



Our ref:DOC/17/210537

27 December 2017

PRIVATE AND CONFIDENTIAL

By email: roy.green@uts.edu.au

Dear Professor Green,

I refer to your written request for advice received on 24 December 2017 regarding ethics and integrity issues arising from your new role.

As a statutory office holder¹ you are a designated person under section 12(1)(b) of the *Integrity Act 2009* (Qld), and I am required to provide the advice that you seek. In so doing I am not able to provide you with legal advice.

I also draw your attention to your obligation under section 15(4) of the *Integrity Act 2009* (Qld) to disclose to me all information relevant to an ethics or integrity issue. Any omission to provide information, whether intentional or not, can directly and significantly affect and alter the advice I provide to you.

For your information, this advice is set out as follows:

1. Facts of situation as provided by you;
2. Advice in response to request including:
 - a) Relevant standards,
 - b) Discussion of issues; and
3. Summary.

¹ Under section 209 of the *Queensland Competition Authority Act 1997* (Qld).

1. Facts of situation as provided by you

You say:

I gather Ray Rapinette from QCA has already been in touch to foreshadow my intent to notify a potential conflict of interest in my role as Chair of the Queensland Competition Authority.

I have just been appointed Chair of the Port of Newcastle, which provides port services to coal customers in NSW. While this is a separate jurisdiction and would not in the view of Mr. Rapinette or myself involve a conflict of interest, we are aware that the perception of such a conflict may arise among QCA regulated entities – Aurizon Network, Queensland Rail, Dalrymple Bay Coal Terminal.

To address this potential conflict of interest, I will be writing to the regulated entities and relevant customers informing them of my new appointment. I have already notified the QCA Board and Management, and have indicated that I will not participate in any decisions where a perception of bias or interest, however unlikely, may arise. Likewise at PON, I will exclude myself from decisions which have or may have implications for QLD regulatory processes in which the QCA has involvement.

I will be advised by you as to any further steps I might need to take. Mr. Rapinette can provide additional information on the scope and significance of decision-making at the QCA and possible points of intersection with PON.

2. Advice in response to request

a) Relevant Standards

As a statutory office holder you are bound by the *Queensland Competition Authority Act 1997 (Qld)*, and under s. 21(3) of the Integrity Act I am required to have regard to any relevant codes in providing advice to you.

Queensland Competition Authority Act 1997 (Qld):

Under the section titled, 'Disclosure of interests' (s.219), the Queensland Competition Authority Act sets out the process to follow if a Director of the Board of the Queensland Competition Authority has a relevant indirect or direct interest in an issue being considered, or about to be considered, by the authority (s. 219(1)(a)); and where the interest could conflict with the proper performance of the member's duties about the consideration of the issue (s.2019(1)(b)). The actions to follow are:

'(3) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the authority.

(4) As soon as practicable after the nature of the interest is disclosed, the authority must give written notice of the disclosure to the Minister.

(5) Unless the Minister otherwise directs, the member must not—

- (a) be present when the authority considers the issue; or
- (b) take part in a decision of the authority on the issue.'²

Conflict of interest:

A conflict of interest is defined in section 10(1) of the *Integrity Act 2009* (Qld) as:

'A *conflict of interest*, involving a person, is an issue about a conflict or possible conflict between a personal interest of the person and the person's official responsibilities'.

Whether such a conflict exists is to be judged objectively – that is, what would be the view of the reasonable member of the public, properly informed. Perception is a very significant aspect in this field, and it is not adequate to respond to a situation where a perceived conflict exists by saying that you, as an individual, can manage such conflict because you will not allow inappropriate considerations to influence you. Therefore, it is critical to seek advice as you have done.

A conflict does not arise from the simple fact that you are a statutory office holder. It is necessary for you to have had, or be having, some specific official responsibility in relation to a particular matter. As well, the fact that a conflict arises is not problematic in and of itself; it is how a conflict is managed that is important.

In each case it is necessary to consider the facts and to strike a balance which would be perceived as reasonable by a fair-minded individual who knows all the facts. Where conflicts of interests, or conflicts of duties exist, these must be resolved in favour of the public's interest.

Conflict of Duties

The functions of the Board of the Queensland Competition Authority are set out in the Queensland Competition Authority Act, and you would be aware of these.

The question then is whether the addition of your new role might interfere with your ability to fulfil your obligations and functions under the Queensland Competition Authority Act, and as a statutory

² See *Queensland Competition Authority Act 1997* (Qld), s.219. Retrieved 27 December 2017.
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1997-025#sec.219>

office holder these functions take precedence over any other activities you take part in.

b) Discussion of Issues

Although there may be perception of a link between your duties as Chair of the Queensland Competition Authority, and your new, additional role as Chair of the Port of Newcastle, I do not believe that a reasonable member of the public, properly informed, would consider that a conflict of interest or a conflict between duties has arisen simply because you hold the two positions.

A conflict will only arise if you have:

- (i) Some specific official responsibility as Chair of the Queensland Competition Authority which a reasonable person may consider might be influenced by your role as Chair of the Port of Newcastle; and
- (ii) Where a reasonable person might perceive that, due to the nature of your work, you might seek to gain an advantage or benefit or some kind for you or the Port of Newcastle; or
- (iii) Where a reasonable person might perceive that you, when acting in an official capacity as Chair of the Queensland Competition Authority, were not able to bring an objective mind to a decision.

I am not fully aware of the nuances with the two roles, so I would recommend that you stay vigilant for potential areas of concerns.

I agree with your strategies to manage the situation including that you have already declared an interest in the Port of Newcastle to the Queensland Competition Authority, and will notify relevant stakeholders in writing.

I would also recommend that you notify the relevant Minister, and update your Statement of Interests within one month of your date of appointment to the Port of Newcastle.

If a situation arises that would raise a concern in a reasonable member of the public, I would advise that you err on the side of caution, and declare a potential conflict of interest to the next meeting of the authority as soon as practicable after the relevant facts come to your knowledge. As is consistent with the Queensland Competition Authority Act, you will also need to provide written notice to the Minister of the potential conflict of interest or duties.

The strategies you propose with respect to absenting yourself from any deliberations and decision-making about a relevant issue are also sufficient to manage any potential conflict issues.

Although I hope the situation does not arise, I must raise one concern with you. Practical considerations dictate that you cannot continue to fulfil both positions, and undertake their responsibilities, if the extent of any conflicts of interest, or conflicts between duties, requires you to absent yourself from meetings of the Queensland Competition Authority on too many occasions. If this situation arises, you will need to make a decision about your ability to continue on in both roles.

3. Summary

Based on the information you have provided to me, I am of the view that a reasonable member of the public, properly informed, would not consider there to be a current conflict of interest between your responsibilities as Chair of the Queensland Competition Authority, and Chair of the Port of Newcastle.

Should a conflict of interest arise in the future, I am satisfied with the strategies you propose to implement to manage the conflict.

Of course you are most welcome to contact me should you require additional advice, or should a situation arise that you would like more specific advice about.

Under s.27 of the Integrity Act 2009, you may disclose this letter as you see fit. However, in the interests of transparency, should you choose to disclose this advice I would strongly urge you to disclose this advice in full.

Please don't hesitate to contact me should you require any further assistance.

Yours sincerely



Dr. Nikola Stepanov PhD (Melb.)
QUEENSLAND INTEGRITY COMMISSIONER

Note: The Right to Information Act does not apply to this document and the enquiry to which it responds – *Right to Information Act 2009 (Qld), schedule 1, section 6.*