government, and would achieve very little. He has suggested 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 a lobbying activity.⁶⁴

2.3.2 Incidental lobbying activities

The Commissioner identified 'incidental lobbying activities' as being exempt from the definition of lobbying activities, as a further area of concern. The Commissioner informed the Committee that this area has proved to be one of the most difficult and contentious provisions of the Act.⁶⁵

The Commissioner identified two major issues. The first is the extent to which professionals are meant to be excluded from the provisions of Chapter 4 of the Act. The second is the way the phrase 'lobbying activities are occasional only and incidental to the provision of professional or technical services', is applied.⁶⁶

In his submission to DPC, the Commissioner noted that the sub-section has to be read in conjunction with section 41(6) which defines 'incidental lobbying activities' and includes four examples in an attempt to clarify the meaning of the provision. The exemption for professionals does not cover an activity conducted by them that is not regulated by the specific legislation covering their profession. The Commissioner explained that in his view, lobbying is not an activity covered as a 'legal service' by the *Legal Profession Act 2007*, nor is it an activity regulated by the various accountancy institutes, nor is it regulated by the *Professional Engineers Act 2002*.⁶⁷

The Integrity Commissioner noted that in Queensland there are no legal or accountancy firms registered as lobbyists, although he understands at least one accountancy firm operating in Queensland has registered in some other Australian jurisdictions. The 'occasional' and 'incidental' exemption is ultimately what has been relied on by professionals seeking to avoid registering as lobbyists.⁶⁸

⁶⁴ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 8-9

⁶⁵ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 9

⁶⁶ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 9

⁶⁷ Dr Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 9

⁶⁸ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 9-10

The Commissioner confirmed that the exemption is interpreted differently by different departments and local councils, and that this cannot be avoided given the structure of the Act which puts the onus on individuals to determine whether they are being lobbied and whether the entity lobbying them needs to be registered in accordance with section 71. Given the difficulties sections 41(3)(d) and 41(6) create, the Commissioner expressed the view that it would be preferable if this exemption was removed from section 43.⁶⁹

2.3.3 Sanctions for section 71 breaches

Section 71 provides that:

- an entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client;
- a government representative must not knowingly permit an entity that is not a registered lobbyist to carry out a lobbying activity for a third party client with a government representative;
- if a government representative is aware that an entity seeking to carry out a lobbying activity for a third party client with the government representative is not a registered lobbyist, the responsible person for the government representative must give the entity's details to the Integrity Commissioner as soon as practicable;
- the responsible person for a government representative may delegate the obligation to give details under subsection 71(3).⁷⁰

The Act does not provide sanctions for a breach of section 71. The Commissioner told the Committee that Crown Law has issued several legal updates concerning public sector obligations for dealing with lobbyists. The Commissioner, citing Crown Law advice, stated:

The Integrity Act does not make it an offence for a person to fail to comply with the obligations in sections 71(2) and (3). However, government representatives and responsible persons could still be prosecuted for a criminal offence under section 204 of the Criminal Code 1899 (disobedience to statute law). This section makes it an offence for a person without lawful excuse to do any act the person is forbidden to do, or not to do any act the person is required to do, under the provisions of any public statute in force in Queensland.⁷¹

⁶⁹ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 10

⁷⁰ *Integrity Act 2009*, section 71(1)-(4)

⁷¹ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 11-12

The Commissioner also confirmed that the LGAQ and the Queensland Police Service support the introduction of a section 71 sanctions regime.⁷²

The Integrity Commissioner advised the Committee that he considers that the prohibition against unregistered lobbying as contained in section 71(1) has no teeth. He advised that some unregistered lobbyists can, and do, ignore its provision so long as they are not refused access by government representatives.⁷³

The Commissioner stated that:

I have had several such cases brought to my notice and all I can do is write to lobbyists urging them to register, or raise the matter with the local government, urging them not to deal with the unregistered lobbyists'.⁷⁴

The Commissioner notes that in Western Australia, the *Integrity (Lobbyist) Bill 2011*, provides for a penalty of \$10,000 in the equivalent provision to section 71. In his review of the Act, the Commissioner recommended a similar penalty should apply in Queensland, with an equivalent provision for government representatives employed under the *Public Service Act 2008*.⁷⁵

2.3.4 Post separation and employment restrictions

The Integrity Commissioner advised that post-separation employment for senior government representatives is regulated in three different ways:

- the Integrity Act bans lobbying by former senior government representatives for two years in an area where the person had official dealings in the two years before becoming a former senior government representative. However, this does not apply where the former senior government representative is involved in-house, as an employee, director etc of an entity that wants to lobby government;
- Contractual and code of conduct requirements, contained in Public Service Commission (PSC) policy documents, prevent former senior government representatives from having meetings with officials on matters where they had official dealings in the previous 18 months for 18 months.
- A ban, supported by legal restraints, on the use of confidential information.⁷⁶

⁷² Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 11

⁷³ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 11

⁷⁴ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 12-13

Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 13

⁷⁶ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 13

The Commissioner suggested to the Committee that the Act should also deal with meetings and confidentiality in addition to the current restrictions which only apply to lobbying activities. The Integrity Commissioner noted that there is no legislative support for the bans on meetings between former senior government representatives and public servants or Ministers or Ministerial Staff. He stated that the PSC's policy document has no jurisdiction in relation to former senior government representatives. He suggested that it would send a stronger message to departing senior government representatives if they were aware that there were legislative restrictions in place.⁷⁷

The Commissioner wrote in a submission to DPC that:

Because 'former senior government representative' is defined so broadly in the Act to include former Ministers, Parliamentary Secretaries and their staff, and local government councillors and officials, it would probably be necessary to put such legislative controls on post-separation employment in the Act. It should also include sanctions, if it is to be taken seriously by the people at whom it is directed, as well as the public.⁷⁸

The Commissioner's submission to DPC contained the recommendation to include a part in the Act dealing with post-separation obligations for former senior government representatives, and that the part should include sanctions for breaches of the Act.⁷⁹

2.3.5 Committee comments

In considering the evidence before it, the Committee remained mindful of the Act's purpose – to encourage confidence in public institutions by helping Ministers, MPs, and others to deal appropriately with ethics or integrity issues; and to regulate contact between lobbyists and State or local government representatives so that lobbying is conducted in accordance with public expectations of transparency and integrity.⁸⁰

The Committee considers that the amendments to the Act suggested by the Integrity Commissioner are sensible and will add to the effectiveness of the Act in achieving its objectives. The Committee therefore has made the following recommendations:

Recommendation 2

The Committee recommends 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 a lobbying activity as recommended by the Integrity Commissioner.

⁷⁷ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 14

⁷⁸ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 14

⁷⁹ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: Attachment – Response to Issues Paper – Review of the *Integrity Act 2009*: 15

⁸⁰ *Integrity Act 2009*, section 4

Recommendation 3

The Committee recommends that the 'occasional' and 'incidental' exception be removed from section 43 of the Act as recommended by the Integrity Commissioner.

Recommendation 4

The Committee recommends that the government consider amending the Act to include a part dealing with post-separation obligations for former senior government representatives, and that this part include, if appropriate, sanctions for breaches of the Act as recommended by the Integrity Commissioner.

2.4 Resourcing of the Integrity Commissioner's office

For 2010-2011 the Commissioner was employed on an 80 percent full time equivalent arrangement. He confirmed that this is a reasonably accurate reflection of what has occurred, although it is possibly a slight under estimate. The Commissioner reported that the work has been split reasonably evenly between the integrity and lobbyist functions.⁸¹

The Commissioner's office is located adjacent to the PSC's premises. The PSC provides some technical services, and computer services are provided by DPC.⁸² The Commissioner is supported by a full-time Executive Coordinator. In January 2010, two additional positions were created, a Principal Policy Officer (Lobbying) and a Research Support Officer (Lobbying), to manage the Lobbyist Register.⁸³

2.5 Public Awareness of Ethics or Integrity Issues

The Commissioner is required to raise awareness of ethics or integrity issues by contributing to public discussion of the issues relevant to the Integrity Commissioner's functions. In performing this function, however, the Integrity Commissioner must not disclose information likely to identify a specific request for advice that has been received or information that could result in the identification of any person who sought advice or about whom advice was sought.⁸⁴

⁸¹ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 13

⁸² Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 13

⁸³ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 18

⁸⁴ Queensland Integrity Commissioner, *Annual Report 2010-11*: 7

The Commissioner confirmed that his office is adequately resourced to realise its public awareness function.⁸⁵ The Commissioner reports that he gave presentations and answered questions at a large number of meetings with Councillors and/or senior staff of many local governments including the Gold Coast, Logan, Ipswich and Redlands City Councils and the Moreton Bay, Toowoomba, Fraser Coast and Gladstone Regional Councils. The Commissioner also addressed the Far North Queensland Regional Organisation of Councils and the North Queensland Local Government Association Conference.⁸⁶

The Commissioner also presented to the following professional bodies: the Australian Institute of Administrative Law; the Institute of Arbitrators and Mediators; the Inter-Departmental Accounting Group; the University of Queensland's Business School and Corporate Education department; and the Queensland Environmental Law Association.⁸⁷

The Commissioner advised that he also had meetings with representatives from Government Owned Corporations, Senior Executive Service inductees, the Queensland Police Service Corporate Governance Collaborative Group and the Chief Executive Officers Leadership Team.⁸⁸

The Commissioner also met a number of individual lobbyists and organisations concerning lobbying, including the LGAQ and executive members of the Government Relations Professionals Association (Inc.).⁸⁹

The Integrity Commissioner also delivered a paper at the Australian Public Sector Anti-Corruption Conference in Fremantle in November 2011 entitled *Lobbying: Is registration sufficient?* He provided a copy of the paper to the Committee.⁹⁰ A copy of this paper is available on the Integrity Commissioner's web page: <http://www.integrity.qld.gov.au/page/publications/speeches-articles.shtml>

2.5.1 Committee comments

The Committee is satisfied that by contributing to public discussion on integrity and ethics in the way he has been, the Integrity Commissioner is fulfilling his obligation to raise public awareness.

3. Annual Report 2010 – 2011

The Annual Report of the Queensland Integrity Commissioner for the 12 months ending 30 June 2011 was tabled on 30 September 2011. It is the second report under section 85 of the *Integrity Act 2009* and complies with the provisions of that section.

⁸⁵ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated 9 December 2011: 3

⁸⁶ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 11

⁸⁷ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 1

⁸⁸ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 11

⁸⁹ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 11

⁹⁰ Correspondence from Dr Solomon AM, Queensland Integrity Commissioner, to FAC dated, 23 November 2011: 1

The following table details the source of requests for advice received in the 2009-10 and 2010-11 financial years:

	2009-10	2010-11
Ethics and integrity issues		
Premier and Ministers	20	11
Parliamentary Secretaries	0	1
Other MPs	11	5
Directors-General	4	7
Other designated persons	22	16
Total – Designated persons	57	40
Other Issues		
Lobbying – formal advice	13	25
General Advice/No jurisdiction	23	0
Preliminary discussions – No written request received	1	0
Total	94	65

Source: Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 14; Queensland Integrity Commissioner, *Annual Report 2009-10*, October 2010: 15

The Integrity Act requires that the Integrity Commissioner's report must not disclose information likely to identify a specific request for advice on an ethics or integrity issue, including information likely to identify an individual who requested advice or about whom advice was sought. The Integrity Commissioner advised that previously requests made by the Premier were reported separately to other Ministers. The Integrity Commissioner considers that this practice does not accord with the requirements of the Act and therefore the statistics for this year combine any requests that the Premier may have made with requests from other Ministers.⁹¹

The annual report identifies that most requests for advice concerned: conflicts of interest about post separation employment; conflicts of interest arising from interests of relatives; conflicts of interests arising from share holdings; conflicts of interest of staff; and conflicts of interest arising from MPs constituency interests or duties.⁹²

Other developments outlined in the Commissioner's 2010-2011 Annual Report include: discussion of the decrease in requests for advice from 'designated persons', with the largest decline in requests from backbench MPs. Most requests for advice were answered in about 24 hours. Some took longer because the Integrity Commissioner needed further information from the person making the request, or because a designated person needed to obtain permission from their chief executive to make the request.⁹³

⁹¹ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 15

⁹² Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 15

⁹³ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 10

The Integrity Commissioner responded to 25 written requests for advice about various aspects of the lobbying provisions of the *Integrity Act 2009*, mainly from local government councils, and he gave evidence to the New South Wales Independent Commissioner Against Corruption (ICAC) as part of its inquiry into corruption risks involved in lobbying. The Integrity Commissioner was also consulted by representatives of the Victorian, Tasmanian and South Australian Government about lobbying and/or integrity issues.⁹⁴

The following table summarises the Integrity Commissioner's financial performance for the year:

	2009-10	2010-11
Statement of Revenue and Expenditure		
Total Revenue	\$464,466	\$626,458
Employee expenses	\$353,940	\$437,808
Supplies and services expenses	\$110,525	\$188,650
Total Expenses	\$464,465	\$626,458
Net Operating Result	0	0

Source: Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 20

Funding and administrative support is provided by the PSC. Corporate services and asset replacement were also provided through the PSC. The increased cost to run the office was due largely to the creation of two additional positions within the office in January 2010.

3.1 Committee comments

The Committee is satisfied that the Integrity Commissioner's annual report complies with the relevant requirements of the *Integrity Act* (s85).

⁹⁴ Queensland Integrity Commissioner, *Annual Report 2010-11*, September 2011: 11