

Integrity and Other Legislation Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Annastacia Palaszczuk, Premier and Minister for the Olympics make this statement of compatibility with respect to the *Integrity and Other Legislation Amendment Bill 2022* (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

On 28 June 2022, Professor Peter Coaldrake AO delivered *Let the Sunshine In: Review of culture and accountability in the Queensland public sector* to the Government.

The report makes 14 direct recommendations and recommends implementation of a suite of other recommendations from former reviews and inquiries, all with the purpose of strengthening the integrity and oversight framework in Queensland.

It is proposed to implement some of these recommendations through the Bill.

The objectives of the Bill are to effect amendments to the following Acts to better promote the independence and authority of the Queensland Auditor-General, the Queensland Ombudsman and the Queensland Integrity Commissioner.

The Bill amends the *Auditor-General Act 2009* to:

- create the Auditor-General as an Officer of the Parliament require them to take an oath;
- remove Queensland Audit Office staff from the operation of the proposed *Public Sector Act 2022* while preserving existing staff employment entitlements and giving staff an option, for a limited time, to return to the public sector;
- give greater autonomy to the Auditor-General to set basic fees; and
- provide greater oversight of the Auditor-General by the relevant parliamentary committee.

The Bill amends the *Integrity Act 2009* to:

- establish the Office of the Queensland Integrity Commissioner (the Office);
- create the new position of deputy Integrity Commissioner;
- provide staff of the Office continue to be employed under the proposed Public Sector Act and provide the Integrity Commissioner with greater autonomy to control the Office including staff;
- amend the definition of ‘designated’ person and provide for an end date for designation;
- revised declaration of interests requirements; and
- create an offence of unregistered lobbying.

The Bill also amends the proposed *Public Sector Act 2022* to establish the Office of the Queensland Integrity Commissioner as a public service entity, providing the Integrity Commissioner with the powers of a departmental chief executive.

The Bill also amends the *Ombudsman Act 2001* so that strategic reviews of the Ombudsman's office are conducted at least every five years instead of the current seven, consistent with the strategic review timeframes for other integrity bodies.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the *Human Rights Act 2019* (HR Act) that are relevant to the Bill are:

- taking part in public life (section 23);
- privacy and reputation (section 25); and
- freedom of expression (section 21).

Taking part in public life

Amendments to the *Auditor-General Act 2009* (AG Act)

The part of this Bill that is relevant to this right is:

- clause 10, new section 19A applies to a person who stops holding office as the Auditor-General, providing that the person must not hold an office in or be employed by a public sector entity for two years after the person stops holding the office; and
- clause 14, new section 29 provides that a person may not be employed in the audit office unless consent has been given to the Auditor-General to obtain certain information about their criminal history.

The Bill also provides that the staff of the Audit Office, including the Deputy-Auditor General, are to be appointed under the *Auditor-General Act 2009* rather than the proposed *Public Sector Act 2022*.

The Bill provides transitional provisions to continue the terms of employment of staff currently appointed, employed or seconded to the Audit Office until such a time as new industrial instruments are negotiated in the future. The Bill also ensures that staff retain existing rights to superannuation and leave entitlements, as well as continuity of service. The Bill contains transitional provisions to enable existing employees to remain public service employees, if they so choose.

These provisions may, if enacted, protect the right to take part in public life.

Amendments to the *Integrity Act 2009 (Integrity Act)*

The part of this Bill that is relevant to this right is:

- clause 34 which amends section 12 to provide that a ‘senior officer’, ‘ministerial staff member’ (except Chiefs of Staff for a Minister) and ‘assistant minister staff member’ are no longer a ‘designated person’ able to request advice from the Integrity Commissioner. It also replaces the power of Ministers and Assistant Ministers to designate a person or person within a class of person with the power to designate a person of a class by regulation.

This is to bring transparency and avoid unmonitored incremental creep in numbers of those who can access Integrity Commission advice.

The Bill also provides for the establishment of the Office, consisting of the Integrity Commissioner, the Deputy Integrity Commissioner and integrity officers. The Deputy Integrity Commissioner and integrity officers are to be employed under the proposed *Public Sector Act 2022 (PSA)*, which is a continuation of current practice.

The Bill creates the Office as a public service entity under the PSA, providing the Integrity Commissioner with the same authority as a chief executive of a department, and confirms that the Integrity Commissioner controls the Office. The changes do not affect the employment conditions or rights of existing staff members.

These provisions may, if enacted, protect the right to take part in public life.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *HR Act*)

Certain restrictions on employment for two years after holding office as the Auditor-General

(a) the nature of the right

Taking part in public life

Section 23 of the HR Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The right protected by section 23 of the HR Act includes a right for every eligible person to have access on general terms of equality, to the public service and to public office.

Participation in the conduct of public affairs is a broad concept and covers all aspects of public administration. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office.

The right in section 23(2), to have access, on general terms of equality, to the public service and to public office, is limited to ‘every eligible person’.

This internal limitation provides for the prescribing of matters such as eligibility for a role in the public service, relevant to Clause 10 of the Bill as discussed below.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The main objects of the *Auditor-General Act 2009* include conferring on the Auditor-General and the Audit Office the functions and powers necessary to carry out independent audits of the Queensland public sector and related entities.

Given this key function, it is essential to safeguard the potential for any real or perceived lack of independence of the Auditor-General and Audit Office.

Clause 10 of the Bill introduces new section 19A which restricts a former Auditor-General from holding an office or being employed a public sector entity for two years after their term. This limitation addresses the real or perceived lack of independence of the Auditor-General, by removing any doubts about the work undertaken during the final part of their term.

It is intended that including this provision will reinforce the independence of the Auditor-General and support increased community confidence in the integrity and impartiality of the role.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation seeks to achieve the main objects of the Act by strengthening provisions relating to the independence of the Auditor-General and any Deputy Auditor-General in carrying out independent audits of the Queensland public sector and related entities.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no less restrictive and reasonably available way of achieving the purpose of the amendments. The approach adopted in the Bill is consistent with a requirement in section 324CI and 324CJ of the Commonwealth *Corporations Act 2001*, which provides that a private sector auditor cannot become an officer of a former audit client for a two year period.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As outlined above, if enacted, the Bill will address the real or perceived lack of independence for the Auditor-General by ensuring the Auditor-General cannot be employed or hold office in a public sector entity subject to an audit for two years after their term. On balance the amendments are required to ensure the Auditor-General's independence, as a key integrity agency for Queensland Government.

- (f) any other relevant factors

Nil.

Restriction on employment unless consent is provided to obtain criminal history information

(a) the nature of the right

Taking part in public life

Section 23 of the HR Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The right protected by section 23 of the HR Act includes a right for every eligible person to have access on general terms of equality, to the public service and to public office.

Participation in the conduct of public affairs is a broad concept and covers all aspects of public administration. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office.

The right in section 23(2) to have access, on general terms of equality, to the public service and to public office is limited to ‘every eligible person’.

This internal limitation provides for the prescribing of matters such as eligibility for a role in the public service, relevant to Clause 14 of the Bill as discussed below.

Privacy and reputation

Section 25 of the HR Act provides that a person has a right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The right might be relevant to laws, policies, acts or decisions that provide for sharing of personal information across or within agencies.

The right to privacy may be affected if a person may not be employed in the audit office unless consent has been given to the Auditor-General to obtain certain information about their criminal history.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Clause 14 of the Bill introduces new section 28 which provides that a person may not be employed or seconded to the audit office unless the person has given written consent to the Auditor-General to obtain the information about the persons criminal history.

New section 29 provides that to decide if a person is suitable to be employed, the Auditor-General may ask the commissioner of the police service for information about the persons criminal history, if the person has provided written consent to obtain this information.

An officer of the audit office is expected to investigate a range of financial matters, necessitating access to sensitive financial records that would otherwise be restricted. It is also possible that staff of the audit office may also be required to conduct on-site investigations on premises where children and young people are present, such as schools and detention centres.

Given this position of trust and the functions of the role, it is necessary for all prospective staff members to be subject to a robust screening regime.

The provisions are consistent with the principles of natural justice. New section 29(5) also provides that the Auditor-General must disclose the criminal history information to the prospective staff member and allow a reasonable opportunity to make representations to the Auditor-General about the information.

New section 29A also provides that disclosure of the criminal history information to another person is subject to a maximum penalty of 100 penalty units, unless the disclosure is permitted in the circumstances provided at subsection (3), including for example, if the disclosure is otherwise required or permitted by law.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation improves the rigour of the employment process for prospective staff members, proportionate to significant position of trust required for officers in the audit office.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The proposed requirements for criminal history screening are consistent with the requirements applying to staff of the Ombudsman Office under the *Ombudsman Act 2001*. There is no less restrictive and reasonably available way to achieve the purpose of these amendments.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Given the position of trust and the functions of the audit office, the Bill will improve the rigour of the employment process by ensuring all prospective staff members are subject to a robust screening regime.

As outlined above, the Auditor-General must disclose the criminal history information to the prospective staff member and allow a reasonable opportunity to make representations to the Auditor-General about the information.

(g) any other relevant factors

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Change in access to Integrity Commissioner advice

(a) the nature of the right

Taking part in public life

Section 23 of the HR Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly

or through freely chosen representatives. The right protected by section 23 of the HR Act includes a right for every eligible person to have access on general terms of equality, to the public service and to public office.

The right in section 23(2) to have access, on general terms of equality, to the public service and to public office is limited to ‘every eligible person’.

This internal limitation provides for the prescribing of matters relating to the role, relevant to Clause 34 of the Bill as discussed below.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Clause 34 of the Bill amends section 12 of the Integrity Act to remove the ability of senior officers of departments, ministerial staff members (except Chiefs of Staff for a Minister) and ‘assistant minister staff members’ are no longer ‘designated persons’ who may directly request advice from the Integrity Commissioner.

The provision is intended to enable Ministers and Chiefs of Staff to be aware of Integrity Commissioner advice being sought by a member of their staff and that full contextual information is provided to the Integrity Commissioner. It is also intended to redirect senior officer departmental staff to seek advice from the department’s ethical standards or integrity units in the first instance, with advice from the Integrity Commissioner sought where required through departmental chief executives or senior executives.

It may be considered that this limits the existing right of senior officers, ministerial staff members and assistant minister staff members to participate in the conduct of public affairs.

However, this does not limit the ability for these persons to identify, consider and recommend to the Minister or Chief of Staff or, in the case of senior officers, their department’s chief executive or relevant senior executive officer, that independent advice from the Integrity Commissioner should be sought. Clause 42 enables Ministers and Assistant Ministers to seek Integrity Commissioner advice involving their staff.

Clause 34 also provides for a regulation to prescribe that a designated person may include ‘a person of a class prescribed by regulation’ and this may, for particular projects and from time to time, include Ministerial staff members and senior officers. This provides scope to expand the range of designated persons, should the need arise.

Staff with existing direct access, impacted by the proposed amendments, will have these rights continue until the Bill commences and according to transitional provisions described below.

Clause 58 of the Bill includes transitional provisions which provide that where senior staff, ministerial staff members and assistant minister staff members cease to be a ‘designated person’ on commencement, the Integrity Commissioner must comply with an existing request (made prior to commencement) for advice on an ethics or integrity issue.

However, the Integrity Commissioner may refuse to give advice in certain circumstances and provide a written explanation. For example, the Integrity Commissioner may refuse to give the

advice if they believe the ethics integrity issue is not related to the person's role in relation to which the person was a designated person.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation has the effect of providing appropriate oversight of requests for integrity advice. Independent advice from the Integrity Commissioner may still be sought where supported by the relevant chief executive. Similarly, ministerial staff will be able to seek advice via their Minister, chief of staff or Assistant Minister.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The approach adopted in the Bill is considered the least restrictive way of ensuring requests for integrity advice are appropriately made and directed to the appropriate body. It does not change the functions of the Integrity Commissioner or the role of departmental ethical standards or integrity units, or the ability of any employee to obtain ethical advice.

For ministerial staff, Clause 34 provides access to the Integrity Commissioner via their Minister or Assistant Minister. Clause 42 enables Ministers and Assistant Ministers to seek Integrity Commissioner advice involving their staff.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Clause 34 of the Bill provides that a 'senior officer', a 'ministerial staff member' (except Chiefs of Staff for a Minister) and 'assistant minister staff member' are no longer 'designated persons' that may directly request advice from the Integrity Commissioner.

This ensures there is oversight of any departmental requests to the Integrity Commissioner, by ensuring that the chief executive (or a senior executive officer) is the designated person (for the department) who may request independent advice from the Integrity Commissioner.

This does not limit the ability for these persons to identify, consider and recommend the department's chief executive that independent advice from the Integrity Commissioner should be sought. Clause 42 also enables Ministers and Assistant Ministers to seek Integrity Commissioner advice involving their staff.

- (f) any other relevant factors

Nil.

Freedom of expression

- (a) the nature of the right

Section 21 of the HR Act provides that every person has a right to hold an opinion without interference and the right to freedom of expression. This includes the freedom to seek, receive

and impart information and ideas of all kinds, whether within or outside Queensland and whether orally, in writing, in print, by way of art or in another medium chosen by the person.

The right to freedom of expression may be affected by Clause 51 of the Bill (new section 71A) which provides a new offence for unregistered lobbyists in relation to certain lobbying activities.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the *Integrity Act 2009* includes encouraging confidence in public institutions by regulating contact between lobbyists and State or local government representatives and contact between lobbyists and key representatives for the Opposition, so that lobbying is conducted in accordance with public expectations of transparency and integrity.

Lobbying itself is not a prohibited activity. However, the Integrity Act establishes a statutory basis for the Register of Lobbyists to ensure that contact between lobbyists and government and opposition representatives is carried out in accordance with public expectations of transparency and integrity.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Section 71 of the *Integrity Act 2009* provides that an entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client. However, there are no sanctions associated with this prohibition.

Recent reviews of Queensland's integrity framework have identified that sanctions for unregistered lobbying are required if the regulation of lobbying is to be effective under the Integrity Act.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The approach adopted in the Bill is a reasonable way of achieving the purpose of the Bill.

Clause 51 inserts a new section 71A into the Integrity Act providing that a lobbyist (as defined in the Act) that is not a registered lobbyist must not carry out a lobbying activity for a third party client.

The offence is a simple offence with a penalty of 200 penalty units.

This characterisation is consistent with the prohibition of a success fee under the *Integrity Act 2009*, which carries a maximum penalty of 200 penalty units. This prohibition goes to the heart of the requirement that lobbying be engaged in ethically and not with the promise of reward for "success".

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Creating an offence for unregistered lobbying is intended to encourage “ethical” lobbying and will underline the fact that lobbying can and does have a significant impact on the business of government.

The public should be able to easily access information about who is lobbying government, and this information should be up to date and accurate.

- (h) any other relevant factors

Nil.

Conclusion

In my opinion, the *Integrity and Other Legislation Amendment Bill 2022* is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

THE HON ANNASTACIA PALASZCZUK
PREMIER AND MINISTER FOR THE OLYMPICS

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