

# Executive Summary

## Background

Queensland was established as a separate colony (later state) from New South Wales in 1859. In 2005, a unit was established within the Department of the Premier and Cabinet (the Department) to manage the celebrations for the 150<sup>th</sup> anniversary of the State's establishment. The program of celebrations is known as 'Q150', and the unit within the Department is referred to in this report as the 'Q150 Unit'.

In late 2005, the former Premier, the Honourable Peter Beattie, had a telephone discussion with Professor Ross Fitzgerald about commissioning Professor Fitzgerald to write a book about the history of Queensland. Mr Beattie then directed the then Director-General of the Department, Mr Ross Rolfe, to implement the decision. Mr Rolfe then had discussions with Professor Fitzgerald and, subsequently, directed officers of the Department to prepare a contract for that purpose with Professor Fitzgerald.

The contract was signed for and on behalf of the State of Queensland by Mr Rolfe on 30 March 2006.

On 27 March 2008, the then Leader of the Queensland Liberal Party and Member for Caloundra, Mr Mark McArdle MP, wrote to me asking that I investigate the commissioning of Professor Fitzgerald to write the book.

In summary, Mr McArdle complained that the contract had been awarded without the normal accountability process having been followed (that is, a tender or seeking quotes), and that no consideration was ever given to any other potential authors.

I commenced an investigation of the complaint.<sup>1</sup>

## Role of Ombudsman

In investigating the administrative actions of public sector agencies, the Ombudsman must consider whether those actions are (among other things):

- unlawful, unreasonable or unjust;
- taken on irrelevant grounds or having regard to irrelevant considerations;
- based wholly or partly on a mistake of law or fact; or
- wrong.<sup>2</sup>

For convenience, administrative action that falls into any of the above categories is referred to in my report as 'maladministration', although the term is not used in the Ombudsman Act.

The Ombudsman is empowered to make recommendations to the principal officer of an agency that action be taken to rectify the effect of maladministration or to improve administrative practice within that agency. The Department of the Premier and Cabinet, as a Queensland Government department, is an 'agency' as defined in the Ombudsman Act.<sup>3</sup>

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<sup>1</sup> Ombudsman Act s.12(a)(ii)

<sup>2</sup> Ombudsman Act s.49(2)

<sup>3</sup> Ombudsman Act s.8(1)(a)

The Ombudsman Act stipulates that I may not question the merits of a decision of a Minister or Cabinet.<sup>4</sup> Nor do I have any jurisdiction over private persons.

The circumstances of this case involve, in part, the actions of the former Premier, the Honourable Peter Beattie, as well as the Cabinet Budget Review Committee (CBRC), and a private person. However, in accordance with the jurisdictional limits in the Ombudsman Act, I have not investigated, or expressed any opinions in relation to, any decision or action of the former Premier or any other Minister, or of Cabinet or any private person.

## **Public report**

The Ombudsman Act provides that, if the Ombudsman considers it appropriate, the Ombudsman may present a report to the Speaker for tabling in the Assembly on a matter arising out of a performance of the Ombudsman's functions.<sup>5</sup> I have decided to report to Parliament on my investigation for the following reasons:

- the complaint was made to me by a Member of Parliament;
- the contract, and related matters, have been the subject of discussion in Parliament;
- the matter has been the subject of several reports in the media;
- it is in the public interest to report on my investigation of concerns raised about the Department's actions in the matter; and
- the opinions and recommendations in the report will provide guidance to other government agencies.

## **Principal objects of the investigation**

The principal objects of the investigation were to:

- establish the facts in relation to engaging Professor Fitzgerald to write a history of Queensland and the University of Queensland Press (UQP) to publish the history;
- determine which officers of the Department made relevant decisions about the contracts;
- identify the requirements to be met for a contract such as that entered into with Professor Fitzgerald, under the State's purchasing laws and guidelines and the Department's own policies and procedures;
- investigate whether the Department's officers followed appropriate procedures; and
- identify ways to improve the policies and procedures for contracting within the Department and in other public sector agencies.

## **Investigative process**

My investigation was undertaken informally under s.24(a) of the Ombudsman Act, without the need to invoke my coercive powers.<sup>6</sup> The Director-General and other officers and former officers of the Department provided information in the course of my investigation. Certain information relating to the proceedings of the CBRC was also provided to me on the authority of the Premier, the Honourable Anna Bligh MP.

During the investigation, my investigators recorded interviews with a number of current and former officers of the Department, and held discussions with officers of the Queensland Government Chief Procurement Office in the Department of Public Works.

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<sup>4</sup> Ombudsman Act s.16(1)

<sup>5</sup> Ombudsman Act s.52

<sup>6</sup> Under part 4 of the Ombudsman Act

As I have noted, I do not have jurisdiction over the actions of Ministers. Nor do I have jurisdiction over private persons. However, in order to properly investigate the actions of officers of the Department, my officers contacted the former Premier and Professor Fitzgerald and sought their comments on the matter.

The former Premier responded by email on 31 October 2008, and I have included his response at relevant parts of this report. Professor Fitzgerald also responded by email on 4 November 2008 and his response is also included in my report.

My officers also contacted Mr Rolfe by telephone and email and asked him to participate in an interview. He did not respond to these requests. However, in response to a notice I provided to him of proposed adverse comment, he forwarded a submission by email on 6 November 2008.

The second Director, who does not currently reside in Australia, also provided a submission by email.

As I considered that some of the comments I proposed to make in my report could be regarded as adverse to a number of persons, I provided each of those persons with the opportunity to make submissions on the proposed adverse comment.<sup>7</sup> I did this by providing each of them with a notice of proposed adverse comment identifying the relevant parts of the proposed report and inviting their response.

In total, I provided notices to seven persons and only one did not provide a submission. Any defences they offered, or comments made, are summarised or, in some cases, set out in full in this report.

On 30 October 2008, I provided the Director-General of the Department, Mr Ken Smith, with a proposed report on my investigation, and invited him to comment on the matter under investigation. This process ensured that I complied with my statutory obligation to give the Director-General the opportunity to comment on the subject matter of the investigation.<sup>8</sup>

Mr Smith provided a written submission on Tuesday 25 November 2008. The information provided has been included at 9.13 of my report.

I also provided Mr Mal Grierson, Director-General of the Department of Public Works, with the opportunity to comment on a recommendation I proposed to make to him, directed at the provision of advice to the public sector on managing contracting processes in situations such as those that arose in this case.

## **Outcomes of the investigation**

My investigation has established that the decision to engage Professor Fitzgerald to write a history of Queensland was made by the former Premier and subsequently approved by the CBRC. The related decision to engage UQP to publish the history was also made by the former Premier.

The former Premier then directed the then Director-General, Mr Rolfe, to give effect to the decisions and Mr Rolfe directed officers of his Department accordingly.

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<sup>7</sup> Ombudsman Act, s.55

<sup>8</sup> Ombudsman Act, s.26(3)

Officers believed that, to give effect to the decisions, they had to complete documentation for each contract justifying exempting the contract services from the Department's normal procedures for seeking competitive offers.

I have formed the opinion that this course of action was both unnecessary and potentially misleading as it gave the appearance that the Department had made both decisions in accordance with its normal processes. The documentation also made no reference to the underlying reason why competitive offers were not sought, namely, that decisions had been already made by the former Premier.

I also consider that the documents created to justify not seeking competitive offers on the grounds of urgency or the specialised nature of the work involved did not contain sufficient details to support those claims even though the evidence probably supports exemption on at least one of those grounds.

I have made several recommendations to improve accountability and transparency in the Department's contracting processes and expenditure approvals.

My investigation did not reveal evidence of a breach of duty or misconduct on the part of any officer, such as would require me to give a report under s.50(2) of the Ombudsman Act to the current Director-General of the Department.

## Opinions

I form the following opinions:<sup>9</sup>

### Opinion 1

The preparation of the first exemption document was unnecessary in that, at the time it was endorsed and approved, a decision had already been made that Professor Fitzgerald would be engaged to write a history of Queensland. The document was also potentially misleading as it did not record that fact. This constituted administrative action that was unreasonable and/or wrong for the purposes of s.49(2)(b) and (g) respectively of the Ombudsman Act.

### Opinion 2

The first exemption document did not contain sufficient details to justify the bases on which exemption was sought from inviting competitive offers under the Department's Agency Purchasing Procedures, namely, that a genuine urgency existed and/or that the contracting services were of a specialist nature.

### Opinion 3

The preparation of the second exemption document was unnecessary in that, at the time it was endorsed and approved, a decision had already been made that UQP would be engaged to edit, publish and distribute the history of Queensland. The document was also potentially misleading as it did not record that fact. This constituted administrative action that was unreasonable and/or wrong for the purposes of s.49(2)(b) and (g) respectively of the Ombudsman Act.

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<sup>9</sup> For the purposes of part 6, division 1 of the Ombudsman Act

**Opinion 4**

The second exemption document did not contain sufficient details to justify the bases on which exemption was sought from inviting competitive offers under the Department's Agency Purchasing Procedures, namely, that a genuine urgency existed and/or that the contracting services were of a specialist nature.

**Opinion 5**

The decision to appoint the Project Officer to prepare the documentation for the two contracts was unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act in that:

- The Project Officer had not been provided with adequate training in procurement procedures at the time, and
- The project involved a substantial budget and was of considerable public significance.

**Recommendations**

I make the following recommendations:<sup>10</sup>

**Recommendation 1**

That the Department amend its Agency Purchasing Procedures to provide better guidance to officers on:

(a) the meaning of the expressions 'limited supply situation' and 'projects of a specialist nature' in Chapter 3.13 of the Procedures;

(b) the need to include sufficient details in exemption documents of the basis on which exemption is sought from obtaining quotations.

**Recommendation 2**

That the Department amend its Agency Purchasing Procedures to require that, where a Minister or Cabinet has decided that the Department is to enter into a contract with a specified provider, officers preparing contract documentation to give effect to the decision must make a record of that decision on the file relating to the contract.

<sup>10</sup> Under s.50 of the Ombudsman Act

**Recommendation 3**

That the Department of Public Works, after consultation with government, issue guidance to all agencies on appropriate procedures for managing contract processes where a Minister or Cabinet has made a decision that a department is to enter into a contract with a specified provider.

**Recommendation 4**

That the Department ensure staff involved in significant purchasing matters have received adequate training.