



## Standard 2.02 - Integrity Framework: Corrupt Conduct and Public Interest Disclosures

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### 1. Application

This Standard applies to all NQBP Personnel.

### 2. Standard

#### Introduction

NQBP is committed to the prevention of corrupt conduct and wrongdoings and the maintenance of integrity and ethical conduct within NQBP.

#### Structure of the Standard

This Standard:

- Explains what is meant by the term corrupt conduct;
- Outlines the obligation to report matters which may involve corrupt conduct;
- Details how complaints of wrongdoings and corrupt conduct will be dealt with by NQBP; and
- Outlines additional criminal offences that may be relevant to proper ethical conduct.

### 3. Applicable Legislation

As a GOC, NQBP is subject to integrity and accountability requirements.

#### Integrity Act

The *Integrity Act 2010* (Qld) (**Integrity Act**) resulted in three key changes for NQBP, being:

- The Crime and Corruption Commission (**CCC**) will investigate corrupt conduct matters within Government and the GOCs;
- Certain former senior employees of GOCs are prohibited from engaging in lobbying activities that are related to their previous employment, for a two year period after ceasing their GOC employment; and
- Lobbying activities are now regulated.

#### The *Crime and Corruption Act 2001* (Qld)

Under the *Crime and Corruption Act 2001* (Qld) (**CC Act**), the CCC oversees the investigation of "corrupt conduct" across the public sector, including GOCs such as NQBP.

Complaints about corrupt conduct made to the CCC can come from a range of sources, for example, from within NQBP or by a member of the public.

"Corrupt conduct" is conduct that satisfies all of the following cumulative threshold tests:

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of an agency or a public office holder; and

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- results, or could result, directly or indirectly, in the performance of functions or exercise of powers in a way that is not honest or impartial; involves a breach of the public trust; or involves a misuse of information; and
- is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.

### **Public Interest Disclosure Act 2010 (Qld)**

A public interest disclosure (**PID**) is a disclosure about suspected wrongdoing in the public sector made under the *Public Interest Disclosure Act 2010 (PID Act)*. Allegations about wrongdoing in the public sector, by public sector workers and members of the public, help to uncover corruption and other misuses of public resources.

The PID Act encourages the disclosure of information about suspected wrongdoing in the public sector so that it can be properly evaluated and, if necessary, appropriately investigated. An effective system for making public interest disclosures helps to safeguard the integrity of the Queensland public sector.

## **4. Corrupt Conduct Reporting and Governance Arrangements**

### **Processes and Procedures - Reporting Suspected Corrupt Conduct**

Under the CC Act, a complaint can be made to the CCC about corruption. The complaint must be made in the form of a statutory declaration unless the CCC decides otherwise because of exceptional circumstances. Examples of exceptional circumstances include where the complainant fears retaliation, the complainant is illiterate or not literate in English, has a disability or a personal or physical disadvantage.

The CCC has greater capacity to issue directions to agencies like NQBP to ensure that only the more serious corrupt conduct matters are referred to the CCC.

The process of investigation of the CCC can be obtained from the CCC via their website at [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au).

### **Examples of Corrupt Conduct**

The CC Act prescribes a non-exhaustive list of conduct which might constitute "corrupt conduct" including:

- Abuse of public office;
- Bribery;
- Fraud;
- Extortion;
- Obtaining a financial benefit; and
- Sedition.

### **The Role of the Chief Executive Officer (CEO)**

CEOs are only required to notify the CCC where the CEO "reasonably suspects" that the complaint involves corrupt conduct. The requirement for there to be a "reasonable suspicion" is still a relatively low threshold but the conduct in question must now satisfy the number the **cumulative** threshold tests outlined above..

### **The Role of NQBP Personnel**

NQBP encourages all NQBP Personnel to make disclosures of wrongdoing, including corrupt conduct. Where NQBP Personnel have information about the conduct of another NQBP Personnel which, if proved, could be corrupt conduct or a wrongdoing, the NQBP Personnel may make a disclosure in relation to this information either to NQBP or directly, if the conduct is

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corrupt conduct under the CC Act, to the CCC. In these circumstances, the NQBP Employee will be making a Public Interest Disclosure under the PID Act and will qualify for the protections established under the PID Act.

### **CCC Action**

When the CCC receives a complaint alleging corrupt conduct in the public sector, the CCC assesses how it should be handled, taking into account the particular circumstances of the case.

The CCC will retain and investigate only the most serious allegations of corrupt conduct, including those with a strong public interest element or if the relevant agency is not equipped to handle the investigation. Complaints about corrupt conduct (or information provided) that are not considered to be serious or systemic are referred to the appropriate agency to handle.

CCC may conduct joint investigations with agencies, using CCC powers and in-house expertise in intelligence, financial analysis, forensic computing, research and covert investigative techniques to:

- hold public and closed investigative hearings;
- compel people to give testimony; and
- intercept telephone communications.

The Commission can dismiss or take no action in response to a complaint on the grounds that the complaint:

- is frivolous or vexatious;
- lacks substance or credibility;
- is not made in good faith;
- is made for a mischievous purpose;
- is made recklessly or maliciously;
- is outside the CCC's jurisdiction; or
- has been dealt with by another entity.

Based on the result of the investigation or assessment, the CCC may decide to:

- refer the complaint to the relevant public official to deal with, subject to some level of review or audit by the CCC;
- ask the relevant public official to carry out further enquiries before a final assessment is made (e.g. the complaint appears to indicate quite serious corruption, but the initial information gathered suggests that there may be an innocent explanation for what happened);
- investigate the complaint itself;
- investigate the complaint in cooperation with the relevant public official; or
- refer possible criminal activity to the Queensland Police Service.

### **Governance Arrangements**

The Company Secretary is responsible for maintaining this Policy. The Company Secretary will ensure that NQBP Personnel receive training in relation to this Policy on induction and at least once every two years.

Conduct that is not corrupt conduct for the purposes of the CC Act will, in most situations, be investigated and dealt with by NQBP internally. NQBP has in place policies and procedures and provides training to all NQBP Employees to assist with identifying and dealing with conduct which, while not constituting corrupt conduct, still raises serious concerns for the agency.

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### **5. Additional Integrity Issues**

Where applicable, NQBP Personnel should be aware of the following additional issues relating to integrity and ethical conduct.

#### **Examples of Potential Criminal Offences under the Criminal Code**

Actions that amount to corrupt conduct may also separately be offences under the *Criminal Code 1899* (Qld) (the **Code**). NQBP Personnel should be aware of the following criminal offences.

##### **a) Fraud**

A person who dishonestly:

- Obtains someone else's property;
- Uses someone else's property;
- Gains a benefit or advantage for any person;
- Causes detriment to any person;
- Induces someone to do an act or abstain from doing an act; or
- Commits the crime of fraud.

##### **b) Misconduct in relation to public office**

A public officer who:

- Deals with information gained because of their public office; or
- Performs or fails to perform a function of their office; or
- Abuses the authority of their office, with the intention of dishonestly gaining a benefit for themselves or another person, or causing detriment to another person, is guilty of a crime.

The definition of a "public officer" under the Code is not limited to the more restricted definition of "officer" under the Corporations Act 2001 (Cth). It is possible that all NQBP Personnel, irrespective of their position and/or responsibilities, are in this regard "public officers" under the Code. All NQBP Personnel may therefore be liable to be prosecuted for the offence of misconduct in relation to a public office.

##### **c) Public Sector Accountabilities and Offences Applying to NQBP**

GOCs such as NQBP are now increasingly being judged by the same standards of integrity and ethical behaviour as those that are applicable to core public sector agencies such as Departments of State. The recent Integrity Act reforms referred to in this Policy are an example of this development.

Recent additional examples include:

- Section 175 of the RTI Act which establishes the offence of directing an RTI decision-maker to make a decision contrary to the RTI Act. A similar offence is also established under s.184 of the IP Act;
- Section 113 of the RTI Act provides that where the Information Commissioner, on the completion of an external review, is of the opinion that there is evidence of an officer breaching a duty or misconduct in the administration of the RTI Act, the Information Commissioner must bring the evidence to the attention of the relevant CEO. A similar requirement is also contained in s.126 of the IP Act.

### **6. Dealing with Lobbyists**

As a GOC, NQBP is subject to the requirements of the Integrity Act. A key requirement of the Integrity Act is the regulation of lobbying activity. Under the Integrity Act while lobbying is not

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prohibited, it is regulated and as such, there are certain requirements which are now applicable to NQBP and NQBP Employees.

"Lobbying activity" is any contact with a government representative in an effort to influence State or local government decision making. There are some exceptions. For example, the following contact is not a "lobbying activity":

- Talking to your local councillor or member about a constituency issue;
- Making a statement in a public forum; or
- Responding to a call for submissions.

Also, unions and professional bodies are not classified as "lobbyists" under the Integrity Act.

An entity may be a lobbyist under the Integrity Act even if they are not paid.

Lobbyists must be registered on the Lobbyists Register administered by the Integrity Commissioner and must comply with the Lobbyist's Code of Conduct. Details of who are registered lobbyists can be found on the Queensland Integrity Commissioner's website at <http://lobbyists.integrity.qld.gov.au/who-is-on-the-register.aspx>

It is an offence for a GOC to provide a "success fee" to a lobbyist. A "success fee" is an amount of money or other reward which is contingent on the outcome of a lobbying activity.

Certain persons are restricted from undertaking lobbying activities. Former CEOs and Senior Executives of NQBP cannot carry out a lobbying activity related to their previous role at NQBP for two years after leaving NQBP.

NQBP Employees should ensure that:

- Lobbyists engaged by NQBP are registered;
- Lobbyists engaged by NQBP are not paid "success fees"; and
- Former senior employees of NQBP do not lobby NQBP on behalf of a third party client for two years after ceasing employment with NQBP.

The engagement of any lobbyists by NQBP requires the prior approval of the NQBP Board of Directors.

NQBP Employees must not knowingly permit an unregistered lobbyist to lobby NQBP on behalf of a third party client. If an NQBP Employee suspects that a person or entity is contacting NQBP on behalf of a third party in an effort to influence NQBP's decision making, then the NQBP Employee should check the status of this person or entity on the Queensland Integrity Commissioner's website.

In dealing with third parties who are undertaking lobbying activities, it should be determined whether the third party is included in the Lobbyists Register administered by the Integrity Commissioner. In the event that NQBP Employees become aware that the lobbyist is not registered, the CEO and / or the Company Secretary must be notified immediately. The CEO and / or the Company Secretary will manage the issue and may arrange for an appropriate notification to be made to the Integrity Commissioner.

NQBP maintains a Lobbyist Contact Register to record the specific details of any interactions between NQBP and lobbyists. The Lobbyist Contact Register is located in NQBP's Records Manager system at E10/56902. All NQBP Employees must promptly record any dealings they have with lobbyists in the course of NQBP's business activities. This register is reviewed by the Corporate Governance and Planning Committee on a quarterly basis, with the Committee reporting any material issues arising from the register to the Board of Directors. The Board reviews the Lobbyist Contact Register on a bi-annual basis. The Lobbyist Contact Register is also provided to the Integrity Commissioner.

### **7. Legislative/Policy Framework**

The following Policies, Procedures and Legislation combine to form the framework provided for by this Policy:

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- a. Guideline 2.04 - Trading (Securities) Policy;
- b. Policy 2 – Compliance;
- c. Policy 3 – Human Resources Management;
- d. Procedure 2.02 - Disclosure and Conflicts of Interest;
- e. Procedure 2.05 - Whistle-blower Protection;
- f. Procedure 2.06 - Whistle-blower and Public Interest Disclosure Management;
- g. Procedure 3.08 - Grievance Resolution; and
- h. Procedure 3.09 - Harassment Bullying and Discrimination.
- i. Procedure 9.02 – Complaint Handling;
- j. Standard 2.01 - Code of Conduct;
- k. Standard 4.02 - Acceptance of Gifts;
- l. Risk Management Manual;
- m. *Crime and Corruption Act 2010* (Qld);
- n. *Criminal Code Act 1899* (Qld);
- o. *Integrity Act 2010* (Qld);
- p. *Information Privacy Act 2009* (Qld);
- q. *Right to Information Act 2009* (Qld);
- r. *Public Interest Disclosure Act 2010* (Qld); and
- s. Public Interest Disclosure Standard No. 1.

### 8. Policy Review Date

This policy should be reviewed by xx xxx 2018.

### 9. Definitions

**Company Secretary:** means the Company Secretary of NQBP.

**Contractors:** means contractors or consultants engaged by NQBP under a personal services consultancy agreement or other similar arrangements.

**CC Act:** means the *Crime and Corruption Act 2001* (Qld).

**CCC:** means the Crime and Corruption Commission.

**Corporations Act:** means the *Corporations Act 2001* (Cth).

**Criminal Code:** means the *Criminal Code Act 1899* (Qld).

**GOC Act:** means the *Government Owned Corporations Act 1993* (Qld).

**GOC:** means a Government Owned Corporation.

**Integrity Act:** means the *Integrity Act 2010* (Qld).

**IP Act:** means the *Information Privacy Act 2009* (Qld).

**NQBP:** means North Queensland Bulk Ports Corporation Limited ACN 136 880.

**NQBP Employee:** means employees and Contractors of NQBP and does not include NQBP directors.

**NQBP Personnel:** means NQBP officers (for example, NQBP directors) and NQBP Employees.

**PID Act:** means the *Public Interest Disclosure Act 2010* (Qld).

**PID:** means a public interest disclosure made under s.19 of the PID Act by a NQBP Employee or a disclosure referred to NQBP under s.31 of the PID Act.

**RTI Act:** means the *Right to Information Act 2009* (Qld).

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