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State Library of Queensland

REVIEW

RACHEL HUNTER
Executive Summary

This Review was commissioned by the Minister for Housing and Public Works and Minister for Science and Innovation, in consultation with the State Library Board Chair, on 25 August 2015, to assess the process and governance instruments applied by the State Library of Queensland in addressing a sensitive human resource management and misconduct matter (the MacGregor matter), with a view to providing learnings that enhance the control environment to mitigate future risk to the Library Board and its employees and ensure confidence in the management of the State Library of Queensland (SLQ). This Review is not an investigation, rather it is intended to assess how the matter was managed, to inform management of similar matters in the future. The Terms of Reference for the Review are at Attachment A.

Review Process

The Review process has involved a desktop analysis of files held by the SLQ on the matter. In addition, the Review has responded to requests for interviews and received and considered a number of confidential submissions.

The Review was not an investigation, however it was required under its terms of reference to assess the processes of managing the matter, including the decision making, staff management and communication by the State Librarian and/or the Library Board of Queensland.

The Terms of Reference required recommendations for future action based on learnings derived from the Review. These included recommendations on the protocols, policies and procedures of the State Library of Queensland; the current operating model between State Library of Queensland, the department and the Minister’s Office on any process, system, or organisational issues; and appropriate governance, communication and risk management arrangements for the State Librarian, Library Board of Queensland and the department.

The timeframe and complexity associated with the management of the matter/s are best reflected in a chronological summary of facts. To that end a summary of facts has been constructed from primary source material provided to the Review.

Issues and legal matters arising from the management of the investigation into the allegations of misconduct have been ongoing for three years. The Review has been conducted understanding that one matter remains ‘live’ and that determinations on the matter remain subject to consideration by the Queensland Civil and Administrative Tribunal (QCAT). The Review has outlined the history in relation to the matter (as provided to the Review in documents and submissions), however it was not appropriate for the Review to make comment.

In the event that some material in the draft report contained information adverse to the interests of parties, it was important that the Review process provided for procedural fairness. To that end, the following processes applied.

Procedural Fairness

A decision maker has an obligation to be fair to those who might be affected by his or her decision. In a review such as this, that requires the decision maker to adhere to the principles of procedural fairness, understanding the review is not an investigation.
In the final stages of the Review, in order to afford procedural fairness the following process steps applied:

1. Relevant sections of the draft report were provided to persons whose interests may have been adversely affected in order to provide them natural justice.
2. Consideration of all submissions received after providing the draft report to persons whose interests may have been adversely affected.
3. Review of the draft report in the context of additional evidence received.

Background:

In October 2012, an allegation of misconduct by a senior officer - Mr Bruce MacGregor, Director of Corporate Services (DCS) - from the State Library of Queensland, were reported to the Director-General of the Department of Science, Information Technology and Innovation (DSITI). The allegation was that he had used a mobile phone to take covert photographs of a Crown Lawyer during an Anti-Discrimination Commission Queensland (ADCQ) hearing. The incident was witnessed and reported by a State Library employee who was also attending the hearing. The allegations were referred by the Director General to the State Librarian for investigation. The State Librarian referred the matter to the Crime and Misconduct Commission (CMC). The CMC considered the allegations and referred the matter back to the State Librarian to investigate in a disciplinary context.

The State Librarian commenced an independent investigation of the allegations, which resulted in an interim report provided in January 2013.

When advised of the allegations by the State Librarian, Mr MacGregor collapsed at work, was voluntarily hospitalised, and did not return to the workplace. Mr MacGregor gave notice of his resignation on 22 February 2013, with a prospective resignation date of 12 July 2013. He remained on sick leave for this period.

There was no further investigation of the matter.

However the management of the MacGregor matter gave rise to a series of legal actions taken against and by the State Library. One of those actions has been the subject of a recent finding for the appellant in the Industrial Court where Justice Martin found that “...the effect of the various omissions and the steps which were taken constitute management action which was not reasonable.” A second action alleging reprisal by SLQ management against the officer who reported the actions of Mr MacGregor, remains subject to QCAT consideration.

The management of the investigation (and the matters arising) have raised a number of process issues regarding the nature and timeliness of management response, SLQ communication/escalation of issues to the Department and the Minister; communication and handling of the matter within the SLQ workplace; and operating and governance arrangements between SLQ and the department.

In summary, the Review of the process and governance instruments applied by the State Library of Queensland to address the MacGregor matter has revealed a need to strengthen governance and communication related to the management of such matters within the Library, and across the portfolio.
The Review has resulted in the following recommendations:

1. An SLQ Integrity Officer role be established to facilitate relevant integrity system training, and act as a contact for information, complaints or public interest disclosures (PIDS) related to inappropriate conduct such as fraud and corruption; sexual harassment; or corrupt conduct.

2. SLQ institute formal leadership and management training on the Queensland Integrity regime and system and refresh this training annually. Specifically the training should include: the role of integrity bodies; the Code of Conduct; Corrupt Conduct; PIDS; Complaints management; and policies and procedures governing the conduct of employees at the State Library Queensland as they relate to conduct befitting a public servant or public official.

3. All staff be provided training on induction and then annually on the Code of Conduct, Use of work issued ICT devices; Sexual Harassment; Making a Complaint; Corrupt Conduct and Public Interest Disclosure.

4. Training be developed and delivered for all SLQ staff to enable them to understand the role of the integrity agencies in the Queensland Integrity system, to assist an understanding of their rights and responsibilities with respect to making complaints and/or reporting misconduct to the appropriate jurisdiction.

5. Professional development be provided to SLQ Executive Team members on the integrity and accountability frameworks for statutory bodies, to better their understanding of their accountabilities in the context of those of the Board, SLQ, the department, and the portfolio Minister.

6. Professional development with leadership, management and staff on integrity issues be conducted in ways which are interactive and engaging, rather than on-line and compliance based.

7. The role of the Departmental observer on the Library Board be clarified (in terms of purpose and accountability) to ensure reporting and communication responsibilities are vested with the Board; in recognition of both the Board’s independent statutory role, and the respective public service accountabilities of the officer.

8. The relationship and shared accountabilities between the proposed role of SLQ Integrity Officer, the Integrity Unit in DSITI, and the integrity services available to SLQ through the Corporate Administration Agency be mapped, clarified and strengthened.

9. Legal advice be secured to determine how would be possible for affected staff, and other staff who have reasonable grounds to believe they may have been affected, to view the unidentified photos of women (in business attire in business settings and/or in public settings) should they wish to do so.

10. Given the protracted history of legal actions to date, the State Librarian and Executive team be provided training on Model Litigant principles.

11. The SLQ work with the ADG DSITI to develop a Charter of Responsibilities which provides an agreed governance, accountability and business operations framework to inform and improve the current decision, reporting and communication operating model between the SLQ, the department and the Minister’s Office.

12. The Board handbook be updated to incorporate the communications protocol and the Charter of Responsibilities to be produced in accordance with Recommendation 11.

13. All Board delegations and the current SLQ Delegations Manual be reviewed annually and formally approved by the Board.
14. That consideration be given to the current construct of the role of State Librarian/CEO, and whether responsibility for organisational operations might better be managed by delegation of the State Librarian to a Chief Operating Officer role (understanding the Act provides that The State librarian may delegate the librarian’s powers (including a power delegated to the librarian by the Board) to— (a) an appropriately qualified employee of a department or another government entity performing work for the Board under a work performance arrangement; or (b) an appropriately qualified employee of the Board accountable to the State Librarian - [s 20] Libraries Act 1988 Part 2 The Library Board Page 12 Current as at 22 November 2012).

15. The State Librarian and the Executive Team meet with the Board to discuss and document operating protocols which address the issues of internal governance arising from this Review.

16. The State Librarian and the Executive Team meet with the Assistant Director General, DSITI to advise of these protocols, and incorporate requirements to ensure appropriate departmental oversight of the role and function of the SLQ as it relates to the Minister’s accountabilities.

17. The role of Board Officers other than the State Librarian, be reviewed, understanding such officers are not subject to post-termination disciplinary action as provided for in the Crime and Corruption Act 2001 (Current as at 14 May 2015).

18. Induction procedures for members of the Senior Executive Team (including Board employees) and for new Board members include information on the accountabilities of Ministers of the Crown to the Parliament and the Executive for the performance and public expenditure of statutory bodies in their portfolios; the statutory functions of the Board; and the role and responsibilities of the Executive in relation to the State Librarian, the Board, the department and the Minister.

19. Any ongoing issues affecting the implementation of the new communications protocols be shared by parties to the protocols and used as case-study material to better inform and streamline future interaction.

20. SLQ initiate regular meetings with the Executive Director, DSITI Media and Content (Communication and Engagement), to discuss a forward calendar of events, issues or matters requiring ongoing reporting; and to actively seek and provide feedback on the operation of the communications protocols.

21. Review recommendations are shared with the relevant integrity agencies (once all related legal actions are resolved) to assist improved access to and navigation of their services.

22. The Division of Workplace Health and Safety Queensland (WHS) be consulted to provide advice on the management of such matters in the future in accordance with employer obligations under the Work Health and Safety Act 2011 (WHSA).

23. Following the QCAT determination on a related legal matter, the Board and Executive review relevant SLQ documentation and consult with WorkCover and QComp to inform the management of such matters in the future.
Attachment A

State Library of Queensland review - Terms of Reference

BACKGROUND:

In 2012 a serious workplace matter came to the attention of the then Director-General, DSITI on 17 October 2012 and subsequently, the State Librarian on 22 October 2012. The State Librarian had responsibility for the management of the matter. There have been no adverse findings made to date against the SLQ in the handling of the matter in relation to the investigation and actions as a result of the investigation.

However, issues have been raised regarding the timeliness of the response, the communication/escalation of issues to the department and the Minister, communication and handling of the matter within SLQ workplace, and operating and governance arrangements between SLQ and DSITI.

The Industrial Court of Queensland is currently considering an appeal of a Queensland Industrial Relations Commission decision to reject an application for compensation by a State Library of Queensland employee.

The focus of this review is to assess the process and governance instruments applied by the State Library of Queensland in addressing this matter with a view to providing learnings that enhance the control environment to mitigate future risk to the Library Board and its employees and ensure confidence in the management of the State Library of Queensland.

SCOPE:

The review will:

• Assess the overall management of the issue including the decision making process, staff management and communication by the State Librarian and/or the Library Board of Queensland.

• Review the referrals that were made and the actions resulting.

• Assess the handling of communications between the State Librarian, Library Board of Queensland, Ministers Office and the Director-General.

• Provide recommendations on the protocols, policies and procedures of the State Library of Queensland based on learnings derived from this review.

• Provide recommendations on the current operating model between State Library of Queensland, the department and the Minister’s Office on any process, system, or organisational issues that should be strengthened to improve management of similar matters in the future.

• Provide recommendations on appropriate governance, communication and risk management arrangements for the State Librarian, Library Board of Queensland and the
department to ensure appropriate departmental oversight of the role and function of the State Library of Queensland in providing appropriate and timely advice to the Minister relevant to the Minister's accountability in their portfolio.

TERM:

It is expected that the review will be completed within four weeks of engagement.