Integrity and Other Legislation Amendment Bill 2023

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Title of the Bill

Integrity and Other Legislation Amendment Bill 2023

Objectives of the Amendments

To progress public sector integrity reforms, the Government committed to implementing the recommendations from 'Let the sunshine in: Review of culture and accountability in the Queensland public sector' (Coaldrake Report) and the 'Strategic Review of the Integrity Commissioner's Functions' (Yearbury Report).

The *Integrity and Other Legislation Amendment Act 2022*, passed by Parliament in November 2022, implemented some of the Yearbury Report and Coaldrake Report recommendations.

The Integrity and Other Legislation Amendment Bill 2023 (the Bill) will implement additional recommendations from the Coaldrake and Yearbury Reports to strengthen the regulation of lobbyists and lobbying activities and enhance the independence of core integrity bodies.

On 1 September 2023, the formerly named Economic and Governance Committee (the Committee) tabled 'Report No. 51, 57th Parliament – Integrity and Other Legislation Amendment Bill 2023', which followed the Committee's detailed consideration of the Bill.

The Committee received 16 submissions from interested stakeholders, including four of Queensland's five integrity bodies. Three of those integrity bodies appeared before the Committee at its public hearing. Stakeholders raised a number of operational issues with the Bill and the amendments address these matters.

While they do not alter the policy intent of the Bill, the amendments will achieve the following:

- Commence certain provisions (prohibition of 'dual hatting' for lobbyists) 60 days after the date of assent, with the remaining provisions to continue to commence by proclamation.
- Enable an extension of the 20-business day timeframe for a parliamentary committee to consider a key appointment to an integrity body.
- Clarify the timing of tabling for independent audit reports of the Queensland Audit Office to ensure consistency with the Financial and Performance Management Standard 2019 (under the *Financial Accountability Act 2009*).
- Add additional functions into the new long title of the *Integrity Act 2009* to remove any doubt the Integrity Commissioner may perform those functions.
- Authorise the Premier to nominate a person or person in a class of persons to be a 'designated person' for a short period of time, to allow that person to seek integrity advice in urgent circumstances.
- Remove four remaining references to 'senior officer' in the *Integrity Act 2009* to ensure consistency with the other amendments to be made by the Bill.
- Strengthen the provisions that prohibit 'dual hatting' and disqualification from future registration as a lobbyist.
- Provide for Integrity Commissioner advice to be requested by chiefs of staff and for ministerial advisors in respect of post-separation obligations.
- Remove duplication of the description of a 'third party client' and contain it within the definition of the term.
- Correct a legacy reference to the *Energy Ombudsman Act 2006*.
- Update the definition of 'government entity' in the *Integrity Act 2009* to ensure consistency with the *Public Sector Act 2022*.

Two additional amendments to be moved relate to the *Evidence Act 1977* to ensure the sexual assault counselling privilege (SACP) framework operates as intended by:

- expressly providing that the court may, for the purpose of deciding an application for leave, order that protected counselling communication be produced to it and consider the communication; and
- clarifying that if protected counselling communication is produced to the court in accordance with an order, the court must not make the communication available, or disclose its contents, to the parties to the proceeding before deciding the application for leave under the SACP framework.

Achievement of the Objectives

Commencement of provisions

The Bill currently commences on a day to be fixed by proclamation.

The amendments provide for staggered commencement of the Act, with (new) Part 3A to commence on assent; (new) Part 4, division 2 to commence 60 days after assent; and the remainder of the Act to commence by proclamation.

New Part 4, Division 2 will carve out the legislative framework for the prohibition of dual hatting and disqualification from future registration under the *Integrity Act 2009*, to enable those provisions to commence ahead of the remainder of the Act. New Part 3A are amendments to the *Evidence Act 1977*.

Strengthening the independence of integrity bodies

Parliamentary committee approval of appointments and remuneration and conditions

The Bill amends the relevant provisions of the integrity bodies' legislation (except for the *Crime and Corruption Act 2001*) to require parliamentary committee approval of recruitment and selection processes; the nominee proposed for appointment; and the remuneration, allowances and terms and conditions for the appointee, prior to the recommendation for appointment being provided to the Governor in Council. For the Crime and Corruption Commission, consultation with the Parliamentary Crime and Corruption Committee (PCCC) is already required as part of the appointment process for the chairperson, deputy chairperson, ordinary commissioner and chief executive officer.

The Bill provides the parliamentary committee with a 20-business day approval timeframe, which is intended to ensure timely decisions on key appointments.

There could be legitimate reasons why a quorum cannot be formed, and a decision made within 20 business days. In the clauses relating to appointments and the remuneration, allowances and terms and conditions for the appointment, the amendments will provide that:

a. the Minister and chair of the committee may negotiate a further period for consideration of not more than 20 business days; and
b. the negotiation must occur prior to the end of the first 20-business day period (the *original period*).

Tabling of report from independent audit of Queensland Audit Office

Under the *Auditor-General Act 2009*, an independent audit of the Queensland Audit Office (QAO) must be conducted each financial year and the subsequent audit report must be provided to the Premier, Treasurer and Auditor-General. Clause 18 of the Bill amends these requirements to provide for the relevant parliamentary committee to also receive a copy of the audit report and for the parliamentary committee to table the audit report within three sitting days of receiving the report.

The Financial and Performance Management Standard 2019 (FPMS) provides that financial statements should not be made public until the annual report for the relevant entity is tabled. To ensure the tabling requirement is not contrary to the FPMS, the amendments clarify that the (independent) audit report will be included in the annual report of the QAO.

Lobbying reforms

Amendment to the Long Title of the *Integrity Act 2009*

Clause 28 of the Bill amends the long title of the *Integrity Act 2009*. The current replacement long title does not include some of the additional functions of the Integrity Commissioner, including approval of a training course, issuing directives and approval of a code of conduct for registered lobbyists.

To provide clear and unambiguous authority for the Integrity Commissioner in relation to these functions, clause 28 of the Bill is amended to include the above functions in the long title.

Premier nomination of 'designated person' in urgent circumstances

Only 'designated persons' under the *Integrity Act 2009* may request advice from the Integrity Commissioner on an ethics or integrity issue. Amendments in the *Integrity and Other Legislation Amendment Act 2022* removed authority for Ministers to nominate persons as 'designated persons'. Instead, a person or class of persons are to be prescribed in regulation. This leaves a very specific list of 'designated persons' prescribed within the *Integrity Act 2009* and does not provide an avenue for urgent ethics or integrity advice to be sought from a person who is not a 'designated person', for example, a critical appointee to a body needed during an emergency (for example, a natural disaster or terror attack), prior to a regulation being made.

To allow for urgent integrity advice to be sought in unforeseen and exceptional circumstances, an amendment to Clause 30 of the Bill will amend section 12 to authorise the Premier to nominate a person, or a person within a class of persons (such as a senior position-holder), who may ask for the Integrity Commissioner's advice on an ethics or integrity issue involving the person. The designation term is limited in that it will lapse 28 business days from the date of nomination. The Premier will be required to advise the Integrity Commissioner of the nomination by way of a signed notice.

Definitions of 'government entity', 'senior officer' and 'senior officer equivalent'

The current definition of 'government entity' in Schedule 2 of the *Integrity Act 2009* refers to a public service office. The term 'public service office' is no longer used in the *Integrity Act 2009* and has been replaced with 'public service entity' in the *Public Sector Act 2022*. Therefore, the definition of 'government entity' is being amended in clause 46 of the Bill to ensure the definition is consistent with the *Public Sector Act 2022*, by replacing the reference to 'public service office' with 'public service entity'.

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, senior officers are no longer 'designated persons' under the *Integrity Act 2009*. Therefore, the amendments to Schedule 2 will remove the definitions for 'senior officer' and 'senior officer equivalent'. Further, consistent with the removal of other references to 'senior officer' and 'senior officer equivalent' throughout the Bill (i.e. clauses 30 and 32-35), remaining references to 'senior officer' and 'senior officer equivalent' in the *Integrity Act 2009* have been identified since introduction of the Bill and are removed from sections 17, 29 and 30 in clause 32, 34 and 35 respectively.

Integrity Commissioner advice requests for ministerial advisors

Request by Chief of Staff

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, chiefs of staff are no longer 'designated persons' under section 12 of the *Integrity Act 2009*. However, it has been identified that a chief of staff may need to request advice about a ministerial advisor (and for the relevant Minister/Assistant Minister to be notified that this has occurred).

The amendments address this through new clause 33A in the Bill, which will insert new section 20CA in the *Integrity Act 2009* to provide that a chief of staff may ask for the Integrity Commissioner's advice on an ethics or integrity issue involving a ministerial advisor who gives advice to the Minister or Assistant Minister (as relevant). The amendment also requires that the chief of staff must give notice of the request to the relevant Minister or Assistant Minister.

Request by former ministerial advisor

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022,* ministerial staff members are no longer 'designated persons' under section 12 of the *Integrity Act 2009*. However, it has been identified that a ministerial advisor may need to seek post-employment advice prior to their employment separation. Obtaining post-separation advice through the Minister while still employed might cause unintended consequences.

The amendments address this through new clause 33B in the Bill, which will insert new section 20D(1A) in the *Integrity Act 2009* to provide that, while still employed as a ministerial advisor or within two years of being employed a ministerial advisor, a person may ask for the Integrity Commissioner's advice on an ethics or integrity issue involving the person that arises from a post-separation obligation.

Third Party Client

In clause 36 of the Bill, 'third party client' is defined in new section 41 of the *Integrity Act 2009*, and new section 46 creates an offence for a person to carry out lobbying activity for a third-party client for reward if they are not a registered lobbyist. The penalty is up to 200 penalty units.

The offence in section 46 provides the criteria for the reward, being 'for a commission, payment or other reward, whether pecuniary or otherwise'. It has been identified that these criteria are better located within the definition of 'third party client' in section 41, rather than section 46, and the amendment to clause 36 achieves this.

Prohibition of 'dual hatting' and disqualification from future registration as a lobbyist

The Coaldrake Report recommends lobbyists be prohibited from carrying out lobbying activity while performing a substantial role for any political party in state election campaigns regardless of which political party subsequently forms government. 'Substantial role' is defined as a senior role with significant involvement in the party's election strategy or policy development. General party membership and volunteering (for example, handing out how to vote material or door knocks) will not be captured.

The Bill amends the *Integrity Act 2009* to provide that:

a. a registered lobbyist cannot perform a substantial role in an election campaign of a political party;

b. a registered lobbyist must notify the Integrity Commissioner, and be removed from the lobbying register, if they intend to perform a substantial role in an election campaign of a political party (noting there are sanctions for non-compliance); and

c. a person is disqualified from being a registered lobbyist for the term of government that follows an election if that person:

   (i) was a registered lobbyist immediately before an election period; and

   (ii) performed a substantial role in an election campaign of a policy party (noting the above requirement to give notice to the Integrity Commissioner).

The effect of these provisions is that a registered lobbyist is disqualified from registration from an election period to the next election (the term of a government), if they perform a substantial role in the election campaign of a political party during the 'election period' (defined as from issue of writ to the day of election). The prohibition and disqualification will only apply to general elections.

The amendments to the Bill better support the intent and implementation of the recommendation from the Coaldrake Report that lobbying regulation be strengthened by an explicit prohibition on the 'dual hatting' of professional lobbyists during election campaigns. The amendments achieve this by requiring that, if at any time during a term of government a person is registered as a lobbyist and subsequently seeks to perform a substantial role in an election campaign, they must de-register as a registered lobbyist (if not already de-registered for any other reason) and are unable to re-register for the remainder of that term of government.

The amendments also provide for the disqualification of a person as a registered lobbyist, as follows:

a. A person is disqualified from registration as a lobbyist after an election and for the term of government if the person has performed a substantial role in the election campaign of a political party during the preceding term of government (including the election period), and that political party forms government after the relevant election.

b. A person is not disqualified from registration as a lobbyist after an election if the person has performed a substantial role in the election campaign of a political party during the preceding term of government, and that political party does not form government after the relevant election.

Noting the concerns raised in the Coaldrake Report, about a lobbyist exercising actual or perceived special influence, the amendments ensure confidence and transparency after an election that a person assisting a political party during an election campaign does not then advocate or lobby that same party as an incoming government.

<u>Legacy reference to the Energy Ombudsman Act</u>

Schedule 1 of the *Integrity Act 2009* refers to the statutory office holders for the purposes of section 40E of that Act. A legacy reference to the *Energy Ombudsman Act 2006* has been identified. The amendment updates this legacy reference to refer to the current name of the Act, being the *Energy and Water Ombudsman Act 2006*.

Amendment of *Evidence Act 1977*

The SACP framework seeks to ensure that victims or alleged victims of sexual assault are not deterred from seeking therapy through fear of having their confidential counselling communications disclosed during legal proceedings. The framework limits the disclosure and use of protected counselling communication during criminal proceedings (committal, bail, trial and sentencing proceedings), proceedings relating to a domestic violence order under the *Domestic and Family Violence Protection Act 2012* (DFVPA proceedings), and civil proceedings arising from the same act or omission as a criminal proceeding or DFVPA proceeding.

SACP is absolute in committal and bail proceedings and is qualified in criminal trials, sentencing hearings, and DFVPA proceedings. In proceedings where the privilege is qualified, a party may apply to the court for leave to produce to a court, adduce evidence of, or otherwise use a protected counselling communication, or otherwise disclose, inspect, or copy a protected counselling communication. The court may grant leave if the applicant satisfies the court that:

- the communication will, by itself or having regard to other documents or evidence produced or adduced by the applicant, have substantial probative value;
- other documents or evidence concerning the matters to which the communication relates are not available; and
- the public interest in admitting the communication substantially outweighs the public interest in preserving the confidentiality of the communication and protecting the victim or alleged victim of a sexual assault offence ('counselled person') from harm.

The SACP framework expressly provides that the court may consider a document or evidence to decide whether it is a protected counselling communication, but does not expressly provide that the court may consider protected counselling communication for the purpose of deciding whether to grant leave.

The Supreme Court of Queensland held in *TRKJ v Director of Public Prosecutions* that the court has an implied power to review protected counselling communication for the purpose of deciding whether the communication will have substantive probative value, as part of its power to hear and determine an application for leave.

The absence of express statutory authority for the court to obtain and consider protected counselling communication for the purpose of deciding an application for leave may result in the court's power to obtain and consider protected counselling communication being legally challenged.

The amendments to be moved during consideration in detail of the Bill ensure the SACP framework operates as intended. The amendments confirm the implied power of the court to consider protected counselling communication for the purpose of deciding an application for leave by expressly providing that the court may order that protected counselling communication be produced to it and that it may consider the protected counselling communication. The amendments also clarify that if protected counselling communication is produced to the court in accordance with an order, the court must not make the communication available, or disclose its contents, to the parties to the proceeding before deciding the application for leave.

The amendments have retrospective effect, and provide that the rights and liabilities of all persons affected by any past exercise, or purported exercise, of jurisdiction of the court in dealing with a leave application and anything else done, or purportedly done, by a court or person in relation to a leave application are the same as they would have been if the provisions introduced by the amendments had been in force when the jurisdiction was exercised or the action was done.

Alternative Ways of Achieving Policy Objectives

Alternatives to de-registration for a registered lobbyist for the remainder of the term of government or for the following term (if the political party wins the election), were considered as follows:

- Disclosure of the individual's role in the political campaign and managing conflicts of interests as they arise or are perceived to arise.
- Imposing a shorter period of disqualification.
- Limiting the disqualification to particular classes of lobbyists, rather than all lobbyists.

However, none of these options satisfactorily addresses the issue of lobbyists having or being perceived to have had, undue influence within a government.

There are no alternative ways to achieve the policy objectives for the remainder of the amendments.

Estimated Cost for Government Implementation

There are no costs to government to implement the majority of the amendments.

The *Evidence Act 1977* amendments are not expected to present any significant costs for government. Any implementation costs will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

The amendments have been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992*.

<u>Premier nomination of 'designated person'</u>

The following has been identified as relevant to the consideration of whether the amendments have sufficient regard to the institution of Parliament.

Delegation of legislative power (section 4(2)(b) of the Legislative Standards Act 1992)

Where the Premier nominates a person or person within a class of persons as a designated person, the 28-day time limitation for the nomination is to allow urgent advice to be sought and provides a timely avenue for advice to be sought by, for example, a critical appointee to a body needed during an emergency (for example, a natural disaster or terror attack). The limitation also serves to implement Recommendation 2 of the Yearbury Report in that it brings transparency to the nomination of a designated person (or persons) and avoids the 'unmonitored

incremental creep' in numbers of those who can access Integrity Commissioner advice beyond which there is capacity to service.

The proposed approach may be viewed as not having sufficient regard to the institution of Parliament by allowing an authority to nominate a person as a designated person despite the Parliament not including the person or class in amended list in the *Integrity Act 2009* (as amended), and thereby delegating the Parliament's legislative power.

The departure is mitigated by reducing the tenure of designation to 28 days. A regulation could be made to subsequently prescribe the person or the person within a class of persons for a longer period, under section 12(g) of the *Integrity Act 2009*, if needed.

Amendments to *Evidence Act 1977*

The following have been identified as relevant to the consideration of whether the amendments have sufficient regard to the rights and liberties of individuals.

Privacy and confidentiality (section 4(2)(a) of the Legislative Standards Act 1992)

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The amendments to be moved during consideration in detail of the Bill expressly provide that the court may order that protected counselling communication be produced to it and that the court may consider the communication for the purpose of deciding an application for leave. Providing express authority for the court to obtain and consider protected counselling communication may be a departure from FLPs in relation to privacy and confidentiality. The departure is justified as it ensures that the SACP framework operates as intended by confirming the power of the court to obtain and consider protected counselling communication for the purpose of deciding an application for leave under the SACP framework, ensuring the court's capacity to consider applications in a procedurally fair manner.

The amendments are also reasonably adapted to ameliorate the impacts on privacy and confidentiality by authorising the court to order the production of protected counselling communication only to itself and permitting consideration of the communication only by the court. The privacy and confidentiality of the counselled person is further safeguarded by amendments clarifying that if protected counselling communication is produced to the court, the court must not make the communication available, or disclose its contents, to the parties to the proceeding before deciding the application for leave under the SACP framework.

Retrospectivity (section 4(3)(g) of the Legislative Standards Act 1992)

Legislation may not have sufficient regard to the rights and liberties of individuals if it adversely affects those rights and liberties or imposes obligations retrospectively.

The amendments to be moved during consideration in detail of the Bill will operate retrospectively, however the departure from FLPs is considered justified as the amendments do not alter the rights of individuals; they do not alter the process for making an application or the grounds that an applicant must satisfy for an application to be granted. Rather the

amendments confirm the power of the court to obtain and consider protected counselling communication for the purpose of deciding an application for leave under the SACP framework, ensuring the court's capacity to consider applications in a procedurally fair manner.

Consultation

The Department of the Premier and Cabinet attended the Committee public briefing on 10 July 2023. The Committee also held a public hearing on 11 August 2023 in relation to written submissions received in response to the Bill.

The Queensland Integrity Commissioner has been consulted specifically in relation to the amendments to the *Integrity Act 2009*.

In respect of the *Evidence Act 1977* amendments, external stakeholders were not consulted during development of the amendments due to the technical nature of the amendments, which confirm the implied power of the court and ensure the intended operation of the SACP framework. The amendments do not alter the policy or operation of the framework, rather they ensure that the current operation of the framework is clarified and preserved.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 to provide for the commencement of the Act, which currently entirely commences by proclamation.

The amendment will provide that the Act will now commence as follows:

- Part 3A will commence on assent;
- Part 4, division 2 will commence 60 days after assent; and
- The remainder of the Act will commence by proclamation.

The effect of this amendment is to enable some amendments to commence earlier than the remainder of the Act.

<u>Amendments to the *Auditor-General Act 2009*</u>

Amendment 2 amends clause 4, which amends section 9 of the *Auditor-General Act 2009*, to provide for the extension of time, agreed under new subsection (4), for the parliamentary committee to consider the appointment of the Auditor-General.

Amendment 3 amends clause 4, which amends section 9 of the *Auditor-General Act 2009*, to insert new subsection (4) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the appointment of the Auditor-General. The extension must be agreed before the end of the original 20-business day period.

The extension of time is proposed for unforeseen situations of illness, natural disaster or other disruption that may result in the parliamentary committee being unable to form a quorum to consider the appointment.

Amendment 4 amends clause 5, which amends section 11 of the *Auditor-General Act 2009*, to provide for the extension of time, agreed under new subsection (6), for the parliamentary committee to consider the remuneration, allowances and terms and conditions of appointment of the Auditor-General.

Amendment 5 amends clause 5, which amends section 11 of the *Auditor-General Act 2009*, to insert new subsection (4B) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the remuneration, allowances and terms and conditions of appointment of the Auditor-General. The extension must be agreed before the end of the original 20-business day period.

The extension of time is proposed for unforeseen situations of illness, natural disaster or other disruption that may result in the parliamentary committee being unable to form a quorum to consider the remuneration, allowances and terms and conditions of appointment.

Existing clause 5 provides for the renumbering of section 11, so new subsection (4B) becomes new subsection (6) referred to in Amendment 4.

Amendment 6 amends clause 5, which renumbers subsections within section 11 of the *Auditor-General Act 2009*, to reflect the changes made in Amendment 5.

Amendment 7 amends clause 18 to omit sub-section 72(4) of the *Auditor-General Act 2009* so that the (independent) audit report will be included in the annual report of the audit office, as required under current section 72(3). As such, the audit report will be tabled as part of the annual report for the audit office under new section 72AA(2)(b).

This amendment ensures the tabling of the independent audit report is not contrary to section 42 of the Financial Performance Management Standard 2019, which provides that financial statements should not be made public until the annual report for the relevant entity is tabled.

<u>Amendments to the *Evidence Act 1977*</u>

Amendment 8 inserts part 3A (Amendment of the Evidence Act) into the Bill.

Part 3A consists of clauses 26A to 26C.

Clause 26A states that part 3A amends the *Evidence Act 1977*.

Clause 26B amends section 14H of the *Evidence Act 1977* by inserting new subsections (2A) and (2B) and amending subsection (3).

New subsection (2A) provides that for the purpose of deciding an application for leave under section 14H the court may do any of the following:

(a) order a person to produce protected counselling communication to the court;

(b) consider protected counselling communication;

(c) make any other order it considers appropriate to facilitate its consideration of protected counselling communication.

New subsection (2B) provides that if protected counselling communication is produced to the court in accordance with an order under subsection (2A), the court must not make the protected counselling communication available, or disclose its contents, to the parties to the proceeding before deciding the application for leave.

Subsection (3) is amended to replace the word 'For' with 'Also, for'.

Clause 26C amends part 9 (Transitional and declaratory provisions) of the Evidence Act by inserting new division 15 (Integrity and Other Legislation Amendment Act 2024) which contains new section 171 (Sexual assault counselling privilege).

Subsection (1) of new section 171 provides that the section applies in relation to an exercise, or purported exercise, of the court's jurisdiction in dealing with a leave application done before commencement and anything else done, or purportedly done, by a court or person in relation to a leave application before commencement.

Subsection (2) provides that the rights and liabilities of all persons affected by a relevant action are the same and are taken to have always been the same, as they would be or would have been, if amended section 14H had been in force at the time of the relevant action.

Subsection (3) provides that subsection (2) applies for all purposes, including for the purpose of a leave application made by not decided before the commencement.

New subsection (4) provides definitions of *amended section 14H* and *leave application*.

<u>Amendments to the *Integrity Act 2009*</u>

Amendment 9 inserts a heading after clause 27 to create a new division in Part 4 of the Bill that will enable the amendments to the *Integrity Act 2009* that are commencing by proclamation to be differentiated from the amendments that are commencing 60 days after assent under Amendment 1.

Amendment 10 amends clause 28, which replaces the long title of the *Integrity Act 2009*, to include other significant functions of the Integrity Commissioner, being the approval of a training course, issuing directives and approval of a code of conduct for registered lobbyists. This amendment will provide clear and unambiguous authority for the Integrity Commissioner in relation to these functions.

Amendment 11 amends clause 30, which amends the meaning of 'designated person' in section 12 of the *Integrity Act 2009*, to correct a numbering reference because of amendments inserted in Amendment 12.

Amendment 12 amends clause 30, which amends the meaning of 'designated person' in section 12 of the *Integrity Act 2009*, to provide for a designated person to also include a person, or a person within a class of persons, nominated by the Premier. This amendment further provides that the Premier's nomination will lapse 28 days after the start of the nomination, and the Premier's nomination must be by signed notice given to the Integrity Commissioner.

This amendment provides for time critical or urgent circumstances where a senior position-holder who is not an existing 'designated person' under section 12 of the *Integrity Act 2009* can be nominated by the Premier as a designated person and as such, may ask for the Integrity

Commissioner's advice on an ethics or integrity issue involving the person. The designation term is limited in that it will lapse at 28 business days from the date of nomination. Should it be determined that a person or class of persons nominated by the Premier needs to be nominated as a designated person for a longer period, this can be done subsequently by prescribing the person or person within a class of persons in regulation under section 12(1)(g) of the *Integrity Act 2009*.

Amendment 13 amends clause 32 to omit a reference to a senior officer in section 17 of the *Integrity Act 2009*.

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, senior officers are no longer designated persons under the *Integrity Act 2009*. As a result, the Bill is removing references to 'senior officer' and 'senior officer equivalent'. Some of these references were not identified until after the Bill was introduced.

Amendment 14 amends clause 32 to correct a numbering reference in section 17 of the *Integrity Act 2009* because of amendments inserted in Amendment 13.

Amendment 15 inserts a new clause (33A) after clause 33, to insert new section 20C into the *Integrity Act 2009*. New section 20CA will enable a chief of staff (however called) in the office of a Minister or Assistant Minister to ask for the Integrity Commissioner's advice on an ethics or integrity issue involving a ministerial advisor who gives advice to the Minister or Assistant Minister. New subsection (2) will require the chief of staff to give notice of the request to the relevant Minister or Assistant Minister.

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, chiefs of staff (however called) are no longer 'designated persons' under section 12 of the *Integrity Act 2009*. This amendment provides the ability for chiefs of staff to seek advice and is consistent with recommendation 5 of the Yearbury Report to ensure Ministers and Assistant Ministers are aware of Integrity Commissioner advice being sought by a member of their staff and that full contextual information is provided to the Integrity Commissioner.

Amendment 16 inserts a new clause (33B) after clause 33, to insert new subsection 20D(1A) into the *Integrity Act 2009* to enable a ministerial advisor, before their employment separation from the office of a Minister or Assistant Minister, to ask for the Integrity Commissioner's advice on an ethics or integrity issue involving the ministerial advisor that may arise from a post-separation obligation. This amendment enables ministerial advisors to be able to seek post-employment advice prior to their separation of employment.

Amendment 17 amends clause 34 to omit a reference to a senior officer or senior officer equivalent in section 29 of the *Integrity Act 2009* and replace it with 'senior executive equivalent'.

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, senior officers are no longer designated persons under the *Integrity Act 2009*. As a result, the Bill is removing references to 'senior officer' and 'senior officer equivalent'. Some of these references were not identified until after the Bill was introduced.

Amendment 18 amends clause 35 to omit a reference to a senior officer or senior officer equivalent in section 30 of the *Integrity Act 2009* and replace it with 'senior executive equivalent'.

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, senior officers are no longer designated persons under the *Integrity Act 2009*. As a result, the Bill is removing references to 'senior officer' and 'senior officer equivalent'. Some of these references were not identified until after the Bill was introduced.

Amendment 19 amends clause 36, which inserts new section 41 into the *Integrity Act 2009* to provide the definitions for new Chapter 4 about regulating lobbying activity. This amendment removes the definition of 'election period' as this term is no longer used because of other amendments made to this Chapter in Amendment 22.

Amendment 20 amends clause 36, which inserts new section 41 into the *Integrity Act 2009* to provide the definitions for new Chapter 4 about regulating lobbying activity. This amendment modifies the definition of 'third party client' to include the criteria currently included in new section 46(1), with the intent that a third party client is an entity that engages another entity to provide services constituting, or including, a lobbying activity 'for a commission, payment or other reward, whether pecuniary or otherwise' that is agreed to before the other entity provides the services.

New section 46 creates an offence for a person to carry out lobbying activity for a third-party client for reward if they are not a registered lobbyist. The offence in section 46 currently provides the criteria for the reward, but the criteria are better located within the definition of 'third party client' in section 41, rather than the offence provision.

Amendment 21 amends clause 36, which inserts new section 46(1) in the *Integrity Act 2009* to remove the criteria that have been moved to the meaning of 'third party client' in Amendment 20.

Amendment 22 amends clause 36, which inserts new section 49 into the *Integrity Act 2009*, to omit and replace section 49. The amendment provides for the disqualification of a person who engages in dual hatting and replaces the current approach in the Bill.

Consistent with Recommendation 3 made in the Coaldrake Report, the intent is to explicitly prohibit registered lobbyists 'dual hatting' as political campaigners.

Under new section 49, an individual is disqualified from being a registered lobbyist or continuing to be a registered lobbyist, if they perform a substantial role in the election campaign of a political party for the next general election.

The period of the disqualification will differ for an individual depending on whether the political party for which they performed a substantial role 'wins' the subsequent general election.

As provided for in section 49, the disqualification applies if:

1. the individual is:
    a. a registered lobbyist during a term of government, which is timed from a general election day ('first general election') to the subsequent general election day ('second general election') – referred to in new section 49 as the 'inter-election period'; and
    b. the individual is required to give the Integrity Commissioner notice, under new section 66A, of the individual's intention to perform a substantial role in the election campaign of a political party (this notice triggers removal of the individual from the lobbying register);

    OR

2. the individual was a registered lobbyist at any time during the inter-election period;

    AND

3. the election campaign in which the individual (in either (1) or (2) above) performed a substantial role is for the subsequent general election (i.e. the 'second general election').

The period of the disqualification applies as follows:

(i) If the political party wins the second general election, the individual is disqualified for the period that commences when they started performing the substantial role in the election campaign and ends at the end of the next general election day that follows the second general election. This means the individual is disqualified for the remainder of the current term of government and for the subsequent term of government.

(ii) If the political party does not win the second general election, the individual is disqualified for the period that commences when they started performing the substantial role in the election campaign and ends at the end of the second general election day. This means the individual is disqualified for the remainder of the current term of government but can apply to be a registered lobbyist in the subsequent term of government.

The purpose achieved by the amendment is to prevent an individual having actual or perceived influence with a government because they have been instrumental in helping the political party win government (and therefore could have continued influence during the relevant term the political party is in power). The difference in disqualification period reflects the level of actual or perceived influence an individual is likely to have with the incoming government, depending on which political party they worked for and which political party won the election.

Amendment 23 amends clause 36, which inserts new section 58 into the *Integrity Act 2009*, to remove reference to an election period in the heading for section 58. New section 58 was drafted to prohibit dual hatting during an election period. However, consistent with Amendment 22, the intent is to prohibit dual hatting more broadly (i.e. during a term of government).

Amendment 24 amends clause 36, which inserts new section 58 into the *Integrity Act 2009*, to remove reference to an election period in subsection (2). New section 58 was drafted to prohibit dual hatting during an election period. However, consistent with Amendment 22, the intent is to prohibit dual hatting more broadly (i.e. during a term of government).

Amendment 25 amends clause 36, which inserts new section 66A into the *Integrity Act 2009*, to omit and replace the current subsection (1) to remove reference to the election period, because of the amendments made in Amendment 22 to apply the dual hatting prohibition more broadly than an election period (i.e. to a term of government). The amendment clarifies that a registered lobbyist must immediately notify the Integrity Commissioner if they intend to perform a substantial role in a political party's election campaign, and that the notification will be required at any time prior to an election (rather than the current clause, which applies when a writ is issued for an election). The focus of this section is on when the individual forms the intention as this is when their ability to influence commences.

Amendment 26 amends clause 36 to correct a typographical error in the amendments to new section 66N(3) of the *Integrity Act 2009*.

Amendment 27 amends clause 37, which amends section 74 of the *Integrity Act 2009*, to provide for the extension of time, agreed under new subsection (4), for the parliamentary committee to consider the appointment of the Integrity Commissioner.

Amendment 28 amends clause 37, which amends section 74 of the *Integrity Act 2009*, to insert a new subsection (2B) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the appointment of the Integrity Commissioner. The extension must be agreed before the end of the original 20-business day period.

The extension of time is proposed for unforeseen situations of illness, natural disaster or other disruption that may result in the parliamentary committee being unable to form a quorum to consider the remuneration, allowances and terms and conditions of appointment.

Amendment 29 amends clause 37, which amends section 74 of the *Integrity Act 2009*, to update the section references because of the insertion of new subsection (2B) in Amendment 28.

Amendment 30 amends clause 37, which amends section 74 of the *Integrity Act 2009*, to update the sections being renumbered because of the insertion of new subsection (2B) in Amendment 28.

Amendment 31 amends clause 38, which amends section 76 of the *Integrity Act 2009*, to provide for the extension of time, agreed under new subsection (6), for the parliamentary committee to consider the remuneration, allowances and terms and conditions of appointment of the Integrity Commissioner.

Amendment 32 amends clause 38, which amends section 76 of the *Integrity Act 2009*, to insert new subsection (6) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the remuneration, allowances and terms and conditions of appointment of the Integrity Commissioner. The extension must be agreed before the end of the original 20-business day period.

The extension of time is proposed for unforeseen situations of illness, natural disaster or other disruption that may result in the parliamentary committee being unable to form a quorum to consider the remuneration, allowances and terms and conditions of appointment.

Amendment 33 amends clause 45, which inserts new Chapter 8, Division 5 into the *Integrity Act 2009*, to amend the heading for this clause to reflect that it will replace Chapter 8, Division 5, which is being inserted in Amendment 40 and will commence 60 days after assent.

Amendments 1, 9, 33-36 and 40 work together to enable the dual hatting provisions to be separated out from the Bill and commenced 60 days after assent via a new division (inserted by Amendment 40). The provisions are then replicated and replaced by clause 45 when it commences by proclamation.

Amendment 34 amends clause 45, which inserts new Chapter 8, Division 5 into the *Integrity Act 2009*, to clarify that this clause will now replace an existing Chapter 8, Division 5 which is inserted via a new division (inserted by Amendment 40) that commences 60 days after assent.

Amendment 35 amends clause 45, which inserts new Chapter 8, Division 5 into the *Integrity Act 2009*, to clarify that this clause will now replace an existing Chapter 8, Division 5 which is inserted via a new division (inserted by Amendment 40) that commences 60 days after assent. The amendment achieves this by clarifying clause 45 will now 'omit' the existing Chapter 8, Division 5 and 'insert' the new Division 5 in clause 45.

Amendment 36 amends clause 45, which inserts new Chapter 8, Division 5 into the *Integrity Act 2009*, to insert new sections 104A and 104B.

New sections 104A and 104B are transitional provisions that will clarify when the dual hatting provision in new section 49 will apply and to ensure that an individual disqualified under the dual hatting provision that commences earlier (new section 53A, inserted by Amendment 40) is taken to be disqualified under section 49 when it commences and replaces section 53A.

The effect of these provisions is to clarify that new section 49 is not retrospective and can only apply to an individual from the date of commencement (which is by proclamation). However, a disqualification under new section 53A, which exists until it is replaced by section 49, will still continue to apply to the individual. This ensures that, where an individual has been disqualified under new section 53A, their disqualification continues with the commencement of section 49.

Amendment 37 inserts new clause 45A to amend Schedule 1 of the *Integrity Act 2009* to remove a legacy reference to the *Energy Ombudsman Act 2006*, to reflect the Act's current name, being the *Energy and Water Ombudsman Act 2006*.

Amendment 38 amends clause 46, which amends the dictionary in Schedule 2 of the *Integrity Act 2009*, to include the terms 'senior officer' and 'senior officer equivalent' as terms that are being omitted from the dictionary, as they are no longer used in the *Integrity Act 2009*.

As a result of amendments made by the *Integrity and Other Legislation Amendment Act 2022*, senior officers are no longer designated persons under the *Integrity Act 2009*. As a result, the Bill is removing references to 'senior officer' and 'senior officer equivalent'. Some of these references were not identified until after the Bill was introduced.

Amendment 39 amends clause 46, which amends the dictionary in Schedule 2 of the *Integrity Act 2009*, to amend the definition of 'government entity'. The amendment omits the reference

to ‘public service office’ and refers instead to a ‘public service entity mentioned in the *Public Sector Act 2022*, section 9(b)’.

The term ‘public service office’ is no longer used in the *Integrity Act 2009* and has been replaced with ‘public service entity’ in the *Public Sector Act 2022*.

Amendment 40 inserts new Division 2 into Part 4 of the Bill that will enable the amendments to the *Integrity Act 2009* that are commencing by proclamation to be differentiated from the amendments relating to dual hatting, which are commencing 60 days after assent under Amendment 1.

Division 2 consists of clauses 46A to 46H, which amend existing sections and insert new sections in the *Integrity Act 2009*. The clauses will replicate the intent of the dual hatting provisions in Part 4, Division 1 of the Bill (as amended during consideration in detail) to enable the clauses in Division 2 to commence 60 days after assent. When Part 4, Division 1 commences by proclamation, the amendments made in clauses 46A to 46H will be replaced.

The terminology in these amendments reflect existing terms in the *Integrity Act 2009*. For example, ‘registrant’ is used instead of ‘registered lobbyist’ and ‘lobbyists register’ is used instead of ‘lobbying register’.

Clause 46A amends section 50 of the *Integrity Act 2009* to insert new subsections (3) and (4) to provide new circumstances for the Integrity Commissioner to immediately remove an individual’s name as a registrant from the lobbyists register. These circumstances are if the Integrity Commissioner:

- becomes aware that a registrant is disqualified under section 53A from being a registrant, or continuing to be a registrant; or
- receives a notice under section 66B that an individual who is a registrant intends to perform a substantial role in an election campaign.

This clause replicates the requirements in new section 66N, inserted by clause 36 of the Bill, which will replace section 50 when Part 4, Division 1 commences by proclamation.

Clause 46B inserts new section 53A into the *Integrity Act 2009* to provide for the disqualification of a person who engages in dual hatting and replaces the current approach in the Bill. This clause replicates new section 49, as amended by Amendment 22, which will replace section 53A when Part 4, Division 1 commences by proclamation.

Clause 46C amends section 55 of the *Integrity Act 2009* to insert a new ground for the Integrity Commissioner to refuse registration, which is where an entity is disqualified from being a registrant under section 53A. This clause replicates the ground for refusal of registration in new section 51, which will replace section 55 when Part 4, Division 1 commences by proclamation.

Clause 46D amends section 62 of the *Integrity Act 2009* to insert a new ground for the Integrity Commissioner to cancel registration, which is where an entity is disqualified from being a registration under section 53A. This clause replicates the ground for the Integrity Commissioner to take action (which may include cancellation of registration) in new section 66H, which will replace section 62 when Part 4, Division 1 commences by proclamation.

Clause 46E inserts new section 66B into the *Integrity Act 2009* to require a registrant to immediately notify the Integrity Commissioner if they intend to perform a substantial role in a political party's election campaign. This clause replicates new section 66A, as amended by Amendment 25, which will replace section 66B when Part 4, Division 1 commences by proclamation.

Clause 46F inserts new section 71AA into the *Integrity Act 2009* to prohibit a registrant from performing a substantial role in the election campaign of a political party. This clause replicates new section 58, as amended by Amendment 23, which will replace section 71AA when Part 4, Division 1 commences by proclamation.

Clause 46G inserts new Chapter 8, Division 5 into the *Integrity Act 2009* to provide the transitional provisions for Division 2. New section 104 provides that new section 53A applies after commencement of that section, which is 60 days after assent.

Clause 46H amends the dictionary in Schedule 2 of the *Integrity Act 2009* to insert a definition for 'substantial role'. This clause replicates the approach taken for this definition in new section 41 and Schedule 2, which will replace the amendment in clause 46H when Part 4, Division 1 commences by proclamation.

Amendments to the *Ombudsman Act 2001*

Amendment 41 amends clause 50, which amends section 59 of the *Ombudsman Act 2001*, to provide for the extension of time, agreed under new subsection (3), for the parliamentary committee to consider the appointment of the Ombudsman.

Amendment 42 amends clause 50, which amends section 59 of the *Ombudsman Act 2001*, to insert new subsection (1B) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the appointment of the Ombudsman. The extension must be agreed before the end of the original 20-business day period.

Existing clause 50 provides for the renumbering of section 59, so new subsection (1B) becomes new subsection (3) referred to in Amendment 41.

Amendment 43 amends clause 50, to provide for the renumbering of subsections within section 59 of the *Ombudsman Act 2001*, to reflect the changes made in Amendment 42.

Amendment 44 amends clause 50, which renumbers subsections within section 59 of the *Ombudsman Act 2001*, to reflect the changes made in Amendment 42.

Amendment 45 amends clause 51, which amends section 62 of the *Ombudsman Act 2001*, to provide for the extension of time, agreed under new subsection (7), for the parliamentary committee to consider the remuneration, allowances and terms and conditions of appointment of the Ombudsman.

Amendment 46 amends clause 51, which amends section 62 of the *Ombudsman Act 2001*, to insert new subsection (7) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to

consider the remuneration, allowances and terms and conditions of appointment of the Ombudsman. The extension must be agreed before the end of the original 20-business day period.

Amendments to the *Right to Information Act 2009*

Amendment 47 amends clause 64, which amends section 135 of the *Right to Information Act 2009*, to provide for the extension of time, agreed under new subsection (3), for the parliamentary committee to consider the appointment of the Information Commissioner.

Amendment 48 amends clause 64, which amends section 135 of the *Right to Information Act 2009*, to insert new subsection (1B) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the appointment of the Information Commissioner. The extension must be agreed before the end of the original 20-business day period.

Existing clause 64 provides for the renumbering of section 135, so new subsection (1B) becomes new subsection (3) referred to in Amendment 47.

Amendment 49 amends clause 64, to provide for the renumbering of subsections within section 135 of the *Right to Information Act 2009*, to reflect the changes made in Amendment 48.

Amendment 50 amends clause 64, which renumbers subsections within section 135 of the *Right to Information Act 2009*, to reflect the changes made in Amendment 48.

Amendment 51 amends clause 65, which amends section 135 of the *Right to Information Act 2009*, to provide for the extension of time, agreed under new subsection (6), for the parliamentary committee to consider the appointment of the Information Commissioner.

Amendment 52 amends clause 65, which amends section 137 of the *Right to Information Act 2009* to insert new subsection (6) that enables the Minister and chair of the parliamentary committee to agree to an extension of not more than 20 business days for the parliamentary committee to consider the remuneration, allowances and terms and conditions of appointment of the Information Commissioner. The extension must be agreed before the end of the original 20-business day period.

Long Title

Amendment 53 makes a consequential amendment to the long title of the Bill to include the *Evidence Act 1977*.

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