

## INTEGRITY AND ACCOUNTABILITY

As Queensland grows and evolves, the Queensland Government will continue to drive reform to ensure our integrity and accountability framework keeps pace.

Source: Anna Bligh MP, Premier of Queensland, 2009<sup>82</sup>

This chapter gives an overview of the key integrity and accountability reforms being implemented across the Queensland Public Sector. It looks at the comprehensive program of integrity and accountability reforms implemented by the government, the RTI reforms, trends in the QPS appeal system and employee perceptions of integrity and accountability.

### • Introduction

The OECD underlines the importance of integrity when it says “integrity is the cornerstone of good governance ... and is essential to maintaining trust in government”.<sup>83</sup> The Queensland Government has demonstrated its commitment to a strong integrity and accountability framework through an ongoing process of reform.

As outlined in Chapter 3, the government commenced this process through the introduction of the new PS Act to govern the operation of the QPS and establish the PSC. The reforms continued in 2009 with the passage of new RTI and Information Privacy legislation which fundamentally changed the way the public sector deals with the information it holds.

Building on these foundations, the government commenced a wide-ranging process of integrity and accountability reform through public consultation on the *Integrity and Accountability in Queensland* discussion paper released in August 2009.<sup>84</sup> After considering submissions from Queenslanders and the recommendations of an integrity and accountability round table of independent experts, the government announced its program of reform in November 2009 through the *Response to Integrity and Accountability in Queensland*.<sup>85</sup>

82 Bligh, A. 2009, Foreword to: The State of Queensland (Department of the Premier and Cabinet), *Response to Integrity and Accountability in Queensland*, November 2009, <http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/integrity-and-accountability-review.aspx>

83 OECD, ‘Integrity Framework’, <http://www.oecd.org>

84 The State of Queensland (Department of the Premier and Cabinet) 2009. *Integrity and Accountability in Queensland*, discussion paper.

85 The State of Queensland (Department of the Premier and Cabinet) 2009. *Response to Integrity and Accountability in Queensland*, Queensland Government, Brisbane, viewed 18 March 2010, <http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/integrity-and-accountability-review.aspx>

The first stage of this reform program was implemented through the passage of the *Integrity Act 2009*, which commenced operation on 1 January 2010, with further legislative reforms to be achieved through the Integrity Reform Bills 2010. These Bills, which were introduced to Parliament on 3 August 2010, consist of:

- the *Ministerial and Other Office Holder Staff Bill 2010* to create a new stand-alone framework for the employment of Ministerial and Opposition staff, separate from the public service
- the *Public Interest Disclosure Bill 2010* to reform Queensland's whistleblower protection legislation, and
- the *Integrity Reform (Miscellaneous Amendments) Bill 2010* to implement amendments to a range of Acts, including reforming and modernising the public sector ethics principles, reflecting the PSC's enhanced role to promote an ethical culture across the QPS, and strengthening requirements to declare personal interests by members of Parliament and statutory office holders.

This process of reform confirms Queensland's position as a national leader in delivering open and accountable government and the government's continued commitment to a contemporary and robust integrity and accountability framework.<sup>86</sup>

## • Trust in government: key initiatives

The integrity and accountability reform process built on a number of administrative reforms which had already been implemented by the government, including the establishment of an administrative Register of Lobbyists, and introduction of post-separation employment restrictions on former ministers, ministerial staff and senior public servants to ensure that information gained in public sector employment was not able to be used for later personal financial gain.

The discussion paper provided a comprehensive overview of Queensland's integrity and accountability framework and sought comments on 35 questions relating to how this framework could be strengthened and improved. A round table of experts provided advice to government and discussion forums were held throughout Queensland.

After considering the consultation and feedback that the discussion paper generated, the government, in November 2009, proposed a suite of legislative and administrative reforms, most of which have direct implications for the QPS.<sup>87</sup> These reforms have been organised around four 'strong' principles which were identified as underpinning a robust integrity and accountability framework: strong rules, strong culture, strong scrutiny and strong enforcement.

### *Strong rules*

Clear rules and standards in the form of legislation, policies, guidelines and administrative arrangements are being put in place to provide the scaffolding for the integrity framework. These reforms will balance the prohibition of banned behaviours with the positive expression of values, desired conduct and ideals. Reforms being implemented include:

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<sup>86</sup> A comparison of accountability frameworks across Australian jurisdictions, as included in the discussion paper, is reproduced at Appendix 5.

<sup>87</sup> The State of Queensland (Department of the Premier and Cabinet) 2009, *Response to Integrity and Accountability in Queensland*, Queensland Government, Brisbane, viewed 18 March 2010, <http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/integrity-and-accountability-review.aspx>

- declaration of personal interests for CEOs, statutory office holders and senior executives, and legislative amendments to create a statutory obligation for members of Parliament to declare their personal interests
- revision of gifts and benefits policies across the public sector, and the issuing of a new directive on 1 January 2010 which provides thresholds and requirements for declaring the acceptance or giving of gifts and benefits by agencies and public service employees<sup>88</sup>
- the establishment of Australia's first legislative regime for the regulation of the lobbying industry, including a ban on the payment of success fees
- the introduction of new legislation to govern employment of ministerial and opposition staff, distinct from the QPS
- amendments to the *Public Sector Ethics Act 1994* to provide for the application of a single code of conduct across the public service, and
- development of a Premier's Communiqué regarding the interaction of ministerial staff and public servants.

### *Strong culture*

The building and maintenance of a strong ethical culture in the QPS rests on its leaders modelling, promoting and being consciously dedicated to ethical values in their daily dealings. This culture will only develop in an environment which respects and supports ethical behaviour.

A key plank in strengthening the ethical culture of the QPS is the introduction of new legislation to facilitate disclosures of wrongdoing in the public sector. The *Public Interest Disclosure Bill 2010* reforms the *Whistleblowers Protection Act 1994* and incorporates recommendations from the three-year national research project, *Whistling While They Work*. Legislative amendments are also being made to the *Civil Liability Act 2003*, which will allow government departments to issue apologies without the communications being taken as admissions of legal liability.

A significant part of the strengthened integrity regime, and a major step towards developing this strong ethical culture, was the establishment in early 2010 of an Ethical Standards Branch within the PSC. This initiative provides a formal mechanism for supporting public sector agencies and leaders in their day-to-day roles and will provide independent advice and capability building on public sector ethics issues.

Additional initiatives to support a strong ethical culture include an enhanced role for the Queensland Public Sector Ethics Network. This network is a forum, which was established to raise awareness about public sector ethics, and comprises an ethics contact officer from each agency whose role it is to promote the government's integrity agenda within their agency.

The Queensland Government has acknowledged that appropriate training is important to ensure all public officials are fully aware of the way that their ethical obligations should affect their conduct. As a result there is now a requirement for mandatory annual ethics training for all QPS staff.

### *Strong scrutiny*

The Queensland Government has a number of mechanisms in place to monitor the conduct of the

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88 The State of Queensland (Public Service Commission) 2009, *Directive No. 22/09 Gifts and Benefits*.

QPS, including internal audit mechanisms, and external oversight bodies such as the Crime and Misconduct Commission, the Queensland Ombudsman, the Information Commissioner and the Integrity Commissioner. The oversight bodies have an invaluable role at a whole-of-government level and are ideally placed to discuss and promote public discussion of strategic, topical and emerging integrity issues and to monitor and report on the integrity of the conduct and culture of all public sector agencies.

While these mechanisms have been in place for some time, the government has committed to stronger scrutiny by enhancing some roles and strengthening processes. These proposed enhancements relate to good governance across the broad spectrum of government processes, with two in particular specifically concerning the public service.

The passage of the *Integrity Act 2009* significantly enhanced the role of the Integrity Commissioner through a number of measures including:

- establishing the office as an independent officer of the Parliament responsible to the Legislative Assembly through the Integrity, Ethics and Parliamentary Privileges Committee (formerly the Members' Ethics and Parliamentary Privileges Committee) rather than to the Premier
- creating a new legislative regime for the regulation of the lobbying industry, under the oversight of the independent Integrity Commissioner
- expanding the matters on which the Integrity Commissioner can give advice to include all ethics or integrity issues, rather than just conflict of interest issues, and
- monitoring the provision of declarations of interest by chief executives of government departments, including the ability to report on non-compliance with requirements to declare personal interests.

In addition, in accordance with the culture of greater transparency implemented under the RTI reforms, the Government has commenced publication of agency gift registers on departmental websites. The Register of Members' Interests is also now available on the Parliament of Queensland website. The government will also report annually on its responses to recommendations made by the Crime and Misconduct Commission.

Another area of increased scrutiny concerns increased accountability in procurement processes within government. In October 2008, OECD countries approved the *OECD Principles for Enhancing Integrity in Public Procurement*.<sup>89</sup> The 10 principles centre on maximising transparency, implementing effective control mechanisms, training procurement officials and monitoring procurement outcomes. Collectively, these principles provide a policy framework for enhancing integrity at all stages of the public procurement cycle. Countries are able to benchmark their procurement systems against the principles. OECD countries committed to reporting in 2011 on their progress in implementing the principles.<sup>90</sup>

These OECD integrity principles are reflected in the initiatives currently being implemented by the Queensland Government Chief Procurement Office. From 1 September 2010 the revised State Procurement Policy increased reporting requirements for both the awarding of contracts and the processes leading up to the award of these contracts. In addition, probity auditors will be required to be appointed for procurement of high risk contracts over a set threshold.

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89 OECD 2008, *OECD Recommendation on Enhancing Integrity in Public Procurement*.

90 OECD 2008, *Keeping Government Contracts Clean* Policy Brief.

### *Strong enforcement*

In recognition that an effective integrity system needs to have inbuilt enforcement and disciplinary procedures available to ensure adherence to prescribed rules and obligations can be enforced, Queensland's integrity regime is expanding. For the QPS this expansion will reinforce measures already in place and will include:

- the PSC partnering with agencies to develop leadership and management capability in dealing with disciplinary matters so that greater consistency in sanctions and improved timeliness in resolving disciplinary matters can be achieved, and
- amendments to the PS Act in relation to discipline, including new post-separation disciplinary provisions.

In addition, as part of the first stage of legislative integrity reform, the jurisdiction of the Crime and Misconduct Commission was expanded to cover government owned corporations. Following amendments to the *Government Owned Corporations Act 1993* which took effect on 1 January 2010, allegations of official misconduct can now be referred to the Crime and Misconduct Commission for investigation.

## • **Open government: Right to Information**

The Queensland Government has made a strong commitment to giving the community greater access to information through its RTI reforms. These reforms, which came into force in Queensland on 1 July 2009, have led to a fundamental mind shift in the way the QPS and the rest of the public sector views and shares the information it holds on behalf of citizens.

The change is best described as a move from a 'pull' model to a 'push' model: information is now proactively released by agencies as part of their routine communication. Prior to the RTI reforms, much of this information may only have been released (or not released) in the context of a formal Freedom of Information request.<sup>91</sup> Since those reforms, however, formal applications are considered to be the option of last resort when providing the public with access to government-held information.

The RTI reforms resulted from the government's commitment to promote a public service culture that supports openness and transparency and a pledge to maximise the community's access to information. Underpinning these reforms is the belief that government-held information is a public resource. It belongs to the community and should be made available unless, on balance, it would be demonstrably contrary to the public interest to do so.<sup>92</sup> Information is now made available to the public by three principal means:

- proactively through a public sector agency's publication scheme which sets out the kind of information the agency routinely makes available, usually on its website
- via an administrative access scheme provided by the agency for specific types of information, for example, a person's personnel records, and
- as a last resort, through a legislative access process under the RTI Act, which provides for an agency decision maker to make a considered decision as to whether the disclosure would be contrary to the public interest.<sup>93</sup>

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91 Under Queensland's *Freedom of Information Act 1992*.

92 Bligh, A. 2009, *Statement of Right to Information Principles for the Queensland Public Service*, Queensland Government, <http://www.rti.qld.gov.au/rti/about.asp>

93 Office of the Information Commissioner 2009, *Accessing government information*, <http://www.oic.qld.gov.au>

During 2008-09, the DPC led other key public sector agencies in a program of initiatives aimed at driving the cultural and organisational changes needed to embed the new RTI policy agenda across the public sector. Program partners with DPC are Queensland State Archives, the PSC, the QGCIO and the Office of the Information Commissioner (OIC).

Prior to the enactment of the RTI Act, the OIC's role was to provide external merits reviews of agency and ministers' Freedom of Information decisions.<sup>94</sup> Now the OIC is Queensland's independent body established under the RTI Act to promote access to government-held information and protect people's personal information held by government under the *Information Privacy Act 2009*. As a result OIC's role has expanded significantly to include:

- providing information and assistance to agencies, ministers and the community to support agencies in complying with these laws
- reviewing specific agency decisions under these laws
- monitoring and reporting on agencies' compliance with the RTI reforms
- dealing with privacy complaints, and
- making certain decisions, including whether an agency's privacy obligations can be waived or modified in the public interest.<sup>95</sup>

Since the reforms commenced, the assistance and support to agencies has included providing training for agency decision makers and publishing capability resources such as RTI guidelines.

## • Fair employment: appeal trends

Governments need to ensure that their public officials perform their duties in a fair and unbiased way and, as an integral part of this, that public service employees are treated fairly and reasonably. This is not only because it is an expectation of the community, but because it allows the QPS to attract and retain skilled and committed employees dedicated to effectively and efficiently conducting the business of government for the community.

The QPS appeals system provides a functional, accessible forum for reviewing agency decisions relating to the management of the QPS workforce. It provides an independent and impartial avenue for public service employees to have decisions that affect them reviewed and ensure that principles of natural justice are applied in decision making. Administered by the PSC Chief Executive under chapter 7 of the PS Act, this service plays a vital role in supporting and upholding ethical and equitable workforce practices and promoting transparency and accountability in decision making. At the same time, the hearing and deciding of appeals provides an opportunity for agencies to learn from past practices to improve decision making in the future.

The appeals mechanism is one means of reinforcing the management and employment principles set out in the PS Act section 25(2):

*Public service employment is to be directed towards promoting –*

- (a) best practice human resource management; and*
- (b) equitable and flexible working environments in which all public service employees are –*
  - (i) treated fairly and reasonably; ...*

In reinforcing these principles, the appeal tribunal conducts an independent and informal review of agency decisions where these decisions have not been able to be resolved by the parties

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94 Office of the Information Commissioner 2009, *Annual Report 2008-2009*, <http://www.oic.qld.gov.au>

95 Office of the Information Commissioner 2009, *Publication Scheme*, <http://www.oic.qld.gov.au>

themselves. The types of decisions against which an appeal can be made include:

- a decision to take or not take action under a directive – termed ‘fair treatment appeals’ (for example, *Directive No. 11/07 Grievance Resolution* (Grievance Directive))
- a disciplinary decision, and
- a promotion decision.

While the following information on the appeals heard by the PSC appeal tribunal provides a contextual basis regarding the commitment of the public service to ensuring fairness in the treatment of its valuable workforce, the number of appeals is very small when considered in the context of the thousands of decisions relating to employees that are made each year by agencies.

The data used in the following sections is based on decided appeals, not lodged appeals. A significant proportion of appeals lodged are not heard and decided due to ineligibility under the PS Act or a Directive (no right of appeal), jurisdictional issues or other compelling reasons.

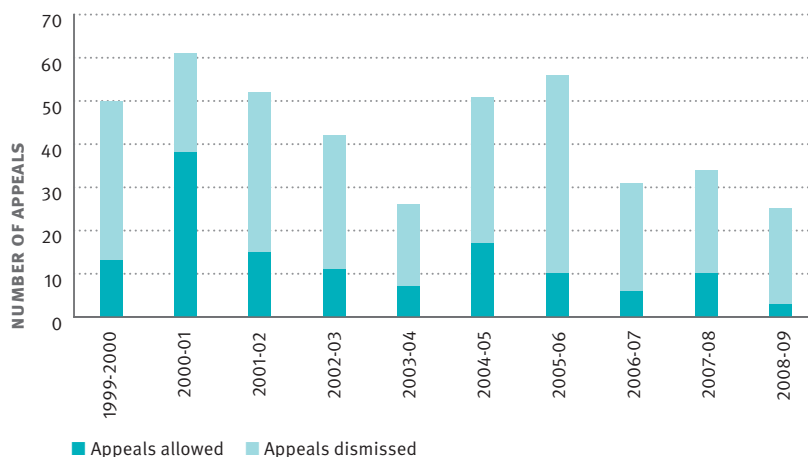
#### *Appeal trends over 10 years to 30 June 2009<sup>96</sup>*

##### **Fair treatment appeals**

A fair treatment appeal may be made where an aggrieved employee honestly and reasonably believes they have not been treated fairly and reasonably on a range of issues, including decisions about transfers or deployment. If the issue relates to a grievance matter, the appellant shall satisfy the Commission Chief Executive that the appellant has sufficiently used the grievance procedure within their agency to resolve the issues under appeal.

The number of fair treatment appeals fluctuates from year to year with the number of appeals decided ranging from 25 to 61 per year over the nine year period. Despite this fluctuation, there has been an overall downward trend in the number of decided appeals over this period. Apart from one anomaly in 2000-01, the proportion of appeals dismissed remains significantly higher than the proportion allowed, with an average of 70 per cent of appeals being dismissed over the nine year time frame. The vast majority of fair treatment appeals arise from final agency decisions made under the Grievance Directive. Figure 38 depicts the trends in fair treatment appeals over the 10 year period from the 1999-2000 financial year to 2008-09.

**FIGURE 38: FAIR TREATMENT APPEALS BETWEEN 1999-2000 AND 2008-09**



Source: The State of Queensland (Public Service Commission) 2010

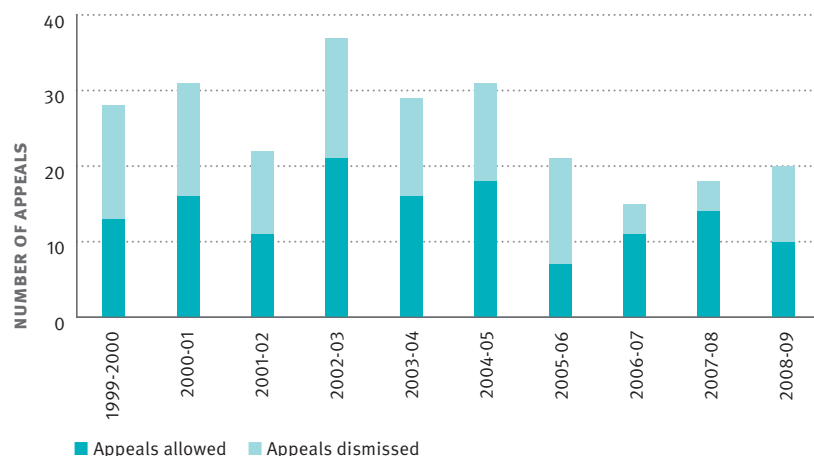
## Discipline appeals

Where a decision has been made to discipline a public service employee, that employee may appeal the decision to the PSC Chief Executive provided it does not relate to the dismissal of the employee.<sup>97</sup> The appeal may be made and argued in relation to the decision to discipline the employee and/or the penalty imposed.

As is the case for other appeal types, the number of discipline appeals decided fluctuates from year to year with the number of appeals ranging from 15 appeals to 37 appeals per year over the nine year period. Discipline appeals have also experienced an overall downward trend over the nine year period. However for discipline appeals, although the number being heard has decreased, the proportion of these appeals which are being allowed, either in whole or in part, fluctuates around the 50 per cent mark over the decade.

This trend reinforces the need, as outlined under the strong enforcement section, to provide clearer direction and enhanced capability development in the handling of discipline matters. The trends in discipline appeals over the nine year period to 30 June 2009 are provided in Figure 39.

**FIGURE 39: DISCIPLINE APPEALS BETWEEN 1999-2000 AND 2008-09**



Source: The State of Queensland (Public Service Commission) 2010

## Promotion appeals

A permanent public sector employee who applied unsuccessfully for a position may appeal against the decision to promote another public sector employee who was appointed to that position. Since the introduction of the PS Act, the appeal must be based upon a claim that the recruitment or selection process was deficient. Prior to this, appellants could also appeal on the basis that they believed that they were a more meritorious applicant than the successful one.

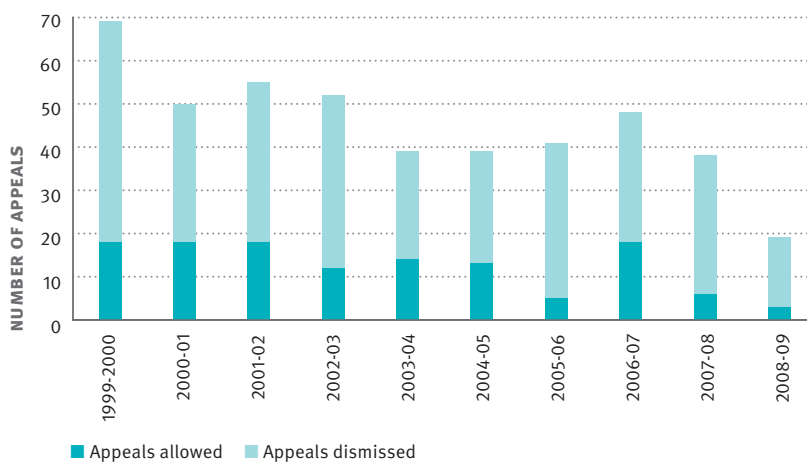
The number of promotion appeals has ranged between 19 and 69 appeals per year over the period from the 1999-2000 financial year to 2008-09. Despite this fluctuation, there has been an overall downward trend in the number of decided appeals over this period. In addition, the rate

<sup>97</sup> It should be noted that, under section 194 (1)(b)(ii) of the PS Act, an appeal may be made against a decision to discipline a former public service officer by way of a disciplinary declaration made under section 188A, including if the disciplinary action that would have been taken was termination of employment.



at which promotion appeals are being allowed has also decreased. On average over the nine year period, promotion appeals were dismissed in about 80 per cent or more cases. Figure 40 depicts the trends in promotional appeals over the nine year period.

**FIGURE 40: PROMOTION APPEALS BETWEEN 1999-2000 AND 2008-09**



Source: Public Service Commission 2010

## • Employee perceptions of ethics and integrity

The State of the Service employee survey asked staff to answer questions relating to their perceptions of accountability and integrity within their agency and among its leaders. The results showed clearly that employees strongly believe that their agencies actively encourage ethical behaviour by their staff. Just over three-quarters of survey respondents (75.9%) either agreed or strongly agreed with the statement that ‘my organisation actively encourages ethical behaviour by all its employees’ (16.1% of respondents neither agreed nor disagreed with the statement, or were not sure, with only 8.1 per cent disagreeing or strongly disagreeing with the statement). This positive result is likely to be further enhanced in the future with the increased awareness building activities and initiatives being put in place to further embed a strong ethical culture in the QPS.

Achieving a strong ethical culture in the QPS is dependent on senior leaders being positive and behaving as intentional role models. In view of this, it is pleasing that slightly more than half of survey respondents also believed that senior leaders led the way in ethics and integrity. Some 51.4 per cent of survey respondents either agreed or strongly agreed with the statement that ‘senior managers in my organisation lead by example in ethical behaviour’. These results are expected to improve in future years with the planned reforms to the *Public Sector Ethics Act 1994* requiring all QPS employees to undertake ethics training annually and with chief and senior executives of the QPS having the benefit of ethics training tailored specifically for them in their roles as senior leaders.

However, more challenging results were found in relation to employee perceptions around certain decision making within their agencies. While nearly a third of respondents (28.7%) were non committal, just over a third of survey respondents (36.8%) reported that they believed recruitment and promotion decisions in their agency were fair. While this would indicate some room for improvement, the majority of staff would not have direct knowledge of the vast number of recruitment and promotion decisions that did not relate directly to them.

Additional support has been provided to agencies with a new Recruitment and Selection Directive<sup>98</sup> issued in January 2010 specifying the requirements for recruiting and selecting QPS employees. It is also expected that the application of this directive in the new environment of a stronger focus on ethical behaviour and decision making will lead to employees being more confident in their agency's performance in the future.

A third of survey respondents (34.1%) have confidence in how their agency resolves employee grievances, while less than a third (27.2%) stated that they did not. This result suggests a need to increase the capacity of managers to more effectively deal with issues that are likely to lead to grievance situations and to achieve early resolution of issues before they escalate to grievances. This will need to be a priority area of capability building for managers and senior leaders if a more positive culture is to be achieved.

## • Key themes and future directions

The Queensland Government has been at the forefront of integrity and accountability reform. It has introduced a range of comprehensive reforms, including making government-held information more open and accessible, instituting a Lobbyists Register and restricting the use of information gained by ministers, ministerial staff and public servants after leaving their employment with the state. Despite being a leader in this area the government has recognised that the job of delivering integrity and accountability in government is a continuing process and has pushed ahead with the rollout of a suite of reforms, including both legislative and administrative improvements, to strengthen the integrity and accountability climate within government and the public sector.

This further reform program is centred around the four key principles of strong rules, strong culture, strong scrutiny and strong enforcement. The government has sent a clear message that it expects the highest standards of integrity and accountability from everyone in public office and it has set about putting in place the frameworks to achieve this.

Many of these additional reforms are only in the early stages of implementation. However, change is essential and with the reform agenda already commenced this change is likely to be realised in the near future. There is clearly an ongoing commitment to have and maintain a robust integrity framework, and the QPS is well-placed to deliver on this commitment. Progress on the achievements and adaptations to new challenges will be reported in the next State of the Service Report to be produced in 2012.

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98 Public Service Commission *Directive No. 01/10 Recruitment and Selection*