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RE: Integrity and Accountability in Queensland: Review Submission

Dear Sir/Madam,

I am making this submission to Premier Bligh's Review on Integrity and Accountability in Queensland on behalf of the Australia-New Zealand School of Government's Institute for Governance. This letter addresses a number of general matters of broad principle which are of particular interest to the Institute in terms of its focus on Governance policy, and provides specific comment on selected governance issues raised by the Premier's discussion paper.

The Institute understands governance as the methods by which societies determine and deliver public goods. Its action-based research programs focus on the key governance dilemmas confronting ANZSOG's government partners in an era of collaborative governance of which perhaps the most politically salient at present is to guarantee *integrity in public administration*, and secure the broader legitimacy of the system of government.

In this context, integrity refers to the structural arrangements for achieving Good Governance - *a relative, evolving and culturally defined aspiration which can mean different things in different countries and at different levels of government*. In Australia, the various integrity agencies have been charged with a crucial role in safeguarding the sanctity of liberal democracy, and they accordingly uphold increasingly unfashionable concepts such as popular control, political equality, accountable government, and the public interest.

The Institute recently convened two workshops on integrity in public administration which were attended by nationally and internationally renowned academics, practitioners, thought leaders and research students. The second of these workshops considered Premier Bligh's questions presented in this review. We offer for consideration a number of observations which loomed large in our discussions, which crystallise around three themes: the social purpose of integrity agencies; the main challenges to the establishment of integrity in public administration; and the core reforms required to meet these challenges.

It should be noted at the outset that although certain institutional reforms could be introduced to enhance the quality of integrity and accountability in Queensland's public governance, we believe that the core integrity challenge is behavioural rather than institutional in character. In this respect, the probity of accountability relationships between Ministers, governments, the public service, and the parliament on the one hand, and between governments and the voting public on the other, is the key issue.

The Social Purpose of Integrity Agencies

International comparison demonstrates that integrity systems tend to reflect the national democratic culture; in other words, limited liberal democracies will focus primarily on constructing integrity systems to achieve upwards accountabilities to politicians, transparent procurement processes, and competent public servants. They may even include reactive anti-corruption measures. In contrast, more developed participatory liberal democracies will include these features but will also be characterised by downward-focused accountability processes towards the citizenry, open systems of decision-making, and pro-active anti-corruption measures. In sum, different integrity systems are underpinned by different conceptions of democracy and by implication core values.

If we accept the maximalist conception of an integrity system, such as that which operates in Queensland and in Australia generally, the role of integrity agencies will be to ensure the integrity of:

1. Governing parameters (defined as clear and embedded institutional rules and the rule of law);
2. Accountability routes to ensure that politicians, the judiciary, and public servants are legally and politically 'publicly' accountable with regard to their delegated responsibilities;
3. Transparency processes with regard to public scrutiny of governmental decision-making and operational delivery;
4. Competence systems insofar as public servants should be proficient, expert and knowledgeable, and should have the capacity to discharge their responsibilities effectively, efficiently and economically, and according to law;
5. Reactive and pro-active anti-corruption initiatives which are effective in suppressing corrupt and corruptive conduct by citizens and officials alike; and,
6. Public organisations which deliver public value where public intervention needs to be justified in terms of both the social and economic benefits it delivers to the citizenry, as defined by national priorities.

The achievement of this role would require integrity agencies, and public sector integrity systems more generally, to function in three spheres of responsibility:

- the moral sphere, as the guardian of the good society on behalf of the citizenry;
- the prudential sphere, in terms of monitoring, reporting, evaluating integrity risks and securing the system; and,
- the educative sphere, upwards to the political elite, sideways to the bureaucratic elite and, crucially, outwards to the citizenry, to ensure that the significance of integrity risks is appreciated.

International experience tells us that in order to exercise these functions effectively integrity agencies and systems require: political and financial independence; the support of sovereigns (political will); appropriate constitutional legal, financial and human resources; public support and a strong connection with the citizenry; and inclusive delivery systems (a whole-of-government and society-wide approach).

Addressing the Governance challenges

It is the Institute's view that integrity systems in Western systems of government generally have been placed under increasing stress in the past two decades due to: (1) the introduction of New Public Management (NPM) and the shift of emphasis from government to governance; (2) issues of independence and control; (3) the failure of integrity agencies to engage effectively with the citizenry; and, crucially, the failure of political and professional leadership to ensure the institutionalisation of the new ethics, integrity, and accountability policies through appropriate practices and procedures.

NPM privileges the role of technocrats, and takes the politics out of policy deliberation. Its market orientation is at odds with the concept of 'public service', sitting more easily with the language of the consumer rather than the language of the citizen. The introduction of "employment at whim" (contract employment, associated with varying degrees of precariousness), and the corresponding erosion of public service ethics and institutional memory are evident manifestations of the hollowing-out of 'government by the rules'. Indeed, an integrity paradox has emerged in which the quest for economy, efficiency and effectiveness through NPM, networked governance, and risk management, has increased rather than reduced the scope for maladministration and corruption.

Democracy minimises but does not eliminate corruption. This is because integrity in public administration is an ongoing behavioural challenge which is as much about changing individual values and attitudes as it is about institutional design. Twenty years of radical constitutional reform in the United Kingdom did not prevent the recent expenses scandals in the House of Commons or the 'cash for influence' crisis in the House of Lords. Moreover, the Queensland government itself is a striking example of a government which in less than one decade moved from being a "laggard" state in integrity matters, to being temporarily a leader in developing innovative legislative and policy approaches to public sector ethics,

integrity and accountability. However, two decades of reform to improve Queensland's legislative framework for accountability and integrity did not prevent the Nuttall and Patel scandals, or nullify the recent public expressions of concern offered by Mr Fitzgerald, Mr Goss, Mr Crooke, or Mr Needham. The Institute shares the view that the legal and policy framework may well be adequate, but its implementation in practice and the achievement of long-lasting and fundamental cultural change is a key project which has yet to be addressed effectively.

On the subject of independence and control, many integrity agencies are given statutory status in recognition of their need for real independence from government. However, as they depend on government for financial and other forms of support, and since they are inspectors of departments and agencies of the same government, they will on occasion necessarily find themselves in conflict with government if they are performing their tasks appropriately. Or such agencies may be subject to institutional capture: perhaps not surprisingly, government may seek to curtail their autonomy or otherwise restrict them, or powerful local interests may perform the same limiting role.

It therefore becomes a major issue of governance to ensure that integrity agencies such as Ombudsmen, Auditors-General, and Anti-corruption Commissions, are not so weak that they are unable to resist capitulation to government pressure. But what defences do such integrity agencies have? How can they be protected against government actions which, by design or coincidentally, serve to reduce their effectiveness? Since parliament has created and empowered these integrity agencies through legislation, it is self-evident that *parliament* should defend them, in response to the parliament's constitutional obligation to ensure good governance in the jurisdiction. This arrangement would allow both for the achievement of economies of scale (addressing issues of power, functions, and resource asymmetries between integrity Agencies), and efficiency gains in terms of joining-up monitoring and investigative processes and easing the administrative burden on public organisations.

In our view, it is the responsibility of Parliament to make it clear to the world at large that integrity in government and public administration is a fundamentally important public governance issue, which is the proper concern of the parliament as the ultimate policy-making authority in a democratic system of government.

Public Confidence and the need for Professionalism in Public Administration

In a recent survey, 68% of Australians said that they did not understand the purpose of integrity agencies: the public standing of integrity agencies is clearly not high. This is indicative of a failure by integrity agencies to deliver on their educative function outwards to the citizenry, and of a failure to play an active and independent role in upholding democratic values and institutions. In the absence of alternative sources of such education and example, this deficit brings potentially serious consequences for public understanding of the need for integrity in governments and public services.

Australian citizens expect to be able to trust that their public officials will demonstrate integrity - in short, will be reliable - in performing their roles. Thus public officials are generally expected to do their professional duty diligently, obey the law, act fairly and honestly, respect the rights of individuals, and resist corruption. They are also expected to take responsibility for ensuring that their organisations' integrity systems function effectively in preventing and detecting misconduct, waste, fraud, abuse of public office, maladministration, and bad management. Integrity in government administration is thus concerned primarily with the notion of duty, in particular fiduciary duty.

The discretionary exercise of state or institutional power, and trusteeship for public resources, are matters of central importance. The universal requirement set out in public sector ethics codes - that public officials minimize conflicting private interests which might adversely affect their integrity, and that of their organisation - arises precisely because unelected public servants participate in governing. The proper observance of the professional ethics standards traditionally expected of public officials is therefore crucial to public confidence in the integrity of their elected governments: this is no small matter in a democracy.

But unlike the established professions, entry to the profession of public service in Australia does not require demonstration of a mastery of, or even familiarity with, the relevant ethical standards. For a public servant, the competing and conflicting demands of law and policy, official duty, personal disinterestedness, procedural fairness, due process, and the proper exercise of discretionary judgment, can provide fertile ground in which ethical dilemmas may grow. Taking account of "the public interest" has long proved to be of great difficulty for officials at all levels, and "loyalty to the government of the day," unexceptionable enough in principle, can seem to require "blind loyalty," and suppression of dissent. Especially for senior managers, many views of what 'integrity' requires can jostle for attention, even if there is agreement about what the substantive issues are in a given case. "Circumstances alter cases" as we know from experience.

Dilemmas can arise when codified rules seem to conflict, or not to fit the case in hand, or seem likely to produce adverse unintended consequences in a given case. New situations emerge continuously, and by their nature, codes of ethics cannot prescribe actions for every possible case that might arise. In these circumstances, the individual decision maker's personal moral intuitions alone will rarely, if ever, be sufficient to provide a reliable outcome.

Yet very few officials at any level have the benefit of specific professional training in dealing with professional integrity and accountability matters, and rarely if ever is such training positively required for public servants who seek to advance to senior management roles. It appears to be generally assumed by public sector management authorities that this situation is unproblematic: candidates for public service appointment are assumed to have either somehow learned how to reason about the application of the 'core values' of public service to specific cases before they enter public employment, or that they will not cause undue harm while they make the inevitable mistakes while 'learning by doing.'

It is the Institute's position that for today's professional public service, this approach is fundamentally inadequate, even self-defeating. To deliver integrity in public administration, officials need real skills, not just good intentions. Role-relevant skills should have to be demonstrated by individuals before they can be considered eligible to be promoted to positions of responsibility. If it is true that "*good judgment comes from experience: and experience comes from bad judgment,*" bad judgment in this crucially important area should as far as possible be confined to the relative privacy of the training room, rather than exposed to the public, or the workplace. 'Integrity amateurs' can do enormous damage, to people, organisations, Ministers, governments, and public trust in the system of government. As Confucius pointed out so aptly, ensuring 'trust in government' is more important than providing a disciplined army, or even sufficient food for all the people, since without it nothing can be achieved.

In the Institute's view, the provision of formal professional training and development aimed at ensuring integrity in government administration and professionalism in the public service should be a first priority for any responsible government. No organisation, public or private, can afford to have its staff trying to guess what its standards are.

A Culture of Transparency and Accountability

"Sunlight is said to be the best of disinfectants," according to Louis Brandeis, later a US Supreme Court judge, in 1913: almost a century later his words have become a maxim in relation to corruption-prevention. More broadly, the same principle applies to government accountability: a government's preparedness to be held accountable to parliament and the electorate for its performance measured against appropriate criteria, independently evaluated, and publicly reported, is now widely seen as the basis of the government's claim to legitimacy.

The starting-point for any consideration of the integrity issues which arise in the context of the demand for accountability by government can be found in the principle that parliament is not to be equated to government. Even where a particular party might dominate the parliament at any given time, it needs to be remembered that the executive government of the day is not the parliament, which is constituted by the entirety of the elected representatives together with the Crown. In principle, it is the parliament which provides legitimacy to the government of the day, based on the government's commitment to established democratic and participatory principles.

In this context, Annual Reports of activity by departments and agencies, channelled through responsible Ministers to the parliament, are intended to be vehicles for enabling appropriate *public* scrutiny of a given government's trusteeship of public resources, and its use of the powers of the State, in pursuit of its mandate. The public purpose to be served by this accountability mechanism is central to democratic government: ultimately the parliament and the electorate are entitled to have a proper basis for deciding on whether

the government deserves their trust - akin to the principle of 'informed consent' already familiar in the world of medical practice.

The adequacy of government accountability regimes thus depends on the adequacy of information provided to those to whom the duty of accountability is owed. Herein lies a set of potentially conflicting interests: as John Uhr has observed, Australian voters may well be prepared to trust their elected government, but they tend not to appreciate how far the information on which they base their trust is controlled by that government. It remains an irony that public servants who are responsible for the implementation of Freedom of Information laws across Australia are usually required, when seeking promotion, to demonstrate their expertise in the application of the various *exemptions* from disclosure available under the Act: a truly perverse incentive.

In this respect the Institute applauds the Premier's recent commitment to a new culture of openness in public management in Queensland through a positive regime which aims to provide citizens with much greater access to official information (often wrongly termed 'government information'), as of right.

The Institute also commends the promptness and forcefulness with which the Premier has begun the process of institutionalising the new culture. In the past, the agencies of public administration in Queensland have not enjoyed a strong tradition of openness, transparency or accountability. Like other Public Services in Australia, Queensland's public sector is generally risk averse, possibly as a result of the long-established culture of Ministerial involvement in administration (especially in State government sector), and possibly as a result of the widespread use of 'at whim' employment and performance management arrangements (especially in the senior ranks of the public service and government instrumentalities generally).

Much will depend on the energy with which Ministers, encouraged by the Premier, adopt the Premier's new orientation to public accountability as a matter of democratic principle, rather than as an exercise in personal risk-management. The Institute accordingly recommends that the proposed extended Office of the Integrity Commissioner (see below) be tasked with the responsibility of monitoring and reporting on the effectiveness of measures taken to institutionalise the new Right to Information legislation.

Whistleblowing

The Institute recognises that Queensland's pathbreaking *Whistleblowers Protection Act 1994* is a key component of the integrity and accountability framework in Queensland, and has provided a policy model which has influenced the development of policy and practice in numerous other jurisdictions, notably the United Kingdom and various UN agencies.

It is noted in particular that the Queensland model is based on the recognition that the protection of whistleblowers is properly seen as a means to an end - the objective being to

encourage generally the disclosure of defined wrongdoing by officials and others who deliver services on behalf of government, to an agency which has some responsibility for remedying the situation.

The Institute agrees with the report of the recent collaborative research project '*Whistling While They Work*' insofar as it broadly endorsed the Queensland model as effective in principle, while suggesting a number of improvements in its implementation. The Institute also endorses the report's specific recommendations in relation to achieving more effective implementation of the legislation.

In addition, the Institute recommends that the legislation be amended in two additional respects. It is our view that it is in the public interest that the law recognise and protect 'whistleblowing' by private citizens in respect of wrongdoing or misconduct (as currently defined in the law) by public officials. Secondly, it is our view that the current law should be amended to enable a public official who claims to have suffered reprisal (as defined) should have the additional option of pursuing a claim for protection and/or compensation through an action against the responsible agency for failure to maintain a safe workplace.

Permitting or failing to prevent reprisal should in principle be considered to be a failure by a responsible organisation to comply with applicable OH&S standards. The Institute is aware that this approach has been followed by the UK legislation since its inception in 1998, with positive results in terms of enabling complainants to pursue their claims otherwise than via a prosecution for a criminal offence.

Addressing the Civics Education Challenge

Connecting with the citizenry requires a strategic approach, with integrity agencies playing a central role the delivery of comprehensive Civics education, to strengthen the 'democratic literacy' of Australian voters and those citizens-in-preparation who will gain the right to vote in the foreseeable future. Ultimately the health of our democracy depends on it.

It is the Institute's view that the office of the Integrity Commissioner should be developed as a parliamentary integrity agency with a broader mandate than that which it pursues at present. While the Commissioner would continue to give advice to all members of parliament and other 'designated officials' on integrity matters generally and conflict of interest matters in particular, the office could appropriately undertake the broader role of sponsoring the collaborative development and delivery of a wide range of courses for a wide range of audiences. These could focus on strengthening citizens' understanding of Queensland's (and Australia's) democratic institutions, citizens' rights and obligations, parliamentary government, the legal framework and related concepts such as the rule of law and the separation of powers, and accountability and integrity in public governance, among others.

Such courses and materials would be delivered by schools, universities, public service departments and agencies, and other integrity agencies, and monitored, where appropriate, by the office.

The proposed office would be advised in this task by the other integrity agencies (in particular the Crime and Misconduct Commission, the Auditor-General, and the Office of the Ombudsman) and a broadly representative citizen-based consultative panel, as originally recommended by the Electoral and Administrative Review Commission in the report on its *Review of Codes of Conduct for Public Officials*, in 1991.

It is the Institute's concern that unless there is formalised responsibility and leadership in the provision of such offerings, the task of strengthening 'democratic literacy' in the Queensland community will be seen as the responsibility of no particular entity, and nothing will happen.

Conclusion

In conclusion, the crafting of a culture of accountable, transparent, competent and responsive public administration, underpinned by the mutually-reinforcing concepts of public integrity, public value, and the public interest, embedded through ethical and professional public service, comprehensive Civics education, and effective citizen engagement, appear to provide the best possible conditions for achieving integrity in government.

The development and institutionalisation of such a culture is fundamentally a task for the Queensland government and Parliament, whose leadership and commitment to the task of strengthening democratic practice in Queensland will serve as mark of their integrity.

Yours sincerely,

A handwritten signature in black ink. It consists of the initials 'M.C.' followed by a large, stylized cursive signature that appears to be 'Evans'.

Professor Mark Evans