

Integrity and Other Legislation Amendment Bill 2022

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Grace Grace MP Minister for Education, Minister for Industrial Relations and Minister for Racing

Title of the Bill

Integrity and Other Legislation Amendment Bill 2022

Objectives of the Amendments

Clause 15 in the Bill implements the Coaldrake Report recommendation in relation to the 2013 Finance and Administration Committee Inquiry and the 2017 Strategic Review of the Auditor-General by amending section 35 of the *Auditor-General Act 2009* to give the Auditor-General discretion to conduct audits of matters relating to the financial administration of public sector entities if requested by Parliament.

In its report on the Bill, the Chair of the Economics and Governance Committee in his foreword commented that the “bill would define the Auditor-General as an Officer of the Parliament, yet at the same time provides the Auditor-General with the capacity to ignore an audit request by the Queensland Parliament. This seems at odds with the primary democratic sovereignty and role of the Parliament and should be further considered.”

A policy objective of the amendments during consideration in detail (ACiDs) of the Bill is to remove clause 15 from the Bill in response to the Chair’s concerns.

Amendments to the *Magistrates Act 1991* (Magistrates Act) which are unrelated to the Bill are also proposed to be progressed as ACiDs of the Bill. The policy objective of these amendments is to retrospectively validate the appointments of, and any relevant exercise of jurisdiction by, particular acting magistrates who, during the period between 27 June 2019 and 1 July 2022, were purportedly appointed to act as magistrates but were ineligible to be appointed because

they were 70 years or more at the time of their appointments (invalidly appointed acting magistrates).

Achievement of the Objectives

The ACiDs will achieve the policy objectives by amending:

- the Bill to remove clause 15; and
- the Magistrates Act to retrospectively validate (by declaration) the appointment of, and exercise of jurisdiction by, the invalidly appointed acting magistrates.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no costs to government in implementing the amendments.

Consistency with Fundamental Legislative Principles

The proposed amendment to clause 15 is consistent with the fundamental legislative principle of having sufficient regard to the institution of parliament by ensuring the Auditor-General, as an officer of Parliament, must conduct an audit of a matter relating to the financial administration of a public sector entity if requested by resolution of the Legislative Assembly.

Section 4(3)(g) of the *Legislative Standards Act 1992* (LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. The proposed amendments to the Magistrates Act will retrospectively validate the appointments of, and any relevant exercise of jurisdiction by, the invalidly appointed acting magistrates.

These amendments may be considered a departure from the fundamental legislative principle under section 4(3)(g) of the LSA, as they retrospectively affect the rights of persons who appeared before those acting magistrates to have their matters heard and decided. Further, the amendments retrospectively affect the rights of persons to challenge those decisions on the grounds of invalidity. However, any departure from this fundamental legislative principle is justified as the amendments will provide certainty to individuals and the justice system as a whole by ensuring the validity of the appointments of, and any relevant exercise of jurisdiction by, those acting magistrates.

Consultation

The Department of the Premier and Cabinet attended the Economics and Governance Committee public briefing on 24 October 2022. The Committee also held public hearings on 7 November 2022 in relation to written submissions received in response to the Bill.

The Chief Magistrate has been consulted on the amendments to the Magistrates Act.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 (Commencement) to provide that part 3A (Amendment of the Magistrates Act 1991) as inserted by Amendment 3 commences on assent.

Amendment 2 amends clause 15 (Amendment of s35 (Audits at request of Legislative Assembly) to omit the clause.

Amendment 3 inserts part 3A of the Bill which amends the Magistrates Act by inserting new division 11 (Validation provision for particular acting magistrates) in part 10 (Transitional and validation provisions). The division comprises new section 74 (Validation of purported appointment of particular acting magistrates). The section applies if—

- during the period between 27 June 2019 and 1 July 2022 a person was purportedly appointed to act as a magistrate under section 6(1)(b); and
- on the day of the purported appointment the person was 70 years or more.

The section declares that:

- the purported appointment of the person is, was and always has been, as valid as it would be or would have been had the person been less than 70 years throughout the period of the purported appointment;
- a relevant exercise of jurisdiction by the person is, was and always has been as valid as it would be or would have been had the person been less than 70 years throughout the period of the purported appointment; and
- the person did not cease to act as a magistrate under section 42(d) only because the person was 70 years or more while purportedly acting as a magistrate.

Amendment 4 amends the long title of the Bill as a consequence of Amendment 3.