

Integrity Bill 2009

Explanatory Notes

Short title

The short title of the Bill is the Integrity Bill 2009.

Objectives of the Bill

The Integrity Bill 2009 will create a new stand-alone Integrity Act containing the provisions establishing the office of the Integrity Commissioner currently contained in the *Public Sector Ethics Act 1994* to:

- enhance the functions and independence of the Integrity Commissioner, including providing for the Integrity Commissioner to be an officer of the Parliament;
- create a statutory basis for the Register of Lobbyists and ban the payment of success fees to lobbyists;
- amend the *Parliament of Queensland Act 2001* to rename the Members' Ethics and Parliamentary Privileges Committee the Integrity, Ethics and Parliamentary Privileges Committee with an additional area of responsibility of oversight of the performance and functions of the Integrity Commissioner; and
- amend the *Government Owned Corporations Act 1993* to bring government owned corporations (GOCs) within the jurisdiction of the Crime and Misconduct Commission (CMC) in relation to misconduct investigations.

Reasons for the Bill

On 29 July 2009, the Premier announced a review of integrity and accountability in Queensland which focussed on a broad range of integrity and accountability issues including political fundraising, the adequacy of internal misconduct investigation procedures and dealing with pecuniary/conflict of interest matters.

On 6 August 2009, the Government released the discussion paper, *Integrity and Accountability in Queensland* (the Discussion Paper) to prompt public discussion on integrity and accountability issues and seek public input on proposals for integrity reform.

In addition, a round table of experts was appointed to consider the feedback received on the Discussion Paper and provide recommendations to the Government on proposals for reform.

Achievement of the Objectives

In recognition of the importance of the role of the Integrity Commissioner in Queensland's integrity framework, the Bill will relocate the provisions establishing the Integrity Commissioner from the *Public Sector Ethics Act 1994* to a new stand-alone Integrity Act. The Bill will re-enact and enhance the current provisions setting out the Integrity Commissioner's functions of giving ethics or integrity and conflict of interest advice to designated persons.

The Government has previously announced that all Government Members of Parliament will be required to meet annually with the Integrity Commissioner to discuss matters related to their statement of interests to the Register of Members' Interests. Accordingly, the Bill includes an additional function for the Integrity Commissioner to give oral or written advice to Members of Parliament on these statements at meetings. The amendments in the Bill will facilitate, but not mandate, the process for the Integrity Commissioner providing advice to Members.

In addition, the Integrity Commissioner will report on compliance by chief executives with the requirement under the *Public Service Act 2008* to lodge statements of interest with their Minister. To facilitate this report, the *Public Service Act 2008* will be amended to require chief executives to provide the Integrity Commissioner and the chief executive of the Public Service Commission with a copy of their statement, as well as confirmation that the statement has been provided to their Minister. Chief executives who do not comply with the requirement may be identified in the Integrity Commissioner's annual report.

The Bill will also create a statutory basis for the Register of Lobbyists, which is currently administratively established within the Department of the Premier and Cabinet under the Queensland Contact with Lobbyists Code. The Integrity Commissioner will be responsible for the Lobbyists

Register, ensuring the independence of the lobbyist registration process from executive government.

To enhance the independence of the office, the Integrity Commissioner will also be made an officer of the Parliament, reporting through a parliamentary committee rather than to the Premier. In accordance with reporting arrangements for other independent statutory offices, the Integrity Commissioner's appointment will require consultation with the committee, and removal from office will only be able to occur on motion of the Assembly.

The legislative Lobbyists Register will continue current administrative practice, with some amendments being made to definitions, scope and procedure. Lobbyists will be required to apply to be listed on the Register prior to undertaking lobbying activities with government, and government representatives will not be permitted to allow lobbying activity except by registered lobbyists. The requirements, which already apply to Ministers, Parliamentary Secretaries, Ministerial and public sector staff, will be expanded to cover councillors, local government employees and staff of government owned corporations.

In addition, former senior government representatives (former Ministers, Parliamentary Secretaries, Ministerial and Parliamentary Secretary office staff and senior executives within the public sector) will be restricted from lobbying in areas with which they have had official dealings for two years after ceasing to hold public office.

The payment of success fees to lobbyists will be prohibited, and subject to a maximum penalty of 200 penalty units and forfeiture of any success fee to the State. In accordance with the *Competition Principles Agreement*, a Public Benefit Test was conducted on the proposed ban which concluded that the benefits to both the community and the lobbying industry of increased public confidence in government decision-making and the ethical conduct of the lobbying industry outweigh the detriment of any restriction on competition.

In order to allow Parliamentary oversight of the Integrity Commissioner's functions, the name and responsibilities of the Members' Ethics and Parliamentary Privileges Committee under the *Parliament of Queensland Act 2001* will be amended. The committee will be renamed the Integrity, Ethics and Parliamentary Privileges Committee with an additional area of responsibility of oversight of the Integrity Commissioner's performance and functions.

The Bill will also amend the *Government Owned Corporations Act 1993* to bring GOCs within the jurisdiction of the CMC in relation to misconduct investigations. This will ensure that the use of public resources by these bodies is subject to the scrutiny of the CMC and that any incidences of corruption or alleged corruption can be appropriately pursued. The amendments will not apply to declared entities under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

Alternative Ways of Achieving Objectives

The introduction of a legislative Lobbyists Register is considered necessary in order to strengthen the current administrative system. Providing the Integrity Commissioner with responsibility for administration of the Register will ensure the independence of the lobbyist registration process.

The Public Benefit Test on the ban on the payment of success fees considered alternatives to a legislative prohibition, such as contractual restrictions or self-regulation, and the relative effectiveness of the alternative ways of prohibiting success fees. The report concluded that the alternatives would not be as effective as a legislative ban in achieving the Government's overall objective of implementing the ban in order to enhance public confidence in the integrity, objectivity and impartiality of government decision-making.

Changes to the name and functions of the Members' Ethics and Parliamentary Privileges Committee, and bringing GOCs within the jurisdiction of the CMC in relation to misconduct investigations, can only be implemented through legislative amendment.

Estimated Cost for Government Implementation

The transfer of responsibility for the Register of Lobbyists from the Department of the Premier and Cabinet to the Integrity Commissioner will have a resourcing impact on the office of the Integrity Commissioner, which is administratively located within the Public Service Commission. In recognition of this impact, additional staff will be assigned to the office of the Integrity Commissioner to administer the Lobbyists Register.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles.

Clause 8 of the Bill provides protection for the Integrity Commissioner from civil liability for acts or omissions done or made where the Integrity Commissioner is acting in good faith and without negligence under the Act. The liability will instead attach to the State. This provision continues an existing protection for the Integrity Commissioner under section 36 of the *Public Sector Ethics Act 1994*. While the principle of equality before the law and that each person should be liable for their acts and omissions is recognised, the continuation of the protection is considered justified in this circumstance given the protection does not extend to negligent acts and is intended to allow the Integrity Commissioner to fulfil statutory duties.

In addition, under clause 40, designated persons acting on the advice of the Integrity Commissioner in resolving a conflict of interest issue are provided with limited protection in a civil proceeding or an administrative process if the action is substantially in accordance with the Integrity Commissioner's advice. This provision continues an existing protection for designated persons under section 35 of the *Public Sector Ethics Act 1994* and is considered warranted to ensure that designated persons would not be liable under, for example, disciplinary processes, where they have acted in accordance with the Integrity Commissioner's advice.

Under clauses 29 to 33, 38 and 39 of the Bill, the Premier, a Minister, Parliamentary Secretary, chief executive or Leader of the Opposition may be provided with documents about a request for advice about another person. For example, information about certain persons may be provided to the Premier if the Integrity Commissioner identifies a real or significant conflict of interest and the person, after being provided opportunity, fails to resolve the conflict. In other cases the person accessing the information must be authorised to seek advice about the person. The comments from the Scrutiny of Legislation Committee about this provision in the *Public Sector Ethics Act 1994* are noted where the committee acknowledged that it "can be argued it is appropriate for [particular designated persons], (all of whom are "superiors" of the "designated person" with the conflict of interest problem) to be able to inform themselves about the issue and about the commissioner's view of it.". This provision will allow appropriate monitoring and scrutiny of potential ethics or integrity issues.

Under clauses 16 to 20 of the Bill, particular designated persons may ask for the Integrity Commissioner's advice about ethics or integrity issues of other designated persons of lower ranking. In 1999, the Scrutiny of Legislation Committee commented on the potential impact of this provision on the rights of the other designated person but noted that the Bill

does not make the Integrity Commissioner's view conclusive of the matter. Continuation of this provision is proposed to allow designated persons to take steps to resolve any identified ethics or integrity issues involving other officers within a designated person's area of responsibility. The Integrity Commissioner does not have an investigative role and can only act on the information provided that is relevant to the request for advice. These provisions have operated successfully since 1999 and are generally considered to provide an effective process to seek confidential and authoritative advice to assist in the resolution of conflict of interest issues.

The Bill allows the Integrity Commissioner to refuse to give advice on an ethics or integrity issue or a matter relevant to the Register of Members' Interests or the Register of Related Persons' Interests (clauses 21 and 23). The Integrity Commissioner may refuse to give the advice if he or she reasonably believes there is not enough information, or the giving of the advice would not be in keeping with the purpose of the Act and must provide written reasons for the decision. While this decision is not subject to review and is dependent on the opinion of the Integrity Commissioner, the provision recognises the fact that the Integrity Commissioner does not have an investigative role and may only act and provide advice in response to information provided by the designated person seeking advice. Written reasons must be given for the reasons for the refusal. As an independent statutory officer of Parliament, a separate review of the Integrity Commissioner's decision would not be appropriate; however, the parliamentary committee will have general responsibility for oversight of the performance of the Integrity Commissioner's functions.

The Bill regulates lobbying activities involving public sector officers and clause 47 allows an extension of the definition of 'public sector officer' by Regulation to include other entities assisted by public funds. This provision is considered necessary to allow flexibility in applying the lobbying provisions to entities which are funded by government. The Bill only allows an extension, rather than a restriction, to the scope of the Act and can only apply to entities assisted by public funds.

Under the Bill, the Integrity Commissioner administers the Lobbyists Register and has responsibility for deciding registration applications from lobbyists. Accordingly, the Bill empowers the Integrity Commissioner to refuse or cancel a registration (clauses 60 and 66). 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. There is no further appeal on a decision to refuse or cancel a registration, although the lobbyist could seek review of the decision under the *Judicial Review Act 1991*. Although the decision to refuse or cancel a registration is recognised to affect a lobbyist's livelihood, it is important that the Integrity Commissioner have power to restrict membership of the Lobbyists Register in appropriate circumstances to meet the purpose of the Bill of regulating lobbying in accordance with public expectations of transparency and integrity. As the Integrity Commissioner is an independent statutory officer of the Parliament, a separate review of the Integrity Commissioner's decision would not be appropriate; however, the parliamentary committee will have general responsibility for oversight of the performance of the Integrity Commissioner's functions.

Clause 68 of the Bill provides for a code of conduct for lobbyists which sets out standards of ethical conduct for the lobbying industry in contact with government. Breaches of the code by a lobbyist would provide a basis for removal from the Lobbyists Register. The code of conduct is to be approved by the Integrity Commissioner following consultation with the parliamentary committee. Having regard to the role of the Integrity Commissioner as an independent and authoritative source of advice on ethics and integrity matters, it is considered appropriate that the Integrity Commissioner develop guidance on appropriate standards of ethical behaviour for the lobbying industry. Approval by the Integrity Commissioner will also facilitate administrative flexibility in allowing amendment to the code as required in response to any emerging issues. In recognition of the pre-eminence of the institution of Parliament in the delegation of this power, the Integrity Commissioner will be required to consult with the parliamentary committee prior to approval of the code.

The Bill introduces a new reporting requirement for the Integrity Commissioner to report on compliance by chief executives of the requirement to provide statements of interest to Ministers (clause 85). While the ability to identify non-complying chief executives in the annual report could be considered to be an infringement on the privacy of the individuals involved, relevant officers will be provided opportunity to comply with the requirement prior to the commencement of the reporting process and will not be identified if they have met their obligations under the *Public Service Act 2008*. The Integrity Commissioner will only report on the provision of statements and will not further consider or comment on information contained in the statements.

Consultation

Over 200 submissions on the Discussion Paper were accepted by the Department of the Premier and Cabinet and non-confidential submissions have been published on the Department's website. In addition to written submissions, the Government considered feedback received at regional forums held in Toowoomba, Sunshine Coast, Townsville, Cairns, Bundaberg, Mackay, Gold Coast, Rockhampton and Brisbane over the period 25 August 2009 to 15 September 2009.

The Integrity and Accountability round table considered summaries of the results of consultation and made recommendations to government on reforms to the integrity and accountability framework.

The Integrity Commissioner was consulted on the draft Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to the Commonwealth or another state is not relevant in this context. However approaches in other jurisdictions were taken into consideration in the development of the Bill.

Notes on Provisions

Chapter 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation.

Clause 3 states that the dictionary in schedule 2 defines particular words used in this Bill. However, certain core concepts for chapter 3 and chapter 4 are defined in those chapters.

Clause 4 establishes the purpose of the Bill, which is to encourage confidence in public institutions. This is achieved through the Integrity Commissioner's functions of assisting Ministers and other designated persons to deal appropriately with ethics and integrity issues, and regulating contact between lobbyists and government representatives in accordance with public expectations of transparency, and integrity.

Clause 5 provides that the Bill binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all other states, but does not make the State or other jurisdictions liable for an offence.

Chapter 2 Integrity commissioner

Clause 6 establishes the office of Queensland Integrity Commissioner. The Bill implements enhancements to the functions and independence of the Integrity Commissioner, including providing that the Integrity Commissioner is to be an officer of the Parliament.

Clause 7 provides that the Integrity Commissioner has the functions of—

- providing advice to designated persons in relation to ethics or integrity issues. In accordance with clause 9, the Premier may also seek advice on standard-setting for ethics or integrity matters generally;
- meeting with and giving written or oral advice to Members of the Legislative Assembly on matters related to the Register of Members' Interests or Register of Related Persons' Interests;
- administering the Register of Lobbyists; and
- raising public awareness of ethics or integrity issues by contributing to public discussion of issues relevant to the commissioner's functions. However, in performing this function, the Integrity Commissioner must not disclose information likely to identify a specific person or request for advice.

Clause 8 provides that the Integrity Commissioner is not liable in a civil proceeding or under an administrative process for acts or omissions done or made by the commissioner in good faith and without negligence for the

purposes of the Act. Liability instead attaches to the State. This clause continues an existing protection for the Integrity Commissioner under section 36 of the *Public Sector Ethics Act 1994*.

Chapter 3 Advice on ethics or integrity issues

Part 1 Core concepts

Clause 9 defines ‘ethics or integrity issue’. An ethics or integrity issue is defined to include a conflict of interest issue.

Clause 10 defines ‘conflict of interest issue’. A conflict of interest issue was previously the only category of advice which could be sought by designated persons other than the Premier under the *Public Sector Ethics Act 1994*. The *Acts Interpretation Act 1954*, section 36 definition of ‘interest’ does not apply to a reference to an interest or conflict of interest.

Clause 11 defines ‘interests issues’. The Bill introduces a new category of advice not provided under the *Public Sector Ethics Act 1994* which allows Members of the Legislative Assembly to seek advice on matters related to the Register of Members’ Interests or Register of Related Persons’ Interests.

Clause 12 establishes the classes of persons who may seek advice from the commissioner under the Bill. ‘Designated persons’ include all Members of the Legislative Assembly, statutory office holders, chief executives and senior executives of departments and public service offices and Ministerial office and Parliamentary Secretary office staff. In addition, the Bill allows for chief executives or senior executives of government entities and other classes of persons to become designated persons upon written nomination by the responsible Minister or Parliamentary Secretary.

Clause 13 provides that in chapter 3, a reference to information includes a document.

Part 2 **Advice for designated persons on ethics or integrity issues**

Clause 14 excludes chapter 3, part 2 from application to advice given to a Member of the Legislative Assembly on an interests issue.

Clause 15 establishes the conditions under which a designated person may request advice from the Integrity Commissioner. The request must be in writing, and if the advice is sought by a senior executive, senior officer or equivalent, the request must be authorised by the officer's chief executive. The designated person must disclose all relevant information and provide any further information requested to the Integrity Commissioner to allow the commissioner to give the advice. A designated person may seek advice about a matter relating to their own interests and other particular designated persons can seek advice about another designated person as provided for under clauses 16 to 20. For the avoidance of doubt, subject to clause 16 (which allows the Premier to seek advice about former designated persons except non-government Members), advice may not be sought by or about a person who has been, but is not presently, a designated person.

Clause 16 allows the Premier to seek advice about an ethics or integrity issue involving any person who is or has been a designated person, other than a non-government Member of the Legislative Assembly.

Clause 17 allows a Minister to seek advice about an ethics or integrity issue involving a designated person who is a statutory office holder or chief executive within the Minister's portfolio responsibilities or Ministerial office staff member or nominee.

Clause 18 allows a Parliamentary Secretary to seek advice about an ethics or integrity issue involving a designated person who is a Parliamentary Secretary office staff member or nominee.

Clause 19 allows the Leader of the Opposition to seek advice about an ethics or integrity issue involving a non-government Member of the Legislative Assembly within the Leader of the Opposition's political party.

Clause 20 allows a chief executive of a department or public service office to seek advice about an ethics or integrity issue involving a designated person employed in the department or office. Chief executives of government entities can seek advice about senior executive equivalents employed in the government entity and nominated by the Minister.

Clause 21 provides the process for the provision of advice on an ethics or integrity issue. The Integrity Commissioner must provide the advice in writing, having regard to codes of conduct and ethical standards as considered appropriate. The Integrity Commissioner may refuse to give advice in relation to an issue where the commissioner reasonably believes that he or she has insufficient information, or that the giving of advice would not be in accordance with the purpose of the Act. The Integrity Commissioner must give written reasons for a refusal to give advice.

Part 3 Meeting with and advice for members of Legislative Assembly on interests issues

Clause 22 allows Members of the Legislative Assembly to request meetings with the Integrity Commissioner regarding interests issues. Members must disclose all relevant information and provide any further information requested to the Integrity Commissioner to allow the commissioner to give advice to the Member.

Clause 23 provides the process for meetings and the provision of advice on interests issues. The Integrity Commissioner may provide the advice orally or in writing, having regard to codes of conduct and ethical standards as considered appropriate. The Integrity Commissioner may refuse to give advice in relation to an issue where the commissioner reasonably believes that he or she has insufficient information, or that the giving of advice would not be in accordance with the purpose of the Act. The commissioner must give written reasons for a refusal to give advice.

Part 4 Confidentiality and protection

Division 1 Secrecy

Clause 24 establishes that a person must not record, use or disclose information about an ethics or integrity issue involving another person. Such an action is punishable with a maximum penalty of 85 penalty units or one year's imprisonment. This does not prevent persons publishing advice about an ethics or integrity issue involving themselves. Information may not be recorded, used or disclosed unless disclosure is required for performance of functions under chapter 3 of the Bill or is authorised under this or another Act. Persons involved in the administration of the Act are not compellable in any proceeding to disclose information that came to the person's knowledge due to their involvement in the administration of chapter 3.

Division 2 Authorised disclosures – ethics or integrity issue

Clause 25 sets out definitions for chapter 3, part 4, division 2 of 'designated person to whom a relevant document relates' and 'relevant document'.

Clause 26 provides that disclosures of advices on ethics or integrity issues may be authorised under this division.

Clause 27 authorises disclosure of relevant documents by the designated person who is the subject of the advice. In effect, a person who is the subject of an ethics or integrity issue advice may disclose the advice or related information to the world at large.

Clause 28 authorises the Integrity Commissioner to disclose relevant documents to the person to whom the document relates.

Clause 29 provides that the Premier may request, and be provided by the commissioner with, relevant documents about an ethics or integrity issue advice in relation to any designated person other than a non-Government Member of the Legislative Assembly, senior executive officer, senior officer or equivalent. The Integrity Commissioner may, in specified

circumstances, provide the Premier with a document about an ethics or integrity issue advice on his or her own motion. Before providing the document to the Premier, the commissioner must have formed the view that an actual and significant ethics and integrity issue exists and advised the designated person of the view. The document may only be provided to the Premier if the person has failed to resolve the issue to the commissioner's satisfaction within five business days of receiving the commissioner's advice.

Clause 30 allows the Integrity Commissioner to provide a copy of relevant documents to a Minister, upon request, if the document relates to a person about whom the Minister may request advice.

Clause 31 allows the Integrity Commissioner to provide a copy of relevant documents to a Parliamentary Secretary, upon request, if the document relates to a person about whom the Parliamentary Secretary may request advice.

Clause 32 provides that the Leader of the Opposition may request, and be provided by the commissioner with, a relevant document about an ethics or integrity issue advice in relation to a Member of the Legislative Assembly within the same political party as the Leader of the Opposition. The Integrity Commissioner may provide the Leader of the Opposition with information about an ethics or integrity issue advice on his or her own motion under the same circumstances as the Premier under clause 29 where the person has been advised of the identification of a significant issue and been provided with the opportunity to resolve the issue.

Clause 33 allows the Integrity Commissioner to provide a copy of a relevant document to chief executives of departments, public service offices or government entities, upon request, if it is a person about whom the relevant chief executive may request advice.

Division 3 Authorised disclosures – interests issues

Clause 34 sets out definitions for chapter 3, part 4, division 3 of 'member to whom a relevant document relates' and 'relevant document'.

Clause 35 provides that disclosures of advices on interests issues of Members of the Legislative Assembly may be authorised under this division.

Clause 36 authorises disclosure of relevant documents by the Member of the Legislative Assembly who is the subject of the advice. In effect, the Member the subject of the advice may disclose the advice or related information to the world at large.

Clause 37 authorises the Integrity Commissioner to disclose a relevant document to the Member to whom the document relates.

Clause 38 provides that the Premier may request, and be provided by the Integrity Commissioner with, relevant documents about an interests issue advice in relation to a Member of the Legislative Assembly, other than a non-government Member. The Integrity Commissioner may, in specified circumstances, provide the Premier with documents about an interests issue advice on his or her own motion. Before providing such documents to the Premier, the commissioner must have formed the view that an actual and significant ethics and integrity issue exists and advised the designated person of the view. The documents may only be provided to the Premier if the person has failed to resolve the issue to the commissioner's satisfaction within five business days of receiving the commissioner's advice. The Premier is not empowered to further disclose the documents other than to the Member to whom the documents relates.

Clause 39 provides that the Leader of the Opposition may request, and be provided by the commissioner with, a relevant document about interests issue advice in relation to a Member of the Legislative Assembly within the same political party as the Leader of the Opposition. The Integrity Commissioner may provide the Leader of the Opposition with a relevant document on his or her own motion under the same circumstances as the Premier under clause 38 where the Member has been advised of the identification of a significant issue and been provided with the opportunity to resolve the issue.

Division 4 Protection

Clause 40 provides the conditions which must be met to attract protection from liability in a civil proceeding or under an administrative process for acts done pursuant to the commissioner's advice. If a designated person

asks for the Integrity Commissioner's advice on a conflict of interest issue, discloses all relevant information and does an act to resolve the conflict which is substantially in accordance with the commissioner's advice, the person is not liable in a civil action or an administrative process for the act. The protection provided by complying with the commissioner's advice does not extend to acts or omissions of a designated person occurring before the person received that advice.

Chapter 4 Regulation of lobbying activities

Part 1 Core concepts

Clause 41 defines 'lobbyist' and related concepts. Lobbyists are defined as entities, or employees or contractors of those entities, carrying out lobbying activities on behalf of a third party client.

The clause also excludes certain entities from the definition of lobbyist. Certain entities and any employee, contractor or person otherwise engaged by the following entities are not considered to be lobbyists: non-profit entities; entities constituted to represent the interests of their own members (such as employer groups, unions and professional bodies); trade delegations visiting Queensland; and entities which conduct 'incidental lobbying' (activities incidental to the provision of another technical or professional occupation such as architecture, engineering, legal practice or accountancy). Non-profit entities such as charities, churches or environmental societies which do not conduct activities for the profit or gain of individual members, or any lobbyists engaged on behalf of such entities, are not captured by the definition in the Bill. The legislation will therefore not restrict non-profit entities from undertaking their activities in pursuit of community goals. In addition, entities (and their employees) which conduct lobbying activities for the purpose of representing the entity's own interests are excluded from the definition of lobbyist.

Clause 42 defines ‘lobbying activity’ and ‘contact’. Lobbying activities include contact with government representatives which aim to influence State or local government decision-making. Activities such as contact with a parliamentary committee, petitions community campaigns, statements made in public forums or responses to requested submissions, information or tenders are not within the parameters of the definition of lobbying activities.

In addition, contact with the Premier, Ministers, Parliamentary Secretaries or councillors in their capacity as local representatives on a constituency matter is excluded from the definition of lobbying activity. The ability of citizens to request that local representatives make representations their behalf is a fundamental tenet of the democratic process, and the Bill does not restrict such activity.

Likewise, the definition excludes activities of a personal or otherwise non-business nature, or incidental meetings outside the control of the government representative. It is recognised that social or unscheduled contact may occur between government representatives and lobbyists and the Bill does not regulate such activity. The clause defines ‘contact’ to include telephone, email and written contact in addition to face-to-face meetings.

Clause 43 provides for the Lobbyists Register and the Lobbyists Code of Conduct. *Clause 96* provides transitional arrangements which continue current listings in the administratively established Register of Lobbyists in the Lobbyists Register established under *clause 49* of the Bill.

Clause 44 defines ‘government representative’, which includes the Premier, Ministers, Parliamentary Secretaries, councillors (including mayors), public sector officers and Ministerial and Parliamentary Secretary staff members.

Clause 45 defines ‘former senior government representative’, which includes former Ministers, Parliamentary Secretaries, councillors (including mayors), senior public sector officers (to the equivalent of chief executives or senior executives) and Ministerial and Parliamentary Secretary office staff members.

Clause 46 defines ‘councillor’ as councillors of local government, including mayors, within the meaning of the *Local Government Act 2009*. *Clause 98* provides transitional provisions in relation to the reference prior to commencement of the *Local Government Act 2009*.

Clause 47 defines ‘public sector officer’, which means chief executives or employees of: departments; public service offices; local governments; corporate entities under the *Local Government Act 2009*; the Parliamentary Service; registries and administrative offices of courts or tribunals; government owned corporations; or other entities assisted by public funds and prescribed by regulation.

Part 2 Registration of lobbyists

Division 1 Interpretation

Clause 48 references the definitions of ‘listed person’, ‘proposed listed person’ at clauses 49 and 53 respectively and defines ‘registrant’ as an entity registered in the Lobbyists Register.

Division 2 Register

Clause 49 requires that the Integrity Commissioner keep a Lobbyists Register which is published on the commissioner’s website. The Register must include the name and business registration details for the lobbyist, the names and roles of ‘listed persons’ who carry out lobbying activities and the names of each client which has engaged the lobbyist in the previous year. The Register must also state whether listed persons are former senior government representatives, and the date that they ceased to hold public office.

Clause 50 requires registrants to notify the Integrity Commissioner of changes to particulars listed on the Register within 10 business days of the registrant becoming aware of the change. The commissioner must update the register (where appropriate) with such changes.

Clause 51 requires registrants to provide the Integrity Commissioner with annual confirmation of particulars listed on the Register by 31 July each year. Registrants will be required to confirm that previous registration details remain correct and submit new statutory declarations for all listed persons.

Division 3 Registration

Clause 52 references the definitions of ‘accepted representations’ at clause 58 and ‘show cause notice’ and ‘show cause period’ at clause 57.

Clause 53 allows any entity to apply for registration as a lobbyist, and requires that applications be made to the Integrity Commissioner in an approved form. The listed person may be required to disclose any relevant criminal history, verified by statutory declaration. The *Criminal Law (Rehabilitation of Offenders) Act 1986* would apply to any disclosure of criminal history. The clause also defines ‘dishonesty offence’ and ‘relevant criminal history’.

Clause 54 provides that before deciding an application for registration, the Integrity Commissioner may require the applicant to provide further information in not less than five business days. Such information may need to be verified by statutory declaration. Failure by the applicant to comply is deemed to be a withdrawal of the application.

Clause 55 sets out grounds on which an application for registration may be refused. The grounds of refusal are that the application is false or misleading, obligations under the Bill or the Lobbyists Code of Conduct have not been complied with, or for a reason as otherwise determined by the Integrity Commissioner. In making such a determination, the commissioner may have regard to facts such as exhibited standards of ethical behaviour, or if a lobbyist has been removed from the Register of Lobbyists of the Commonwealth or another state, the facts or circumstances resulting in the removal.

Clause 56 requires the Integrity Commissioner to consider and decide applications as soon as practicable. If the Integrity Commissioner decides to register the lobbyist the commissioner must advise the lobbyist and update the Register with their details. The Integrity Commissioner can alternatively issue the applicant with a notice requiring the applicant to show why their application should not be refused. The show cause process allows for natural justice for an applicant prior to any decision to refuse an application.

Clause 57 provides that, prior to refusing to register an applicant, the Integrity Commissioner must give the applicant a show cause notice stating the grounds upon which the commissioner intends to refuse registration, and the facts and circumstances establishing the ground. The registrant

must be invited to show why registration should not be refused in a period of not less than five business days after being given the notice.

Clause 58 authorises the applicant to make written representations to the Integrity Commissioner and requires the commissioner to consider all representations made by the applicant about the show cause notice.

Clause 59 provides that, if the Integrity Commissioner decides after receiving representations, that no grounds to refuse registration exist, the commissioner must register the applicant.

Clause 60 sets out the process where the Integrity Commissioner considers that grounds for refusal of the registration still exist after consideration of representations, or where no representations have been received. The registrant must be notified of the Integrity Commissioner's decision to refuse registration as soon as practicable.

Division 4 Cancellation of registration

Clause 61 references the definitions of 'accepted representations' at clause 64 and 'show cause notice' and 'show cause period' and clause 63.

Clause 62 sets out grounds on which an registrant's registration may be cancelled by the Integrity Commissioner. The grounds for cancellation are the same as the grounds for refusal, namely that the registration was on the basis of a false or misleading application, obligations under the Bill or the Lobbyists Code of Conduct have not been complied with, or for a reason as otherwise determined by the Integrity Commissioner. In making such a determination, the commissioner may have regard to facts such as exhibited standards of ethical behaviour, or if a lobbyist has been removed from the Register of Lobbyists of the Commonwealth or another state, the facts or circumstances resulting in the removal.

Clause 63 provides that if the Integrity Commissioner believes a ground exists to cancel registration, the commissioner must give the applicant a show cause notice stating the grounds upon which the commissioner intends to cancel the registration, and the facts and circumstances establishing the ground. The registrant must be invited to show why registration should not be cancelled in a period of not less than five business days after being given the notice.

Clause 64 authorises the applicant to make written representations to the Integrity Commissioner and requires the commissioner to consider all representations made by the applicant about the show cause notice.

Clause 65 provides that, if the Integrity Commissioner decides after receiving representations, that no grounds to cancel registration exist, the commissioner must not take any further action and advise the registrant as such.

Clause 66 sets out the process where the Integrity Commissioner considers that a ground for cancellation of the registration still exists after consideration of representations, or where no representations have been received. The commissioner may cancel the registration, remove the registrant's details from the Register and must notify the registrant of the decision as soon as practicable.

Part 3 Limitations on lobbying activities

Clause 67 references the definition of 'listed person' in clause 49 and clarifies that in chapter 4, part 3 a lobbyist includes a listed person for the lobbyist.

Clause 68 establishes that the Integrity Commissioner may, after consultation with the parliamentary committee approve a Lobbyists Code of Conduct which must be published on the commissioner's website. This clause defines the purpose of a Lobbyists Code of Conduct as being to provide standards of conduct for lobbyists in their dealings with government representatives. Lobbyists must comply with the code of conduct and non-compliance would provide a ground for refusal or cancellation of registration by the Integrity Commissioner.

Clause 69 prohibits an entity (other than a lobbyist) that has engaged a lobbyist to undertake a lobbying activity from giving or agreeing to give the lobbyist or related person a success fee. A lobbyist must not agree for the lobbyist or related person to receive a success fee for lobbying activities conducted by or for the lobbyist. The maximum penalty for both offences is 200 penalty units. Any success fee paid is forfeited to the State upon conviction but must be returned if the conviction is quashed. The clause defines 'success fee' as money or other reward which is contingent on the outcome of lobbying activities. As the clause applies to entities other than

lobbyists, this clause will not prevent lobbying firms from paying performance bonuses or providing other rewards to its employees in recognition of successful performance of services.

Clause 70 prohibits former senior government representatives from conducting related lobbying activities for two years from the date they ceased to hold public office. A government representative must not knowingly permit a former senior government representative of less than two years to undertake related lobbying activities. The clause defines ‘related lobbying activity’ 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.

Clause 71 prohibits an entity that is not a registered lobbyist from conducting lobbying activities, and government representatives from knowingly permitting an entity that is not a registered lobbyist to conduct a lobbying activity. Requirements will apply to both lobbyists to ensure registration prior to conducting lobbying activities and to government representatives to check the publicly available register to ensure registration of lobbyists conducting lobbying activities. Non-compliance with these requirements may form a basis for refusal of registration for lobbyists, or disciplinary action for certain government representatives.

Clause 72 makes clear that a government representative is not obliged to have contact with a particular lobbyist or lobbyists in general, and that the Bill does not limit lobbyists from having contact with government representatives if a law requires the representative to consider views put forward by the lobbyist.

Chapter 5 Administrative provisions for integrity commissioner

Clause 73 provides that the Integrity Commissioner must be appointed by the Governor in Council under this Bill and not the *Public Service Act 2008*.

Clause 74 sets out the process for appointment of a person as Integrity Commissioner. An appointment may only be made after the Minister has advertised the position nationally, and consulted with the parliamentary committee about the selection process and the successful applicant's appointment. This does not apply where the Integrity Commissioner is being reappointed. A person must have suitable knowledge, experience, personal qualities and standing within the community to qualify for appointment as Integrity Commissioner.

Clause 75 provides for the Integrity Commissioner to hold office for a term not longer than five years, but limits the total continuous term of appointment of a commissioner to ten years.

Clause 76 requires the Integrity Commissioner to be paid the remuneration and allowances decided by the Governor in Council. The Governor in Council decides the terms and conditions of appointment where not otherwise provided by the Bill.

Clause 77 allows the Minister to grant the Integrity Commissioner leave of absence.

Clause 78 provides for the Integrity Commissioner to resign by notice in writing to the Minister. The notice must be provided to the Governor, and a copy must be provided to the Speaker and the chairperson of the parliamentary committee as soon as practicable after the resignation is tendered to the Minister. However, failure to comply with this requirement does not affect the resignation.

Clause 79 requires the Integrity Commissioner, as an independent officer of the Parliament, to make an oath or affirmation administered by the Speaker prior to performing the duties of office.

Clause 80 introduces a new requirement for the Integrity Commissioner to provide a statement of interests to the Minister and parliamentary committee in accordance with requirements of the *Public Service Act 2008*, section 101(3). The statement must be provided within one month of appointment and a revised statement must be provided as soon as possible after relevant changes to the commissioner's interests. The *Acts Interpretation Act 1954*, section 36 definition of 'interest' does not apply to a reference to an interest.

Clause 81 provides a further new requirement for the Integrity Commissioner to disclose to the Minister and parliamentary committee if he or she has an interest which conflicts with the discharge of the

commissioner's responsibilities. The commissioner must not take action or further action about the matter unless authorised by the Minister. The *Acts Interpretation Act 1954*, section 36 definition of 'interest' does not apply to a reference to an interest.

Clause 82 sets out a new process for removal from office of the Integrity Commissioner, on grounds of incapacity, incompetence or misconduct or conviction of an indictable offence. The commissioner may only be removed from office by the Governor upon address moved by the Minister in the Legislative Assembly. The Minister must first have given the commissioner reasons for the motion, have tabled the commissioner's response in the Assembly and consulted and gained unanimous or bipartisan support for the motion from the parliamentary committee.

Clause 83 provides for the delegation of the Integrity Commissioner's functions in relation to the Lobbyists Register under chapter 4 to an appropriate qualified public service officer.

Clause 84 provides for the Governor in Council to appoint a person to act as the Integrity Commissioner when the position is vacant or the commissioner is absent or otherwise unable to perform the duties of the office. To remove any doubt, a former Integrity Commissioner may be appointed to act as Integrity Commissioner.

Clause 85 requires the Integrity Commissioner to issue the Speaker and parliamentary committee with a written report about the performance of the commissioner's functions as soon as practicable after the end of each financial year. The Bill introduces a new function for the commissioner to report on the compliance of chief executives with the requirement to lodge statements of interest under the *Public Service Act 2008*. The report on chief executive compliance with this requirement may identify a chief executive; however the report must not contain information likely to identify individuals who requested the commissioner's advice on an ethics or integrity issue or about whom advice was requested. The Speaker must table the report in the Legislative Assembly the next sitting day after it is given to the Speaker.

Chapter 6 Strategic reviews of integrity commissioner's functions

Clause 86 contains provision for the Governor in Council to appoint and decide terms of reference for an appropriately qualified person to undertake a strategic review of the Integrity Commissioner's functions. The first review must be conducted within four years of the commencement of this clause, and further reviews must be undertaken at least once every five years. The Minister must consult with both the Integrity Commissioner and the parliamentary committee on the appointment of the reviewer and the terms of reference.

Clause 87 establishes that, in conducting the strategic review, the reviewer has the powers that an authorised auditor has for an audit of an entity under the *Auditor-General Act 2009*.

Clause 88 provides for the reviewer to give a copy of a proposed report on the review to the Minister and the Integrity Commissioner. The Minister and the Integrity Commissioner may, within 15 business days provide the reviewer with written comments on a proposed report which must be incorporated into the final report. The Minister must table the report in the Legislative Assembly within three sitting days after the Minister receives the report.

Chapter 7 Miscellaneous provisions

Clause 89 sets out the functions of the parliamentary committee. The Bill enhances the functions and the independence of the Integrity Commissioner, including providing for the commissioner to report to parliament through a parliamentary committee. The renamed Integrity, Ethics and Parliamentary Privileges Committee will oversight the commissioner's performance and functions and will have responsibilities including reporting to the Legislative Assembly on any matter concerning the commissioner, examining each annual report and strategic review report and reporting to the Assembly on any changes considered desirable for the more effective operation of the Act.

Clause 90 allows the Integrity Commissioner to approve forms for use under the Bill.

Clause 91 provides that the Governor in Council may make regulations under the Act.

Chapter 8 Transitional provisions

Clause 92 provides for interpretation of references to the *Public Sector Ethics Act 1994* and that, if the context permits, references to that Act may be taken as a reference to this Act. The provision applies only to the extent of provisions of part 7 of the *Public Sector Ethics Act 1994* regarding the Integrity Commissioner which will be re-enacted through the Bill.

Clause 93 continues the current appointment of the Integrity Commissioner under the *Public Sector Ethics Act 1994* and provides that the oath requirements have been taken to be satisfied and that a statement of interests must be provided within one month of commencement of the clause.

Clause 94 continues any nominations of persons or classes of persons as ‘designated persons’, in effect under the *Public Sector Ethics Act 1994* through the Bill.

Clause 95 allows the Integrity Commissioner to continue to consider any requests for advice received under the *Public Sector Ethics Act 1994* under the Bill.

Clause 96 continues current listings in the Register of Lobbyists administratively established under the Queensland Contact with Lobbyists Code in the Register established under clause 49 of the Bill. All lobbyists on the Register will be taken to be listed on the Register under the Bill.

Clause 97 provides that failure to comply with the Queensland Contact with Lobbyists Code can be taken as failure to comply with the Lobbyists Code of Conduct to be approved under the Bill.

Clause 98 provides for interpretation of references to the *Local Government Act 2009* for the period prior to commencement of that Act.

Until the *Local Government Act 2009* commences, the reference can be taken to be a reference to the *Local Government Act 1993*.

Clause 99 provides for interpretation of references to the *Sustainable Planning Act 2009* for the period prior to commencement of that Act. Until the *Sustainable Planning Act 2009* commences, the reference can be taken to be a reference to the *Integrated Planning Act 1997*.

Chapter 9 Amendments

Part 1 Amendment of this Act

Clause 100 provides that chapter 9, part 1 amends the Bill.

Clause 101 amends the long title of the Bill to omit the reference to related amendments of other Acts.

Part 2 Amendment of Government Owned Corporations Act 1993

Clause 102 provides that chapter 9, part 2 amends the *Government Owned Corporations Act 1993*.

Clause 103 replaces section 156 of the *Government Owned Corporations Act 1993* to qualify the exclusion of GOCs from the definition of ‘unit of public administration’ under the *Crime and Misconduct Act 2001*. The clause deals with situations in which the chief executive officer of a GOC suspects that a complaint, or information or a matter relating to the GOC involves, or may involve, something that would be official misconduct under the *Crime and Misconduct Act 2001* if the GOC were a unit of public administration. The clause provides that in these circumstances the chief executive officer must notify the CMC of the complaint under section 38 of

the *Crime and Misconduct Act 2001* as if the GOC were a unit of public administration and the chief executive officer were a public official.

The clause also deals with situations in which the chief executive of the department in which the *Government Owned Corporations Act 1993* is administered reasonably suspects that a complaint, or information or matter relating to a GOC involves, or may involve, something that would be official misconduct under the *Crime and Misconduct Act 2001* if the GOC were a unit of public administration **and** the chief executive officer of the GOC has not notified the CMC of the complaint. In such situations, the chief executive must notify the Crime and Misconduct Commissions of the complaint under the *Crime and Misconduct Act 2001*, section 38 as if the GOC were a unit of public administration and the chief executive were a public official.

The clause provides that sections 39 and sections 40 of *Crime and Misconduct Act 2001* will apply in relation to the above mentioned complaints.

Further, upon the notifications mentioned in this clause, the *Crime and Misconduct Act 2001* will apply in relation to the GOC for the purposes of the complaint as if the GOC were a unit of public administration and the chief executive of the department in which the *Government Owned Corporations Act 1993* is administered were a public official or relevant public official.

This clause does not apply to a declared entity under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

Clause 104 replaces schedule 4, section 156 of the *Government Owned Corporations Act 1993* to qualify the exclusion from the definition of 'unit of public administration' under the *Crime and Misconduct Act 2001* for GOC subsidiaries. The provision operates on the same basis as the amendment to the *Government Owned Corporations Act 1993*, section 156 outlined above.

Part 3 **Amendment of Parliament of Queensland Act 2001**

Clause 105 provides that chapter 9, part 3 amends the *Parliament of Queensland Act 2001*.

Clause 106 amends section 78 of the *Parliament of Queensland Act 2001* to include an additional area of responsibility for the statutory committees of the Legislative Assembly.

Clause 107 amends section 80 of the *Parliament of Queensland Act 2001* to rename the Members' Ethics and Parliamentary Privileges Committee as the Integrity, Ethics and Parliamentary Privileges Committee.

Clause 108 replaces the heading for chapter 5, part 4, division 2 of the *Parliament of Queensland Act 2001* to reflect the new name of the parliamentary committee.

Clause 109 amends section 90 of the *Parliament of Queensland Act 2001* to reflect the additional area of responsibility for the Integrity, Ethics and Parliamentary Privileges Committee of the integrity of public institutions. The clause inserts a new section 90A specifying that the committee's area of responsibility about the integrity of public institutions involves its functions under the Bill.

Part 4 **Amendment of Public Service Act 2008**

Clause 110 provides that chapter 9, part 4 amends the *Public Service Act 2008*.

Clause 111 amends section 101 of the *Public Service Act 2008* to require chief executives to provide a copy of their statement of interests and written confirmation that the statement has been provided to their departmental Minister, to the Integrity Commissioner and the chief executive of the Public Service Commission. The Integrity Commissioner will report on compliance with the requirement under the *Public Service Act 2008* to lodge the statement of interests but will not investigate or further consider interests declared in the statement.

Clause 112 inserts a new chapter 9, part 4 into the *Public Service Act 2008* which provides that the chief executive of the Public Service Commission must provide the copies of any chief executive statements of interests to the Integrity Commissioner.

Clause 113 amends schedule 2 of the *Public Service Act 2008* to omit the exclusion of the Integrity Commissioner from the definition of ‘term appointee’. Under clause 82 of the Bill, the Integrity Commissioner may now only be removed from office on address of the Governor to the Legislative Assembly. As section 140(3)(a) of the *Public Service Act 2008* provides that the holder of an office who may or must be removed from office following an address or resolution of the Legislative Assembly is not a term appointee, it is no longer necessary to declare the Integrity Commissioner as being excluded from the definition of term appointee in schedule 2 of the *Public Service Act 2008*.

Clause 114 amends the definition of Integrity Commissioner in schedule 4 of the *Public Service Act 2008* to reflect the title of the new Act under which the Integrity Commissioner is established.

Part 5 Amendment of other Acts

Clause 115 provides that schedule 1 amends the Acts it mentions.

Schedule 1 Amendments

The *Local Government Act 2009* is amended to omit references to the Queensland Contact with Lobbyists Code.

The *Public Sector Ethics Act 1994* is amended to omit references to the Integrity Commissioner and insert a reference that the *Acts Interpretation Act 1954*, section 36 definition of ‘interest’ does not apply to a reference to interests.

The *Right to Information Act 2009* is amended to update references to the exclusion from that Act of documents created or received by the Integrity Commissioner. In order to preserve confidentiality of the commissioner’s advice, all documents created or received by the Integrity Commissioner

for chapter 3 of the Bill, including the new category of advice on interests issues for Members of the Legislative Assembly, will be excluded from the operation of the *Right to Information Act 2009*.

Schedule 2 Dictionary

Schedule 2 provides a dictionary to define key terms in the Bill.

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