



Report of the Queensland Ombudsman



QUEENSLAND
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The Q150 Contract Report

An investigation of the Department of
the Premier and Cabinet's contracting
process for the writing of a history of
Queensland

December 2008

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ISBN 978-0-9805824-2-0

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4 December 2008

The Honourable Mike Reynolds MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Reynolds

In accordance with section 52 of the *Ombudsman Act 2001*, I hereby furnish to you my report, *The Q150 Contract Report: An Investigation of the Department of the Premier and Cabinet's contracting process for the writing of a history of Queensland*.

The report arises from my investigation of a complaint about the matter.

Yours faithfully

A handwritten signature in black ink, appearing to read "D Bevan".

David Bevan
Queensland Ombudsman

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Dictionary and Abbreviations

APP	The Department of the Premier and Cabinet's Agency Purchasing Procedures
Business Manager	A Business Manager in the Department's Policy Division who had some involvement in the initial stages of the contracting process with Professor Fitzgerald
CBRC	The Cabinet Budget Review Committee, a standing committee of State Cabinet
Contracts Officer	A Senior Contracts and Consultancies Officer in the Department who provided initial advice to departmental officers on the contract with Professor Fitzgerald
CPO	Queensland Government Chief Procurement Office (formerly Queensland Purchasing) in the Department of Public Works
Department	Department of the Premier and Cabinet
Deputy Director-General (Governance)	Deputy Director-General (Governance) in the Department at the relevant time, with responsibility for Q150 matters
Deputy Director-General (Policy)	Deputy Director-General (Policy) in the Department at the relevant time
Director-General	Mr Ken Smith, who became the Director-General of the Department of the Premier and Cabinet on 14 September 2007
First Director	The Acting Director of the Q150 Unit until mid-2006
First exemption document	The document completed to justify an exemption from obtaining competitive offers for the contract with Professor Fitzgerald
Former Director-General	Mr Ross Rolfe who was the Director-General of the Department of the Premier and Cabinet at the relevant time
Former Premier	The Honourable Peter Beattie
Project Officer	The Project Officer in the Q150 Unit initially responsible for preparation of certain documentation for the History of Queensland book project
Publisher	A representative of the UQP
Purchasing Officer	A Certified Purchasing Officer in the Department who provided advice to the Q150 Unit on the contracting process for the History of Queensland book project and endorsed the first and second exemption documents

Q150	The program of celebrations, and related events, for the 150 th anniversary of the establishment of Queensland as a separate colony (and later state) from New South Wales.
Q150 Unit	The unit within the Department of the Premier and Cabinet with primary responsibility for organising Q150-related events and programs.
Second Director	The Director who succeeded the first Director of the Q150 Unit
Second exemption document	The document completed to justify an exemption from obtaining competitive offers for the contract with UQP for publishing the History of Queensland book
UQP	The University of Queensland Press (St Lucia, Brisbane)

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 150th 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.¹

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.²

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.³

¹ Ombudsman Act s.12(a)(ii)

² Ombudsman Act s.49(2)

³ 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.⁴ 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.⁵ 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.⁶ 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.

⁴ Ombudsman Act s.16(1)

⁵ Ombudsman Act s.52

⁶ 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.⁷ 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.⁸

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.

⁷ Ombudsman Act, s.55

⁸ 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:⁹

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.

⁹ 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:¹⁰

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.

¹⁰ 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.

Chapter 1: Introduction

1.1 The Q150 Project

2009 marks the 150th anniversary of the foundation of the colony (later state) of Queensland, separate from New South Wales. To mark the anniversary, the State Government established the 'Queensland's 150th Celebrations Unit' within the Department of the Premier and Cabinet (known commonly as the Q150 Unit).¹¹

An advisory committee¹² was appointed by the former Premier, the Honourable Peter Beattie, in November 2004 to direct the program of celebrations, and the Q150 Unit itself was established in 2005. Major activities being conducted by the Q150 Unit include the promotion of the anniversary, and the administration of a community funding program for activities and events throughout the State relevant to the anniversary. The Q150 Unit also oversees a 'Legacy Infrastructure Program' which provides funding for relevant community infrastructure.

The activities are overseen by an advisory committee, currently chaired by the Vice-Chancellor of the Queensland University of Technology, Professor Peter Coaldrake. The Q150 Unit itself is now located within the Office of the Deputy Director-General (Governance).

1.2 The 'History of Queensland' book

On 5 September 2007, the former Premier announced in Parliament that, as part of the Q150 activities, a book was to be commissioned on the history of Queensland.¹³ He also informed Parliament that the book was to be written by Professor Ross Fitzgerald, historian and Emeritus Professor of History and Politics at Griffith University:

... we have commissioned Ross Fitzgerald to write a book for the 150 celebrations in 2009. I make no apology for ensuring that our history is appropriately recorded. One of the things I find annoying is that in a great state like this we have not ensured that our history is appropriately recognised at a national level. I would expect this history written by Ross Fitzgerald to be fair. I would expect it to reflect all the history of this state—different governments of different political persuasions—but, more than that, I would expect it to talk about the people.¹⁴

On the following day, the former Premier provided the following information to Parliament:

... Ross Fitzgerald is being paid approximately \$280,000 for 41 months work on this important project. He will receive no royalties from the book. The entire budget for the project is in the vicinity of \$900,000—this includes the wages of researchers, the cost of research and the general expenses that come with the project of this size. I look forward to reading the history upon its publication in 2009.¹⁵

¹¹ Further details of the Unit and its activities are available at <http://www.q150.qld.gov.au>

¹² Queensland's 150th Celebrations Advisory Committee

¹³ Hansard, Questions Without Notice, 5 September 2007, p.3025

¹⁴ Ibid

¹⁵ Hansard, Ministerial Statements, 6 September 2007, p.3119

Chapter 2: Complaint

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.

Mr McArdle stated that he had concerns '*...about the awarding of a \$900,000 taxpayer-funded publishing contract to historian [Professor] Ross Fitzgerald without a tender, or evidence of a fair and reasonable contract competition*'. In summary, Mr McArdle complained that:

- the contract was awarded to Professor Fitzgerald without a tender process being followed;
- no consideration was given to any other potential author being selected, either to write the book or at least to be involved in its production;
- the book was unnecessary in light of a two-volume history of Queensland¹⁶ already written by Professor Fitzgerald, and the recent publication of *A History of Queensland* by another academic;¹⁷
- the book was to be written without any form of peer review;
- the overall budget for the project (approximately \$900,000) was '*exceedingly generous and unrealistic*'; and
- in the circumstances, the project could '*descend into political propaganda*'.

Mr McArdle stated: '*As there appears to be substantial inconsistencies and anecdotal evidence of dishonesty and maladministration in the awarding of this Government contract, I believe the ... Ombudsman should investigate ...*'

¹⁶ Fitzgerald, R, *History of Queensland* (Vols 1&2), University of Queensland Press, St Lucia, 2004 [A reprint of 1982 and 1984 editions of the work]

¹⁷ Evans, R, *A History of Queensland*, Cambridge University Press, Port Melbourne, 2007

Chapter 3: Jurisdiction

The Ombudsman is an officer of the Parliament empowered to deal with complaints about the administrative actions of Queensland public sector agencies, including government departments, public authorities and local governments. As the Department of the Premier and Cabinet is an 'agency' for the purposes of the *Ombudsman Act 2001* (Ombudsman Act), it follows that I may investigate its administrative actions.

Under the Ombudsman Act, I have authority to:

- investigate maladministration by public sector agencies in response to complaints or on my own initiative;
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures; and
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.

If I consider that an agency's actions were unlawful, unreasonable, unjust or otherwise wrong, I may provide a report to the principal officer of the agency. In my report, I may make recommendations to rectify the effect of the maladministration I have identified or to improve the agency's policies, practices or procedures with a view to minimising the prospect of similar problems occurring.

Section 16 of the Ombudsman Act relevantly provides:

16 What ombudsman may not investigate

- (1) The ombudsman must not question the merits of—
- (a) a decision, including a policy decision, made by a Minister or Cabinet; or
 - (b) a decision that the ombudsman is satisfied has been taken for implementing a decision made by Cabinet.

Accordingly, I have not investigated or expressed any opinions in relation to any decision of the former Premier or any other Minister, or of Cabinet.

The Ombudsman Act also prevents me from requiring a person to provide information relating to proceedings of Cabinet or a committee of Cabinet.¹⁸ However, for the purpose of my investigation, I wrote to the Cabinet Secretary on 11 June 2008 seeking access to documents about a decision of the Cabinet Budget Review Committee (CBRC) in March 2006 relating to the contract with Professor Fitzgerald. I was subsequently provided with the relevant documents, comprising a submission to the CBRC signed by the former Premier, and the CBRC's decision.

By letter of 22 October 2008, the Director-General of the Department, Mr Ken Smith, advised me that the Premier, the Honourable Anna Bligh MP, in response to my written request, had approved the use in my report of certain extracts and information from those documents.

¹⁸ Section 46(1)

Chapter 4: Media reports

Between August 2007 and February 2008, a series of articles appeared in the *Courier Mail* and *Sunday Mail* in relation to this matter. Articles referred to by Mr McArdle in his complaint included the following:

16 August 2007 – *Courier Mail*:

State to pay \$1m for book - Opposition accuses Beattie of cronyism¹⁹

This article purported to quote allegations by the former State Opposition leader, Mr Jeff Seeney MP, of 'cronyism' and 'favouritism' in relation to the contract, and included a comment from a spokesperson for Mr Beattie that the project was not put out to tender 'because of its urgent and specialist nature'.

17 August 2007 – *Courier Mail*:

Million reasons to keep secrets²⁰

The breakdown of the budget for the History of Queensland project was the primary focus of this article.

6 September 2007 – *Courier Mail*:

Seeney: History repeats - \$900,000 book 'not justified'²¹

The proceedings in Parliament in relation to the book were described in this article.

8 September 2007 – *Courier Mail*:

'Back-to-front' history queried²²

15 September 2007 – *Courier Mail*:

Historians sidelined in lavish book deal²³

These two reports discussed concerns about the commissioning of the book alleged to have been raised by historians.

31 October 2007 – *Courier Mail*:

Lucrative book deal might yet be history²⁴

This article claimed that the History of Queensland book project was to be reviewed following a direction by the current Premier, the Honourable Anna Bligh MP.

24 February 2008 – *Sunday Mail*:

Coaldrake focuses on State's big party²⁵

This article referred briefly to the allegations made earlier about the project.

¹⁹ Philip, M; Bray, N, 'State to pay \$1m for book – Opposition accuses Beattie of cronyism', *Courier Mail*, 16 August 2007, p.2

²⁰ Philip, M, 'Million reasons to keep secrets', *Courier Mail*, 17 August 2007, p.20

²¹ Philip, M, 'Seeney: History repeats - \$900,000 book 'not justified'', *Courier Mail*, 6 September 2007, p.13

²² Philip, M, 'Back-to-front' history queried', *Courier Mail*, 8 September 2007, p.2

²³ Philip, M, 'Historians sidelined in lavish book deal', *Courier Mail*, 15 September 2007, p.19

²⁴ Philip, M, 'Lucrative book deal might yet be history', *Courier Mail*, 31 October 2007, p.2

²⁵ Healy, S, 'Coaldrake focuses on State's big party', *Sunday Mail*, 24 February 2008, p.55

Chapter 5: Investigation

5.1 Preliminary inquiries

In order to properly assess whether I should investigate the complaint, I considered that preliminary inquiries were necessary. Accordingly, I wrote to the Director-General of the Department, Mr Ken Smith, on 15 April 2008, requesting documentation in relation to the History of Queensland project.

Under s.38 of the *Crime and Misconduct Act 2001*, I must refer to the Crime and Misconduct Commission (CMC) any matters that I suspect may involve official misconduct. Having regard to the nature of the allegations, I wrote to the Chairperson of the CMC, also on 15 April 2008, to advise him of the matter. I also advised him that I intended to investigate the matter, and that I would notify him if my investigation uncovered any evidence of official misconduct.

The Chairperson replied by letter of 15 April 2008 noting and agreeing with my proposed course of action.

Following our preliminary inquiries, I decided to investigate the matter.

5.2 Summary of investigation

Between June and October 2008, my investigators recorded interviews with a number of current and former departmental officers who had been involved in the preparation and administration of the contract with Professor Fitzgerald, namely the:

- Project Officer;
- Purchasing Officer;
- Contracts Officer
- First Director;
- Business Manager;
- Deputy Director-General (Governance); and
- Deputy Director-General (Policy).

My officers also contacted the former Director-General of the Department, Mr Ross Rolfe, by telephone and email and asked him to participate in an interview. Mr Rolfe, who resides outside Queensland, 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 2008.²⁶

The material provided to me by the Department suggested that a decision of the CBRC had been made about the contract with Professor Fitzgerald during early 2006. To verify this and as stated in Chapter 3, I wrote to the Cabinet Secretary requesting a copy of any relevant Cabinet Minute created during that time. In response, I was provided with a copy of a Cabinet Submission (signed by the former Premier on 24 February 2006) seeking the CBRC's approval to proceed with the contract, and a copy of the CBRC's approval dated 2 March 2006. Also, as explained at Chapter 3, the Premier, the Honourable Anna Bligh MP, subsequently authorised my use of information from those documents in this report.

²⁶ See 9.7 for details of Mr Rolfe's submission

I have also considered the State Procurement Policy and related guidance issued by the Department of Public Works, and the Department of the Premier and Cabinet's Agency Purchasing Procedures. My investigators also discussed contracting and tendering procedures in cases such as this with officers from the Queensland Government Chief Procurement Office in the Department of Public Works.

Additionally, I sought advice from the Director-General of the Department of the Premier and Cabinet as to whether any internal audit had been conducted within the Department which involved the History of Queensland book project. He advised me that, although the Executive Director, Audit, Evaluation and Risk Services (within the Department) had recently concluded a review of Q150 operations generally, this did not include the History of Queensland book contract.²⁷

5.3 Notices of proposed adverse comment

In addition, I considered that some of the comments I made in my proposed report, as well as some of my proposed opinions and recommendations, could be considered adverse to a number of officers who were in some way involved in aspects of the contract process, including the former Director-General.

Therefore, to comply with s.55 of the Ombudsman Act, I provided each of those persons with a notice of proposed adverse comment. Each notice set out relevant parts of my proposed report I considered to constitute adverse comment about the person, and invited the person to make a submission. Section 55 requires that, if I still intend to include the comment in my report, I fairly set out any defence offered by the person.

In total, I provided notices of proposed adverse comment to seven persons. Six of those persons provided submissions in response to the notices. Any defences they offered, or comments made, are either included or (where necessary) summarised in this report. I am satisfied that I have complied with my obligation under s.55.

5.4 Information provided by former Premier and Professor Fitzgerald

As mentioned in Chapter 3, I do not have jurisdiction over the actions of Ministers (including the Premier).²⁸ Nor do I have any jurisdiction over private persons. However, as evidence provided by officers during my investigation, as well as the documents provided by the Department, indicated that the former Premier had first contacted Professor Fitzgerald to obtain his agreement to write a history of Queensland and had directed Mr Rolfe to implement the decision, my officers contacted the former Premier and Professor Fitzgerald and provided them with a broad overview of my investigation, and invited their comments.

The former Premier responded by email on 31 October 2008, and I have included his response at relevant parts of this report.

Initially, the former Premier criticised some aspects of the way in which I had conducted the investigation, stating that he believed that:

- I had already determined to make adverse findings against relevant officers at the time I sent them extracts of my proposed report for their comment.

²⁷ Letter of 29 July 2008 from Mr Ken Smith, Director-General of the Department, to the Queensland Ombudsman

²⁸ Ombudsman Act, s.16(1)

- Any adverse comment on a public servant would be reported in the media as criticism of him, and his administration.
- My proposed opinions were incorrect.
- Had I offered him the opportunity during the investigation, he would willingly have participated in an interview with my officers.

At all stages of my investigation, I have been vigilant to ensure that I do not breach s.16(1) of the Ombudsman Act by investigating, or questioning the merits of, any action or decision of the former Premier, or of Cabinet. Accordingly, I responded by email to him to explain the limits of my investigation:

As you would be aware, the Ombudsman's role is to investigate the administrative actions of Queensland public sector agencies. In relation to decisions of Ministers or Cabinet, s.16(1) of the Ombudsman Act 2001 states:

The ombudsman must not question the merits of—

- (a) a decision, including a policy decision, made by a Minister or Cabinet; or
- (b) a decision that the ombudsman is satisfied has been taken for implementing a decision made by Cabinet.

Accordingly, I have not investigated your decisions as Premier, or the decisions of Cabinet (including the CBRC). My report does not comment on the merits of your decision and recognises the broad powers of a Minister to enter into contracts on behalf of the government.

My investigation solely relates to the administrative actions of officers of the Department of the Premier and Cabinet in completing certain documentation relating to the contract with Professor Fitzgerald and the contract with the University of Queensland Press for publication of the history.

Initially, I did not consider it necessary to contact you about the matter as the focus of the investigation was on why officers went through the process of completing documentation purporting to justify a sole supplier arrangement when they believed the decision had already been made that Professor Fitzgerald was to be engaged to write a history of Queensland.

The evidence indicated that you had made the decision in late 2005 during discussions with Mr Rolfe and Professor Fitzgerald. However, the departmental records provided to me and the evidence of the officers we interviewed did not firmly establish that fact.

Therefore, my investigators needed information from you and/or Mr Rolfe and/or Professor Fitzgerald to confirm that fact.

Some time ago, I provided Mr Rolfe, as the most senior public official involved in the matter, with the opportunity to be interviewed, or to provide me with any comments he wished to make on the investigation. He has also been provided with a copy of my proposed report for the purpose of making such comments. To date, he has declined to be interviewed and has not provided any comments.²⁹

That is why I sought information from you at this stage of the investigation. I note that you have confirmed that you made the decision that Professor Fitzgerald would write the history. My report does not suggest he was not qualified to do so.

Mr Beattie responded by email on the same day thanking me for my email and advising that he now better understood my position.

²⁹ This comment was correct at the time the email was sent to Mr Beattie. However, Mr Rolfe subsequently provided me with a submission on my investigation.

Professor Fitzgerald also provided a submission by email in response to my invitation to comment. Relevant parts of his submission appear at 9.11.

5.5 Opportunity to principal officer to comment on matter under investigation

On 30 October 2008, I provided the Director-General of the Department, Mr Ken Smith, with my proposed report on the investigation, and invited him to comment on the matter under investigation. I also invited him to meet with me (or my officers) if he so wished. This process ensured that I complied with my obligation under s.26(3)³⁰ of the Ombudsman Act to give the Director-General the opportunity to comment on the matter under investigation.

Mr Smith met with me and my Assistant Ombudsman on 24 November 2008 and provided a written submission on 25 November 2008. The information provided has been included at relevant parts 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.

³⁰ If, during an investigation, the ombudsman considers there may be grounds for making a report on the investigation that may affect or concern an agency, the ombudsman must, before making the report, give the principal officer of the agency an opportunity to comment on the matter under investigation.

Chapter 6: Initial discussions

Copies of emails provided to my Office by the Department indicated that discussions were held in late 2005 between the former Premier, Mr Rolfe and Professor Fitzgerald.³¹ One of those emails, dated 15 December 2005, from Professor Fitzgerald to Mr Rolfe read:

Dear Ross,

Good to talk with you.

As you and I and the Premier have discussed, re the writing of the 150th anniversary of Queensland book, Ross Fitzgerald Consultancy Pty Ltd would work from 1 January 2006 until 30 June 2009.

The rate of payment for this period would be three fifths of a full professorial salary plus fifteen percent. I would also be given twelve Sydney/Brisbane return airfares, plus cab charges.

As agreed, there would be two research assistants to assist me, with minimum qualifications of a history and/or politics honours degree.

...

I look forward to expediting the matter.

...

Professor Ross Fitzgerald

According to the documentation provided to us, it appears that this email was forwarded by Mr Rolfe's office on the same day to the then Deputy Director-General (Policy) in the Department.³² He forwarded the email on to another officer in the Department, again on the same day, with the comment *'This clarifies the details of the contract'*.

Later that day, the Contracts Officer emailed the Business Manager and the Purchasing Officer, stating:

[Business Manager]

Thank you for your call this morning in relation to the proposed engagement of Ross Fitzgerald to author a historical tome.

...

I ... think that to award such a contract to Fitzgerald without going to the market is acceptable in this instance and the government's prerogative as long as there is supporting evidence that the govt has made a considered decision in this regard.

...

[Contracts Officer]

³¹ This has been confirmed by Mr Beattie, Mr Rolfe and Professor Fitzgerald.

³² Based on our interview with the then Deputy Director-General (Policy) and other evidence, it appears his involvement in the contract process was brief, ending on or around 20 December 2005. I did not provide any notice of adverse comment to the then Deputy Director-General (Policy) during the course of this investigation.

Later that day, the Business Manager emailed the Purchasing Officer (who worked in the Office of the Director-General) and the Deputy Director-General (Policy):

Hi [Purchasing Officer],

Can we get together to discuss drafting of this contract please – the DG has requested that the DDG, Policy³³ facilitate preparation of this contract ... Ross Fitzgerald will be up here on ... 21 December 2005 to start discussions about the project – hence the urgency in having a draft ready for the DG.

The Business Manager then set out the essential terms of the contract, which included:

- contract term from 1 January 2006 to 30 June 2009;
- payment was to be at 3/5 of a professorial salary plus 15%;
- two research assistants would be recruited to work with Professor Fitzgerald; and
- the Department was to pay for monthly return airfares from Sydney to Brisbane for Professor Fitzgerald.

A 'Director-General's Briefing Note', signed by the Acting Deputy Director-General (Policy) and dated 20 December 2005, recommended to the former Director-General:

That you provide further advice and clarification to facilitate preparation of a draft contract between Ross Fitzgerald ... and the State ... to prepare works celebrating the history of Queensland to coincide with the State's 150th anniversary celebrations.

The Briefing Note included an elaboration of the contract terms (set out in the Business Manager's email, above) and also stated:

Terms of Reference are requested for inclusion in the contract ... These will need to be included in the Letter of Engagement to Professor Fitzgerald.

Additional comments made in the Briefing Note included:

- Approval seeking exemption from inviting competitive offers will be sought on the basis of 'specialist or confidential nature'.
- The total value of the contract is anticipated at approximately \$0.700 million and as a result, Executive Council approval is required. This will mean a contract execution date of 1 January 2006 is not possible, and should be renegotiated to 1 February 2006.

On 20 December 2005, Professor Fitzgerald emailed Mr Rolfe, setting out his understanding of the project:

Dear Ross

I am very pleased to be writing the Official History of Queensland for the Premier and the people of Queensland. [emphasis added]

This general history, with a distinctly political bent, **will be published by the University of Queensland Press.** [emphasis added]

...

The Official History of Queensland, which will be approximately 350 pages long, will be published to coincide with Queensland's 150th anniversary on June 6 2009.

³³ My investigators were advised by those interviewed that primary responsibility for the contract was initially given to the Deputy Director-General (Policy) but, in the very early part of 2006, was moved to the Deputy Director-General (Governance) who was responsible for the Q150 Project.

The progress of the work will be subject to a series of six monthly reviews of milestones by Mr Ross Rolfe, the Director-General and Coordinator-General of the Department of the Premier and Cabinet.

...

I look forward to receiving my formal contract and to seeing the advertisement you have planned for the two Queensland History Project research assistants.

...

I very much look forward to working with you on this important and exciting project.

Regards
Ross

Mr Rolfe responded nine days later (29 December 2005) as follows:

Dear Ross

Thank you for your email of 20 December outlining some of your ideas for the writing of the Official 150th Anniversary of Queensland publication.

Given the nature and significance of the project, the Premier will be discussing the proposal with some of his Cabinet³⁴ colleagues on return from leave at the end of January. The funding arrangements will also require approval at that time.

As a result, I don't envisage being in a position to advertise for [research assistants] until early February and conduct interviews later in the month. In the meantime, I have instructed my Department to prepare the required materials for the project so that we can hit the ground running in early February. While I will be on leave through January, I have asked my Department to make contact with you in late January about progress and possible dates for us to catch up.

I look forward to catching up with you in February and working with you on the project.

...

Regards
Ross Rolfe

On 19 January 2006, the first Director sent the following email to Professor Fitzgerald:

Ross

Thank you for the opportunity to speak with you yesterday. **As discussed we are currently preparing your contract** as well as the materials for the research assistants for your review. [emphasis added]

...

I understand that UQP will be engaged to publish the book. Are you able to confirm whether any specific arrangements have been made at this stage?

...

Regards
[first Director]

³⁴ In emails and interview transcripts reproduced in this report, the terms 'Cabinet' and 'CBRC' are used interchangeably.

Another email sent by the first Director to Professor Fitzgerald on 30 January 2006 reads as follows:

Dear Ross

I spoke with Ross Rolfe's office on Friday and I understand that they are currently looking into arrangements for a meeting between yourself and Ross Rolfe.

In order to progress the engagement of the two research assistants we have prepared a draft advertisement and Terms of Reference for your review. Could you please advise if you are happy with the details or have any suggested amendments. We have based the fee on guidelines from the Professional Historians Association of Qld.

We are proposing that the positions are advertised next week and close on 1 March...

...

Regards
[first Director]

On 3 February 2006, The first Director again emailed Professor Fitzgerald, stating:

Ross

...

I understand that Ross Rolfe has had initial discussions with [a publisher from UQP] and he has asked that [the Deputy Director-General (Governance)] and I meet with UQP next week to progress discussions.

[The Deputy Director-General (Governance)] passed on that you will require office space for yourself and the researchers and I will ensure that this is included in your contract.

Regards
[first Director]

On the same day, Professor Fitzgerald replied to [the first Director]:

Dear [first Director]

Yes, the room for my research assistants and myself should be in Brisbane, preferably in or near 100 George Street. Plus as [the Deputy Director-General (Governance)] and I discussed, I will need a typist from time to time.

Also as Ross and I agreed, the Uni of Queensland Press requires a subsidy³⁵ of \$20,000 to publish the Official History.

...

Cheers,
Ross

³⁵ This payment related to the agreement to provide a financial contribution to UQP for production of the book – see further discussion at Chapter 10.

Ten days later, on 13 February 2006, Professor Fitzgerald emailed the first Director and Mr Rolfe:

Dear Ross and [first Director]

Good to meet with you today.

I look forward to receiving my contract to begin on March 2 2006. As I mentioned, my very strong preference is to be paid fortnightly as per my previous experience.

I also look forward to flying up to Brisbane for the [research assistant] interviews which will take place from 1pm to 4pm on Monday 3 April.

...

Cheers,
Ross

On 15 February 2006, the first Director sent the following email to Professor Fitzgerald:

Dear Ross

I still haven't been able to speak with [the publisher] from UQP – we kept missing one another's calls yesterday so we will hopefully speak today. I will let you know the outcome when I have spoken to her. I will also confirm [the publisher]'s availability to attend the research assistant interviews on 3 April.

At this stage we are aiming to have a draft contract to you by close of business Friday [17 February 2006].

Regards
[first Director]

Professor Fitzgerald inquired about his contract via email on 2 March 2006, apparently as he had not heard anything further from the Department. The first Director replied on the same day:

Dear Ross

Cabinet has approved the project. To finalise the contract ... I require [your contact details]

...

Kind regards
[first Director]

A timeline of relevant events is provided at Appendix 1.

Chapter 7: Purchasing requirements

7.1 Financial Administration and Audit Act

The State Government's public finances are managed in accordance with (among other things) the requirements of the *Financial Administration and Audit Act 1977*.

Section 34(1) of the Financial Administration and Audit Act states that the chief executive of a Department is the 'accountable officer of the Department' for financial administration purposes. In the case of the Department of the Premier and Cabinet, the chief executive is the Director-General.

Section 36 of the Act imposes a very broad range of accountability obligations on the Director-General. These include the following:

- responsibility for financial administration and for managing the Department efficiently, effectively and economically;
- ensuring procedures within the Department are such as will at all times afford proper control over expenditure;
- ensuring expenditure is incurred for lawful purposes and is made in compliance with the prescribed requirements; and
- ensuring that as far as is possible having regard to the limits of the accountable officer's powers and control reasonable value is obtained for moneys expended for delivering departmental outputs and purchasing, developing and augmenting assets of the department.³⁶

Section 36B permits an accountable officer to delegate his or her powers in appropriate circumstances.

Additionally, s.38(3) (Responsibility for expense management) of the *Financial Management Standard 1997*³⁷ requires that:

In developing the agency's systems for expense management, the accountable officer or statutory body must ensure the agency's systems provide that, if the agency does not comply with the State Purchasing Policy published by the Department of Public Works, the accountable officer or statutory body must record the reason for not complying with it.

7.2 State Purchasing Policy

The State's overarching guidance on purchasing goods and services is currently set out in the State Procurement Policy, issued by the Department of Public Works as part of the accountability framework established by the Financial Administration and Audit Act. Its predecessor was the State Purchasing Policy. The second edition of the State Purchasing Policy, published in 2004, was operative at the time of the negotiation and contract formation process for this case.

³⁶ Section 36(1)(aa) to (c)

³⁷ Made under the *Financial Administration and Audit Act 1977*

The State Purchasing Policy, section 2.4, stated:

2.4 Probity and accountability for outcomes

An agency must conduct its purchasing activities with the utmost probity. Some relevant probity and accountability requirements are set out in legislation. Each agency is to ensure that its purchasing is carried out in accordance with such obligations as may be placed upon it by the:

- *Financial Administration and Audit Act (Qld) 1977*;
- Financial Management Standard (Qld) 1997;
- *Public Sector Ethics Act (Qld) 1994*; and
- such other legislative or Government policy obligations as may from time to time apply to the purchasing activities of the agency.³⁸

The current State Procurement Policy, published in 2007, includes an identical provision.³⁹

The State Purchasing Policy required the Director-General, as the accountable officer, to '... issue Agency Purchasing Procedures consistent with [the] Policy which guide officers concerning purchasing systems and practices within the agency. These procedures are to be based on information provided in the *Developing Agency Purchasing Procedures Better Purchasing Guide*'.⁴⁰

7.3 Department's Agency Purchasing Procedures

The Department of the Premier and Cabinet's Financial Management Unit implemented Agency Purchasing Procedures (APP), which were in force at the relevant time. Relevant requirements of the Department's APP include:

- Chapter 2 – Objectives and Principles – Probity and Accountability:
Adequate documentation is to be maintained to record all decisions and actions taken in relation to any procurement project.⁴¹
- Chapter 2 – Objectives and Principles – Purchasing Skills:
Procurement activities are to be undertaken by departmental officers with an appropriate level of skill and it is a responsibility of management to ensure this.
- Chapter 3 – General Instructions – 3.10 Market Research
Before any major procurement activity can be undertaken, extensive market research must be conducted to determine the correct path to follow. Market research will also help to determine the extent to which a competitive supply market exists.

³⁸ Department of Public Works, *State Purchasing Policy* (2nd ed), Brisbane, 2004, p.8

³⁹ At page 6

⁴⁰ *State Purchasing Policy* (2nd ed - 2004), p.9. A similar requirement is contained on page 9 of the current (2007) version of the State Procurement Policy.

⁴¹ APP, p.4

- Chapter 3 – General Instructions – 3.13 Exemptions⁴² from Obtaining Quotations

Exemptions from obtaining quotations where the value of the purchase exceeds \$10,000 can only be approved by a suitably delegated officer ... The competitive quotation requirements ... do not apply when a plan is prepared for a significant purchase or when:

- ...
- a certified purchasing officer certifies that they are satisfied that a sole supply or limited supply situation exists, which may occur with procurement projects that are either specialist or confidential in nature;
- a certified purchasing officer certifies that a genuine urgency exists; or

...
All exemptions from obtaining the requisite number of quotations must be supported by a written submission prepared by the project officer, with the record of any exemption granted being maintained on file for audit purposes.

7.4 Legal effect of the requirements

The CMC has said, referring to the State Purchasing Policy (2000 version):

It provides for greater flexibility [than the previous Policy] within departments and agencies, requiring them to develop Agency Purchasing Procedures, which are focused on outcomes, provided that they maintain transparency and accountability in the decision-making processes.⁴³

The State Purchasing Policy is not law. In *Concord Data Solutions v Director-General of Education*,⁴⁴ Thomas J stated:

... although it is mentioned in the [Public Finance Standards], the State Purchasing Policy is not identified as a binding law or requirement In this particular context, the State Purchasing Policy is referred more to as a model than as an operative source of law in its own right.⁴⁵

Thomas J also stated that:

... the State Purchasing Policy is a very general document consisting principally of aspirations and guidelines for the guidance of the various departments in the working out of their respective management systems...It is more an umbrella of principles which the departments are required to follow in introducing and managing their own systems.⁴⁶

The State Purchasing Policy requires that APP be issued in each state agency.

⁴² Throughout the Department's financial management documentation, and in emails, interview transcripts and other material relevant to this investigation, the terms 'exemption' and 'exception' are used interchangeably. References to 'exceptions' or 'exception documentation' etc should therefore be read as references to 'exemptions' or 'exemption documentation'.

⁴³ CMC, *Spending Public Money: An Investigation into how Certain Government Grants and Contracts Were Awarded to a Commercial Company*, Brisbane, November 2002, p.23

⁴⁴ [1994] 1 Qd.R. 343

⁴⁵ *Ibid*, at 349

⁴⁶ *Ibid*, at 350

7.5 Guidance from Chief Procurement Office

The Department's APP do not provide detailed advice on the engaging of consultants. However, the Queensland Government Chief Procurement Office (CPO) provides guidance for public sector procurement activities. The Department's APP also refer officers to the CPO for further guidance on these matters. The CPO has produced a guide entitled *Engaging and Managing Consultants*.⁴⁷ The guide states that:

The key characteristics of a consultant include:

- generally an engagement for a fixed period of time at an agreed rate of payment;
- work which is not directly supervised by the department/agency;
- independent research/investigation is conducted; and
- the provision of expert advice with recommendations in the form of a written report or an intellectual product.

The engagement of Professor Fitzgerald clearly meets this definition of a consultancy.

In relation to actually selecting a consultant, the CPO's guide states:

A number of factors will impact on how many consultants will be approached in a particular purchasing exercise, in what manner the department/agency will go to the market and the form of the arrangement that is intended to be established. These factors include:

- the nature and complexity of the consultancy;
- the availability of the services required and the characteristics of the market;
- the importance of the consultancy to the department/agency;
- any action the department/agency may want to take to develop or influence the market;
- the cost of the consultancy;
- the processing costs associated with the purchase;
- taking a particular course of action to advance Government priorities (for example, maximising the local economic impact of spending at the regional/district level by engaging local consultants, especially those that employ people in the region);
- the internal systems in place to control and manage the department/agency's purchasing expenditure; and
- probity and accountability considerations (for example, engaging a process that is fair to all participants).

The guide also advises that:

For high relative expenditure, high risk or complex consultancies, a selection panel should be established to prepare the specification and evaluate offers.

For high value consultancies or those that are highly complex, it is good practice to have a panel of officers, with relevant knowledge, to evaluate the offers. Where possible it is desirable to include an officer who has experience in the purchasing process on the panel.

In selecting the consultant, ensure that maximum value for money for the department/agency is obtained. The main aim is to ensure that the consultant can do the job to the standards required by the department/agency. This may not always mean accepting the lowest priced offer.

Proposals from consultants should be assessed against pre-determined selection criteria. The selection criteria should have been clearly stated in the specification document.

⁴⁷ Queensland Purchasing, *Engaging and Managing Consultants*, Brisbane, 2001

Weightings should be assigned to each selection criteria, but are not usually published in an invitation to offer.

...

The evaluation process must be documented and capable of withstanding scrutiny. This documentation should clearly demonstrate how the successful offeror was selected. Keep in mind that such documentation is open to audit scrutiny and 'Freedom of Information' requests.

Finally, in a 'Question and Answer' section in the guide, the following appears:

Q:

What if there is only one consultant who can do the job? (For example, a well-known academic who leads in a particular field)?

A:

This is a sole invitation process, where just the one particular consultant is invited to offer. You will still need to seek a full offer from the prospective consultant. It is not good practice to advise the sole offeror that they are the only consultant offering. You must submit a written justification for sole supplier situation to your authorised officer for approval.

Procurement activities are generally categorised by CPO as being one of four types:

- Easy to secure supply and low relative expenditure;
- Easy to secure supply and high relative expenditure;
- Difficult to secure supply and low relative expenditure; or
- Difficult to secure supply and high relative expenditure.

The Department's own APP uses these categories in determining 'purchasing thresholds' (that is, thresholds that determine the requisite means of obtaining quotations and purchase methods). Given its overall budget of around \$900,000, the History of Queensland project probably fell within the 'Difficult to secure supply and high relative expenditure' category.

In such a case, the APP required that either:

- (a) there be a written invitation to tender (advertised), with a minimum of three quotes; or
- (b) a certified purchasing officer (at the appropriate certification level) certify that a sole supply or limited supply situation existed and/or genuine urgency existed, in which case an exemption from the requirements in paragraph (a) could be obtained.

7.6 Exemption from normal tendering process

The emails I have referred to in Chapter 6 indicate that by 15 February 2006, the following matters had been agreed to:

1. Professor Fitzgerald would be awarded the contract to write the History of Queensland;
2. the budget for the entire project would be in the order of \$900,000;
3. the final manuscript would be due in June/July 2008;
4. the project would include the hiring of two research assistants;
5. the contract would continue for around three years until the anniversary itself (2009);
6. Professor Fitzgerald would be paid three fifths of a full professorial salary plus fifteen percent (that is, around \$280,000 in total) in fortnightly instalments, as well as twelve Sydney-Brisbane return airfares;
7. UQP would publish the book; and

8. UQP would be given a subsidy in the order of \$20,000 to publish the book.

The information provided by the former Premier and Mr Rolfe is consistent with this summary.

7.7 Cabinet and ministerial involvement in contracting

As noted, the former Premier signed a CBRC submission in relation to the History of Queensland project on 24 February 2006. The Project Officer told my investigators that she prepared the submission at the direction of the first Director. CBRC approval followed on 2 March 2006.

As a general principle, the State Government has a broad ranging power independent of any legislation *'to make such contracts ... as are incidental to the ordinary and well-recognised functions of Government'*.⁴⁸ In *K.C. Park Safe (Brisbane) Pty Ltd v Cairns City Council*,⁴⁹ Thomas J said:

It is well established that when the government (or the Crown) contracts, it exercises its own prerogative power. Unless some particular statutory system is being applied, the making and breaking of governmental contracts are not matters for judicial review.⁵⁰

The power to contract for projects like the Q150 book is not contained in any specific item of legislation but flows from this broad prerogative power to contract. The relevance of this is that neither contract's validity is affected by any failure on the Department's part to follow the State Purchasing Policy or the APP.

As I have stated, the State Purchasing Policy and APP are not law and the former Premier was not obliged to adhere to them. It is a matter for the relevant Minister if the Minister wishes to negotiate directly with, or bind the Department to enter into a contract with, a supplier of goods and services. Seddon comments:

Ministers ... have authority to enter into contracts on behalf of the government in connection with any subject-matter which properly comes within their portfolios ... [T]he Premier of a State ... almost certainly has authority to enter into contracts which bind the Crown across the whole field of government activity.⁵¹

⁴⁸ *Concord Data Solutions v Director-General of Education* [1994] 1 Qd.R. 343 at 352 per Thomas J, quoting from Rich J in *New South Wales v Bardolph* (1934) 52 CLR 455 at 496

⁴⁹ [1997] 1 Qd. R. 497

⁵⁰ *Ibid*, at 501

⁵¹ Seddon, N, *Government Contracts: Federal, State and Local* (3rd ed), Federation Press, Leichhardt, 2004 at p.105

Chapter 8: Negotiations pre-CBRC approval

On 2 March 2006, the CBRC approved that a contract be entered into with Professor Fitzgerald. The approval was based on a submission signed by the former Premier and dated 24 February 2006.⁵²

My investigation established that, at least by 15 February 2006, the former Premier, Mr Rolfe and other relevant officers in the Department believed that the decision had already been made that the Department would enter into a contract with Professor Fitzgerald to write a history of Queensland.

Furthermore, it is likely that Mr Rolfe and the departmental officers believed this was the case on or shortly after 15 December 2005, the day Professor Fitzgerald sent his email to Mr Rolfe referring to his discussions with the former Premier and Mr Rolfe. As mentioned in Chapter 6, this email was forwarded to other officers in the Department.

8.1 Significant Purchase Plan

The Department's APP state that market research should be undertaken prior to any final decision in relation to 'major procurement activity'. While this term is not defined, the APP refer officers to the CPO for further information.

The CPO's guide *Planning for Significant Purchases* indicates that significant purchases are those with high relative expenditure, or where there is likely to be difficulty in securing supply. Either or both of these may have applied in normal circumstances to a contract for the amount involved in this case.

According to the APP, where a proposed purchase is 'significant', a **significant procurement plan** is to be prepared for approval by the Director-General (as accountable officer) or delegate. The CPO's guide advises that such plans must, at a minimum:

- establish the objectives to be achieved from the purchase;
- specify how the purchase supports the achievement of agency purchasing objectives;
- establish the status of the supply market relevant to the area of purchasing and the likely impact the purchase will have on the market;
- evaluate potential buying strategies and identify the preferred strategy to be followed;
- specify contract/supplier management arrangements; and
- specify how the achievement of the objectives of the purchase will be measured.⁵³

Agencies are also to document each element of the significant procurement planning process, including stating reasons for limiting the scope of (or, as here) not undertaking certain elements of the specified process (such as going to tender).

⁵² As I have noted in Chapter 3, on 22 October 2008, the Director-General of the Department, Mr Ken Smith, advised me that, in response to my written request, the Premier, the Honourable Anna Bligh MP, had approved the use in my report of certain extracts and information from the CBRC submission and decision in relation to the contract with Professor Fitzgerald.

⁵³ Department of Public Works, *State Purchasing Policy* (2nd ed), Brisbane, 2004, p.27. See also the similar advice in: Department of Public Works, *State Procurement Policy*, Brisbane 2007, p.7

The Department's APP, at section 3.2 (Significant Purchase Planning), also state:

Plans for significant purchases are to be developed by the Principal Procurement and Contracts Officer in consultation with relevant areas. Plans are required for purchases in the following categories:

- Easy to secure supply / high relative expenditure
- Difficult to secure supply / low relative expenditure
- Difficult to secure supply / high relative expenditure.

Each plan will identify the objectives of the purchase, how these objectives will be achieved and measures to be used to assess the achievement of objectives. Plans for significant purchases must be approved by [the] Director-General.

(Significant purchases are those goods and services that have been identified in the Corporate Procurement Plan as being of high relative expenditure; eg annual aggregate spend in excess of \$400,000, and/or for which supply is difficult to secure.)

My investigators were advised that no such plan was prepared in this case. Nor was market research undertaken in accordance with Chapter 3.10 of the APP which states that 'Market research will also help to determine the extent to which a competitive supply market exists'.

This indicates that the process for the contract did not follow the Department's normal contract process. Nevertheless, as discussed in the next chapter, officers believed they had to comply with Chapter 3.13 of the APP (Exemptions from Obtaining Quotations). Therefore, they prepared a proposal (the first exemption document) that the contract be exempted from the normal requirement of obtaining quotations, which proposal was subsequently submitted to and approved by the former Director-General.

Chapter 9: The first exemption document

9.1 The document

This chapter discusses evidence about the first exemption document. As mentioned in Chapter 8, the document incorporates both:

- a proposal by officers of the Department that the contract with Professor Fitzgerald be exempted from the Department's normal competitive offer process on the grounds that the work is of a specialist nature and that a genuine urgency exists; and
- the former Director-General's approval of the proposal.

One of the issues I have considered in my investigation is why this document was created in circumstances where the former Premier had already decided that Professor Fitzgerald would be engaged to write a history of Queensland and had instructed Mr Rolfe to implement the decision.

9.2 The Project Officer's evidence

The Project Officer was, at the time, employed in the Q150 Unit and was the officer responsible for the actual preparation of the briefing material and other documentation related to the contract with Professor Fitzgerald. The Project Officer signed, but did not date, the copy of the *Operational Contractor (Professional) Proposal/Recommendation* form (the first exemption document).

This was the document used by the Department for approval of exemptions to the general purchasing rules in the APP relating to the requirement to seek competitive offers. A copy is contained in Appendix 2. The names and signatures of officers have been removed except for the name and signature of the former Director-General.

The Project Officer's role as stated on this form was as the 'Officer who carried out exemption research and offer evaluation'. The justification provided by the Project Officer for the exemption was that:

It has been determined that the contracting services in this case are of a specialist nature and that genuine urgency exists to deliver the services within the required timeframe.

It is reasonable that they be undertaken by Professor Fitzgerald as he has demonstrated professional expertise and experience to research and write a book about the history of Queensland to be published to coincide with the deadlines of Queensland's 150th anniversary celebrations in 2009.

The Project Officer confirmed that she had prepared the exemption document and had been asked to do so by the Q150 Director at the time, the first Director.

The Project Officer stated that she had not previously completed an exemption document and had, therefore, sought assistance from the Purchasing Officer, who was at the time a Certified Purchasing Officer. My investigators' interview with the Project Officer included the following:

Investigator Did you conduct any research at all for the purposes of coming to those views as stated in the justification?

Project Officer I looked at the documents that were provided as part of the record of the negotiations and I also sought advice from the Principal Procurement and Contracting Officer in regard to what was required under agency purchasing policy in undertaking this activity.

Investigator The document which is called the *Agency Purchasing Procedures* has a paragraph under the heading of 3.13 where it says–

All exemptions from obtaining the requisite number of quotations must be supported by a written submission prepared by the project officer with a record of an exemption granted being maintained on file for audit purposes.

Is that the only written submission that was prepared with a justification?

Project Officer My understanding is that's the only written submission.

Investigator Did you make contact with any other potential authors other than Professor Fitzgerald?

Project Officer I did not.

Investigator And no one asked you to do that?

Project Officer Nobody did.

Investigator Nobody recommended to you that that would have been something that would have been prudent?

Project Officer Nobody did.

Investigator What led you to believe that Professor Fitzgerald was the only suitable candidate based on the justification which had been written?

Project Officer The documentation that I was provided with following on the negotiations that took place.

Investigator Are they the emails between Ross Rolfe and Professor Fitzgerald?

Project Officer They are.

Investigator Was there anything else in the documentation other than the email exchanges?

- Project Officer** There was the verbal advice I was given following the meeting. I can't recall how many meetings there were between my Director ... and I believe Professor Fitzgerald, Ross Rolfe, and [the Deputy Director-General (Governance)]. I guess there was a verbal instruction or verbal advice of the outcome of that meeting.
- Investigator** And who was that from?
- Project Officer** That was from my Director ... [the first Director].
- Investigator** The second exemption box was ticked that a genuine urgency exists. On what basis did you determine that the matter was urgent?
- It says in the actual justification *it has been determined that the contracting services in this case are of a specialist nature and that genuine urgency exists to deliver the services within the required timeframe*. Was there anything other than what's stated there in the justification that gave rise in your mind to levels of urgency?
- Project Officer** I think that the comment in the emails between Ross Rolfe and Professor Fitzgerald would have led me to believe that that was the case.

The Project Officer stated that she had been aware that CBRC approval was to be sought for the project at the time of preparing the first exemption document.

The following exchange also took place during the interview with the Project Officer:

- Investigator** So would it be fair to say that the matter was already set in stone somewhat by the time you executed the exemption?
- Project Officer** I believe that to be the case.
- Investigator** Could I put it to you that it was basically a *fait accompli*?
- Project Officer** Yes, I would agree.
- Investigator** That Professor Fitzgerald was going to write the book?
- Project Officer** Yes.
- Investigator** Were you concerned about anything that you were specifically instructed to do in relation to the process?
- Project Officer** I guess I was broadly concerned with the entire situation. That would be fair to say.

In response to a notice of proposed adverse comment about these matters, which I issued to the Project Officer under s.55 of the Ombudsman Act, solicitors for the Project Officer provided a submission. This submission raised similar points to those raised in a submission made on behalf of the Deputy Director-General (Governance) and the first Director. The same firm of solicitors provided submissions on behalf of all three officers. I discuss these submissions at 9.8.

9.3 The Purchasing Officer's evidence

The Purchasing Officer was a Certified Purchasing Officer at the Department. He endorsed the first exemption document, in relation to the engagement of Professor Fitzgerald, and the second exemption document, in relation to engaging UQP to publish and distribute the book.⁵⁴ At the time, the Purchasing Officer held level 4 purchasing certification, an appropriate level for a project with a budget of approximately \$900,000.

The Purchasing Officer endorsed the first exemption document on 1 March 2006, thereby certifying that the contractor proposal complied with the Department's Operational Contractor (Professional) Procedure and was in accordance with the State Purchasing Policy.

When interviewed by my investigators, he indicated that he had held several discussions with the Project Officer to advise her about the correct procedure to follow in completing the exemption document. He said that he had also had some discussion with the Project Officer about the reasons an exemption was being sought to the normal purchasing procedure in this case.

When interviewed by my officers, the Purchasing Officer expressed some concerns about purchasing practices in the Department:

Investigator [In the APP there are] four different categories of purchasing decision such as *'Easy to secure supply and low relative expenditure'* and so on. From memory do you recall what category this particular project would have been classed as?

Purchasing Officer Well the value of it was over \$100,000 and from memory ... I don't remember what category it was in because ... unfortunately, when I first started my role at Premier's ... the purchasing area of Premier's had a very low profile and a lot of things were done prior to them coming down the proper channels through the financial management section for approval. That was always an issue, especially in relation to significant purchasing planning.

Investigator When you say a lot of things were done, does that mean decisions had already been made and you were playing 'catch up' so to speak with your paperwork?

Purchasing Officer In some instances, yes.

During the interview, the Purchasing Officer was questioned about the first exemption document:

Investigator In this particular case the project officer was seeking an exemption from the tendering rules. If you see there on the second page [of the exemption document] it says the basis of exemption approval being sought is – one, a genuine urgency exists and the other is – specialist or confidential nature.

Purchasing Officer Yes.

Investigator Do you have any recollection why it was deemed to be urgent?

⁵⁴ See discussion at Chapter 10

- Purchasing Officer** I don't remember exactly why it was today, but looking back on it ... it was my understanding that to get the book written in time the contractor had to start at this date, this time, otherwise the book would not meet the printing ... the drafts ... and all that – it would not meet the target deadline. So that's my understanding why the genuine urgency existed in this case.
- Investigator** The other aspect there – under specialist or confidential nature – What was your view if you can recall in relation to that?
- Purchasing Officer** I thought from memory that Professor Fitzgerald had written some books previously about the history of Queensland and that it wouldn't take that much more to rehash a new style of book.

In response to a notice of proposed adverse comment, which I subsequently issued to the Purchasing Officer under s.55 of the Ombudsman Act, the Purchasing Officer stated:

Just to reiterate my comments made during the interview, the decision to engage Ross Fitzgerald had already been made, well before I was informed. Independent enquiries were made by myself to many people concerned including the Premier's Office, Deputy Director-General and the Director of the Q150 Project. I felt pressured into signing the document as others in much higher positions than mine had already signed off on the exemption and, in addition, Ross Fitzgerald had already begun working on the draft book. During my investigations, I was often reminded how urgent and how important this engagement was to the [former] Premier, and the need for the contract to be executed as soon as possible so that no further delays occurred.

I agree that the first exemption document was a pointless exercise⁵⁵ as the decision was already made at a higher level (CBRC) and that this decision should have been appropriately reflected in the paperwork. In order to satisfy my own requirements as the [Purchasing Officer], I did investigate why Ross Fitzgerald was engaged and under what circumstances as the initial information given to me was not detailed. In order to establish the "genuine urgency" status for the engagement, contact was made with the then [first Director] and Project Officer at [the Q150 Unit] to establish this requirement.

With the combination of the advice from the [first Director], Project Officer, Office of the Deputy Director-General and the Premier's Office, I was in a position to sign the exemption in my capacity as [Purchasing Officer].

The Purchasing Officer's statement that 'the first exemption document was a pointless exercise as the decision was already made at a higher level (CBRC) is inaccurate as he signed the document on 1 March 2006 and CBRC approved the proposal that Professor Fitzgerald be engaged on 2 March 2006.

9.4 The first Director's evidence

The first Director was the Director of the Q150 Unit at the time Professor Fitzgerald was engaged. She stated that she had been involved in a meeting in mid-December 2005, which was attended by a number of Departmental staff, including the Deputy Director-General (Governance) but not Mr Rolfe. At that meeting, the first Director said she was informed that a contract was to be entered into with Professor Fitzgerald to write a history of Queensland. According to the first Director, the meeting discussed details of the contractual arrangements.

⁵⁵ This is a reference to the preliminary view I had expressed in my proposed report that the completion of the first exemption document was unnecessary as the former Premier had already signed the Cabinet submission by the time the exemption document was prepared.

The first Director also informed my investigators that a contract document for the History of Queensland project was already being prepared during late 2005/early 2006 within the Department's Policy Branch, but that the Q150 Unit had considered that the form of the contract was inappropriate for this project. The first Director said that Crown Law had been engaged to prepare a contract specifically for the History of Queensland project, and administration of the contract was assumed by the Q150 Unit in early 2006.

Part of my investigators' interview with the first Director was as follows:

- First Director** My initial involvement in the project would have been about a week before Christmas.
- Investigator** Of what year?
- First Director** 2005. I was asked to attend a meeting at 100 George Street that involved a number of people from across the Department. I think there were some people from the policy unit as well as finance and at that meeting it was explained that the [former] Premier had requested that Ross Fitzgerald write a book to commemorate the history of Queensland ... There was some discussion about the contract and how to ... move that process forward ...
- Investigator** Who to your knowledge was involved in the initial development of the project?
- First Director** Well that request ... came through from the [former] Premier to Ross Rolfe, and then following that meeting ... I attended a meeting with Ross Fitzgerald and Ross Rolfe where Ross [Rolfe] gave some directive as to how the Department should proceed. [The] Deputy Director-General,⁵⁶ was also involved in conveying information to us from Ross Rolfe to the 150th Unit.
- Investigator** So how would you summarise your involvement in the project?
- First Director** My involvement was really to deliver and make, implement, something that had been requested by the Director-General and the [former] Premier.
- Investigator** Would it be fair to say that it was to give effect to a decision or agreement that had already been reached?
- First Director** Yes.

The interview also included the following:

- Investigator** Can you tell me why that [exemption] document was produced?
- First Director** This document was produced because the decision had been made that Ross Fitzgerald would be engaged for the project and ... due to the urgency and specialised nature of the project it hadn't gone to tender. **So this document was produced ... to follow the ... government procedures.** [emphasis added]
- Investigator** The document shows that you were the officer who provided branch manager endorsement, is that correct?

⁵⁶ The Deputy Director-General (Governance)

First Director That's correct.

My investigators showed the first Director a copy of the email of 15 December 2005⁵⁷ from Professor Fitzgerald to Mr Rolfe:

Investigator This is an email from Ross Fitzgerald to Ross Rolfe and it says:

Dear Ross,

Good to talk with you.

As you and I and the Premier have discussed, re the writing of the 150th anniversary of Queensland book, Ross Fitzgerald Consultancy Pty Ltd would work from 1 January 2006 until 30 June 2009.

The rate of payment for this period would be three fifths of a full professorial salary plus fifteen percent. I would also be given twelve Sydney/Brisbane return airfares, plus cab charges.

As agreed, there would be two research assistants to assist me, with minimum qualifications of a history and/or politics honours degree.

...

I look forward to expediting the matter.

...

Professor Ross Fitzgerald

So it seems to be that as of 15 December 05 that decision is already in place that Ross Fitzgerald Consultancy Pty Ltd would be writing the book.

First Director Yes, that's correct.

Investigator So the idea, then, of conducting exemption research some months after that date, would that concern you at all?

First Director It did at the time. Yes.

Investigator Did you raise your concerns with anybody?

First Director I raised my concerns with ... [the Deputy Director-General (Governance)], who I guess I was dealing directly with. But the decision had certainly been made, so I felt that as an officer at my level I really had little option but to implement it to the best of our ability, and following government procedures as best we could.

Investigator So would it be fair to say that you were backtracking really to get the documents in place?

⁵⁷ See Chapter 6

First Director I don't believe that we were backtracking. We actually took quite a long time to get to that stage, and if you notice that email does say that Ross Fitzgerald will commence on 1 January 2006. He didn't commence on 1 January 2006. I think his contract was actually signed and he started work around March by memory. So we spent a couple of months making sure ...

There was a level of urgency, as I recall, from the [former] Director-General at the time to actually have Ross Fitzgerald commence by 1 January. There was some pressure on the Department to actually deliver a contract ...

I do recall that first meeting was only sort of a week before Christmas, so I recall there was a degree of urgency, well difficulty, I guess, in trying to deliver over a Christmas period. I think ... there were some contracts officers that had already started work at that stage on a departmental contract for Ross Fitzgerald. We looked into that contract fairly quickly. After also speaking to our legal people [we] realised that that contract wasn't going to be sufficient for this particular service so we contacted Crown Law and had a contract created which was over this three month period.

Investigator What do you mean by departmental contract?

First Director There's a standard departmental contract that we would use for most services and it would be adequate to cover most goods and services. But after reading through a number of clauses in that contract it became fairly apparent that there were some complexities in engaging a writer, an author, for a book, [and] that our standard departmental contract really didn't cover [that]. So we then approached Crown Law and Crown Law developed a contract that would be specific to the Ross Fitzgerald book.

Investigator Do you recall who in the department had actually started work on that pro forma contract?

First Director Going back to these initial emails, I think [the Business Manager] was actually involved in that initial contract. I mean that really would have only been a couple of weeks ... [the Deputy Director-General (Policy)] would have been, he was in policy at the time.

9.5 The Contracts Officer's evidence

Copies of emails provided to us by the Department indicate that the Contracts Officer provided initial advice to the Business Manager and the Purchasing Officer that:

To award such a contract to Fitzgerald without going to the market is acceptable in this instance and the government's prerogative as long as there is supporting evidence that the govt has made a considered decision in this regard.

The Contracts Officer also told my officers that, quite often (including in this case), the Procurement Unit of the Department would be unaware of the background to specific projects. For example, the Contracts Officer said she was unaware that CBRC approval was to be sought for the contract with Professor Fitzgerald.

The Contracts Officer also expressed some concern at procurement practices generally in the Department, indicating that she had refused to endorse other exemption documents (relating to other contracts) because she believed they contained inadequate justification for the exemption sought.

I issued a proposed notice of adverse comment to the Contracts Officer under s.55 of the Ombudsman Act, and invited her to make a submission. She did not do so.

9.6 Evidence of the Deputy Director-General (Governance)

The Deputy Director-General (Governance) told my investigators that, by the time he became involved in the matter (that is, early January 2006), he believed '... the point had passed in terms of *'Are we still going to enter into an arrangement [with Professor Fitzgerald]'*.

He advised that, until interviewed by my investigators, he had not specifically turned his mind to the relationship between the first exemption document and the CBRC approval process which was underway at the same time, other than to consider that the exemption document was a necessary part of the contracting process.

My investigators' interview with the Deputy Director-General (Governance) was, in part, as follows:

Investigator Why was it necessary to complete [the exemption] document if there was a Cabinet submission pending that had been signed by the Premier?

Deputy Director-General Look, I can't say for sure ... in terms of the timing and requirement for the submission to go to Cabinet vis a vis ... this document. From my understanding and my expectation ... of [the first Director] and the procurement people, given that we were seeking ... an exemption under the State Purchasing Policy and the necessary paper work would be prepared, the advice I accepted was that a document like this ... was required to be in production and approved by the delegated officer being Ross [Rolfe] ... to back up that decision.

So really my ... interpretation was ... this was required to document why the exemption was necessary. In terms of the Cabinet submission and why the matter went to Cabinet ... I never put the two together. I put the submission going to Cabinet as a matter for the Premier wanting to advise Cabinet of the decision taken to engage Ross Fitzgerald and the details around that engagement ... regarding what he will write about and what he will do as a separate issue to the exemption process ...⁵⁸

I never looked at the Cabinet approval process as being part of the exemption process. I just thought this would have primacy in terms of what was required in terms of documentation regarding an exemption from the policy.

Investigator So what do you mean by that? Why would ... the exemption application, have primacy over ... the Cabinet submission?

⁵⁸ I note that this is consistent with Mr Beattie's explanation for taking the matter to CBRC.

Deputy Director-General ... what I'm saying is that in another instance if the department was seeking to have an exemption from the State Purchasing Policy, my expectation and my understanding has always been that you would need to complete standard documentation as required by the Department's policies and practices to progress that, as opposed to having a submission to Cabinet which would just seek to have the exemption and not have this documentation in place ...

Investigator As an officer in the department?

Deputy Director-General That's right. This would need to happen irrespective of whether the matter went to Cabinet or not. But even if the matter did go to Cabinet, it wouldn't override the need to have something like ... [the exemption] document in place. So that's what I mean by primacy.⁵⁹

The interview continued:

Investigator What would occur if the exemption research was contrary to the Cabinet decision, which would be the primary decision then?

Deputy Director-General Well I don't think that would happen. What would have happened, the Cabinet submission would have been authored by the same people who were involved in the work regarding exemption ... So the Q150 people would have authored the Cabinet submission and they also would have been involved with the procurement people in relation to the documentation for the exemption ... That being the case with the same people you'd expect consistency in terms of approach.⁶⁰

Investigator Do you think it would be useful if the procedures actually made some reference to the impact of Cabinet decisions, and what the effect of a pending Cabinet decision is in relation to a situation like this?

Deputy Director-General Possibly, but ... my personal view is that notwithstanding matters being submitted to Cabinet for Cabinet's consideration ... as part of good governance there still needs to be a departmental record of why the Department, and certainly the accountable officer in the Department, has agreed to an exemption under the State Purchasing Policy.

That is to say if we didn't go through this paper work, but we only had a submission to Cabinet which potentially gave some noting or recognition of the exemption, there'd be a gap on the departmental file. A Cabinet submission isn't a departmental file, it's a record of the Cabinet, so the Department's record would be, in my view, ... incomplete and I don't think that's ideal practice.

Whether there needs to be some mention in [the APP] about the interplay between the two if there is a submission to Cabinet? Possibly ... but my expectation would be that on most occasions when there is an exemption, there's probably not a related Cabinet submission, because sometimes the issues are ... smaller and [there] probably wouldn't [be a] need [for] Cabinet to know.

⁵⁹ References to Cabinet should be read as references to the CBRC

⁶⁰ It is noted that the Project Officer acknowledges having prepared both the first exemption document and the submission for the CBRC.

The Deputy Director-General (Governance) was later asked about the appropriateness of requiring an officer to complete exemption documentation in the circumstances of this case:

Investigator [The APP] doesn't give a lot of guidance to the A06, A07, A08 level officer out there who has these responsibilities [when] they're trying to work out – are they just implementing a decision that's already been made, a political decision that's already been made, or are they genuinely required to undertake exemption research and to robustly state what the outcome of that research is.

Deputy Director-General I guess my response to that ... would be, it would depend ... on the instruction from the accountable officer, the Director-General at the time. If the Director-General wanted some advice in terms of – look I think company X or person X is the right one, and there are reasons why, in terms of exemptions, we should go with them ... but ... can you do some research just to [confirm] – then I think the A06/7/8 would do that.

However, I think if the accountable officer said I've got person X in mind, and I know they're the best for these reasons, and we are dealing with timeframes and specialist knowledge and we need to then move forward with the contract, then I think that takes away the discretion of those underneath the accountable officer to probably go down other paths.

Investigator In fact that's more or less what they say in this document isn't it? They say it has been determined the contracting services in this case are of a specialist nature and a genuine urgency exists. So the decision has been made for them hasn't it?

Deputy Director-General Well it would seem [so], yes, certainly from the stuff I've read.

Investigator So what's the point of that? Why do they need this submission? Why doesn't Ross Rolfe just say 'I approve it'?

Deputy Director-General Well the Department thought it was necessary to have paper work in place.

Investigator And that's the difficulty, coming to grips with why they think that, because we haven't really actually been given a proper explanation ... as to why they think they have to do this. We've certainly had the answer – it's to comply with the procedure – but the procedure is just a guide ... Looking at the document ... there's a box for urgency and a box for specialist. Why isn't there a box for Cabinet decision?

The discussion continued:

Investigator Picture yourself as [the first Director] ... against this background where she knows the Premier has chosen this person. The Premier has then, it would seem, told Ross Rolfe ... then the Premier has put up a Cabinet submission, and [the Q150 Unit] are then expected to, in that context, prepare a submission for the DG.

Now I accept that he's the decision-maker, but they've still got to put their moniker on it and submit it. Now it'd take a very courageous public servant, I would suggest, to recommend against that, in that context, and I'm just worried about leading them into that position.

**Deputy
Director-
General**

Yes, I understand, sure. I mean at the end of the day as public servants our role is to provide advice on issues. There are times when the ability to provide that advice is more open than others, depending on the nature of an issue and ... the decisions made at a more senior level, and the bureaucracy.

[A public servant] can make [a] concern known, but if there is a decision taken at a higher level for something to occur, then she should feel that she's got a clear conscience in effecting that decision. And that's ... my expectation of people that work with me. I do understand the tension that you [refer to], no doubt about it. It is part and parcel of working in the public service.

But ... I wouldn't accept the fact the matter's gone to Cabinet as being an adequate level [of] documentation. I know ... you're also saying, well how can you then disagree with a decision of Cabinet. I just don't see that would happen because of the people involved.

In response to my notice of proposed adverse comment, the Deputy Director-General (Governance) (through his solicitors) submitted that:

Although the policy decision surrounding the selection of Professor Fitzgerald to write a history of Queensland had been taken at the highest levels of Executive Government, ... no contract had then been made with the State. It was only after the Director-General, as the accountable officer, authorised the incurring of the expenditure of the public monies that a formal contract of engagement was then created. The Deputy Director-General [Governance] had the administrative responsibility for causing the necessary approval process to be duly implemented.

In the pursuit of that responsibility, the observance by the Deputy Director-General [Governance] of expense management forms and procedures was not a pointless exercise but was the appropriate and legally correct process to follow. This is not a case where the Department was engaged in some meaningless process to create paperwork just for the sake of it.

9.7 Mr Rolfe's submission

As stated in Chapter 5, the former Director-General, Mr Rolfe, did not respond to my officers' requests (by telephone and email) that he participate in an interview. However, in response to the notice I issued to him of proposed adverse comment, he provided a submission by email on 6 November 2008, the relevant parts of which are as follows:

... I have read the report.⁶¹ In short, there seems to be no suggestion that the Premier of the day, the Honourable Peter Beattie, as the Minister responsible for the preparations for the sesquicentenary, was not entitled to commission this work. Such a decision, as you are aware, was also endorsed by the Cabinet Budget Review Committee (CBRC).

The primary concern of the investigating officers seems to relate to the departmental process that was adopted in progressing this decision. It seems to proceed from the perspective that the Department, once advised of the Premier's decision, erred in following the approval process in accordance with generally orthodox procedures.

⁶¹ That is, my proposed report on this investigation.

Indeed the conclusion appears to be that the Department should simply have created a new box on the form entitled “Exemption Document” to tick announcing that the decision had already been taken by the responsible Minister and that no further deliberation was required.⁶² I do not agree with this conclusion. To have done so would imply a complete abrogation of the responsibilities of the accountable officer and the Department.

In considering the matter, perhaps it is worth explaining that when the Premier first informed me of his decision to engage Professor Fitzgerald, he explained to me that he had chosen the Professor on the basis of his clear eminence in the field as a publicist of Queensland history. He discussed with me his reasons including his belief that Professor Fitzgerald was Queensland’s most credentialed historian in this field and had a style that was likely to attract popular readership. The limited number of other contenders did not fulfil both these criteria.

As a past student of Queensland history, myself, I believed this reasoning to be soundly based. The Premier also explained to me that he considered the timeframe involved in producing such a work, as well as publishing it, by the due date precluded any form of effective competitive process. Again, this was a soundly based argument.

The Premier also explained that the project would involve paying the Professor at a proportion of his professorial rate (with a modest weighting to reflect that it was a part-time role) and meeting the actual costs of research assistants and other expenses. This again was a prudent and reasonable approach that I considered to represent fair compensation for the work.

Accordingly, I briefed departmental officers on this outcome and asked that they proceed to process the consultancy in accordance with ordinary practice. To my mind, the process the Department adopted reflected an appropriate consideration of the issues in the circumstances that applied in this particular case.

I concede that the conventional procurement processes are probably not designed to readily accommodate the engagement of services such as these in circumstances that occur so infrequently and are in response to the decisions taken by the responsible Minister at short notice.

That said, I believe that the principles of good governance were applied and followed in a sensible and practical way and were honestly observed. The services were of a unique and specialised nature and there was a significant degree of urgency required if the product was to be completed and published by the required date.

Had I not been satisfied of these factors, I would not have approved the exemption document and advised the Premier of my concerns or those of the Department – had they existed and had I been advised of them.

The fact that the Premier had taken a decision already did not, in my mind, mean that the administrative processes should be set aside or that the Department should not manage the engagement in accordance with the conventional processes. I believe that the path that was followed in this case was proper and responsible in the circumstances.

I might also note that despite discussions being entered into with Professor Fitzgerald at officer level, a contract was not entered into until after what I considered the appropriate approval processes were complete – namely the endorsement of CBRC and the production of relevant documents authorising an exemption from a competitive process.

⁶² My proposed report did not include the conclusion referred to by Mr Rolfe.

In closing, I wish to make it clear that at the time I fully supported the processes adopted by the Departmental officers and I was satisfied that the reasoning advanced by the Premier for his decision was sound and conformed with the relevant considerations under the exemption criteria of the Department's purchasing policy.

I was also satisfied that he and the CBRC were entitled to take such a decision and did so on a reasonable and responsible basis.

9.8 Other submissions in response to notices of proposed adverse comment

As I have stated, the proposal in the first exemption document that the contract be exempted from the normal requirement to obtain competitive offers was based on the assertion that the work to be performed was of a specialist nature and/or urgent.

This proposal was endorsed by the first Director and the Purchasing Officer and then approved by Mr Rolfe. While it is not clear from the document or other material when Mr Rolfe signed the document, based on the other signatures and the evidence of the Purchasing Officer and the first Director, he probably did so in early March 2006.

The proposed adverse comments on which I invited relevant officers to make submissions were, in summary:

- the sufficiency of the evidence to support the assertions in the first exemption document about the urgent or specialist nature of the work;
- that it was unnecessary and potentially misleading to prepare the document when the former Premier had already made the decision that Professor Fitzgerald would be engaged to write a history of Queensland;
- that the exemption document did not accurately reflect the reality of the situation, namely, that the decision on who would perform the work had already been made; and
- the Project Officer had not been adequately trained to manage an unusual and significant contract of this kind.

The Deputy Director-General (Governance), the first Director and the Project Officer engaged the same solicitors to prepare submissions in response to my notices of proposed adverse comment. These submissions were extensive, and I summarise them below and, in some cases, include extracts relating to key aspects of the submissions.

The three officers submitted through the solicitors that the preparation of the first exemption document did not constitute unreasonable administrative action, but instead:

Demonstrated careful and considered compliance with the agency's expense management systems and fulfilled all applicable statutory conditions that, under the Financial Management Standard were required to be observed before the expenditure of the Departmental funds could be authorised and approval then given for the State to enter into the contract. The Public Records Act 2002 also required that these processes be appropriately documented.

The submissions emphasised the importance of distinguishing the **policy decision**, taken by Mr Beattie and CBRC that Professor Fitzgerald be engaged, from the **operational decisions** that '... then had to be taken within the Department to authorise expenditure and enter into the contract'. Mr Rolfe makes the same point in his submission.

Specifically, the officers' submissions all argue that:

- The Executive Government (represented by Mr Beattie and CBRC) had the right to make the policy decision to select Professor Fitzgerald to write a history of Queensland.
- The Department was required to implement the decision of the Executive Government taken by the Premier and endorsed by CBRC.
- The responsibility of both the Deputy Director-General (Governance) and the Project Officer was to assist Mr Rolfe, as Director-General, to give effect to the policy decision of the Executive Government.
- The policy decision made by the Premier and CBRC was to engage Professor Fitzgerald precisely because he possessed the necessary skills to write the book.
- Mr Rolfe, as Director-General, was an accountable officer under the *Financial Administration and Audit Act 1977* and therefore had the power to incur the necessary expenditure, and formally enter into the contract with Professor Fitzgerald.
- The legal act of the State in making a binding contract must be preceded by the administrative processes that are relevant to the exercise of the statutory authority to incur the expenditure of Department funds for the contract.
- Departmental officers were clearly obliged to follow those processes under the Department's overall financial accountability framework to properly engage the relevant statutory powers and they should not now be criticised for, in effect, doing what they were obliged to do.
- The regulation of the contractual capacity of the State must be strictly complied with. The relevant statutory process must be observed in the course of its exercise.
- The Financial Management Standard required the officers to either observe the requirement of the State's Purchasing Policy or to record the reasons for not doing so. This is precisely the procedure that the Project Officer and Deputy Director-General (Governance) undertook. However, the officers were criticised in my proposed report for engaging in unnecessary process and for 'going through the motions'.
- There was no need to proceed to public tender in this case as the Premier (supported by CBRC) at the policy level had selected Professor Fitzgerald.
- The Project Officer was correct to recognise that there was no need to make enquiry with other potential authors as the Executive Government's policy decision was that it had selected Professor Fitzgerald.

The submissions also assert that:

It would have been inappropriate and misleading to proceed to a tender in this case because the Premier (supported by CBRC), at a policy level, had selected Professor Fitzgerald as the person to undertake the project. The Director-General and his officers were correct to recognise the 'limits of control' that the policy decision of the Executive Government to select Professor Fitzgerald then imposed upon the Director-General.

...

In all the circumstances, it is difficult to identify what more the Departmental officers could have done. They had no right to 'second guess' the Executive Government's policy decision to select Professor Fitzgerald.

The submission on behalf of the Project Officer further argues:

... prudence did not demand that the Project Officer make contact with any other potential authors ... The selection of the author had already been made by the Executive Government as a matter of policy. Far from being prudent, it would have been hollow and a waste of time to make contact with other authors. It would have served no real practical purpose.

All that the Project Officer was required to do was ... record the reasons for non-compliance with the usual competitive procurement process and to record those reasons in the form seeking accountable officer approval to incur the requisite expenditure of Departmental funds.

In this regard the Project Officer was entitled to accept that the Government had, as a policy decision, selected Professor Fitzgerald to undertake the commission because of the specialist nature of his particular skills.

The submission on behalf of the first Director includes the general statement that 'during her time with the Q150 unit, she engaged in her duties in good faith and with appropriate diligence and exercised careful supervision over the administrative processes for which she had responsibility'. She also submits that:

- She was fully conscious of the fact that this engagement was out of the ordinary in that the executive government decision to engage Professor Fitzgerald meant that in practice a public tender should not be undertaken, but departmental procedures to formally incur the expenditure still had to be complied with.
- As indicative of her attention to her duties, she made regular checks with the legal and financing areas of the Department about what was required, declined to use the standard contract because she thought it inappropriate, was instrumental in engaging Crown Law 'to tailor an appropriate contract' and made extra effort to ensure that a paper trail existed by properly filing all emails and maintaining all records.
- The procedure she followed in identifying the reasons for not following the usual practice of obtaining quotations or going to public tender for this contract and recording those reasons in the relevant departmental form did not constitute unreasonable administrative action, but 'demonstrated that there was a culture of compliance with the Agency's legislative obligations and expense management systems in the unusual circumstances that had arisen'.
- The process that was engaged in was not about justifying the decision to select Professor Fitzgerald. The decision did not need justification as it had been taken by the executive government. The provisions of the form that are concerned with 'justification' relate to the justification for the departure from the usual practice of conducting a public tender. That departure still needed to be explained and documented in terms of its urgency or specialty as these are the indicia that typically justify such a departure.
- There was no attempt to cover up a political decision. In fact there was nothing to be hidden. The Premier had announced his decision to the Parliament and it was in the public domain.⁶³ Although the circumstances were unusual it was still a necessary procedural function to record on the appropriate form the 'justification' for not proceeding to tender in this case.

All three submissions state that the process followed by the officers was necessary, and that it is therefore not accurate to classify their actions as 'simply going through the motions'.

⁶³ My officers' searches of Hansard indicate that Mr Beattie first announced the decision in September 2007. Therefore at the time the first exemption document was signed by officers, the decision to award the contract to Professor Fitzgerald did not appear to be in the public domain.

9.9 Comment

Were the administrative processes appropriate?

After taking into account the submissions provided by the officers, I am not satisfied that the preparation, endorsement and approval of the first exemption document was good administrative practice as it did not add in any meaningful way to accountability in respect of the expenditure of funds for the contract.

The underlying reason for not seeking competitive quotations was not the specialist work involved or the urgency of the work, but the fact that the decision on who was to undertake the work had already been made. This fact was not recorded in the exemption documentation.

Despite the statements in the submissions made by the officers, I believe the evidence points to the conclusion that the Department was, in fact, 'engaged in ... meaningless process'. This is because by the time the exemption document was endorsed by Mr Rolfe, it was clear that:

- Professor Fitzgerald would undertake the work;
- the essential terms of the contract were agreed; and
- there was no likelihood of any contrary views being expressed within the Department, and no likelihood of any other potential authors or publishers being considered.

I note that Mr Rolfe acknowledges 'that the conventional procurement processes are probably not designed to readily accommodate the engagement of services such as these in circumstances that occur so infrequently and are in response to the decisions taken by the responsible Minister at short notice'.

I agree with his submission that 'The fact that the Premier had taken a decision already did not ... mean that the administrative processes should be set aside or that the Department should not manage the engagement in accordance with the conventional processes'.

However, the issue for consideration is whether, as the former Director-General maintains, 'the principles of good governance were applied and followed in a sensible and practical way' and 'the path that was followed in this case was proper and responsible in the circumstances', or whether some other process or additional process should have been followed.

I appreciate that, as the accountable officer, the former Director-General was responsible for authorising the expenditure of funds for the purpose of entering into the contract with Professor Fitzgerald and had to comply with his obligations under the Financial Administration and Audit Act. Of particular relevance here is s.36(1)(aa) and (c)(iii) which provide:

(1) Every accountable officer—

(aa) is responsible for the financial administration of the department under the accountable officer's control and must manage the department efficiently, effectively and economically;

...

(c) must ensure each of the following—

...

- (iii) **that as far as is possible having regard to the limits of the accountable officer's powers and control reasonable value is obtained for moneys expended** for delivering departmental outputs and purchasing, developing and augmenting assets of the department; [emphasis added]

However, I do not consider that the process followed by the Department in completing the first exemption document assisted the former Director-General to discharge these obligations under the Financial Administration and Audit Act. In normal circumstances the measures that could be taken for that purpose include:

- carrying out market research; or
- seeking advice on the appropriate fee from an appropriately qualified person.

I make no comment on whether the payments provided for in the contract represent reasonable value. These were substantially negotiated by the former Premier and I do not have jurisdiction to question the merits of decisions of Ministers. I also note that Mr Rolfe states in his submission that he was satisfied after talking to Mr Beattie that the costs relating to the work would be calculated in accordance with 'a prudent and reasonable approach that [Mr Rolfe] considered to represent fair compensation for the work'.

However, in respect of any future situations where a Minister decides that a department should enter into a contract with a particular provider, the relevant Director-General, as the accountable officer, should, for the purposes of discharging the above obligations under the Financial Administration and Audit Act, cause steps to be taken to ensure that the expenditure related to the contract represents reasonable value 'as far as is possible having regard to the limits of the accountable officer's powers and control'.

The submissions provided by the solicitors on behalf of the Deputy Director-General (Governance), the first Director and the Project Officer rightly point out that at the time the first exemption document was prepared and endorsed 'the selection of the author had already been made' and the officers had 'no right to second guess' the Premier and the CBRC.

However, as I have noted, this important fact is not expressed or implied anywhere in the exemption document. Therefore, an auditor or other person reviewing the contract process could be led to believe that the decision to engage Professor Fitzgerald was made by the Department in accordance with its normal procurement procedures when this was not the case. It follows that I disagree with the submissions that:

... there is absolutely no basis to conclude that the exemption document was potentially misleading. It simply recorded the reasons why the APPs regarding competitive public tender were not followed in this case. It could not have misled the Director-General (to whom the application for approval was directed) because the Director-General knew directly from the Premier of the policy decision to select Professor Fitzgerald and he also knew that the statements in the form were correct.

Nevertheless, I am satisfied that the officers involved in preparing and endorsing the first exemption document honestly believed that under the Department's APP, it was necessary to go through the process of completing the document even though the political decision had already been made on who would perform the services.

If a Minister has already decided that a contract is to be awarded to a particular provider, public servants are put into a difficult situation if they are then required to complete documentation to, in effect, assess whether the decision was justifiable on the basis of the specialist or urgent nature of the work.

The Project Officer, the Purchasing Officer and the first Director all expressed some disquiet to my officers about completing the document in those circumstances (though they all submit that, ultimately, they had reasonable grounds for signing the document).

The other significant risk is that the Department will be perceived as having tried to cover up a political decision by creating documents that indicate that the Department made the decision itself in accordance with its normal contracting procedures.

This issue is one of particular significance for the Department, which performs such a key role in implementing government policy.

I note that the APP provide little guidance to officers on the steps they should take where a political decision has already been made that a contract is to be entered into with a particular provider and the Department has been directed to implement the decision.

Was the work of a specialist or urgent nature?

The submissions forwarded on behalf of the Deputy Director-General (Governance), the first Director and the Project Officer also contain extensive argument attempting to justify why the contract with Professor Fitzgerald involved work of a specialist and urgent nature. The first exemption document contains scant information to justify that the work was of a specialist nature. The submissions assert that this was because the work's specialist nature was 'self-evident'.

I have already commented that the Department's APP provide no guidance on the meaning of the word 'specialist'. I also note that, under the APP, the officers who signed the first exemption document did not have to be satisfied that a sole supplier situation existed but only that the contracting services involved were of a specialist nature.

A specialist is a person who specially or exclusively studies one subject or one particular branch of a subject.⁶⁴ Assuming that the expression 'services of a specialist nature' has a corresponding meaning, in this age of specialisation, there may be many specialists in a particular field. For example, there are no doubt many historians in Australia but how many would have the requisite qualifications and eminence to research and write a history of Queensland commissioned by the Queensland Government as part of the Q150 celebrations.

No doubt views will differ on whether the circumstances of this case constituted specialist work. However, in the absence of any guidance in the Department's APP, I am unable to conclude that the officers' assertion that the contracting services were of a 'specialist nature' was unreasonable or otherwise wrong.

However, I consider that more detailed justification for this claim should have been included in the first exemption document under the heading '**Justification**'. The entry under that heading does little more than repeat the pro forma wording next to the ticked boxes under the heading '**Basis of exception approval being sought**' (see Appendix 2).

⁶⁴ Moore, B et al (eds), *Australian Concise Oxford Dictionary* (3rd ed, 2001), p.1308

The first exemption document also contains scant information to justify the claim for urgency. No independent inquiries were carried out to justify the claim but, as indicated in the following summaries of the evidence of the officers who signed the first exemption document, they all maintain they were satisfied that a genuine urgency existed:

- When interviewed, the **Project Officer** said she believed the contract was urgent based on 'comment in the emails' she saw 'between Mr Rolfe and Professor Fitzgerald'. In her written submission, the Project Officer said it was 'self evident' that the arrangements to be made necessitated urgency having regard to the timeframe for delivery of the manuscript by 1 June 2008. She further submitted that 'nothing further was reasonably needed to substantiate or support the assertion of urgency'.
- When interviewed, the **Purchasing Officer** said that it was his understanding that 'to get the book written in time' for the Q150 celebrations, 'the contractor had to start ... otherwise [he] would not meet ... the target deadline'. In his written submission, the Purchasing Officer said: 'I felt pressured into signing the [first exemption] document, as others in much higher positions than mine had already signed off on the exemption, and in addition, Ross Fitzgerald had already begun working on the draft book. During my investigations, I was often reminded how urgent and how important this engagement was to the Premier, and the need for the contract to be executed as soon as possible so that no further delays occurred'.
- When interviewed, the **first Director** said she had spoken to UQP who 'indicated that when [they] looked through the timelines required to have a book published in time for 2009, the anniversary, that work would indeed need to start fairly quickly'. The first Director also said 'I think [UQP] indicated it was about a 12 month process from when the manuscript was delivered to actually producing a book which is the [process of] editing, publishing and actual printing of the book. There certainly was an indication from UQP that the project needed to start relatively quickly for it to be delivered in time for the anniversary'.

In her written submission, the first Director said 'It would have been a waste of resources to conduct any greater degree of research as to whether the matter was ... urgent. The conclusions that were recorded [in the first exemption document] were plainly self-evident in light of the Executive Government's preference for, and selection of, Professor Fitzgerald as the author'. The first Director also said 'It was plainly self-evident that there was urgency having regard to the timeframe for delivery of the manuscript by 1 June 2008 ... The timeframe for publication of the book was dictated by external events, namely the [Q150 celebrations] and the publication date for the book could not be delayed beyond that date [ie: mid-2009]'.

The first Director also stated that, based on her professional experience and expertise in event management, she was well placed to endorse the statement that the project attracted genuine urgency.

- In his submission, the **former Director-General** said he believed there was a genuine urgency based on Mr Beattie's explanation to him that 'the timeframe involved in producing such a work, as well as publishing it, by the due date precluded any form of effective competitive process'. Mr Rolfe said he considered this to be a soundly based argument.

In my view, it would have been good administrative practice to have provided greater details in the exemption document to justify the claim that genuine urgency existed. However, it is important to understand that, under the APP, exemptions from inviting competitive offers can be approved on the grounds that:

- genuine urgency exists; **or**
- the contracting services are of a specialist nature.

It is not necessary to establish both of these grounds for an exemption to be approved.

9.10 Mr Beattie's submission

It became evident in this investigation that the outcomes of the discussions in late 2005 (between Mr Beattie, Professor Fitzgerald, and Mr Rolfe) were of central importance in verifying the accuracy of the evidence provided by the officers we interviewed.

Accordingly, on 30 October 2008, I instructed my Deputy Ombudsman to contact Mr Beattie, provide him with an overview of my investigation, and invite him to comment. A similar opportunity was provided to Professor Fitzgerald.

Mr Beattie's response included the following:

As Premier, I determined that it was appropriate that Queensland celebrate its proud 150 years of statehood. I became the Minister responsible for determining the nature of those celebrations. With my long association with historians such as Dr Denis Murphy it is hardly surprising that Queensland's history would play a part in those celebrations.

As the responsible Minister, I determined that it was appropriate that an updated history of Queensland be written and launched as part of the celebrations to highlight our progress, our proud achievements as well as the historical lessons learnt along the way. I remain firmly of the view that not enough has been written about Queensland history and our role in the Commonwealth. Such history should be extensively taught in our schools. The public benefit from such a project is self-evident.

By the time I had determined that such a history should be written I realised time was of the essence. (I did have other matters on my plate). As a student of history and some one who had dabbled in the painstaking effort of writing a book, I knew that to do the book properly and comprehensively it would take years and it was therefore necessary for the book to be started urgently, otherwise it would not be finished in time for its 2009 launch. **My Department was directed accordingly.**

I chose Professor Fitzgerald to lead a team of three to do the work. The budget includes printing the book and the costs of the three person team. My first choice would have been Dr Denis Murphy had he been alive. Professor Fitzgerald in my view has written the most comprehensive histories of Queensland and was therefore ideal to take a fresh look at the State's history. You would be aware of the publication dates of his earlier works. Of course Professor Fitzgerald was approached to see if he would do the work and when he agreed a negotiation then took place on the details.

You misunderstand the CBRC submission and decision. If I recall correctly, as the responsible Minister, I did not need CBRC approval for the contract. Matters of less than a million dollars do not regularly go to CBRC ... These matters go to Executive Council. (You will also be aware of the existence of the Director General's reserve.) In fact, departments in the budget process were told not to bring matters of less than a million dollars to CBRC.

As I was privately and discreetly planning a transition to my successor-the current Premier-and knew I would not be the Premier for the 150 year celebrations, I used the formal CBRC process to inform my senior ministerial colleagues of what I was planning for 2009. It was that simple.

I notice that Mark McArdle attacks Professor Fitzgerald in his complaint for a work that could 'descend into political propaganda'. I wonder if he still holds that view bearing in mind Professor Fitzgerald's recent critical articles of the Premier in the 'Australian' newspaper and his strong support of the LNP.

I believe the book should be judged on its merits when it is released in 2009.

Finally I always knew there would be a hen's scratch among the tiny number of historians writing about Queensland history when it was announced such a history would be written. They all wanted to write it.

[emphasis added]

9.11 Professor Fitzgerald's submission

As Professor Fitzgerald was a key party in the contractual discussions involved in this matter, I considered it necessary to seek his comments. My officers therefore contacted Professor Fitzgerald by email on 4 November 2008 outlining the matters under investigation and inviting his comment. Professor Fitzgerald replied by email with a submission, parts of which were as follows:

To the best of my recollection, sometime in late 2005 the then premier Peter Beattie asked me if I would be interested in writing the 150th anniversary history of Queensland.

When I responded that I would, my memory is that Mr Ross Rolfe made contact with me and that in March 2006 I was engaged to research and write such a book.

To the best of my recollection, I was provided with no information regarding the contracting process. My understanding is simply that I was asked by Premier Beattie, I accepted, and then a contract between me and the State of Queensland was drawn up which Ross Rolfe and myself signed in March 2008.

My understanding is that, about the same time, a similar contract was drawn up and signed by the book's publisher, the University of Queensland Press, and by the state of Queensland.

...

... it was claimed repeatedly that I was to receive \$900,000 and that Peter Beattie and I met each other once a month. As you know, the former claim is false. So too is the latter. To the best of my recollection, after Beattie launched my book 'The Pope's Battalions: B.A. Santamaria and the Labor Split' in 2003, he and I did not meet at all until after he resigned from the premiership.

...

... it is the State of Queensland which receives all royalties from the book, in perpetuity.

I consider that the submissions of Mr Rolfe, Mr Beattie and Professor Fitzgerald substantially confirm the evidence provided to me by the officers and former officers we interviewed.

I reiterate that I believe that Mr Beattie, as Premier of the day, had the capacity to commit the State of Queensland to enter into the contract with Professor Fitzgerald (and the subsidiary contract with UQP).

9.12 Consultation with CPO and Director-General of Public Works

The State Procurement Policy and other guidance published by the CPO do not provide any assistance to public sector staff involved in such situations.

Therefore, my investigators met with officers from the CPO to discuss this issue. These officers expressed the view that, broadly speaking, where a Minister or Cabinet directs that a contract be entered into with a specified provider, it is not appropriate for the relevant department to produce procurement documentation which incorrectly implies that exemption research has been carried out.

Any documentation prepared by a department in such cases should accurately reflect what has happened – that is, that a decision has already been made and the department is merely giving effect to that decision.

On 3 November 2008, I provided Mr Mal Grierson, Director-General of the Department of Public Works (the Department within which the CPO is located), with brief, de-identified details of my investigation, and invited his comment on the following recommendation I was considering making.

Proposed Recommendation 2

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

On 17 November 2008, Mr Grierson wrote to me stating that he considered that the issue raised in my proposed recommendation was one 'that requires broader Government advice and consultation, before a decision can be made to issue procedures which potentially impact on the role of the Premier, Ministers and Cabinet as well as accountable officers'. Mr Grierson suggested that I amend my proposed recommendation to read as follows:

That the Department of Public Works consult with government on the need for procedures for managing contract processes where the Premier, a Minister, or Cabinet has initiated and made a decision that a Department is to enter into a contract with a specified person or business.

While I agree with Mr Grierson that consultation with government is important, I remain of the opinion that there is a need for the Director-General to provide formal guidance on how public officers should respond in such situations. I have therefore amended my proposed recommendation (which appears below as Recommendation 3) to incorporate the element of consultation.

9.13 Submission of current Director-General

As stated at 5.3, I invited the current Director-General to comment on the matter under investigation to comply with my obligation under s.26(3) of the Ombudsman Act. He provided a submission on 25 November 2008 as follows:

You have sought my comments on the report. Further to our discussion I wish to raise five major points:

1. Your investigation has its origin in a lawful exercise of the power of the Crown, through a Minister, (in this case the former Premier) to contract for specific services. The public servants who implemented this lawful decision did so in the normal course of their work. In my opinion, this action gave the subject contract an appropriate administrative and legally enforceable form.

That the State Procurement Policy (which, of course, does not have lawful force or effect) may, arguably, not have been strictly followed in the process initiated, informed and directed by the former Premier does not in any way detract from these two crucial considerations involved in the contracting of Professor Ross Fitzgerald or in the incidental matter relating to his publisher. Again, these factors are:

- (a) the unquestioned lawfulness of the contractual arrangement; and
 - (b) the circumstance of all public servants involved in the process acting diligently and conscientiously under direction with a view to giving coherent form and lawful effect to the contractual arrangement already entered into. The issues of the urgency of that arrangement and of Professor Fitzgerald's undoubted eminence and speciality as an experienced historian were, again, matters already considered and determined by the former Premier.
2. In this context, and based upon that limited part of the evidence contained in the interim report no adverse comment can appropriately be made in your final report concerning the conduct of individual public servants or of the Department of the Premier and Cabinet generally;
3. Based upon the evidence contained in the interim report and the statement of my predecessor, Mr Ross Rolfe, I consider that the adverse comments relating to public servants and the naming of an individual public servant would be both damaging to the individuals' reputations and unnecessary in your final report;
4. In terms of the grounds of exception from compliance with the State Procurement Policy, given the undoubted urgency attaching to the arrangement entered into between Professor Fitzgerald and the former Premier, and noting Professor Fitzgerald's unquestioned eminence and distinguished publishing record as an historian of Queensland, it would seem almost self-evident that grounds for exception from the State Purchasing Policy existed on this occasion, and that it was quite reasonable for the Department and its public servants to have acted accordingly; and

5. In the event that your final report concludes that the State Procurement Policy and related Agency Purchasing Procedures (APP) might usefully be amended to accommodate a situation of a similar kind to that involved here, then I would be pleased to consider your views in order to facilitate the effective and accountable operation of contracting and purchasing policy involving a government department consistent with the intent of the *Financial Administration and Audit Act 1997*. It would however be inappropriate for the APP to be amended to require a Departmental contract with a third party to disclose the exercise of the prerogative power to contract. This should be more appropriately stated in the Department's briefing and procurement documents.

I make the following comments on the Director-General's submission:

- In relation to point 1, I have not questioned the validity of the contract with Professor Fitzgerald (or the contract with UQP).
- In relation to points 2 and 3, I disagree with the Director-General that the evidence does not support a finding of maladministration on the part of the Department but I have not attributed the maladministration to individual officers. Furthermore, I have not considered it necessary to name any particular officer other than the former Director-General who was the accountable officer at the relevant time.
- In relation to point 4, I have already expressed the view that the officers' assertion that the contract to write the history of Queensland involved work of a specialist nature was not unreasonable. However, I considered that further justification for this assertion and for the assertion of urgency should have been included in the first exemption document.
- In relation to point 5, I note the Director-General's preparedness to consider my views. I also agree with the second part of his response.

9.14 Opinions and recommendations

After considering all of the evidence, including the submissions provided to me, I have formed the following opinions, and make the following recommendations:

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.

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.

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.

Chapter 10: The subsidy to UQP

From the evidence available to me, it would appear that the commissioning of UQP to publish the history was first raised by Professor Fitzgerald during the December 2005 discussions he had with Mr Beattie and Mr Rolfe.

On 21 September 2006, a briefing note (prepared by the Project Officer) was sent from the Deputy Director-General (Governance) to Mr Rolfe, recommending that a subsidy to UQP be approved, and attaching an exemption document (the second exemption document) in relation to the commissioning of UQP. A copy of this exemption document is contained in Appendix 3.

The briefing note indicated that:

- the total subsidy to UQP was to be \$24,000, payable in three instalments of \$8,000 each (on signature of the contract, delivery of the manuscript to the publisher, and on delivery of final page proofs); and
- the subsidy was intended to cover editing, printing, designing, marketing, and nationally distributing a minimum print run of 3,000 books.

Professor Fitzgerald was, when approached by Mr Beattie, already under contract to UQP to produce a new edition of his two-volume 1982 and 1984 History of Queensland series.⁶⁵ Professor Fitzgerald and UQP apparently agreed to terminate this contract and, instead, take on the Q150 project.

The briefing note from the Deputy Director-General (Governance) to Mr Rolfe (with the Project Officer listed as the action officer) states that *'based on comparable projects previously undertaken by [the Department], the cost of the subsidy is less than the cost of [the Department] directly bearing all the production costs itself'*.

The Project Officer prepared the second exemption document to seek approval to exempt the publication of the history from the normal departmental process of inviting competitive offers. The second exemption document, like the first, stated that the basis on which exemption was sought was that there was 'genuine urgency' and that the work was of a 'specialist or confidential nature'. The justification provided by the Project Officer for this claim was as follows:

It has been determined that the contracting services in this case are of a specialist nature and that genuine urgency exists to deliver the services within the required timeframe.

It is reasonable that these services be provided by the University of Queensland Press (UQP) as it has the demonstrated capacity, expertise and experience to publish the book to a high standard within the timeframe required. UQP also has the marketing, sales and distribution capacity and expertise required to ensure successful promotion and distribution of the book.

⁶⁵ Fitzgerald, R, *From 1915 to the Early 1980s: A History of Queensland*, University of Queensland Press, St Lucia, 1984; Fitzgerald, R, *From the Dreaming to 1915: A History of Queensland*, University of Queensland Press, St Lucia, 1982

10.1 The Project Officer's evidence

My investigators questioned the Project Officer about her involvement in the approval process for the payment to UQP:

Investigator It appears from the material provided to us that the University of Queensland Press required a \$20,000 subsidy⁶⁶ to produce the book. Were you aware of this?

Project Officer I was.

Investigator And do you know if that subsidy was in fact paid?

Project Officer I believe that it will be paid.

Investigator Do you know who agreed to it being paid?

Project Officer I believe that it was originally agreed that it be paid by Ross Rolfe.

Investigator Do you know on what basis it was paid?

Project Officer I believe it was paid in relation to an outstanding agreement with the University of Queensland Press and Professor Fitzgerald.

Investigator Was there any form of market testing or other research conducted to determine if any alternative publishers existed without the need for payment of a subsidy?

Project Officer I undertook an analysis of previous publishing, for a previous book that the Department had published and I looked at the costs involved in the publishing of that book. I looked at the market for publishers of that kind of book and also the distribution and marketing capacity of those publishers.

In response to my notice of proposed adverse comment, the **Project Officer** engaged solicitors to prepare a submission on this matter. Details of that submission are included at 10.6.

10.2 The Purchasing Officer's evidence

The Purchasing Officer told my investigators that, given the passage of time since he had endorsed the second exemption document (approximately two years), he could not be certain what had happened at that time. However, he said he believed that the Project Officer had sourced several alternative quotes for the printing of the book.

The Purchasing Officer made no specific submission to me about my adverse comments in relation to the second exemption document.

⁶⁶ Material obtained from the Department after this interview indicated that the actual subsidy amount was \$24,000.

10.3 The first Director's evidence

The first Director advised that she had left the Q150 Unit by the time the exemption was sought for the UQP contract and therefore had no relevant knowledge of that exemption process. The first Director's interview included the following:

Investigator So what were you required to do in order to justify approving the contract proposal?

First Director We had met with the University of Queensland Press in the couple of months leading up to the contract. I think the initial discussions regarding Ross Fitzgerald's services were back in December so over those three months we spoke until the contract was developed. We spoke to the University of Queensland Press. They certainly indicated that [it] had been determined that UQP would publish the book as the Queensland publisher.

Investigator Who determined that?

First Director That was determined through discussions with Ross Rolfe, Ross Fitzgerald and the Premier. So that had been decided before we got involved as well.

Investigator So your understanding was that that decision was also a *fait accompli*?

First Director Yes, correct.

Investigator And were you satisfied that the Department's procedures and the State Purchasing Policy had been followed in relation to this particular proposal?

First Director I believe that with ... what was asked of our unit to deliver ... I feel that we followed the procedures to the best of our ability, but ... I believe that there could have been a tender process undertaken at the outset. But that wasn't a decision that our unit was involved in making.

10.4 The second Director's submission

The **second Director** endorsed the second exemption document in relation to the subsidy to UQP. In response to my notice of proposed adverse comment, the second Director stated:

- I was appointed in July 2006.
- As you have acknowledged all the decisions were made and signed off 6 months earlier.
- Contrary to your statement in the letter⁶⁷ that I was initially responsible for certain aspects of the contract I have had absolutely no involvement in the initial arrangements or for that matter later arrangements with Ross Fitzgerald.
- At my handover I was advised by the former Director⁶⁸ that everything concerning the book was completed – there was just the briefing note prepared by the project officer to sign off.
- The briefing note with my signature relating to the use of UQP was prepared in March by the project officer and she took until September to present it to be signed.

⁶⁷ That is, my notice of adverse comment to the second Director

⁶⁸ That is, the first Director

- Following my appointment all conversations and handling of matters associated with the book were dealt with by the project officer and the Deputy Director General.⁶⁹

The submission provided to me on behalf of the Project Officer denies she was responsible for any delay in preparing the document and denies that only she and the Deputy Director-General (Governance) handled matters associated with the book following the appointment of the second Director.

10.5 The Deputy Director-General's evidence

The Deputy Director-General (Governance) informed my investigators that, as at 31 July 2008, the payment details were:

1. \$8,000 plus GST paid to UQP on 27 September 2007; and
2. \$8,000 plus GST due to be paid on 8 August 2008.

In response to my notice of proposed adverse comment, the Deputy Director-General (Governance) engaged solicitors to prepare a submission on this matter. Details of that submission are included at 10.6.

10.6 Comment

Based on the copies of emails between the Department and Professor Fitzgerald from December 2005, it appears to have been decided some months before the second exemption document was endorsed and approved (that is, in September 2006) that UQP would be the publisher for the book. For example, the email of 20 December 2005 from Professor Fitzgerald to Mr Rolfe states:

Dear Ross

I am very pleased to be writing the Official 150th Anniversary History of Queensland for the Premier and the people of Queensland.

This general history, with a distinctly political bent, **will be published by the University of Queensland Press.** [my emphasis]

...

The first Director sent an email to Professor Fitzgerald on 19 January 2006 which stated, in part:

I understand that UQP will be engaged to publish the book. Are you able to confirm whether any specific arrangements have been made at this stage? [my emphasis]

Professor Fitzgerald replied to the first Director (in an email cc'd to Mr Rolfe) on the same day, stating, in part:

Yes, UQP are to be the publishers but nothing can be finalised until Ross [Rolfe] and [publisher] have made contact. I think the plan is to have a separate contract between the Government and UQP, but you will need to check with Ross [Rolfe]. As I mentioned, UQP need to have a \$20,000 subsidy for publication. [my emphasis]

⁶⁹ That is, the Deputy Director-General (Governance)

While the CBRC submission of 24 February 2006 mentions that UQP was 'interested' in being the publisher for the History of Queensland book, the submission did not seek the CBRC's approval for a publishing contract with UQP, or for a subsidy or other payment to UQP.

The submission by the solicitors for the Deputy Director-General (Governance), includes the following comments:

In this instance the payment to UQP was identified as a subsidy and it may be that an exemption from competitive public tendering is unnecessary when subsidy payments are being made.

The submission does not provide any authority for this claim, but continues:

... the facts as understood by the Deputy Director-General [Governance] were that this particular payment was to be made because it was part of the overall arrangement for the [book] project. In that light, it was not unreasonable for the Deputy-Director General [Governance] to accept the self-evident fact that UQP was a reputable and qualified publisher with the necessary capacity, expertise and experience to publish the book to a high standard.

In addition, UQP was the author's publisher ... As such, it was unnecessary for the ... officers to undertake any greater level of investigation in order to accept that UQP was the best supplier or whether any alternative supplier ought to be considered.

There was no compelling need to seek additional evidence to support the assertion that UQP had the capacity, expertise and experience to publish the book.

A similar statement is made in the submission by the solicitors for the Project Officer and first Director.

The fact that it may be 'self-evident' that a provider has 'the necessary capacity, expertise and experience to publish the book to a high standard' does not obviate the need to ensure the arrangement represented reasonable value.

The evidence suggests that the Department had some relatively recent experience in contracting for the publication of books. As a result, there may have been some reasonably sound corporate knowledge on which a decision was made that the UQP offer represented good value for money in the circumstances. However, this information is not recorded in the second exemption document and the Department did not conduct any market research to verify this, which would have been prudent financial practice.

Was the work of a specialist or urgent nature?

It is more difficult than with the first exemption document to establish the reasonableness of the claim in the second exemption document that the contracting services involved were of a specialist nature.

No doubt other publishers could have performed the services but the reality was that the arrangement with UQP was part of the arrangements Mr Beattie had made with Professor Fitzgerald and therefore the situation was essentially a sole supplier situation. Again, this is not recorded in the second exemption document. Therefore, once again, in the absence of any guidance in the Department's APP on the meaning of the word 'specialist', I am unable to conclude that the officers' assertion that the contracting services were of a 'specialist nature' was unreasonable or otherwise wrong.

The claim in the second exemption document (completed in September 2006) for exemption on the grounds of urgency appears odd as the evidence indicates that the decision to use UQP was made months earlier (see also the emails referred to earlier between the first Director and Professor Fitzgerald in February and March 2006).

Therefore, the urgency (if there was one) may have resulted, in part, from the Department's delay. However, it is more likely that the urgency arose from the need to finalise all of the arrangements that had been made months before with Professor Fitzgerald including that UQP would be the publishers.

However, as I have noted, the proposal for exemption could have been approved if either ground was established.

In relation to the lack of details for the justification in the second exemption document that the work was specialist or urgent, I do not believe it is reasonable to argue that this was self-evident. I consider that more detailed justification for this claim should have been included in the second exemption document under the heading '**Justification**'.

As with the first exemption document, the entry under that heading does little more than repeat the pro forma wording next to the ticked boxes under the heading '**Basis of exception approval being sought**' (see Appendix 3).

10.7 Opinions and recommendations

After considering all of the evidence, including the submissions provided to me, I have formed the following opinions:

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.

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.

Chapter 11: Staff training

The Project Officer was directed to prepare documentation relating to research and justification for exemptions to the procurement rules. She told my investigators that she was concerned at the time about the validity of the justification for the two exemption documents (particularly the first), and sought advice from the Purchasing Officer about the process.

Copies of emails provided to us indicate the Project Officer did, in fact, seek extensive advice on the contracting process. One email from the Purchasing Officer to the Project Officer, dated 28 February 2006, includes the advice from the Purchasing Officer that the '*... proposal form is more than adequate to cover the exemption*'.

As noted, the Project Officer said she had been given no training and had no experience in managing pre-contractual processes prior to being required by the first Director to complete the first exemption document during or around February 2006. This is a particular concern given that the contract with Professor Fitzgerald involved expenditure of \$341,000.

The Department's APP state that: *Procurement activities are to be undertaken by departmental officers with an appropriate level of skill and it is a responsibility of management to ensure this*. This is an important principle, as it is more likely that properly trained and experienced officers will be in a better position to question processes which do not appear to conform to procedural requirements.

In response to my comments on this matter in the proposed report, solicitors acting for the Project Officer and the Deputy Director-General (Governance) stated:

The Project Officer had assistance from, and sought, specific advice from a qualified purchasing officer as to the nature and extent of the research that she was required to undertake and the way in which the reasons for her decisions were to be recorded. She followed that advice in good faith. Nevertheless, the recommendation [recommendation 3]... that appropriate training should be provided to public servants to enable them to adequately fulfil their duties is not controversial. Any perceived lack of adequate training does not reflect adversely on the officer herself.

My comments in this regard were not intended to be critical of the Project Officer personally. However, I believe closer attention to training is necessary within the Department to ensure that similar situations do not recur.

After considering all the evidence, including the submissions provided to me, I have formed the following opinion and make the following recommendation:

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.

Recommendation 4

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

Appendix 1 - Timeline

November 2004 - Q150 Advisory Committee established by the former Premier, Mr Beattie.

July 2005 – Q150 Unit established.

Early – Mid December 2005 – Discussion(s) between Mr Beattie, Professor Fitzgerald and Mr Rolfe about the History of Queensland book.

15 December 2005 – Email exchange between Professor Fitzgerald, Ross Rolfe (former Director-General of the Department) and the then Deputy Director-General (Policy) in the Department) indicating that discussions had occurred between the Premier, Ross Rolfe and Professor Fitzgerald about Professor Fitzgerald undertaking the contract. This includes details of payments, dates, research assistants, corporate entity involved and travel arrangements.

Email exchanges involving the Business Manager, the Purchasing Officer, the Contracts Officer and others in relation to the terms of the contract.

Mid December 2005 – Implementation meeting with a number of Department staff, including the first Director and the Deputy Director-General (Policy) about the details of the agreement.

20 December 2005 – Professor Fitzgerald emails details of the book he intends to write to Ross Rolfe, indicating it will be published by the University of Queensland Press (UQP), opening with the line ‘I am very pleased to be writing the Official 150th Anniversary History of Queensland for the Premier and the people of Queensland’.

29 December 2005 – Email from Ross Rolfe to Professor Fitzgerald informing him that the Premier would be discussing the project with ‘Cabinet colleagues’ before the end of January and that funding arrangements would also require approval at that time.

Early January 2006 – Primary responsibility for the contract process is moved to the Deputy Director-General (Governance).

19 January 2006 – Professor Fitzgerald emails the first Director detailing his requirements in relation to research assistants, and also indicating that UQP would require a \$20,000 subsidy to publish the book.

3 February 2006 – Email exchange between Professor Fitzgerald and the first Director regarding Ross Rolfe’s discussions with UQP, and agreement to provide the subsidy.

24 February 2006 – Submission to CBRC personally signed by the Premier.

1 March 2006 – The first Director and the Purchasing Officer endorse the ‘Operational Contractor (Professional) Recommendation’ form which seeks to except this contract from the need for tendering. [The Project Officer] signs as the officer who carried out ‘exception research and offer evaluation’. Ross Rolfe’s signature appears as the approving officer, but is not dated.

2 March 2006 – CBRC approval granted for the contract.

10 March 2006 – Professor Fitzgerald terminates his contract with UQP for revision of volumes 1 and 2 of his 2001 *History of Queensland* publication.

30 March 2006 – Contract with Professor Fitzgerald signed by Ross Rolfe for and on behalf of the State of Queensland.

March 2006 – Advertisements for research assistants in the *Courier Mail* and the *Australian*.

August 2006 – Email exchange between Professor Fitzgerald, Ross Rolfe, the second Director and the Deputy Director-General (Governance) about changing the order and timing for production of various sections of the book.

21 September 2006 – The Purchasing Officer and second Director endorse the exemption document for UQP subsidy. Ross Rolfe approves but does not date the document.

30 October 2006 – Deed of variation approved by the second Director to: clarify requirements under the contract, amend the due dates for various sections of the book.

5 September 2007 – Mr Beattie announced in Parliament that, as part of the Q150 activities, a book was to be commissioned on the history of Queensland.

14 November 2007 – Professor Peter Coaldrake (Vice-Chancellor of QUT and Director of the Q150 project) emails the Deputy Director-General (Governance) indicating he had met with Professor Fitzgerald and had agreed that

- the reality was that the two research assistants were now actually co-authors;
- the book should not be a political history; and
- it would be advisable to obtain the services of an expert reader for the book on the basis that this would be 'reassuring for all of us involved in Q150, given the criticism levelled by some of the historian community regarding the commissioning of the work'.

17 April 2008 – Deed of variation approved by Ken Smith to change references from 'research assistant' to 'co-author'.

July 2008 – Agreed delivery of the manuscript.

June 2009 – Scheduled release of the book.

Appendix 2 – Exemption document 1

Department of the Premier & Cabinet		OPERATIONAL CONTRACTOR (PROFESSIONAL) PROPOSAL / RECOMMENDATION	
Output	Queensland 150 th Celebrations	Sub-output	
Project Manager	Ross Rolfe	File Ref	
Funds available		Phone	
Cost Centre	TBC	Account Code	
Contractor Number		To be inserted by Business Support	

DETAILS OF PROPOSED CONTRACTOR SERVICES

Title	Queensland History Project		
Reason for Contractor Services	It has been determined that no expertise exists within the Department to carry out the services required to research and write this publication.		
Timeframe: Start Date:	March 2 2006	End Date:	July 30 2009
Cost (excluding GST)	\$280,553	GST	\$28,055
Total (including GST)	\$308,608		
Objective	To research and write a book celebrating the history of Queensland to coincide with the State's 150 th anniversary celebrations in 2009.		
Specific tasks milestones and time frames	<p>The Contract Services consist of:</p> <ul style="list-style-type: none"> Researching and developing content for the manuscript and final book; Producing the manuscript, in hardcopy and electronic format, constituting a final book of approximately 350-400 pages including photographs and index; Identifying themes, issues and events around which the book may be organised; Sourcing appropriate photographs and illustrations that complement the manuscript; Submitting sections of the manuscript to the Project Manager for review and approval on a four monthly basis over the term of the contract; Incorporating into the manuscript and final book the matters and underlying principles described in Schedule 1 of the Contract; Liaising regularly with the Project Manager, including attending monthly meetings and discussing the possible presentation and publication of the book in other formats; Reviewing and correcting errors, misprints and omissions in page proofs of the book; and Assisting with promotion of the book. <p>The Contractor is to submit a complete final manuscript, acceptable in terms of form and content and incorporating all amendments, by no later than 1 June 2008.</p>		

Outcomes	Publication of the book to coincide with Queensland's 150 th Anniversary Celebrations in 2009.
Terms of reference	See Contract Services Specification above.

DETAILS OF RECOMMENDATION

Name of recommended contractor	Ross Fitzgerald Consultancy Pty Ltd
ABN:	<input type="text"/> Registered for GST? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Name of Principal (Key) contractor on project.	Professor Ross Fitzgerald
Payment Milestones	Payments to be made in fortnightly instalments on presentation of a valid tax invoice by Ross Fitzgerald Consultancy Pty Ltd and submission of manuscript sections acceptable in form and content to the Project Manager.

DETAILS OF EXCEPTION**BASIS OF EXCEPTION APPROVAL BEING SOUGHT**

Exceptions from inviting competitive offers

- a used standing offer and/or preferred supplier arrangements
- b genuine urgency exists
- c specialist or confidential nature

JUSTIFICATION

Provide details for a), b) and c)

It has been determined that the contracting services in this case are of a specialist nature and that genuine urgency exists to deliver the services within the required timeframe.

It is reasonable that they be undertaken by Professor Fitzgerald as he has the demonstrated professional expertise and experience to research and write a book about the history of Queensland to be published to coincide with the deadlines of Queensland's 150th anniversary celebrations in 2009.

OFFICER/S WHO CARRIED OUT EXCEPTION RESEARCH & OFFER EVALUATION

Name	Designation	Signature
<input type="text"/>	Project Officer	<input type="text"/>

ENDORSEMENTS

1. BRANCH MANAGER ENDORSEMENT This proposal is endorsed and funds are available. Signature & Name <input type="text"/> Date <input type="text" value="1/3/06"/>
2. Certified Purchasing Officer OR Business Support. This Contractor Proposal complies with the Department's Operational Contractor (Professional) Procedure and is in accordance with the State Purchasing Policy. Signature & Name <input type="text"/> Date <input type="text" value="1/5/06"/>

APPROVAL

3. Delegate I approve this proposal
Signature <input type="text" value="Ross Rolfe"/>
Name <input type="text" value="Ross Rolfe"/>
Position <input type="text" value="Director-General, Department of the Premier and Cabinet"/> Date <input type="text"/>

Appendix 3 – Exemption document 2

Department of the Premier & Cabinet

OPERATIONAL CONTRACTOR (PROFESSIONAL) PROPOSAL / RECOMMENDATION

Use this form when only one quote is required or an exception from inviting competitive offers is sought and an acceptable offer has already been obtained and evaluated.

Output	Queensland's 150 th Celebrations	Sub-output	Queensland History Project	File Ref	
Project Manager	Ross Rolfe			Phone	
Funds available		Account Code			
Cost Centre					
Contractor Number		To be inserted by Business Support			

DETAILS OF PROPOSED CONTRACTOR SERVICES

Title	Publication and Distribution of History of Queensland		
Reason for Contractor Services	It has been determined that no expertise exists within the Department to carry out the services required to edit, typeset, design, print, bind, distribute and market this publication.		
Timeframe: Start Date:	October 2006	End Date:	July 2009
Cost (excluding GST)	\$24,000	GST	\$2,400
Total (including GST)	\$26,400		
Objective	To publish and distribute a book celebrating the history of Queensland to coincide with the State's 150 th anniversary celebrations in 2009.		
Specific tasks milestones and time frames	<p>The contract services consist of:</p> <ul style="list-style-type: none"> • Editing manuscript • Preparation of index • Design (cover and internal) • Printing (minimum print run of 3000 paperback copies for book trade distribution) • Provision of 500 hardback copies gratis to the Department • Marketing and publicity to the book trade nationally • Warehousing • Sales and Distribution <p>Timeframes:</p> <ul style="list-style-type: none"> • June 2008: Delivery of final manuscript by the Department to the publisher • July – September 2008: Editing, design and typesetting • September 2008: sign-off of final page proofs • October 2008 – March 2009: book production and pre-sales publicity • June 2009: Publication launch 		

Outcomes	Publication of a large format, illustrated book of approximately 400 pages using the manuscript and illustrations provided by the Department, to coincide with Queensland's 150 th Celebrations in 2009.
Terms of reference	See Contract Services Specification above

DETAILS OF RECOMMENDATION

Name of recommended contractor	University of Queensland Press		
ABN:		Registered for GST?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Name of Principal (Key) contractor on project.	, Publisher		
Payment Milestones	A production subsidy of \$24,000 (plus GST) to be paid to UQP to facilitate publication of the book, to be staged as follows: <ul style="list-style-type: none"> • \$8,000 on signature of contract • \$8,000 on delivery of manuscript to the publisher • \$8,000 on delivery of final page proofs 		

DETAILS OF EXCEPTION

BASIS OF EXCEPTION APPROVAL BEING SOUGHT		
Exceptions from inviting competitive offers		
a	<input type="checkbox"/>	used standing offer and/or preferred supplier arrangements
b	<input checked="" type="checkbox"/>	genuine urgency exists
c	<input checked="" type="checkbox"/>	specialist or confidential nature
JUSTIFICATION		
Provide details for a), b) and c)		
It has been determined that the contracting services in this case are of a specialist nature and that genuine urgency exists to deliver the services within the required timeframe.		
It is reasonable that these services be provided by the University of Queensland Press (UQP) as it has the demonstrated capacity, expertise and experience to publish the book to a high standard within the timeframe required. UQP also has the marketing, sales and distribution capacity and expertise required to ensure successful promotion and distribution of the book.		
OFFICER/S WHO CARRIED OUT EXCEPTION RESEARCH & OFFER EVALUATION		
Name	Designation	Signature
	Project Officer	

ENDORSEMENTS

1. BRANCH MANAGER ENDORSEMENT	
This proposal is endorsed and funds are available.	
Signature & Name	Date
<input type="text"/>	21.09.06
2. Certified Purchasing Officer OR Business Support.	
This Contractor Proposal complies with the Department's Operational Contractor (Professional) Procedure and is in accordance with the State Purchasing Policy.	
Signature & Name	Date
<input type="text"/>	21/9/06

APPROVAL

3. Delegate	
I approve this proposal	
Signature	<input type="text"/>
Name	Ross Rolfe
Position	Director General, Coordinator-General, Department of the Premier and Cabinet
Date	<input type="text"/>

