

Welcome Aboard:

A guide for members of Queensland Government Boards,
committees and statutory authorities



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Introduction

Welcome Aboard: A guide for members of Government Boards, committees and statutory authorities is about the role of these bodies and the responsibilities of those who serve the community as Government Board members. It also gives details about how such bodies are established. Throughout this document, boards, committees and statutory authorities are collectively referred to as Government Boards. Many different names are given to Government Boards including board, commission, authority, trust, tribunal, committee and council.

Welcome Aboard will be invaluable for:

- current and intending Government Board members
- officials involved in selection and appointment of new members
- people interested in how government operates.

Welcome Aboard is available online to allow access by a wider audience. Frequent users will also value the hyperlinks within the electronic text, allowing swift movement to related topics.

Welcome Aboard is part of the *Governing Queensland* suite of handbooks that provides information about:

- the role of Cabinet and the Executive Council
- the roles and responsibilities of Ministers and ministerial staff
- the processes of drafting and approving laws.

Welcome Aboard deals with the obligations of persons involved in the good corporate governance of Government Boards.

The State Affairs branch of the Department of the Premier and Cabinet has expertise in the process of selection and appointment of Government Board members. In this regard, State Affairs:

- supports the Premier in making appointments within the portfolio of the Premier and Cabinet
- briefs the Premier on all 'significant appointment' Cabinet submissions
- administers the [*Queensland Register of Appointees to Government Bodies*](#) which is accessible online
- administers the [*Queensland Register of Nominees to Government Bodies*](#) (on which all Queenslanders are invited to register their interest in being considered for appointment to Government Boards)
- provides secretariat support to the Executive Council of Queensland, which considers appointments to Government Boards where Governor in Council approval is required.

1. Purpose of the guide

Government Boards are, in most cases, established by or under a Queensland Act of Parliament. These bodies are usually administered by a number of people specially appointed by a Minister, Cabinet or by the Governor in Council because of their particular skills or experience. These individuals are appointed for a fixed period of time and together make up a Government Board, which is responsible to a Minister for the general direction, control and operations of the Government Board. Members of Government Boards have similar roles and responsibilities, irrespective of the size of the body.

Members of the public with relevant experience or expertise may be considered for membership to Government Boards when a new Government Board is established, when casual vacancies arise, or at the expiration of the term of office of a Government Board or individual members. Appointment to a Government Board carries with it many serious responsibilities and obligations. Lack of knowledge of these responsibilities can seriously disadvantage both the individual and the board for whose performance they are accountable to a Minister. It is vital that people currently undertaking or newly chosen for such appointments fully understand the scope of the task so that they are able to contribute in a meaningful and positive way to the administration of their Government Board.

This guide is designed to assist the establishment and operation of Government Boards and to assist members in the effective and efficient performance of their duties. The guide may be useful to officers responsible for the appointment process and for Chairs and Chief Executive Officers responsible for selection and induction. This is not a legal document nor is it intended to be exhaustive. It endeavours to consolidate into one document key information relevant to members of Government Boards.

There are several categories of Government Boards which are discussed in this guide. Government Owned Corporations (GOCs) are quite different from most other Government Boards and are subject to the requirements of specific legislation, namely the *Government Owned Corporations Act 1993* and, in certain instances, the *Corporations Act 2001 (Cth)*. The Office of Government Owned Corporations (OGOC) located within Queensland Treasury maintains policies and guidelines affecting GOCs and these are available at www.ogoc.qld.gov.au. *Welcome Aboard* provides general information (see in particular Chapter 11) but does not duplicate the specific information available from OGOC.

2. Role of Government Boards

There are hundreds of different Government Boards across Queensland. They range in scale and character from advisory Government Boards providing policy advice on discrete areas of government policy, to professional registration Government Boards, or governing Government Boards overseeing multi-million dollar government trading enterprises. The Department of the Premier and Cabinet maintains the *Queensland Register of Appointees to Government Bodies*, which is an online database of Queensland Government Boards and their membership. The Register can be accessed at <http://governmentbodies.premiers.qld.gov.au/>

The recent Independent Review of Government Boards, Committees and Statutory Authorities¹ recommended that some existing boards be abolished or merged, although many others were recommended to continue broadly as they are. The government accepted most of these recommendations and, as a result, the number of Government Boards is likely to decrease over 2010.

2.1 Functions

A broad distinction can be drawn between those Government Boards which provide governance (i.e. direction and control) and those which provide policy and management advice. The functions and general powers of a board are usually set out in the enabling legislation (the Queensland Act of Parliament which establishes the entity).

Example: Radiation Advisory Council established under the *Radiation Safety Act 1999*

Section 161 Establishment of council

The Radiation Advisory Council is established.

Section 162 Functions of council

1. The council has the following functions:
 - a. examining, and making recommendations to the Minister about, the following-
 - (i) the operation and application of this Act
 - (ii) proposed amendments of this Act
 - (iii) radiation safety standards
 - (iv) issues relating to radiation
 - (v) research into radiation practices carried out, and the transport of radioactive materials, in the state

¹ The Independent Review of Queensland Government Boards, Committees and Statutory Authorities was carried out by Ms Simone Webbe and Professor Patrick Weller AO during 2008-09. The Government's response to the Independent Reviewers' Report recommendations was tabled in Parliament by the Premier on 22 April 2009 (for details see www.parliament.qld.gov.au/view/legislativeAssembly/tableOffice/documents/TabledPapers/2009/5309T72.pdf)

- b. advising the chief executive about the merits of an application for review of an original decision made under [another part of the Act]
 - c. overseeing the operation of the council's committees.
2. If asked by the Minister, the council must give the Minister a written report about the performance of its functions.

2.2 Responsibilities/reporting relationships

The enabling legislation for each Government Board established by statute should be examined to determine if the Government Board is accountable to a particular entity and if the Government Board is required to comply with specific reporting obligations.

The enabling legislation may require that the Government Board is responsible to the relevant department and/or portfolio Minister. The legislation may determine whether the Minister can intervene in Government Board decisions or policy, can give the Government Board directives, or set the strategic direction/policy direction of the Government Board.

It is also important to examine the internal/external auditing provisions in the Government Board's enabling legislation to determine whether the Auditor-General is required to be the external auditor of the board's operations.

2.3 Categories of Government Boards

Queensland Government Boards can be divided into six broad functional categories: trading, governing, policy/review/specialist, regulatory/registration/appeal, trustees and advisory/consultative.

It should be noted that some Government Boards perform functions across more than one of the listed categories. For example, the Electoral Commission of Queensland reviews the number of electoral districts in Queensland in addition to performing advisory and specialist research functions. The following classifications are based on the primary function of these boards. Additional information should be obtained from the enabling legislation for each particular Government Board (where applicable).

Trading

Boards of public trading enterprises engaged in commercial activities - e.g. port authorities, South Bank Corporation and the Queensland Bulk Water Supply Authority².

Governing

Boards of statutory authorities which govern the operation of an agency - e.g. University Councils, Legal Aid Board and Legal Aid Queensland, Queensland Art Gallery Board of Trustees and the Queensland Theatre Company.

² In some cases these trading enterprises may be Government Owned Corporations (GOCs). GOCs are covered briefly in Chapter 11 of this guide.

Policy/review/specialist

State level committees with a policy or coordination role - e.g. Local Government Grants Commission.

Boards and committees with a review role - e.g. Non-State Schools Accreditation Board and the Public Records Review Committee.

Expert committees with a specialist, scientific or research role - e.g. Radiation Advisory Council and the Horse Trails Scientific Advisory Committee.

Regulatory/registration/appeal

Boards with a regulatory or registration role - e.g. Dental Board of Queensland, Board of the Queensland College of Teachers and the Queensland Gaming Commission.

Boards and tribunals with a quasi-judicial, complaints or appeals role - e.g. Energy Ombudsman Queensland and Referral Panel (Moratorium).

Trustees

Boards which manage public trusts - e.g. Anzac Day Trust and Boards of Trustees of Grammar Schools.

Advisory/consultative

Boards and committees with an advisory or consultative role - e.g. Crocodile Management Advisory Committee, Multicultural Community Ministerial Advisory Committee and the Animal Welfare Advisory Committee.

The primary role of trading and governing Government Boards is to guide and direct the organisation. They set performance goals, ensure corporate compliance and management accountability, endorse strategic plans and approve operating budgets. They ensure that the organisation has the resources necessary to achieve goals, monitor progress and report outcomes.

Regulatory, registration and appeal Government Boards determine standards, monitor and regulate practice, grant licences, investigate complaints, review decisions and make judgements. In some instances, they can also have a governing role if they are responsible for a public sector entity, e.g. Building Services Authority.

Policy/review/specialist committees facilitate policies, plans or projects within and across portfolios.

Advisory committees advise and make recommendations to Ministers and agencies on policies, plans and practices or issues referred to the committee for comment.

Some roles are common to most Government Boards, namely to:

- be strategic – adopt a long term perspective, anticipate and respond to changes in the external environment and integrate various corporate functions
- be client focused – be aware of community and government opinion and needs; balance the demands of different stakeholders
- ensure the highest standards of financial accountability and ethical behaviour
- maintain effective planning, information and control systems to monitor progress.

3. Role of key players

3.1 Ministers

Ministers are responsible to Parliament for the operation of all Government Boards and agencies within their portfolios. They may have the authority to make appointments to Government Boards directly, or to recommend appointments to Cabinet or the Governor in Council. The authority of a Minister to give directions to a board is sometimes specified in the enabling legislation, or in the absence of enabling legislation, the terms of reference or constitution.

3.2 Chair

The Chair of the Government Board leads and directs the activities of the board. Responsibilities of the Chair will usually include:

- setting the board agenda
- facilitating the flow of information and discussion
- conducting board meetings and other business
- ensuring the board operates effectively
- liaising with and reporting to the Minister
- reviewing board and organisational performance
- inducting and supporting board members.

The Chair must be fully conversant with the business of the Government Board and ensure compliance with all legal and statutory obligations. The Chair may be invited to have input to the nomination/selection/recruitment process for new board members. However, responsibility for selection ultimately rests with the Minister and/or Cabinet, so it would not normally be appropriate to tender suggestions or advice unless invited to do so.

3.3 Board members

Members of Government Boards are required to familiarise themselves with the work of the Government Board, including their legal and statutory obligations. They must take reasonable steps to ensure that they are knowledgeable about the business of the Government Board and can make informed decisions. Individual Government Board members are responsible collectively for, and should support and adhere to, all Government Board decisions. Members however can exercise a dissenting view on particular decisions which should be appropriately minuted.

3.4 Chief Executive Officer

For those Government Boards that operate with a Chief Executive Officer (CEO), the responsibilities of the CEO usually include:

- developing an excellent understanding of the enabling legislation, terms of reference or constitution
- maintaining proper internal controls and management information systems

- employment and management of all staff
- managing the budget of the entity
- implementing Government Board decisions
- preparation of the annual strategic plan and annual report, including organisational performance targets for approval of the Government Board
- operational, administrative and marketing functions
- communications to and from the organisation.

The CEO is usually the primary link between the Government Board and the staff of the body and is responsible for communicating Government Board policies and priorities to staff and presenting organisational reports, submissions and budgets to the Government Board. The CEO should work closely with the Chair.

3.5 Executive Officer/Secretary

An Executive Officer or Government Board Secretary provides administrative support to the Government Board. On policy and advisory committees, the Executive Officer may have a coordination, policy development or project management role. The Executive Officer may also brief new Government Board members. The Government Board relies on the Executive Officer to follow correct procedures and to advise the Government Board on public sector regulations, accountability standards and legislative requirements.

The Executive Officer or Government Board Secretary is usually responsible for taking the minutes of the Government Board. It is a duty of the Government Board members to ensure minutes are accurate and reflect a true and correct record of the procedures and decisions of meetings.

Minutes provide evidence of attendance and participation in discussion as well as document the decision making process. This information can become legal evidence and be used to prove whether a member has acted diligently and conscientiously and/or whether the Government Board has acted appropriately. Minutes also provide a record of dissenting votes, establish that the Government Board was advised of a conflict of interest, or that a member was absent as required during a vote on a matter of conflict of interest. It is important that members take personal responsibility to ensure that their views, statements or decisions are reflected accurately in the minutes and should there be any discrepancies, ensure the minutes are amended accordingly.

3.6 Proxies and observers

The enabling legislation of a Government Board (or in the absence of enabling legislation, the terms of reference or constitution) may state if a member is permitted to appoint a proxy to attend, and in some cases vote at a meeting of the Government Board. Observers are not able to vote at meetings.

4. Recruitment and selection

The following provides a general guide to selecting members for Government Boards³. It does not cover specific recruitment requirements such as advertising which are often unique to particular positions. Similarly, it does not cover requirements for appointment by the Governor in Council. Government departments are responsible for preparing all documentation (Cabinet Submissions and Executive Council Minutes) in this regard.

When establishing a Government Board or filling a Government Board vacancy, government departments consider a number of elements when identifying potential candidates, including:

- government priorities
- Government Board composition
- statutory requirements
- member skills and attributes
- member expertise.

In establishing a Government Board, setting terms of appointment or dealing with vacancies arising from the expiry of a member's term, government departments may also consider the benefits of changes to a Government Board's composition over time and the number of terms for which members can be appointed⁴. Government departments may also consider a staggered process for the terms of Government Board appointments to allow changes in Government Board membership while providing continuity and retaining corporate knowledge.

4.1 Government priorities

Community engagement is very important to the Queensland Government. Government Boards are one mechanism by which the government seeks to engage with the community and make government decision making accessible to all Queenslanders.

To complement government policy imperatives it may be appropriate to appoint members with certain expertise or from certain sections of the community such as seniors, youth, women, Aboriginal people, Torres Strait Islanders, or people from culturally and linguistically diverse backgrounds.

4.2 Government Board composition

If the government is to rely on the decisions made or advice given by Government Boards, it is critical that people with the appropriate skills and experience are appointed. Ideally, a Government Board will have a diverse set of members with a blend of expertise, experience and a range

of perspectives. The selection process should be merit based, as inclusive as possible and commence with a Government Board member specification.

A government policy aim is that 50 per cent of new appointments to Government Boards should, where possible, be women, in support of the *Women on Boards* strategy⁵.

The State Affairs branch of the Department of the Premier and Cabinet maintains the *Queensland Register of Nominees to Government Bodies* (the Register). The Register provides Queenslanders with an opportunity to express their interest in being nominated for appointment to a Government Board. Nomination to the Register is by application.

Government departments are required to request a search of the Register when they are in the process of establishing a new Government Board or are going through an appointment or reappointment process in respect of an existing Government Board. The Register is able to be searched by a range of factors, including specific skills, age, gender and/or cultural background as required. State Affairs advises the Office for Women⁶ and Multicultural Affairs Queensland⁷ of relevant nominees. Where specific challenges are identified in sourcing nominees from particular under-represented sections of the community, government departments should consult with relevant government offices (e.g., the Office for Women and Multicultural Affairs Queensland) early in the appointment process to ensure that any advice is able to be utilised effectively.

Consultation with the Register should occur early in the appointment process to ensure that sufficient time exists to consider the information provided in full.

4.3 Statutory requirements

The enabling legislation governing the operations of a Government Board may, or may not, specify the composition of the Government Board or a number of other factors, such as the consultation process required for identifying Government Board members. Any requirements contained in the legislation are mandatory.

³ The procedures for selection and recruitment of Board members to Government Owned Corporations (GOCs) are defined under the *Government Owned Corporations Act 1993*. The Office of Government Owned Corporations, Queensland Treasury, should be consulted for recruitment and selection advice specific to GOCs.

⁴ In some cases, enabling legislation specifies a maximum number of terms for appointments.

⁵ The *Women on Boards* strategy is managed by the Office for Women, Department of Communities, and can be accessed at www.women.qld.gov.au/leadership-and-community/women-on-boards/index.html

⁶ A branch of the Department of Communities.

⁷ A branch of the Department of Communities.

Example: Queensland Parole Board established under the *Corrective Services Act 2006*

Section 218 Membership

1. The Queensland board must consist of the following members-

- a. a President and a Deputy President, appointed by the Governor in Council by gazette notice, each of whom is:
 - (i) a retired judge of a state court, the High Court or a court constituted under a Commonwealth Act; or
 - (ii) a lawyer who has engaged in legal practice for at least five years.

4.4 Member skills and attributes

For effective Government Board performance, individual members and the Government Board collectively need to have a broad range of skills and personal attributes. Knowledge and understanding of accountability, strategic thinking, networking and teamwork are core competencies for all types of Government Boards. The ability to monitor and make decisions are additional core competencies for trading, governing, trustee and regulatory Government Boards. Individual Government Board members may not necessarily need all of these skills and attributes.

It may be desirable for the composition of a Government Board to reflect the characteristics of the community or industry sector that the Government Board is established to serve. This may include such factors as age, gender, culture and interests.

4.5 Member expertise

It may be desirable to appoint Government Board members with specific expertise in areas relevant to the Government Board functions, such as finance, investment, law, human resources, marketing or public sector administration. A Government Board may include people with expert knowledge of a particular industry or valuable professional networks. Care should be taken in such instances to ensure that members are aware of and avoid conflicts of interest (or potential conflicts of interest).

5. Remuneration for Government Boards

Where appropriate, chairs and members of Government Boards may be paid daily fees or annual allowances. Members of advisory Government Boards are usually not remunerated. Similarly, public sector employees appointed to Government Boards do not receive additional remuneration for their service on the Government Board, unless specifically authorised.

Generally, remuneration for chairs and members of Government Boards is approved by the authority prescribed in the enabling legislation (if the Government Board is established by statute). To comply with the requirements of the enabling legislation, the approval of the prescribed authority (usually the Minister or Governor in Council) must be obtained for the initial determination of fees and allowances and on each and any subsequent occasion when the fees and allowances are adjusted for that Government Board.

5.1 Remuneration procedures

The Department of Justice and Attorney-General (Division of Public Sector Industrial and Employee Relations) administers Cabinet approved procedures for the *Remuneration of Part-Time Chairs and Members of Government Boards, Committees and Statutory Authorities*⁸ (the Procedures). The Procedures set out government requirements in relation to the remuneration of “all part-time chairs and members of government boards, committees, authorities, taskforces, councils and other similar bodies approved by legislation or other government approval processes.” The Procedures do not apply to boards of Government Owned Corporations or boards and committees that Cabinet has expressly excluded from the application of the Procedures.

In order to ensure that remuneration entitlements are consistent and equitable, the Procedures set out eight standardised remuneration categories. The factors determining the category allocated to a particular Government Board are its major function and influence and the impact of its activities and decisions on government, industry and the community. The current remuneration rates for each category are available on the Department of Justice and Attorney-General’s website, www.justice.qld.gov.au/__data/assets/pdf_file/0019/28036/remuneration.pdf. The fees prescribed for each category are maximum daily rates. Lower rates may be applied, e.g. where meetings or special assignments are of short duration.

Chairs and members are paid either a daily fee or an annual allowance. Where it is anticipated that the work commitment of a Government Board member will be three or more days per fortnight, annual allowances are paid. These allowances are based on the standardised categories and are calculated according to actual and

projected workload of the Chair and members using the maximum amounts prescribed for special assignments for the appropriate category.

The Procedures also set out the requirements for the review of the remuneration levels of chairs and members of Government Boards and provide information in relation to travelling expenses, taxation, superannuation and other benefits.

Total costs associated with remuneration for Government Boards must be disclosed in annual reports. For those Government Boards that are not statutory bodies, information is to be disclosed in the relevant administering agency’s annual report. The relevant administering agency is the agency that controls the funds of the board or committee. The Department of the Premier and Cabinet’s *Annual Reporting Requirements for Queensland Government Agencies* details the information that must be disclosed.

Departments and agencies are required to monitor closely the activities of Government Boards to ensure that meeting hours and paid work are consistent with the objectives and functions of the particular Government Board and that such hours do not expand unnecessarily. Government Board members must utilise adequate time keeping records to ensure that payment is made for actual time worked.

5.2 Public sector employees on Government Boards

Public sector employees appointed to Government Boards as departmental representatives are generally not remunerated for such appointments unless this is approved by government.

It should be noted that the definition of “public sector employees” in the Procedures is significantly broader than that considered in the *Public Service Act 2008*. The Procedures classify public sector employees as full-time or part-time employees of:

- federal, state or local governments
- federal or state semi-government organisations, including statutory authorities, state and local Government Owned Corporations and colleges
- members of any Parliament within Australia and elected full-time local government representatives
- judges, magistrates and other judicial and quasi-judicial officers.

Paid officials or employees of universities are not included within the definition of public sector employees.

⁸ Available online at: www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/queensland-government-employees/policies/remuneration-of-part-time-chairs-and-members-of-government-boards-committees-and-statutory-authorities

Where attendance at Government Board meetings is a function of an employee's work, normal public service conditions apply.

Pursuant to the Procedures, approval for payment to public service employees for membership of Government Boards may be sought:

- where the employee's chief executive certifies that the appointment is not connected in any way with the employee's employment and the meetings etc. are held outside ordinary working hours;

or

- where deductions are made from the employee's wages when he or she attends meetings or other activities of the board during normal working hours or during other legitimate time off (e.g. banked time leave, annual leave).

The reasons for recommending payment to public sector employees must be provided in the significant appointment Cabinet submission and the Executive Council Minute.

Where legislation authorises the payment of meeting fees to Government Board members, public sector employees are to be included in the Executive Council Minute with a stipulation that they are not to be remunerated, unless Cabinet determines that the remuneration is to be paid in accordance with one of the exceptions above.

5.3 Travelling expenses

Chairs and members are to be paid all necessary and reasonable expenses incurred while travelling on approved board business and to attend meetings in accordance with the following arrangements:

- a. class of travel – as determined by the portfolio Minister
- b. domestic travelling allowances – in accordance with the Ministerial Directive titled *Domestic Travelling and Relieving Expenses* issued under the *Public Service Act 2008* and current at the time the expense was incurred⁹
- c. use of private motor vehicle – in accordance with the Ministerial Directive titled *Motor Vehicle Allowances* issued under the *Public Service Act 2008* and current at the time the expense was incurred¹⁰.

When air travel is required by Government Board members for official purposes, travel should be in accordance with the Queensland Government's *Air Travel Policy*¹¹. The policy sets out that official travel must:

- advance the achievement of Queensland Government priorities
- benefit the business of an agency
- be undertaken only after exploring alternatives to travel
- not duplicate activities of other agencies
- be undertaken at the most advantageous price and service level.

⁹ Issued by the Department of Justice and Attorney-General, available online at: www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/queensland-government-employees/directives

¹⁰ Issued by the Department of Justice and Attorney-General, available online at: www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/queensland-government-employees/directives

¹¹ Issued by the Department of Public Works, available online at: www.qgm.qld.gov.au/09_travel/policy.html

6. Induction

All new Government Board members should receive an induction which may include an introduction to the workings of the Government Board and the government department responsible for the Government Board, their role and responsibilities, and administrative arrangements. This is to ensure that Government Board members are appropriately informed of the standards of accountability expected of them and the statutory obligations imposed on them. The induction should be provided either by the responsible government department, or by the Government Board itself.

The induction process might include information, familiarisation, training and socialisation. Departments can avail themselves of specialised training courses for the induction of new members, including courses offered by the Australian Institute of Company Directors, where this is deemed appropriate.

New Government Board members should receive copies of the following information, where relevant, to assist with their familiarisation with the workings of their particular Government Board.

Statutory framework:

- enabling legislation for the Government Board (if applicable)
- any other relevant legislation, such as applicable sections of the *Auditor-General Act 2009*, *Financial Accountability Act 2009*, *Financial and Performance Management Standard 2009*, *Statutory Bodies Financial Arrangements Act 1982* and *Corporations Act 2001(Cth)* (refer to Chapter 7.4 – General legislation in this guide).

Functioning of the Government Board:

- time commitment required in Government Board meetings
- briefings
- public meetings
- tenure and removal from office
- the Government Board's reporting structure
- attendance requirements (formal notice of absence)
- the applicable accounting standards
- remuneration structure
- financial performance
- declaration of private interests and strategic planning.

Information on the Government Board:

- terms of reference, applicable rules or the company's constitution
- the history of the Government Board and the size of the Government Board
- the three most recent annual reports/accounts
- the last six months' Government Board and committee minutes.

Relevant policy guidelines or statements:

- any current Ministerial directives
- a code of conduct (if there is one designed for the particular body)
- copies of relevant Public Service Commission and other government guidelines
- government policy frameworks and/or agreements relevant to the Government Board's functions
- a copy of this guide.

General information:

- relevant press clippings
- government/industry reports
- economic efficiency or performance audits.

Other helpful references can be found in Attachment 1 of this guide (Resources). To assist, an induction checklist also appears as Attachment 3.

7. Duties and responsibilities of Government Board members

Over and above the duties and obligations placed upon their private sector counterparts, members of Government Boards assume a public trust and confidence by virtue of their role in public administration.

In accordance with the *Queensland Cabinet Handbook*, to manage risks associated with appointments to Government Boards, information on a person's suitability for appointment is obtained for all appointments, including those which are considered by Cabinet as a Significant Appointment submission and those made by a Minister rather than Cabinet. All candidates proposed for appointment to a Government Board are requested to complete a personal particulars form to assist in assessing their suitability for nomination/appointment. It is noted on the form that candidates are responsible for advising the relevant Minister in writing of any changes to the information provided during their term of appointment.

Government Board members must act ethically so as to support the continuation of public trust in the government and to observe the highest standards of behaviour and accountability. The obligations placed on Government Board members are strict, particularly because in many cases members are responsible for spending taxpayers' money and the custody and control of public assets.

These obligations include informing the relevant Minister of any changes to a board member's circumstances that could impact on the board member's suitability to continue to serve on the board. For example, a board member who is also a Director of a company, should immediately advise the Minister if the company is put into voluntary administration (where an external administrator is appointed to attempt to save the company from financial trouble). The Minister would then be in a position to consider whether it was appropriate for the board member to continue to serve on the Government Board.

Legal obligations placed on Government Board members may be derived from:

- the enabling Act constituting the Government Board
- the general law (as opposed to statute law), including any fiduciary duties imposed on the Government Board member
- any relevant statutory enactments.

The nature and extent of some of these obligations is outlined below. The information is very general and different requirements apply to different entities. Therefore Government Board members should make their own enquiries and familiarise themselves with the obligations and duties arising from their position.

7.1 Enabling legislation

In the case of a Government Board established by legislation, specific statutory responsibilities are set out in its enabling legislation.

Example: South Bank Corporation established by the *South Bank Corporation Act 1989*

Section 24 Objects

The corporation's objects are:

- a. to promote, facilitate, carry out and control the development, disposal and management of land and other property within the corporation area
- b. to achieve an appropriate balance between the corporation's commercial and non-commercial functions
- c. to ensure the corporation area complements, rather than duplicates, other public use sites in the inner city Brisbane area
- d. to provide for a diverse range of recreational, cultural and educational pursuits for local, regional and international visitors
- e. to accommodate public events and entertainment that benefit the general community
- f. to achieve excellence and innovation in the management of open space and park areas.

Subordinate legislation (such as regulations, by-laws, ordinances, rules) may also set out members' responsibilities.

7.2 General law

Fiduciary duties are obligations of trust and confidence owed by a fiduciary to another person. The law usually recognises certain relationships, including those of director and company and employer and employee, to be fiduciary relationships. The courts may also find other relationships to be fiduciary in nature, particularly where one party stands in a position of trust and confidence in relation to the other, and is bound to place the interests of the other before his or her own personal interests. As Government Board members will often be in a similar position to a company director, they may be subject to fiduciary obligations.

Company directors, and other Government Board members acting in a fiduciary capacity, have an obligation to:

- act honestly and to exercise powers for their proper purposes
- avoid conflicts of interests
- act in good faith
- exercise diligence, care and skill.

Act honestly and to exercise powers for their proper purposes

Members of Government Boards must act openly and honestly at all times in the performance of their duties. They must ensure that they do not use information acquired by virtue of their position to gain directly or indirectly an advantage for themselves or any other person.

Avoid conflicts of interest

Members of Government Boards should avoid actual or potential conflicts between their duties to the Government Board and their personal interests or their duties to others. Members of Government Boards should also be aware of possible perceived conflicts of interest. The *Cabinet Handbook* states that:

- *Departments are to ask the proposed nominee(s) to declare whether there are any reasons why they should not be appointed to the relevant Government Body. Specifically, proposed nominees are to be asked to consent to disclose whether, if successful, there would be any conflicts of interest, i.e. any private interests that may affect or appear to affect the appointee's public duty.*

Members of Government Boards who have or acquire directly or indirectly personal or pecuniary interest in a matter decided or under consideration by the Government Board must:

- as soon as reasonably practicable, prior to the Government Board meeting, disclose to the Government Board full and accurate details of the interest
- not take part in any discussion by the Government Board relating to the matter¹²
- be absent from the room when any such discussion or voting is taking place
- not have access to information of the Government Board in relation to the matter in which he or she has the conflict
- not seek, directly or indirectly, to influence the outcome of any deliberations by the Government Board or any of its officers in relation to any matter to which he or she may have a conflict
- disclose interests in contracts with the Government Board and potential conflicts arising from offices or property held by the member or his/her family members.

Disclosure of this information should be recorded in the minutes of the meeting of the Government Board and reported to the Minister as soon as possible after the meeting. Particular Government Boards may require members to make prior declarations of interests through completion of a Registration of Personal Interests Form (an example appears as Attachment 4).

If there is any doubt as to whether a conflict of interest exists the relevant member should err on the side of caution and declare the interest and excuse himself or herself from the room when any discussion or voting on the particular issue the subject of the conflict is taking place. Further, certain officers defined as 'designated persons' under the *Integrity Act 2009* can seek the confidential advice of the Integrity Commissioner about conflicts of interest (see Chapter 7.9 of this guide).

¹² Section 119 of the *State Development and Public Works Organisation Act 1971* provides an exception to this rule, stating that a project board member must disclose to a meeting any direct or indirect financial interest that the member has in a matter being considered and must not take part in any vote on the matter but may participate in discussion.

Act in good faith

Because of their position of trust, member's actions and standards of behaviour are required to be exemplary. Members should always act *bona fide* in the interests of the Government Board and never in their own interest or to pursue personal agendas. Members are expected to act in the best interests of the Government Board, the state and the community.

Exercise diligence, care and skill

Members of Government Boards have to ensure that they exercise diligence, care and skill in the performance of their duties. They must also take reasonable steps to inform themselves about the functions of the Government Board, its business and activities and the circumstances in which it operates. A member must give close attention to Government Board affairs. A member should obtain sufficient information and advice, and exercise an active discretion at all times to enable him/her to make conscientious and informed decisions. A member should also maintain confidentiality of Government Board discussions and of information made available to them, such as Government Board papers.

7.3 Corporations Act 2001 (Cth) (the Corporations Act)

The Corporations Act imposes a number of additional fiduciary duties on directors of entities incorporated under that legislation. The Queensland Government has established a number of special purpose companies (incorporated under the Corporations Act) which operate under the auspices of a number of departments. Details of these companies can be found in the relevant department's annual reports.

Individuals appointed as directors of companies must comply with the Corporations Act in carrying out their duties. Although persons who are appointed to Government Boards which are not companies are not specifically bound by the Corporations Act, the duties discussed below parallel the common law duties to which Government Board members must adhere.

Under the Corporations Act, directors are required to:

- act in good faith and for a proper purpose
- act with care and diligence
- avoid improper use of information
- avoid improper use of position
- disclose certain interests.

Duty to act in good faith in the best interests of the corporation and for a proper purpose

Section 181 of the Corporations Act imposes a civil obligation on directors, secretaries and other officers of a corporation to exercise their powers and discharge their duties in good faith, in the best interests of the corporation and for a proper purpose. For example, use by the directors of their powers to benefit self interest, the interests of a third party or sectional interests, rather than the interests of the corporation as a whole, may be considered to be a breach of this duty.

Under Section 184(1) of the Corporations Act a breach of this duty will be a criminal offence if the breach arises because the director or other officer of the corporation was reckless or intentionally dishonest.

Duty to act with care and diligence

Section 180 of the Corporations Act provides a civil obligation that a director or other officer must at all times exercise a reasonable degree of care and diligence in the exercise of powers and the discharge of duties. 'Reasonable' in this sense means the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the same circumstances.

The requirement for a director or officer to exercise a reasonable degree of care and diligence will be satisfied in relation to a particular business judgement where they:

- make the judgement in good faith and for a proper purpose
- do not have a material personal interest in the subject matter of the judgement
- inform themselves about the subject matter of the judgement to the extent they reasonably believe is appropriate
- rationally believe that the judgement is in the best interests of the corporation.

Directors do not satisfy the required levels of care, skill and diligence by delegating to colleagues or subordinates in the company and paying no further attention. At a minimum, they must take an active interest in the company's affairs and obtain a general understanding of the company's business. They must pursue anything untoward that comes to their attention.

Duty to avoid improper use of information

Section 183 of the Corporations Act provides a civil obligation that a person who obtains information because they are or have been a director or other officer or employee of a corporation must not improperly use that information to gain an advantage for themselves or someone else or cause detriment to the corporation. This duty is of particular significance where the director has interests in the industry to which the Government Board relates.

Under Section 184(3) of the Corporations Act, directors, other officers and employees of corporations may also commit a criminal offence where information is used dishonestly.

Duty to avoid improper use of position

Section 182 of the Corporations Act provides a civil obligation that prohibits a director, secretary, other officer or employee of a corporation from making improper use of their position to gain an advantage for themselves or someone else, or to cause detriment to the company. Section 184(2) of the Corporations Act specifies that directors, other officers or employees of a corporation commit an offence if they use their position dishonestly.

Duty to disclose certain interests

Section 191 of the Corporations Act requires a director

of a company who has a material personal interest in a matter that relates to the affairs of the company to give the other directors notice of the interest, unless one of the specified exceptions apply. The notice must include details of the nature and extent of the interest and be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter. A common example of a material personal interest is a director who has a personal interest in a contract that the corporation is to enter into.

Penalties

Breach of statutory duties draws penalties under the Corporations Act which range up to \$200,000. Under both the common law and the Corporations Act, officers may also be required to pay compensation or to account for profits. In some cases directors may also be disqualified from office.

7.4 General legislation

Aside from specific legislation applying to the Government Board, members may also have additional responsibilities and obligations placed upon them by a number of pieces of other legislation, including but not necessarily limited to:

Anti-Discrimination Act 1991
Company Law Review Act 1998 (Cth)
Competition Policy Reform (Queensland) Act 1996
Corporations Act 2001 (Cth)
Crime and Misconduct Act 2001
Environmental Protection Act 1994
Fair Trading Act 1989
Financial Accountability Act 2009
Financial and Performance Management Standard 2009
Income Tax Assessment Act 1936 (Cth)
Information Privacy Act 2009
Integrity Act 2009
Judicial Review Act 1991
Libraries Act 1988
Ombudsman Act 2001
Public Records Act 2002
Public Service Act 2008
Public Sector Ethics Act 1994
Right to Information Act 2009
Statutory Bodies Financial Arrangements Act 1982
Trade Practices Act 1974 (Cth)
Whistleblowers Protection Act 1994
Workers' Compensation and Rehabilitation Act 2003
Workplace Health and Safety Act 1995

Government Board members should familiarise themselves with all legislation relating to their specific responsibilities and obligations. The appropriate government department(s) should also provide information to Government Board members on relevant legislative responsibilities. It may be the case that in certain circumstances enabling legislation may specifically exempt members of a Government Board from some or all of the provisions of these general pieces of legislation.

7.5 Judicial Review

Queensland's *Judicial Review Act 1991* (the JR Act) gives the public the right to request the reasons for decisions which adversely affect them, or seek a review of a decision in the Supreme Court. In addition to administrative decisions of government departments and local authorities, the JR Act applies to administrative decisions of quasi-government agencies and statutory authorities.

The JR Act applies to the following types of government decisions:

- a. a decision of an administrative character made, proposed to be made, or required to be made, under an enactment (whether or not in the exercise of a discretion); or
- b. a decision of an administrative character made, or proposed to be made, by, or by an officer or employee of, the state or a state authority or local government authority under a non-statutory scheme or program involving funds that are provided or obtained (in whole or part)--
 - (i) out of amounts appropriated by Parliament; or
 - (ii) from a tax, charge, fee or levy authorised by or under an enactment.¹³

The JR Act also provides judicial review in relation to failure to make a decision¹⁴ and actions and conduct leading up to the making of the decision.¹⁵ A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.¹⁶

Some of the grounds for judicial review are that:

- The decision-maker breached the rules of natural justice¹⁷.
- The decision-maker did not observe the correct legal procedures.
- The decision-maker did not have the authority to make the decision.
- The decision was not authorised by the legislation it was purported to be made under.
- The decision involved an improper use of power.
- The decision involved an error of law.
- The decision is or may be tainted by fraud.
- There was no evidence or other material supporting the decision; or
- The decision was in some other way unlawful¹⁸.

¹³ Section 4 JR Act

¹⁴ Section 21 JR Act

¹⁵ Section 21 JR Act

¹⁶ Section 5 JR Act

¹⁷ The rules of natural justice provide for procedural fairness, the applicant to be given a fair hearing, the right to have the decision made by an unbiased decision maker and to have the decision based on logically probative evidence.

¹⁸ Section 20(2) JR Act

Certain practices can minimise the likelihood of, or assist in responding to, requests for a Statement of Reasons or an application to the Supreme Court for Judicial Review. Government Board members should ensure that:

- delegations are kept up to date
- each step in a decision is carefully documented by each person who contributes
- file notes taken in the decision-making process do not contain irrelevant considerations
- outgoing correspondence contains the name of the decision-maker
- correspondence produced after a decision is made do not vary or appear to vary a decision if this is not intended.

7.6 Right to Information

The *Right to Information Act 2009* (the RTI Act) gives the public a right of access to information held by government unless, on balance, providing access would be contrary to the public interest. The RTI Act replaced the *Freedom of Information Act 1992* (the FOI Act) on 1 July 2009. It applies to Queensland Government departments, Ministers, Parliamentary Secretaries, local governments, certain Government Owned Corporations and public authorities. A "public authority" is defined¹⁹ as including:

- an entity established for a public purpose by an Act or established under an Act for a public purpose, whether or not the public purpose is stated in the Act
- an entity created by the Governor in Council or a Minister
- another entity that is declared by regulation to be a public authority for the purposes of the RTI Act supported by government funds or other assistance or controlled by government or established under an Act or given public functions under an Act; or
- a person holding an office established under an Act.

Most Government Boards in Queensland are established for a public purpose by or under an Act. This means that under the RTI Act, members of the public have a right to access documents that these Government Boards have control or possession of. The Act states that "a board, council, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency".²⁰

The RTI Act is based on a principle of maximum disclosure of non-personal information with a specified pro disclosure bias. It contains a reduced number of exemptions, compared to the repealed FOI Act. These exemptions apply in situations where Parliament has decided that there is an overriding public interest in not disclosing the information, for reasons relating to confidentiality, privacy or security. The RTI Act also sets out a new decision-making framework

¹⁹ Section 16 RTI Act

²⁰ Section 14(3) RTI Act

to guide agencies and Ministers in determining the public interest when dealing with applications for information.

Documents

Members of the public can apply under the RTI Act for “documents of an agency”, including documents created before the Act commenced.

“Document of an agency” means a document in the possession or control of an agency, including documents the agency is entitled to access and documents that an officer of the agency holds in their official capacity.²¹

The definition of “document of an agency” is broad and would include files, working papers, hand written notes, minutes of meetings, work diaries, post-it notes, computer printouts, maps, films, photographs, tapes, video recordings and electronically recorded data. Drafts and copies of documents are also included. The definition may include documents held outside the agency, e.g. at a Government Board member’s home.

Applications and decisions

The RTI Act sets out the procedural requirements for making and dealing with access applications. There is a whole-of-government approved form for applications under the RTI Act. The processing period for applications is 25 business days with extensions of time provided for in certain circumstances, such as if a third party needs to be consulted. An agency or Minister is required to give the applicant a schedule of relevant documents and a charges estimate notice before the end of the processing period.

The fees and charges for access applications are prescribed under the *Right to Information Regulation 2009* and include an application fee, processing charges based on the time taken to process the application and access charges for photocopying and other costs incurred by the agency. However, if an application takes less than five hours to process, no processing charge will be payable.²² Under the RTI Act, agencies and Ministers are obliged to minimise the charges payable by the applicant.²³ Charges can be waived for concession card holders and non-profit organisations in financial hardship.²⁴ No processing charge is payable under the RTI Act in relation to a document to the extent the document contains information that is personal information for the applicant.

If an applicant is unhappy with the decision of an agency or Minister regarding his or her RTI application, in certain circumstances the applicant can apply for internal review (conducted by staff of the agency or Minister) or external review (conducted by the independent Office of the Information Commissioner). Internal review is not a prerequisite for external review.

Each Government Board should have a designated officer responsible for handling RTI enquiries.

The Queensland Government is committed to moving to a ‘push’ model, based on a greater proactive release of information, without the need to seek information through the RTI application process. These proactive mechanisms include publication schemes, disclosure logs and increased administrative release and access schemes.

Publication Scheme

All government departments have a web-based publication scheme to which information can be published outside the RTI application process. The Publication Schemes are designed to improve public accessibility and enable people to more accurately understand what types of documents government holds. Publication schemes set out the classes of information held by an agency that it routinely makes available to be public.

Disclosure Log

A disclosure log provides details of information that has been released in response to non-personal Right to Information requests. It contains a description of the information released and, where possible, a link to the relevant documents.

Members should be aware that documents they or their board/committee produce may be published in a publication scheme or disclosure log.

More information about Right to Information is available at www.qld.gov.au/right-to-information/

7.7 Information Privacy

Queensland’s first privacy legislation commenced on 1 July 2009. The *Information Privacy Act 2009* (the IP Act) regulates the collection, storage, use and disclosure of personal information by Queensland Government agencies and provides a right for individuals to access and amend personal information about them that the government holds.

The IP Act replaces Information Standards 42 and 42A and continues the requirement for agencies to comply with privacy principles. The IP Act also allows individuals to apply to agencies to access and amend personal information about themselves and gives them rights to internal and external review of access and amendment decisions.

Like the RTI Act, the IP Act applies to agencies which is defined as including public authorities. The term “public authority” has the same meaning as in the RTI Act, meaning that most Government Boards are captured. The IP Act states that:

*“a board, council, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency”.*²⁵

21 Section 12 RTI Act

22 Regulation 5 (1)(a) *Right to Information Regulations 2009*

23 Section 59 RTI Act

24 Section 66(2) RTI Act

25 Section 18(3)(a) IP Act

Personal information

The IP Act defines personal information as:

- “information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion”.²⁶

Access and amendment

Chapter 3 of the IP Act gives members of the public a right to access and amend personal information about them in documents held by agencies. Access and amendment of personal information was previously dealt with under the now repealed FOI Act. However, a person may now elect for their RTI application to be dealt with as an application under the IP Act if the application is for a document containing their personal information.²⁷

The IP Act and RTI Act are designed to work together, and the procedures for access and amendment of personal information are consistent with the procedures in the RTI Act.²⁸ However, there are no application fees or processing charges for applications under the IP Act.

Privacy principles

Under the IP Act, agencies must comply with the Information Privacy Principles (IPPs), except for Queensland Health, which is required to comply with the National Privacy Principles (NPPs). The IPPs are set out in Schedule 3 of the Act and the NPPs are set out in Schedule 4. The following is an overview of the IPPs.

Collection of Personal Information (IPPs 1-3)

Agencies can only collect personal information directly related to their activities or functions and must do so in a way that is not unfair or unlawful. The collection of this information should not unreasonably intrude upon the personal affairs of the individual concerned.

In most cases when collecting personal information, agencies must advise an individual why the information is being collected and to whom the information is normally disclosed.

Reasonable steps are to be taken to ensure that personal information collected is relevant for the purpose for which it is collected, up to date and complete.

Storage and Security and Providing Information (IPPs 4-5)

Agencies in possession of personal information are to ensure that there are reasonable safeguards to prevent loss and unauthorised access, use, modification or disclosure of the information.

Agencies must also take all reasonable steps to ensure that a person can find out whether the agency has documents containing personal information, the type of information, the main purposes for which the information is used and how a person can obtain access to those documents.

Access and Amendment (IPPs 6-7)

Individuals are entitled to access and amend documents containing their personal information. Chapter 3 of the IP Act gives individuals a formal right to apply to access and amend their personal information. The agency must take all reasonable steps, including making appropriate amendments to ensure that personal information is accurate, relevant, complete, up to date and not misleading.

However, agencies have a general obligation under the IPPs to give effect to individuals' requests to access or amend their personal information administratively wherever possible without the need for formal application under the IP Act.

Accuracy (IPP 8)

Agencies must take reasonable steps to ensure that personal information is accurate, up-to-date and complete, before using it.

Use and Disclosure (IPPs 9-11)

In general, agencies must use personal information only for the purpose for which it was collected and disclose personal information only if the individual concerned is aware of, or has consented to, that use or disclosure if it is for another purpose. However, there are certain other circumstances in which agencies may use or disclose personal information without consent, including if it is necessary to lessen or prevent a serious threat to life, health, safety or welfare, necessary for certain law enforcement purposes or if authorised or required under a law.

Contracted service providers

The IP Act provides that agencies must take all reasonable steps to ensure service providers are contractually bound to comply with the privacy principles.²⁹ This applies to new service arrangements entered into after the IP Act's commencement, where the services are for performing one or more of the contracting agency's functions and involve the transfer of personal information to the contracting agency.

The IP Act does not apply to contracts or other arrangements between agencies and service providers that were entered into before 1 July 2009. To maintain any existing obligations of a service provider in relation to the repealed Information Standards 42 and 42A, Section 210 of the IP Act provides that the information standards continue to apply for those contracts.

More information about Information Privacy is available at www.rti.qld.gov.au

7.8 The Ombudsman

The Ombudsman is an officer of Queensland Parliament established under the *Ombudsman Act 2001* (the Ombudsman Act).³⁰

²⁶ Section 12 IP Act

²⁷ Section 34 RTI Act

²⁸ Section 9 IP Act

²⁹ Section 35 IP Act

³⁰ Section 11 Ombudsman Act

Functions

The principal functions of the Ombudsman are to:

- investigate administrative actions of agencies
- make recommendations to agencies about ways of
 - a. addressing the effects of inappropriate administrative actions
 - b. improving administrative practices and procedures.³¹

Jurisdiction

‘Administrative action’ means any action about a matter of administration and includes a decision and an act, the failure to make a decision or do an act (including a failure to provide a written statement of reasons for a decision), the formulation of a proposal or intention, the making of a recommendation (including a recommendation made to a Minister) and an action taken because of a recommendation made to a Minister.³²

The Ombudsman Act applies to ‘agencies’ which means a department, local government or a public authority. Similar to the RTI Act and the IP Act, ‘public authority’ includes entities established for a public purpose under an Act or created by the Governor in Council or a Minister and certain other entities or individuals appointed by the Queensland Government which may include Government Boards. The definition for ‘public authority’ is broad and the Ombudsman’s Office should be consulted for clarification of any queries.

Investigative role and powers

The Ombudsman may instigate an investigation on his/her own initiative, as a result of a complaint, or on reference by Parliament.³³

The Ombudsman may investigate informally or exercise significant formal powers under Part 4 of the Ombudsman Act, such as the power to require persons to give statements, documents and information and may, if necessary, apply for a warrant for the arrest of a person who fails to comply with an investigation requirement.³⁴ The Ombudsman must conduct the investigation in a way that maintains confidentiality.³⁵ The views of both the complainant and the agency are actively sought and considered before any investigation is concluded.

If the Ombudsman considers that the administrative action to which the investigation related was:

- unlawful or unreasonable, unjust, oppressive or improperly discriminatory; or
- made for an improper purpose, based on irrelevant grounds or considerations, or a mistake of law or fact; or
- lacking in adequate explanation or reasons; or
- simply wrong.³⁶

The Ombudsman may give a report to the principal officer of the agency and the relevant Minister recommending that particular action be taken.³⁷ If the recommended action is not taken, a report can be provided to the Premier and Parliament.³⁸

Administrative improvement role

The Ombudsman may also make recommendations or provide information or other assistance to agencies to improve administrative practice – e.g., guidelines and training on good administrative decision making and internal complaints management.

7.9 Integrity Commissioner

The Integrity Commissioner is an independent officer of the Queensland Parliament appointed under the *Integrity Act 2009* (the Integrity Act).

The primary role of the Integrity Commissioner is to provide confidential advice to “designated persons”³⁹ on ethics and integrity issues, including a conflict of interest issue.⁴⁰ Statutory office holders are included as designated persons under the Integrity Act.⁴¹

The Integrity Commissioner is also responsible for maintaining the *Register of Lobbyists* and monitoring compliance by lobbyists and government with the Integrity Act and the *Lobbyists Code of Conduct*.

Lobbyists

On 5 August 2009, the Premier announced in Parliament that individuals registered as a lobbyist on the *Register of Lobbyists* will be prohibited from serving on Queensland government bodies. The clear intention is to remove any suggestion of a conflict of interest between lobbyists and the governance of public entities and programs.

Individuals registered as a lobbyist on the *Register of Lobbyists* who are considered for appointment to a Government Board will be required to be removed from the *Register of Lobbyists* in order for the appointment to proceed.

Chapter 4 of the Integrity Act deals with the regulation of lobbyist activities and the prohibition of the payment of success fees to lobbyists when undertaking lobbying activities.⁴²

Seeking advice

Requests for advice to the Integrity Commissioner from a designated person must be in writing and should contain sufficient information to allow the Integrity Commissioner to evaluate the issues concerned. Requests should be sent to the Integrity Commissioner by post (PO Box 15290, City East, Queensland, 4002) or email (integrity.commissioner@qld.gov.au).

31 Section 12 Ombudsman Act

32 Section 7 Ombudsman Act

33 Section 18 Ombudsman Act

34 Section 36 Ombudsman Act

35 Section 25(2) Ombudsman Act

36 Section 49 Ombudsman Act

37 Section 50 Ombudsman Act

38 Section 51 Ombudsman Act

39 As defined in Section 12 Integrity Act

40 Section 10 Integrity Act defines “conflict of interest”

41 A statutory office is defined in Section 139(1) of the *Public Service Act 2008* as ‘an office established under an Act to which a person may be appointed only by the Governor in Council or a Minister.’

42 Section 69 Integrity Act

A designated person (other than the Premier, Minister, Parliamentary Secretary, Leader of the Opposition or Chief Executive) is only able to seek advice about an ethics or integrity issue involving that person and cannot seek advice about another person.⁴³ However, the Premier may seek advice about a conflict of interest issue involving any person who is, or has been a designated person.⁴⁴

Ministers may also seek advice about certain other designated persons,⁴⁵ including certain statutory office holders in their portfolio. A Parliamentary Secretary, Leader of the Opposition or Chief Executive may also seek advice to the extent permitted under the Integrity Act.⁴⁶

When a request for advice is received, the Integrity Commissioner must have regard to the following issues in the formulation of advice:

- the information provided with the written request
- the relevant code of conduct
- any other ethical standards the Integrity Commissioner considers appropriate.⁴⁷

The Integrity Commissioner must provide advice to the designated person in writing.⁴⁸

The Integrity Commissioner may refuse to provide advice if:

- the Integrity Commissioner does not have enough information about the ethics or integrity issue to give advice; or
- the advice is asked for in circumstances where the giving of advice would not be in keeping with the purpose of the Integrity Act.⁴⁹

It is important to remember the Integrity Commissioner does not provide legal advice.

Where advice is provided by the Integrity Commissioner in respect of a conflict of interest, the designated person is not liable in a civil proceeding or under an administrative process for the action taken by the person to resolve the conflict after the person has received the advice and provided the person has acted substantially in accordance with the advice and has disclosed all relevant information in relation to the issue.⁵⁰

Secrecy

Section 24 of the Integrity Act deals with the secrecy of ethics and integrity issues. Subject to some exceptions for the performance of functions or as authorised by the Integrity Act, a person must not record, use or disclose information in relation to an ethics or integrity issue about another person.

43 Section 15 Integrity Act

44 Section 16 Integrity Act

45 Section 17 Integrity Act

46 Sections 18 to 20 Integrity Act

47 Section 21 Integrity Act

48 Section 21(2) Integrity Act

49 Section 21(4) Integrity Act

50 Section 40 Integrity Act

Disclosure of advice

Part 4 of the Integrity Act deals with authorised disclosures in respect of “relevant documents” which includes the request for advice and advice of the Integrity Commissioner on integrity and ethics issues.⁵¹

A person about whom a relevant document relates may disclose that document to any person.⁵²

The Integrity Commissioner must give the Premier a copy of the relevant document relating to a particular designated person if the Premier asks for a copy of it.⁵³ The Integrity Commissioner must also give a copy of the document to the Premier if the Integrity Commissioner reasonably believes the designated person has an actual and significant conflict of interest but only if:

- the Integrity Commissioner gives written advice to the designated person that he has this belief and states that he is required to give a copy of the document to the Premier
- the designated person fails to resolve the conflict issue to the Integrity Commissioner’s satisfaction within five business days after being given the written advice.⁵⁴

Other exemptions also apply in respect of the Integrity Commissioner’s disclosure of relevant documents to Ministers, Parliamentary Secretaries, Leader of the Opposition and Chief Executive Officers.⁵⁵

Relationship with RTI Act

The RTI Act does not apply to a document created or received by the Integrity Commissioner under Chapter 3 of the Integrity Act.⁵⁶

7.10 Code of conduct

Members of government bodies assume a position of public trust and confidence as outlined above. As such, members of the public rightly expect these appointees to follow certain ethical principles.

The *Public Sector Ethics Act 1994* (the Ethics Act) applies to ‘public officials’ who are defined in that Act to mean ‘an officer or employee of a public sector entity’. ‘Public sector entity’ is defined to include a “commission, authority, office, corporation or instrumentality established under an Act or under state or local government authorisation for a public, state or local government purpose.” It also includes any entity, prescribed by regulation, that is assisted by public funds. However, the definition of ‘public sector entity’ in the Ethics Act expressly excludes certain specified entities including Government Owned Corporations (GOCs).

Therefore, the Ethics Act applies to a Government Board if it is a ‘public sector entity’. It applies to statutory authorities

51 Section 25 Integrity Act

52 Section 27 Integrity Act

53 Section 29(1)(a) Integrity Act

54 Sections 29(1)(b) and 29(2) Integrity Act

55 Sections 30 to 33 Integrity Act

56 Section 6 of Schedule 1 RTI Act

or corporations assisted by public funds or established for a public purpose, but does not apply to GOCs.

The Ethics Act prescribes five “ethics principles” which are declared to be fundamental to good public administration:

- a. respect for the law and the system of government
- b. respect for persons
- c. integrity
- d. diligence
- e. economy and efficiency.

The five ethical principles apply to public officials as “ethical obligations” and are intended to provide the basis for codes of conduct for public officials and are not of themselves legally enforceable. The Chief Executive Officer of a public sector entity has an obligation to ensure that a code of conduct is prepared for the entity.

The Department of the Premier and Cabinet’s *Code of Conduct* (November 2009) is an example of a code of conduct which was developed pursuant to the Ethics Act. The code applies to members of Government Boards within the Premier’s portfolio insofar as they use public resources or have access to official information.

The code is divided into sections which deal with specific requirements under each of the five ethical principles. The code also contains many hypothetical examples together with a Registration of personal interests form (appended to the end of the code). A copy of this form appears as Attachment 4 to this guide.

The relevant enabling legislation may prescribe specific ethics obligations for an organisation:

Example: **Development assessment panels for iconic places** established under the *Iconic Queensland Places Act 2008*

Section 36 Disclosure of material personal interests

1. This section applies if:

- a. a member has a material personal interest in an issue being considered, or about to be considered, by the panel
- b. the material personal interest could conflict with the proper performance of the member’s functions relating to the issue.

2. The member must, as soon as practicable, disclose the material personal interest to all the other members.

3. If a member has disclosed a material personal interest in an issue, the member must not participate in the panel’s consideration of the issue.

If the Ethics Act does not apply to the entity, the legislation creating the entity should be specifically examined to determine officers’ ethical responsibilities.

7.11 Restrictive trade practices

From 21 July 1996, the restrictive trade practices provisions in Part IV of the *Trade Practices Act 1974 (Cth)* (the TPA) apply to all areas of the Queensland Government that represent the Crown, so far as the Crown carries on a business, either directly or an authority of the state.⁵⁷ “Authority” means:

- a. body corporate established for a purpose of the state by or under a law of the state; or
- b. an incorporated company in which the state or the territory, or a body corporate referred to in (a), has a controlling interest.⁵⁸

Part IV of the TPA will apply to all other organisations regardless of whether they carry on a business.

Part IV of the TPA prohibits restrictive trade practices. Restrictive trade practices include:

- exclusionary provisions (also known as primary boycotts): when competitors agree not to supply (or buy) goods or services to a particular person or class of persons, or when competitors agree to prevent or hinder the acquisition of goods or services from a particular person or class of persons.
- price fixing: a contract, arrangement or understanding with a competitor that has the purpose or the effect, or the likely effect, of fixing, controlling or maintaining prices, discount levels, allowances, rebates or credits in relation to goods or services.
- third line forcing: requiring a customer to acquire goods or services from another person as a condition of the supply of your goods or services to that customer. It also includes refusing to supply because the customer has not accepted the condition to acquire goods or services from another, or setting prices according to whether a customer has acquired goods or services from another person.
- resale price maintenance: when a supplier sets a minimum price below which resellers must not resell goods.
- anti-competitive contracts: the making or giving effect to general anticompetitive contracts, arrangements or understandings. These are any contracts, arrangements or understandings that have the purpose or likely effect of substantially lessening competition in a market.
- secondary boycotts: these provisions are primarily designed to combat union boycott activity.
- exclusive dealings: prohibits specified conduct involving product exclusivity, tying arrangements and customer and territory exclusivity, in circumstances where the conduct results in a substantial lessening of competition in the relevant market.
- mergers and acquisitions: if the effect would be to substantially lessen competition in a market.
- misuse of market power: when an entity that has a

⁵⁷ Section 2B(1) TPA

⁵⁸ Section 4 TPA

substantial degree of market power takes advantage of that power for one of the proscribed purposes. The proscribed purposes are eliminating or damaging a competitor, preventing a person from entering a market, or deterring or preventing a person from engaging in uncompetitive conduct.

Penalties for breaching Part IV are substantial, with fines of up to \$10,000,000 per offence for bodies corporate. Officers and members of Government Boards who are involved in a contravention of Part IV may also be fined up to \$500,000 per offence. Persons who suffer loss as a result of unlawful behaviour may seek damages and injunctions may also be granted to restrain illegal activities.

The TPA expressly provides that a state government will not be liable to a pecuniary penalty under the Act.⁵⁹ However, this protection does not extend to an authority of the state.⁶⁰ Also, a breach of the restrictive trade practices provisions of the TPA by the state may render the government liable to pay damages to a person who suffers loss because of that breach.

Members of Government Boards need to ensure that:

- they are familiar with the provisions of Part IV of the TPA so as to avoid engaging in unlawful behaviour in that capacity
- the Government Board complies with its obligations under Part IV and the *Competition Code* – this will be particularly important where the Government Board is engaging in trading, commercial or business activities
- the Government Board implements an adequate trade practices compliance program to minimise the risk of contravening Part IV. This should be developed in consultation with the Government Board’s legal advisers.

There is provision for a Government Board to engage in conduct which would otherwise breach Part IV, either by giving notice of the conduct to the Australian Competition and Consumer Commission (ACCC), or by seeking authorisation from the ACCC. Government Boards which are subject to control or direction from the government must obtain approval from Cabinet, via the relevant portfolio Minister, before taking either of these steps (after having consulted with Queensland Treasury’s Economic and Structural Policy branch, which is responsible for ensuring whole-of-government compliance).

7.12 Approval requirements

In the case of Government Boards constituted by statute, certain activities may require the prior approval of the portfolio Minister, the Treasurer or the Governor in Council. Such requirements may be set out in the enabling legislation or other legislation. For example, certain investment activities, borrowings, leases and other financial arrangements may require the prior approval of

the Treasurer pursuant to the *Statutory Bodies Financial Arrangements Act 1982* (the SBFA Act). Likewise, contract expenditure over specified amounts may require approval from the Governor in Council.

An activity engaged in without the necessary approval may be unlawful and there may be repercussions for Government Board members. For example, some enabling legislation provides that board members can be held personally liable for illegal financial arrangements. Retrospective approvals cannot be given for investments or other financial arrangements that require the prior approval of the Treasurer under the SBFA Act.

7.13 Delegations

Legislation, such as the enabling legislation for an entity or the *Public Service Act 2008*, may create a statutory power that vests in a particular individual or body who is able to exercise that power.

Government Boards or board members can only delegate a power or duty if that delegation is permitted by the legislation that creates the power.

A delegation cannot apply in respect of a matter that goes beyond the legal powers conferred upon the Government Board by the relevant legislation, i.e. a Government Board cannot delegate to another party, including a subsidiary company of the Government Board, the right to engage in an activity on behalf of the Government Board which the Government Board itself is not authorised to engage in.

A delegate must use their own discretion when exercising a power under delegation.

A delegation should be made through a formal instrument of delegation.

7.14 Accountability arrangements for subsidiary companies

The enabling legislation of a Government Board (in the case of Government Boards established by statute) may expressly state whether a subsidiary body may be established.⁶¹ This is particularly the case with incorporated bodies.

In cases where the enabling legislation of a Government Board does not provide an express power for a Government Board to establish a subsidiary, the Government Board must obtain the prior approval of the relevant portfolio Minister. In these circumstances, the additional approval of the Treasurer may also be required. Those Government Boards subject to the SBFA Act may require the prior approval of the Treasurer for matters classified as ‘other financial arrangements’, which include establishing a subsidiary. Similarly, the *Financial Accountability Act 2009*

⁵⁹ Section 2B(2) TPA

⁶⁰ Section 2B(3) TPA

⁶¹ A Government Board that is an advisory body and is not constituted by statute does not have the legal power to establish a subsidiary.

requires the Treasurer's approval for the formation of a company by a department where the formation involves the use of public moneys.

A Government Board then has a duty to ensure that a subsidiary does not engage in any activity that the Government Board itself does not have the power to engage in.

Agencies must disclose information about other bodies formed or acquired by the agency including their roles, functions, responsibilities, achievements and costs. This information is a mandatory requirement, however if sufficiently disclosed in the financial statements it is not necessary to repeat the information. The Department of the Premier and Cabinet's *Annual Reporting Requirements for Queensland Government Agencies* details the information that must be disclosed.

The annual financial statements of the Government Board must be prepared in accordance with the appropriate accounting standards pertaining to the preparation of consolidated group accounts (Refer also to Chapter 10 of this guide which deals with Evaluating Government Board performance).

8. The role of public service employees on Government Boards

Public service employees, such as chief executives, senior executives, senior officers and other officers and persons appointed under the *Public Service Act 2008*, may be appointed to a Government Board:

- as the Minister's or Chief Executive Officer's nominee, either by virtue of the enabling Act or at the Minister's discretion
- by virtue of their office (*ex officio*), frequently as the Chief Executive Officer; or
- in an independent capacity as a member of the Queensland community.

Example: Queensland parole boards established under the *Corrective Services Act 2006*

Section 218 Membership

1. The Queensland board must consist of the following members -
 - a. a President and a Deputy President, appointed by the Governor in Council by gazette notice, each of whom is –
[...]
 - b. a public service officer employed in the department and nominated by the Chief Executive.

Public service employees may also attend Government Board meetings in an official observer role.

It is important that public service employees on Government Boards are aware of the nature of their appointment to the Government Board and their associated roles and responsibilities.

There are specific provisions relating to public service employees appointed to Government Boards. Public service employees may be appointed to a Government Board as a government or departmental responsibility, either linked with their tenure in a particular position or due to their experience within a department or the public service but not necessarily linked to a specific position.

When appointing public service employees as government or departmental representatives to Government Boards, it is preferable to appoint by position title where possible, rather than appointing a specific person by name, ensuring that the appointment tenure is linked to the appointee's position with the department or agency relevant to the Government Board role.

This practice is permissible under Section 24A of the *Acts Interpretation Act 1954*, which provides that appointments may be made by the title of an office and that the appointee is taken to be the person occupying or acting in the office.

The appointment of public service office holder positions, as opposed to individuals by name, removes the requirement for the appointee to tender a resignation upon ceasing employment

with the public service or leaving the relevant position. This practice also eliminates the need for a 'significant appointment' submission to be made each time a new individual is employed in the specified position during the original term of appointment.

Appointment by position title may not suit all appointments of public service employees as government or departmental representatives to Government Boards, e.g., under Section 117 of the *Corporations Act 2001* (Cth) (the Corporations Act), company directors must be appointed by name. However, where possible, this should be the preferred approach, subject to compliance with any mandatory appointment requirements prescribed by the enabling legislation.

In some instances, public service employees may be appointed by name as a government or departmental representative to a Government Board, due to their experience within a department or the public service, without the appointment being linked to a specific position. Where this is the case, the appointment instrument should specify that the appointment of the individual is subject to continued employment both under the *Public Service Act 2008* and with the department or agency relevant to the Government Board position.

To ensure that the Government Board position is automatically vacated in these instances, the appointment instrument must specifically state that the appointment terminates on the person ceasing to be employed in the public service or ceasing to be employed with the specific department or agency relevant to the Government Board position.

However, it is acknowledged this may not always be suitable and that a number of existing appointments of departmental representatives to Government Boards are not specifically linked to their tenure. In these instances an individual would be required to formally resign from the Government Board if ceasing to be employed by the public service or with the department or agency relevant to the Government Board position.

The Queensland Cabinet Handbook, available on the Department of the Premier and Cabinet website, provides information regarding the preparation of significant appointment submissions.

8.1 Role and responsibilities

Where public service employees are members of Government Boards either as the Minister's or Chief Executive's nominee or in an *ex officio* capacity, it is necessary to carefully determine and document their role on the Government Board as a government representative and the reporting relationship with the responsible Minister. This should occur in consultation with the Minister, prior to commencing the term of office.

A public service employee's role might include acting as a conduit to the Minister concerning the Government Board and its affairs and representing the government's position in relation to matters being considered.

A public service employee should ensure that the Minister is regularly informed of matters before the Government Board (e.g. by providing an agenda to the Minister before a meeting) and provide advice to the Minister on the Government Board's recommendations.

When appointed to a Government Board in an official capacity, the public service employee should be aware of the government's policy imperatives and should not present a personal opinion or position that is contrary to either the Minister's directives or the government's policy agenda.

This principle applies equally to public service employees representing the government on inter-jurisdictional or Australian Government bodies.

8.2 Incorporated Government Bodies – conflicts of interest

The role of public service employees as government representatives appointed to incorporated bodies differs significantly to that detailed at Chapter 8.1. If appointed to an incorporated Government Board, public service employees need to be mindful of the need to avoid a conflict of interest between their duties as a government officer and their duties as a Government Board director.

As discussed at Chapter 7, the duties imposed on directors under the common law and the Corporations Act require a director to act honestly and in the interests of the company as a whole rather than to the benefit of sectional or third party interests. While the public service employee's role might be to represent the government at Government Board meetings, it would be contrary to the legal duties of a director to act, or cause the Government Board to act, contrary to the interests of the corporate entity.

Where a public service employee attends meetings as an observer (i.e. without formal appointment as a director), the Corporations Act may, in some circumstances, deem the employee to be a director if the Government Board directors become accustomed to acting in accordance with the observer's instructions or wishes. The observer will then attract the legal duties imposed on directors.

The related issue of indemnity of public service employees for actions taken as Government Board members is discussed at Chapter 9.1.

8.3 Remuneration

Public service employees appointed to Government Boards are generally not entitled to receive remuneration for such appointments, unless otherwise approved by the government. Please see Chapter 5 for detailed information regarding remuneration.

9. Liability and indemnity

9.1 Indemnities and legal assistance

The whole-of-government *Guideline for the Grant of Indemnities and Legal Assistance to State Employees*⁶² (the Guideline) sets out the government's principles and practices for determining the grant of legal assistance and/or indemnities to 'state employees'. The Guideline applies only to state employees as defined in the Guideline to mean "a person employed or formerly employed by the state" and relevantly includes "an officer, employee or appointee under the *Public Service Act 2008*" as well as "an employee or member of a board, corporate body, authority or other entity acting for or representing the Crown in right of the State of Queensland."

Public service employees who are appointed to a Government Board will be state employees by virtue of their employment under the *Public Service Act 2008*. However, people who are not employed under that Act and who are appointed to a Government Board may be within the ambit of the Guideline where the Government Board acts for or represents the Crown in right of the State of Queensland. The enabling legislation (where applicable) for the relevant organisation may specify whether the organisation represents the state.

Under the Guideline, legal assistance and/or an indemnity may only be provided to a state employee in relation to a civil proceeding, giving evidence and/or information to an inquiry or investigation, or criminal proceedings, and only in limited circumstances. In the case of civil proceedings or an inquiry or investigation, the matter must arise from or relate to the state employee's duties or functions, and the decision maker must be satisfied that the state employee has diligently and conscientiously endeavoured to carry out such duties or functions. The state will not provide legal assistance to a state employee to defend a charge of a criminal offence unless the decision maker is satisfied that the charge arises from or relates to the proper discharge of the state employee's duties or functions, the decision maker has considered legal advice (including legal advice relating to the prospects of conviction) and the state employee has provided an undertaking to reimburse the state if the state employee is found guilty of an offence.

The decision maker may be the Director-General of the state employee's department, the head of the state employee's office, unit or entity (or delegate), the Director-General of the Department of the Premier and Cabinet where the application relates to an inquiry or investigation in relation to the commission of a criminal offence or defending a criminal charge, or in some circumstances the Premier (or delegate).

The state will not provide legal assistance to a state employee for the purpose of initiating or continuing separate legal proceedings, including an action for defamation, by or on behalf of the state employee in

relation to a civil proceeding, inquiry or investigation, unless approval in writing has first been obtained from the Attorney-General.

An application for legal assistance must be made in the prescribed form as soon as reasonably practicable after the State Employee becomes aware of the civil proceeding, inquiry or investigation or criminal proceeding. The application should be submitted to the decision maker as set out in the Guideline.

The Guideline specifies a number of additional limitations to the circumstances in which legal assistance and/or indemnity will be provided. For further information refer to the Guideline or seek legal advice.

9.2 Guarantees

The provision of a guarantee by a Government Board in favour of any party is subject to the prior approval of the relevant portfolio Minister, as well as the Treasurer if the Government Board is in direct receipt of government funding. There may also be certain statutory requirements under the Government Board's enacting legislation and the *Statutory Bodies Financial Arrangements Act 1982*.

Where a Government Board is not constituted by statute but functions in an advisory role only, it will not have the legal capacity to provide a guarantee to another party.

9.3 Directors' and officers' liability insurance

The law imposes duties upon directors and officers of companies for which they are personally liable including:

- to exercise a reasonable degree of care and diligence in the conduct of their duties and the use of the power of their position
- to not make improper use of information or their position to gain advantage or to disadvantage others
- to act honestly in all of their dealings
- to prevent the company from trading and continuing to incur liabilities whilst insolvent.

Directors and officers may be liable for wrongful acts, breaches of trust or where the entity does not meet its legal responsibilities and can be sued by employees, creditors, clients and competitors.

Under the Corporations Act, an entity is legally able to indemnify its directors and officers other than in respect to claims:

- made by the entity or related body corporate
- involving a lack of good faith.

A director's and officer's liability insurance policy in the private insurance market usually has two insuring clauses. The first clause addresses coverage for the board members, directors and committee members individually and the second clause addresses company re-imbusement.

⁶² Available online via the Public Service Commission's website: www.psc.qld.gov.au/library/document/guideline/indemnities-and-legal-assistance-guideline.pdf

Directors and officers should seek professional advice regarding their insurance needs.

Queensland Government Insurance Fund (QGIF)

QGIF was established on 1 July 2001 to manage the state's insurable assets and liabilities. Whilst it is a self-insurance fund of the Queensland Government, QGIF operates on an insurance company model meaning that it collects premiums from which claims are paid and reserves are built up to meet the cost of future claims.

Participation in QGIF is restricted to state government departments, for whom participation is compulsory, and to statutory bodies for whom participation is optional subject to approval by Queensland Treasury. GOCs are ineligible to participate in QGIF and most importantly, QGIF does not provide insurance cover to any other non-state government entities.

More detail on the insurances available from QGIF can be obtained through their website, www.qgif.qld.gov.au

9.4 Misfeasance in public office

The tort of misfeasance in public office is a civil wrong that may be redressed in law by an award of damages, and relates to the intentional misuse of public power by a public officer. To establish the tort of misfeasance in public office, the plaintiff must prove that an act was:

- invalid or unauthorised
- done maliciously
- done by a public officer
- done in the purported discharge of his or her public duty
- caused loss to the plaintiff.⁶³

The following actions by a public officer may constitute misfeasance in public office:

- action taken in excess of power with an intention to cause harm
- action taken in knowledge that there is no statutory authority and the damage is foreseeable; or
- action done with reckless indifference.

An act conducted in good faith and without knowledge of the invalidity of the act is not likely to constitute misfeasance in public office.

The tort of misfeasance in public office creates a personal liability. The state may not be liable for actions of its officers which amount to misfeasance.⁶⁴ See Chapter 9.1 in relation to the *Guideline for the Grant of Indemnities and Legal Assistance to State Employees*.

To ensure against misfeasance in public office, public officers should ensure that they have the requisite power to exercise their authority and may, in some cases wish to seek legal advice on such matters. Public officials should ensure that they are diligently and conscientiously carrying out assigned duties.

⁶³ Mengel's case

⁶⁴ See www.psc.qld.gov.au/library/document/guideline/indemnities-and-legal-assistance-guideline.pdf

10. Evaluating Government Board performance

The performance of Government Boards and individual Government Board members cannot generally be measured solely against conventional corporate benchmarks based on financial performance. However, public sector Government Board performance can, at least to some extent, be measured by the long term success of an organisation in properly fulfilling the purpose for which it was established. Measures for the assessment of Government Board performance include the development of broad financial and non-financial performance measures for statutory authorities (and hence their Government Boards) as well as more direct measures to appraise collective Government Board performance and individual Government Board member performance. Ministers are responsible for the performance and conduct of the Government Board and the members within their portfolio.

There are also certain legislative requirements outlined below.

The *Auditor-General Act 2009* (the A-G Act) confers on the Queensland Auditor-General and the Queensland Audit Office the functions and powers necessary to carry out independent audits of the Queensland public sector and related entities. Such entities include statutory bodies and Government Owned Corporations.

A 'statutory body' is defined in Section 9 of the *Financial Accountability Act 2009* (the FAA) as an entity that established under an Act, has control of funds and includes, or whose governing body includes at least one member:

- (i) who is appointed under an Act by the Governor in Council or a Minister; or
- (ii) whose appointment is approved by the Governor in Council or a Minister.

Certain entities such as departments, local government and prescribed entities are excluded from the definition.⁶⁵ An Act may prescribe an entity (including part of a department) to be a statutory body for the purpose of the FAA.⁶⁶

Part 4 of the FAA deals with provisions applying to statutory bodies. Section 61 states that statutory bodies have the following functions:

- to ensure the operations of the body are carried out efficiently, effectively and economically
- to establish and maintain appropriate systems of internal control and risk management
- to establish and keep funds and accounts in compliance with the prescribed requirements
- to ensure annual financial statements are prepared, certified and tabled in Parliament in accordance with the prescribed requirements

- to undertake planning and budgeting for the body that is appropriate to its size
- to perform other functions conferred on the body under relevant legislation, including the *Financial and Performance Management Standard 2009* (the FPMS).⁶⁷

10.1 Planning requirements

Section 9 of the FPMS requires that statutory bodies develop:

- a strategic plan for the statutory body that covers a period of four years
- an operational plan (for the whole of the statutory body or for levels of the statutory body that the body considers appropriate) that covers a period of not more than one year.

In developing the plans, the statutory body must comply with the Department of the Premier and Cabinet's *Agency Planning Requirements*.

10.2 Reporting requirements

The FPMS (which is subordinate legislation under the FAA) deals with corporate governance issues and applies to statutory bodies unless a section states that it applies to departments or accountable officers only. Statutory bodies are to comply with this standard, which lists at Section 15(1) the systems for managing resources that they are required to have in place:

- a. revenue management system
- b. expense management system
- c. asset management system
- d. cash management system
- e. liability management system
- f. contingency management system
- g. financial information management system
- h. risk management system.

The FAA and the FPMS specify that statutory bodies must prepare annual financial statements which must be given to the Auditor-General in sufficient time to allow an audit to be completed and the financial statements certified within a two month period.⁶⁸ Statutory bodies are also required to furnish to the appropriate Minister an annual report, and the Minister is required to table the report in Parliament within three months of the end of the reporting year. The Minister may extend the three month period by written notice.

⁶⁵ Section 9(2) FAA

⁶⁶ Section 9(3) FAA

⁶⁷ Section 61 FAA

⁶⁸ The Treasurer has the power to approve an extension to this timeframe in certain circumstances.

The Department of the Premier and Cabinet's *Agency Planning Requirements* provides Queensland Government departments and statutory bodies with a detailed overview of the provisions and processes for preparing strategic, operational and specific purpose plans.

Each financial year the Auditor-General must, under Section 40 of the A-G Act, audit all 'public sector entities' except for any public sector entities which are exempted under a specific regulation pursuant to Section 31 of the A-G Act. The A-G Act defines 'public sector entity' as a department, local government, statutory body or a Government Owned Corporation, or an entity controlled by one or more other public sector entities. The A-G Act also allows (Section 35) for the Legislative Assembly, by resolution, to request the Auditor-General to conduct an audit of a matter relating to the financial administration of a public sector entity. Further, under Section 36, the Auditor-General may audit an entity that is not a public sector entity at the request of a Minister or a public sector entity however, only if the entity agrees to the audit.

Under Section 40(3) of the A-G Act, the auditor's report about the financial statements of a statutory body must state whether:

- the Auditor-General has received all the information and explanations required by him
- the Auditor-General considers the prescribed requirements in relation to the establishment and keeping of accounts have been complied with in all material respects.

11. Government Owned Corporations

Queensland currently has a number of Government Owned Corporations (GOCs) which conduct activities and provide services in a commercially-oriented manner. Sectors in which GOCs operate include energy, transport, funds management, port operations and water. A GOC is established under the *Government Owned Corporations Act 1993* (the GOC Act) and is defined in Section 5 of that Act as a government entity that is established as a body corporate under an Act or the *Corporations Act 2001* (Cth) (the Corporations Act) and declared by regulation to be a GOC.

Corporatisation is defined in Section 13 of the GOC Act as a structural reform process for nominated government entities that:

- a. changes the conditions and (where required) the structure under which entities operate so that they operate, as far as practicable, on a commercial basis and in a competitive environment
- b. provides for the continued public ownership of the entities as part of the process
- c. allows the state, as owner on behalf of the people of Queensland, to provide strategic direction to the entities by setting financial and non-financial performance targets and community service obligations.

The objectives of corporatisation, as set out in Section 14 of the GOC Act, are to improve Queensland's overall economic performance and the ability of the government to achieve social objectives by improving the efficiency and effectiveness of GOCs and improving their accountability.

The GOC Act provides for GOCs to have two shareholding Ministers – the GOC Minister (the Treasurer) and the portfolio Minister (e.g., in the case of transport GOCs, the Minister for Transport). Certain powers to be jointly exercised are conferred on the shareholding Ministers.

The GOC Act and the Corporations Act detail the legal obligations of GOC board members. A brief outline of these provisions follow.

11.1 Role

The role of GOC boards (as defined in Section 88 of the GOC Act) specifically includes the following matters:

- a. responsibility for the GOC's commercial policy and management
- b. ensuring that, as far as possible, the GOC achieves, and acts in accordance with, its statement of corporate intent and carries out the objectives outlined in its statement of corporate intent

- c. accounting to the GOC's shareholders for its performance as required by the GOC Act and other laws applying to the GOC
- d. ensuring that the GOC otherwise performs its functions in a proper, effective and efficient way.

11.2 Key officers

GOCs must have a board of directors appointed by the Governor in Council pursuant to the GOC Act.⁶⁹ The GOC Act provides that in appointing a person as a director, the Governor in Council must have regard to the person's ability to make a contribution to the GOC's commercial performance and, if the GOC has a statement of corporate intent, the implementation of the statement.⁷⁰ The Act precludes public servants from being appointed to GOC boards.⁷¹

Each GOC must have a Chief Executive Officer (CEO) who is to manage the day to day affairs of the GOC. The GOC Act provides that a GOC's CEO is appointed by the GOC's board with the prior written approval of the shareholding Ministers.

11.3 Duties and responsibilities

Part 12 of the GOC Act deals with the duties and liabilities of directors and other officers. Part 12 is fairly general as the duties and liabilities of directors and officers are also governed by the Corporations Act.

The Corporate Governance Guidelines for GOCs encourages GOCs to establish a code of conduct to apply to directors, the CEO and senior executives, to provide guidance as to the practices necessary to maintain confidence in the GOC's integrity and the responsibility and accountability of individuals for reporting and investigating reports of unethical practices. GOC board members should familiarise themselves with the relevant code of conduct.

The GOC Act recognises that GOCs may have community service obligations and may be subject to directions, notifications or approvals from the shareholding Ministers.⁷²

GOCs should note that any projects proposed to be undertaken outside the state of Queensland require written shareholding Ministers' approval prior to negotiations being entered into and prior to any commercially binding contracts being entered into.

The Office of Government Owned Corporations (OGOC), located within Queensland Treasury, maintains policies and guidelines specific to GOCs and these are available on their website. This guide provides general information only and more detailed information can be obtained from OGOC or from their website, www.ogoc.qld.gov.au

⁶⁹ Section 89(1) GOC Act

⁷⁰ Section 89(2) GOC Act

⁷¹ Section 90 GOC Act

⁷² Part 9 GOC Act



12. Appendix

Attachment 1 – Resources

Attachment 2 – Useful contacts

Attachment 3 – Induction checklist

Attachment 4 – Registration of personal interests form
(example)

Attachment 1 – Resources

Australian Institute of Company Directors
Duties and Responsibilities of Directors and Officers,
19th Ed., Professor Bob Baxt, 2009
A complete listing of AICD publications is available at
www.companydirectors.com.au/Publications/

Australian National Audit Office
Public Sector Governance, July 2003
www.anao.gov.au/director/publications/betterpracguides/currentguides.cfm?pageNumber=3

Department of Justice and Attorney-General, Queensland
Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities, February 2010
www.justice.qld.gov.au/__data/assets/pdf_file/0019/28036/remuneration.pdf

Department of Justice and Attorney-General, Queensland
Remuneration Rates
www.justice.qld.gov.au/__data/assets/pdf_file/0015/14415/circ03-07att.pdf

Department of Public Works, Queensland
Queensland Government Travel Policy (including *Whole-of-Government Air Travel Policy*, December 2008)
www.qgm.qld.gov.au/09_travel/policy.htm
www.qgm.qld.gov.au/09_travel/resources/AirTravelPolicy.pdf

Department of the Premier and Cabinet, New South Wales
An Introduction to Board and Committee Membership, April 2008
www.boards.dpc.nsw.gov.au/publications-folder/IntroB-CmembershipFinalV1.doc

Department of the Premier and Cabinet, Queensland
Agency Planning Requirements (published on an annual basis)
www.premiers.qld.gov.au/publications/categories/plans/planning-requirements.aspx

Department of the Premier and Cabinet, Queensland
Annual Report Requirements for Queensland Government Agencies (published on an annual basis)
www.premiers.qld.gov.au/publications/categories/guides/annual-report-guidelines.aspx

Department of the Premier and Cabinet, Queensland
Code of Conduct, November 2009
www.premiers.qld.gov.au/publications/categories/policies-and-codes/code-of-conduct.aspx

Department of the Premier and Cabinet, Queensland
Governing Queensland Suite of Publications

- *Cabinet Handbook*
- *Executive Council Handbook*
- *Legislation Handbook*
- *Ministerial Handbook*
- *Parliamentary Procedures Handbook*
- *Welcome Aboard: A guide for members of Queensland Government Boards, committees and statutory authorities*
www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks.aspx

Department of the Premier and Cabinet, South Australia
Board and Committees: Policy, guidelines and forms
www.premcab.sa.gov.au/dpc/community_boards_committees.html

Dunphy, B
Misfeasance in Public Office: Liability for Public Administrators, March 1999

Office of the Auditor General, Western Australia
Roles and Responsibilities of Members of Governing Bodies of State Government Agencies, February 1997

Public Sector Commission, Western Australia
Principles of Good Corporate Governance for Western Australian Public Sector Boards and Committees, November 2009
www.publicsector.wa.gov.au/boardsandcommittees/Principles/Pages/Default.aspx

Resources, links and tools for CEOs, board and committee members, board and committee chairpersons, Ministers and their staff, and staff supporting boards and committees, November 2009
www.publicsector.wa.gov.au/boardsandcommittees/Pages/ResLinksTools.aspx

Public Service Commission, Queensland
Guideline for the Grant of Indemnities and Legal Assistance to State Employees, November 2009
www.psc.qld.gov.au/library/document/guideline/indemnities-and-legal-assistance-guideline.pdf

Public Service Commission, Queensland
Policies and guidelines relevant to the public sector (some of which may be applicable to Government Boards)
www.psc.qld.gov.au/page/corporate-publications/policy/index.shtml
www.psc.qld.gov.au/page/corporate-publications/guidelines/index.shtml

Attachment 1 – Resources

Queensland Audit Office

Checklist for CEOs, Boards and Accountable Officers, prior to signing financial statements, April 1996

www.qao.qld.gov.au/downloadables/publications/best_practice/qao_checklist_ceos_2006.pdf

State Services Authority, Victoria

Welcome to the Board: Introduction to the good practice guide on governance for Victorian public sector entities, 2006

[www.ssa.vic.gov.au/CA2571410025903D/WebObj/WelcometotheBoard/\\$File/WelcometotheBoard.pdf](http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/WelcometotheBoard/$File/WelcometotheBoard.pdf)

The Audit Office of New South Wales

On board: guide to better practice for public sector governing and advisory boards, April 1998

www.audit.nsw.gov.au/publications/better_practice/1998/onboard_april98.pdf

Attachment 2 – Useful contacts

Issue	Contact
Annual Reporting Requirements	Performance and Delivery Office, Department of the Premier and Cabinet Email: annual.reports@premiers.qld.gov.au
Appointments (Cabinet)	Executive Services, State Affairs, Department of the Premier and Cabinet Telephone: (07) 3224 5456
Appointments (Executive Council)	Constitutional and Administrative Law Services, State Affairs, Department of the Premier and Cabinet Telephone: (07) 3224 4819
Australian Institute of Company Directors	www.companydirectors.com.au/default.htm Telephone: 1300 739 119
Cabinet	Departmental Cabinet Legislation and Liaison Officer and Cabinet Secretariat (refer to individual departments)
Financial management and reporting	Financial Management Branch, Queensland Treasury www.treasury.qld.gov.au/office/services/reporting/requirements/index.shtml Email: fmhelpdesk@treasury.qld.gov.au
Government Owned Corporations	Office of Government Owned Corporations, Queensland Treasury www.ogoc.qld.gov.au Telephone: (07) 3224 4636
Independent Review of Government Boards, Committees and Statutory Authorities	Executive Services, State Affairs, Department of the Premier and Cabinet www.premiers.qld.gov.au/government/boards-committees/review.aspx Telephone: (07) 3224 5456
Indigenous issues	Aboriginal and Torres Strait Islander Partnerships, Department of Communities www.atsip.qld.gov.au Telephone: 13 13 04
Integrity	Queensland Integrity Commissioner www.integrity.qld.gov.au/index.shtml Telephone: (07) 3224 2351
Information Privacy	Department of the Premier and Cabinet www.qld.gov.au/right-to-information Telephone: (07) 3235 4838
Legal issues	Crown Law, Department of Justice and Attorney-General (NB fees may be charged) Liabilities and indemnities – Telephone (07) 3239 6703 Tied legal work guidelines – Telephone (07) 3227 7884 www.justice.qld.gov.au/justice-services/justice-agencies/crown-law Telephone: 1800 268 428
Legislation	Office of the Queensland Parliamentary Counsel www.legislation.qld.gov.au/OQPChome.htm Telephone: (07) 3237 0466
Lobbyists	Queensland Integrity Commissioner www.integrity.qld.gov.au/page/lobbyists/index.shtml Telephone: (07) 3224 2351

Attachment 2 – Useful contacts

Multicultural	Multicultural Affairs Queensland, Department of Communities www.multicultural.qld.gov.au Telephone: 13 13 04
Planning requirements	Performance and Delivery Office, Department of the Premier and Cabinet Email: pm@premiers.qld.gov.au
Privacy	Office of the Privacy Commissioner, Australian Government www.privacy.gov.au Telephone: 1300 363 992
Queensland Government Executive Directory	www.qgd.qld.gov.au
Queensland Government Insurance Fund	www.qgif.qld.gov.au Telephone: (07) 3224 4876
Queensland Ombudsman	www.ombudsman.qld.gov.au Telephone: (07) 3005 7000 or 1800 068 908
Queensland Register of Appointees to Government Bodies	Executive Services, State Affairs, Department of the Premier and Cabinet http://governmentbodies.premiers.qld.gov.au Telephone: (07) 3224 2028
Queensland Register of Nominees to Government Bodies	Executive Services, State Affairs, Department of the Premier and Cabinet www.premiers.qld.gov.au/government/participate/qld-nominees-register.aspx Telephone: (07) 3224 2028
Remuneration	Public Sector Industrial and Employee Relations Division, Department of Justice and Attorney-General www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/queensland-government-employees/policies Telephone: (07) 3225 2449
Right to Information	Department of the Premier and Cabinet www.qld.gov.au/right-to-information Telephone: (07) 3235 4838
Travel	Travel Management Unit, Department of Public Works Telephone: (07) 3224 8298
Women on boards	Office for Women, Department of Communities www.women.qld.gov.au/leadership-and-community/women-on-boards/index.html Telephone: (07) 3224 4062

Attachment 3 – Induction checklist⁷³

The induction should ensure new board members are suitably prepared to fulfil the required governance role. Adequate induction requires the provision of information, familiarisation and socialisation. A typical induction should cover the following information:

1. Information about a board members fiduciary obligations.
2. Information about the public sector.
3. Information about the agency's legislation, particularly the required role of the board.
4. Information on the organisation, including:
 - a. purpose of the organisation, glossary of common terms and acronyms
 - b. organisational structure
 - c. role of key stakeholders
 - d. strategic plan (*Strategic Development Plan/Statement of Corporate Intent* if applicable)
 - e. core operations
 - f. reporting requirements
 - g. compliance obligations.
5. Information on the organisation's strategic environment:
 - a. glossary of common terms and acronyms
 - b. recent trends and issues, and
 - c. role of key stakeholders.
6. Information about the board:
 - a. role of the board (including the board charter)
 - b. role of management (if applicable)
 - c. board structure (including committees)
 - d. board procedures
 - e. minutes from recent board meetings
 - f. code of conduct
 - g. procedures for managing conflicts of interests
 - h. board policy manual (if applicable)
 - i. board annual calendar of activities.
7. Information about other board members.

The mechanism for induction should be considered carefully. It may be beneficial to:

1. provide all information in a written pack
2. provide all information through a secure online facility
3. conduct briefing sessions or site visits
4. conduct session with the Chairman
5. conduct sessions with the CEO
6. conduct sessions with individual board members
7. provide access to a training program in relation to board member responsibilities.

The role of informal conversation and questioning with staff and board members should not be underestimated. Combinations of mechanisms outlined above are likely to be required to achieve an appropriate level of induction.

⁷³ Sourced from: Public Sector Commission, Western Australia
Resources, links and tools for CEOs, board and committee members, board and committee chairpersons, Ministers and their staff, and staff supporting boards and committees, November 2009 www.publicsector.wa.gov.au/boardsandcommittees/Pages/ResLinksTools.aspx

Attachment 4 – Registration of personal interests form (example)⁷⁴

STRICTLY CONFIDENTIAL

To <insert name of Government Body>

Particulars of my personal pecuniary and other relevant interests and those of my immediate family of which I am aware are set out in the attached form.

I undertake to advise you should a situation arise where an interest of mine or an interest of a member of my immediate family of which I am aware, whether that interest is pecuniary or otherwise, conflicts, or may reasonably be thought to conflict, with my public duty.

.....
name (block letters)

.....
(signature)

.....
(position)

.....
(date)

⁷⁴ Sourced from Department of the Premier and Cabinet Code of Conduct, November 2009.

STRICTLY CONFIDENTIAL

Return of Personal Interests of Officer and Immediate Family (including spouse and dependent children)

Real Estate

Real Estate in which a beneficial interest is held other than principal place of residence:

Location	Owner	Purpose for which held
.....
.....
.....

Share Holdings (where total value exceeds \$5,000)

Include registered shares, options and current applications (other than nominal share holdings by way of qualification for membership of a credit union, building society or other co-operative society):

Owner of shares	Name of Company (including holding companies and subsidiary companies if applicable)
.....
.....
.....

Directorships in Companies

In regard to any directorships, whether remunerated or not:

Name of Director	Name of Company	Activities of Company whether public or private
.....
.....
.....

Partnerships etc.

Person holding interest	Nature of Operations	Nature of Business Interest
.....
.....
.....

Investments

Investments in bonds, debentures, savings or investment accounts with banks or other financial institutions (exceeding a cumulative value of \$5,000).

Person holding Investment	Type of Investment	Body in which Investment is held
.....
.....
.....

STRICTLY CONFIDENTIAL

Other Assets

List each asset valued at over \$5,000 including collections. Household or personal effects and motor vehicles for personal use are to be excluded:

Owner of Asset	Nature of Asset
.....
.....
.....

Employment by a public or private company

Exclude salary from principal public sector employment:

Person receiving income	Nature and annualised amount of income
.....
.....
.....

Any Gifts, Substantial Sponsored Travel or Hospitality exceeding \$100

Person receiving Gift etc	Nature of Gift etc
.....
.....
.....

Liabilities

Liabilities exceeding \$5,000 other than mortgage over principal place of residence

Person concerned	Nature of liability	Creditor
.....
.....
.....

Other Interests - including membership or office holding of an organisation other than an industrial or professional organisation, or a political party

.....
.....
.....

Glossary

Cabinet

The principal decision making body of the government. It comprises all Ministers and its decisions are given formal effect through Acts of Parliament, actions of the Executive Council or the executive powers held by Ministers for the administration of their portfolio.

Enabling Legislation

The act of Parliament that establishes an agency.

Executive Council

Executive Council is not a deliberative body and is comprised of the same persons who comprise the Ministry and Cabinet. The Executive Council exists to advise the Governor on the exercise of the powers of the Governor in Council. The Governor is not a member of the Executive Council. Administrative action under numerous Acts, such as appointments, making regulations and by-laws, and approving financial deeds of agreement can only be carried out by the Governor in Council.

Fiduciary

A fiduciary relationship is a relationship between a person in a position of special power and responsibility (the fiduciary) and the person for whose benefit the fiduciary acts.

Government Board

Includes Queensland Government boards, committees and statutory authorities.

Governor in Council

The Governor acting with the advice of the Executive Council.

Government Agency

A department, local government or public authority.

Government Owned Corporation (GOC)

A GOC is a government entity that is established as a body corporate under an act or the *Corporations Law* and declared by regulation to be a GOC in accordance with the *Government Owned Corporations Act 1993*.

Public Sector Employee

(For the purposes of the procedures on the *Remuneration of Part-Time Chairs and Members of Government Boards, Committees and Statutory Authorities*) -

Full-time or part-time employees of:

- federal, state or local governments
- federal or state semi-government organisations, including statutory authorities, state and local Government Owned Corporations and colleges
- members of any Parliament within Australia and elected full-time local government representatives
- judges, magistrates and other judicial and quasi-judicial officers.

Paid officials or employees of universities are not included within the definition of public sector employees.

Public service employee⁷⁵

1. A person is a public service employee if the person is employed under the *Public Service Act 2008* as—
 - a. a public service officer; or
 - b. a general employee; or
 - c. a temporary employee.
2. Public service employees are employees for the *Industrial Relations Act 1999*.
3. Subsection (2) is subject to Sections 215(3) and 218.

Notes –

1. Section 215(3) excludes the jurisdiction of the IRC for decisions against which a person has appealed to the commission chief executive.
2. Section 218 excludes particular matters from the concept of industrial matter.

Gazette (Queensland Government Gazette)

A weekly document published by the Queensland Government Bookshop detailing such matters as amendments to local laws and planning schemes, vacancies in the Queensland State Public Service and appointments, appointments as Justices of the Peace and Commissioners for Declaration, removal of medical practitioners from the Register of Medical Practitioners, Bills of Parliament that have received assent, notification of subordinate legislation, wills and intestate notices and applications for liquor licences or extended hours.

Shareholding Ministers

The Government Owned Corporations Act 1993 provides for GOCs to have two shareholding Ministers; the GOC Minister (the Treasurer) and the portfolio Minister (e.g., in the case of a transport GOC, the Minister for Transport).

Statutory authority

An entity established under an Act and which includes, or whose governing body includes, at least one member who is appointed under an Act, by a Minister, or by the Governor in Council.

Statutory body

An entity established under an Act, which has control of funds, and which includes, or whose governing body includes, at least one member who is appointed under an Act, by a Minister, or by the Governor in Council.

⁷⁵ Section 9 *Public Service Act 2008*