

Queensland



# **PUBLIC SECTOR ETHICS AMENDMENT ACT 1999**

**Act No. 55 of 1999**



Queensland



**PUBLIC SECTOR ETHICS AMENDMENT  
ACT 1999**

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Queensland



## **Public Sector Ethics Amendment Act 1999**

### **Act No. 55 of 1999**

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**An Act to amend the *Public Sector Ethics Act 1994*, and for other purposes**

*[Assented to 18 November 1999]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Public Sector Ethics Amendment Act 1999*.

## **PART 2—AMENDMENT OF PUBLIC SECTOR ETHICS ACT 1994**

### **Act amended in pt 2**

2. This part amends the *Public Sector Ethics Act 1994*.

### **Amendment of title**

3. Title, after ‘conduct’—

*insert—*

**‘, and to provide for an integrity commissioner’.**

### **Amendment of s 2 (Definitions)**

4.(1) Section 2, ‘In this Act—’

*omit, insert—*

‘The dictionary in the schedule defines particular words used in this Act.’.

(2) Section 2, definitions—

*relocate* to the dictionary.

**Renumbering of pt 7 (Miscellaneous)****5.** Part 7—

*renumber* as part 8.

**Renumbering of s 25 (Regulation-making power)****6.** Section 25—

*renumber* as section 44.

**Insertion of new pt 7****7.** After part 6—

*insert*—

**‘PART 7—INTEGRITY COMMISSIONER*****‘Division 1—Purpose of part*****‘Purpose of pt 7**

‘25. This purpose of this part is to help Ministers and others to avoid conflicts of interest and in so doing to encourage confidence in public institutions.

***‘Division 2—Integrity commissioner*****‘Integrity commissioner**

‘26. There is to be a Queensland Integrity Commissioner.

*‘Division 3—Designated persons***‘Who are designated persons**

**‘27.(1)** Each of the following persons is a **“designated person”**—

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

**‘(2)** A nomination under subsection (1)(h) or (k) must be by signed notice given to the integrity commissioner.



***Division 4—Functions of integrity commissioner*****‘Functions of integrity commissioner**

**‘28.** The integrity commissioner has the following functions—

- (a) to give advice to designated persons about conflict of interest issues as provided under division 5;
- (b) to give advice to the Premier, if the Premier asks, on issues concerning ethics and integrity, including standard-setting for issues concerning ethics and integrity;
- (c) to contribute to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the integrity commissioner’s functions.

***Division 5—Advice*****‘Request for advice by designated persons**

**‘29.(1)** The integrity commissioner may give advice about a conflict of interest issue only if—

- (a) the person seeking the advice is a designated person; and
- (b) the person makes a written request for the advice and, if the person is a senior officer, the request is accompanied by a signed authority to seek the advice from the chief executive officer of the department, public service office or government entity in which the person is employed.

**‘(2)** In this section—

**“senior officer”** includes a senior executive officer and senior executive equivalent.

**‘Designated persons about whom advice may be sought**

**‘30.(1)** A designated person may seek advice about a conflict of interest issue involving the person.

‘(2) The Premier may seek advice about a conflict of interest issue involving any designated person.

‘(3) A Minister may seek advice about a conflict of interest issue involving a designated person who is—

- (a) a statutory office holder whose office is established under an Act administered by the Minister; or
- (b) the chief executive of a department administered by the Minister or a senior executive officer or senior officer employed in the department; or
- (c) a chief executive officer of a government entity or a senior executive equivalent employed in the entity nominated by the Minister under section 27(1)(h); or
- (d) mentioned in section 27(1)(i); or
- (e) nominated by the Minister under section 27(1)(k).

‘(4) A Parliamentary Secretary may seek advice about a conflict of interest issue involving a designated person who is—

- (a) mentioned in section 27(1)(j); or
- (b) nominated by the Parliamentary Secretary under section 27(1)(k).

‘(5) The chief executive officer of a department or public service office may seek advice about a conflict of interest issue involving a designated person employed in the department or office.

‘(6) The chief executive officer of a government entity who is nominated by the Minister under section 27(1)(h) may seek advice about a conflict of interest issue involving a senior executive equivalent who is—

- (a) nominated by the Minister under section 27(1)(h); and
- (b) employed in the entity managed by the chief executive officer.

‘(7) To remove any doubt, it is declared that advice must not be sought by or about a person who has been, but is not presently, a designated person.

**‘Process for seeking advice**

‘**31.(1)** A request for advice under section 30 must disclose all relevant information about the conflict of interest issue for which the advice is sought.

‘**(2)** The integrity commissioner may ask the designated person for further information for the purpose of giving the advice.

‘**(3)** The integrity commissioner may refuse to give the advice if the integrity commissioner reasonably believes that—

- (a) he or she does not have enough information about the conflict of interest issue to give the advice; or
- (b) the advice is asked for in circumstances where the giving of the advice would not be in keeping with the purpose of this part.

‘**(4)** Advice given under this division must be in writing.

‘**(5)** If the integrity commissioner refuses to give advice under subsection (3), the integrity commissioner must record in writing the integrity commissioner’s reasons for refusing to give the advice.

**‘Issues to which integrity commissioner must or may have regard when giving advice**

‘**32.** The integrity commissioner when giving advice about a conflict of interest issue to a designated person—

- (a) must have regard to the following—
  - (i) approved codes of conduct;
  - (ii) ethical standards or codes of conduct adopted by the Legislative Assembly by resolution;
  - (iii) ethical standards or codes of conduct approved by the Premier for Ministers; and
- (b) may have regard to other ethical standards the integrity commissioner considers appropriate.

***Division 6—Confidentiality and protection*****‘Secrecy**

**‘33.(1)** A person must not record, use or disclose information about a conflict of interest issue about anyone that came to the person’s knowledge because of the person’s involvement in the administration of this part.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

**‘(2)** Subsection (1) does not apply to a person’s recording, use or disclosure of information if the recording, use or disclosure is—

- (a) in the performance of his or her functions under this part; or
- (b) authorised under this or another Act.

**‘(3)** A person who is or has been involved in the administration of this part is not, in any proceeding, compellable to disclose information about a conflict of interest issue about anyone that came to the person’s knowledge because of the person’s involvement in the administration of this part.

**‘Authorisation of particular disclosures**

**‘34.(1)** A relevant document about a conflict of interest issue may be disclosed under subsections (2) to (7).

**‘(2)** A person who is or has been a designated person to whom a relevant document relates may disclose the document.

**‘(3)** The integrity commissioner may disclose a relevant document to the person who is or has been the designated person to whom the relevant document relates.

**‘(4)** The integrity commissioner must give a copy of a relevant document relating to a particular designated person, other than a senior executive officer, senior officer or senior executive equivalent—

- (a) to the Premier, if—
  - (i) the Premier asks for a copy of the document; or
  - (ii) the integrity commissioner reasonably believes that the person has an actual and significant conflict of interest; or

- (b) to a Minister, if the Minister asks for a copy of the document and the person is a person about whom the Minister may seek advice under section 30(3); or
- (c) to a Parliamentary Secretary, if the Parliamentary Secretary asks for a copy of the document and the person is a person about whom the Parliamentary Secretary may seek advice under section 30(4).

‘(5) The integrity commissioner may give a copy of a relevant document to the Premier under subsection (4)(a)(ii) only if—

- (a) the integrity commissioner advises the designated person in writing that the commissioner has the belief mentioned in the provision and is therefore required under subsection (4)(a) to give a copy of the document to the Premier; and
- (b) the designated person fails to resolve the conflict to the integrity commissioner’s satisfaction within 7 days after being given the advice mentioned in paragraph (a).

‘(6) The integrity commissioner must give a copy of a relevant document relating to a particular designated person to the chief executive officer of a department or public service office if—

- (a) the chief executive officer asks for a copy of the document; and
- (b) the person is a person about whom the chief executive officer may seek advice under section 30(5).

‘(7) The integrity commissioner must give a copy of a relevant document relating to a particular designated person to the chief executive officer of a government entity who is nominated by the Minister under section 27(1)(h) if—

- (a) the chief executive officer asks for a copy of the document; and
- (b) the person is a person about whom the chief executive officer may seek advice under section 30(6).

‘(8) To remove any doubt, it is declared that the integrity commissioner must not disclose a relevant document relating to a person who has been, but is not presently, a designated person, other than under subsection (3).

‘(9) In this section—

**“designated person to whom the relevant documents relate”** means the designated person involved in a conflict of interest issue and to whom the relevant documents relate.

**“relevant document”**, for a conflict of interest issue, means each of the following documents—

- (a) the request for advice;
- (b) any further information requested by the integrity commissioner under section 31(2) and given to the integrity commissioner;
- (c) the advice given by the integrity commissioner about the issue;
- (d) the record, under section 31(5), of the integrity commissioner’s refusal to give the advice.

#### **‘Limited protection to designated persons**

**‘35.(1)** This section applies if a designated person—

- (a) asks under this part for the integrity commissioner’s advice about a conflict of interest issue involving the designated person; and
- (b) discloses all relevant information about the issue to the integrity commissioner when seeking the advice; and
- (c) does an act to resolve the conflict substantially in accordance with the integrity commissioner’s advice on the issue.

**‘(2)** The designated person is not liable in a civil proceeding or under an administrative process for the act taken by the person to resolve the conflict.

**‘(3)** To remove any doubt, it is declared that subsection (2) does not affect the designated person’s liability for an act or omission done or made in connection with the conflict of interest issue before the person receives the integrity commissioner’s advice.

#### **‘Protection for integrity commissioner**

**‘36.(1)** The integrity commissioner is not liable in a civil proceeding or under an administrative process for an act or omission done or made by the integrity commissioner acting in good faith, and without negligence, for the purposes of this part.

‘(2) If subsection (1) prevents a civil liability attaching to the integrity commissioner, the liability attaches instead to the State.

### *Division 7—General*

#### **‘General provisions about integrity commissioner’s appointment**

‘37.(1) The integrity commissioner is to be appointed by the Governor in Council.

‘(2) A person is qualified for appointment as the integrity commissioner if the person has knowledge, experience, personal qualities and standing within the community suitable to the office.

‘(3) Subject to sections 40 and 41, the integrity commissioner holds office for the term, not longer than 5 years, stated in the instrument of appointment.

‘(4) The integrity commissioner is to be appointed under this Act, and not under the *Public Service Act 1996*.

#### **‘Terms of appointment**

‘38.(1) The integrity commissioner is to be paid the remuneration and allowances decided by the Governor in Council.

‘(2) The integrity commissioner holds office on the terms decided by the Governor in Council, to the extent the terms are not otherwise provided for by this Act.

#### **‘Leave of absence**

‘39. The Minister may grant leave of absence to the integrity commissioner on the terms the Minister considers appropriate.

#### **‘Resignation**

‘40. The integrity commissioner may resign by signed notice given to the Minister.

**‘Termination of appointment**

‘41. The Governor in Council may terminate the appointment of the integrity commissioner if the integrity commissioner—

- (a) can not satisfactorily perform the integrity commissioner’s duties; or
- (b) is convicted of an indictable offence; or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the integrity commissioner were a public service officer; or
- (d) is absent, without the Minister’s leave and without reasonable excuse, for 14 consecutive days or 28 days in any year.

**‘Acting integrity commissioner**

‘42. The Governor in Council may appoint a person to act as integrity commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the integrity commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.

**‘Report to Premier**

‘43.(1) The integrity commissioner must, as soon as practicable after the end of each financial year, give the Premier a written report about the performance of the commissioner’s functions for the financial year.

‘(2) The report must be in general terms and must not contain information likely to identify individuals who sought the commissioner’s advice about a conflict of interest issue.’.

**Insertion of new schedule**

8. After section 44, as renumbered—

*insert—*



**‘SCHEDULE****‘DICTIONARY**

## section 2

**“conflict of interest issue”**, involving a person, means a issue about a conflict between the person’s personal interests and the person’s official duties.

**“designated person”** see section 27.

**“government entity”** has the meaning given by the *Public Service Act 1996*, section 21, but does not include a department or a public service office.

**“government member”** means—

- (a) a member of the Legislative Assembly who is a member of a political party recognised in the Legislative Assembly as being in government; or
- (b) a member of the Legislative Assembly, other than a member mentioned in paragraph (a), who—
  - (i) is a member of a parliamentary committee; and
  - (ii) was appointed to the committee on the nomination of a member of a political party recognised in the Legislative Assembly as being in government.

**“information”**, in part 7, includes a document.

**“integrity commissioner”** means the Queensland Integrity Commissioner.

**“parliamentary committee”** means a committee of the Legislative Assembly.

**“Parliamentary Secretary”** means a member of the Legislative Assembly appointed as a Parliamentary Secretary under the *Constitution Act 1867*, section 57.

**“public service office”** means an entity declared under the *Public Service Act 1996*, section 17, to be a public service office.

**“remuneration”** includes salary.

**“senior executive equivalent”** means an employee, other than a chief executive officer, of a government entity whose remuneration is equal to or greater than the remuneration payable to a senior officer.

**“senior executive officer”** means an officer, other than a chief executive, employed under the *Public Service Act 1996* as a senior executive.

**“senior officer”** see the *Public Service Act 1996*, section 63(1).<sup>1</sup>

**“statutory office”** see the *Public Service Act 1996*, section 108.<sup>2</sup>

## **PART 3—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992**

### **Act amended in pt 3**

9. This part amends the *Freedom of Information Act 1992*.

### **Amendment of sch 1 (Secrecy provisions giving exemption)**

10. Schedule 1—

*insert—*

*‘Public Sector Ethics Act 1994, section 33(1)’.*

<sup>1</sup> The *Public Service Act 1996*, section 63(1) provides—

**‘63.(1)** A senior officer is an officer (other than a senior executive) declared to be a senior officer under a directive of the commissioner.’.

<sup>2</sup> The *Public Service Act 1996*, section 108(1) provides—

**‘108.(1)** A **“statutory office”** is an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister.’.

