

# Cross-Border Commissioner Bill 2024

## Explanatory Notes

### Short title

The short title of the Bill is the Cross-Border Commissioner Bill 2024.

### Policy objectives and the reasons for them

The Cross-Border Commissioner will enhance stakeholder engagement and facilitate collaboration between Queensland and relevant jurisdictions in areas of mutual interest related to cross-border communities along Queensland's border.

The Commissioner will facilitate the identification, and advocate for the resolution, of issues related to residing in these cross-border communities which impede regional economic development, community resilience and service delivery.

The Commissioner will have powers only to perform the Commissioner's functions stated in the Bill. The Commissioner will not have regulatory powers and will not assume powers of referral under other Queensland legislation. The role does not detract from any other Queensland legislation.

The Queensland Government announced its intention to create the role in June 2024. The creation of the role is in response to community advocacy about challenges faced by Queenslanders living in cross-border communities. Cross-border communities can experience regulatory and policy gaps and overlaps which can impact economic and social outcomes, and community health and wellbeing.

### Achievement of policy objectives

To achieve its objectives, the Bill establishes the Cross-Border Commissioner and the Office of the Cross-Border Commissioner. It provides that the Commissioner is responsible for the office, including directing staff. Staff of the office will be employed under the *Public Sector Act 2022*. Additionally, the Department of Regional Development, Manufacturing and Water (the department) will support the office with administrative services as required.

The Bill sets out the functions of the Commissioner and arrangements for:

- appointment, vacancy in the office, resignation, removal, and acting arrangements
- ministerial expectations and direction
- reporting
- access to information and confidentiality; and
- review of the Act.

The Bill establishes that there is to be a Cross-Border Commissioner. The Commissioner is a new role that will work closely with governments, agencies, other cross-border commissioners, and broader communities along Queensland's border with New South Wales, South Australia, and the Northern Territory. A priority focus will be building disaster management capacity and resilience for Queensland cross-border communities on the Queensland-New South Wales border.

The Bill provides that the main functions of the Cross-Border Commissioner are to:

- a. facilitate the operation of cross-border agreements. An example of a cross-border agreement is the Memorandum of Understanding for Cross-Border Collaboration between Queensland and New South Wales.
- b. build effective relationships with stakeholders in cross-border communities and stakeholders whose activities affect cross-border communities including across local governments, regional bodies, other states, territories or the Commonwealth, industry associations and community groups.
- c. enhance stakeholder engagement and facilitate collaboration between the State and a relevant jurisdiction to advocate for both the resolution of issues affecting cross-border communities, and improved access to services for cross-border communities.
- d. provide general advice to stakeholders in cross-border communities on government policy and programs relevant to cross-border communities.
- e. provide advice to the government on issues affecting cross-border communities.
- f. perform any other function given to the commissioner under this or another Act.

The Bill ensures that that the Commissioner has the powers necessary to perform the Commissioner's functions.

The Commissioner is to be a statutory appointment by the Governor in Council. The Minister may recommend to the Governor in Council that a person be appointed only if they are appropriately qualified to perform the functions of the Commissioner. The appointment, removal, resignation, and acting arrangements are like that of other commissioner roles in Queensland.

The Bill provides for the Minister to give the Commissioner expectations about, and directions relevant to, performance of the Commissioner's functions. The Commissioner must comply with any reasonable request relating to the Commissioner's functions. The Bill prescribes arrangements for the Commissioner to report to the Minister, including through preparation of an annual report to be tabled by the Minister in the Legislative Assembly. The report will include any ministerial directions provided to the Commissioner and actions taken in relation to each direction.

The Commissioner will share and exchange information to identify and resolve cross-border issues. The Bill will ensure that this occurs in a manner that is cognisant of standards of information gathering and storage, and privacy conventions. Information sharing will be supported by information sharing arrangements. Disclosure of confidential information must not occur unless it is necessary to fulfil the functions prescribed in the Bill, or it is with the consent of the person who the information relates, or it is otherwise required or permitted by law, or in compliance with lawful process. The Bill includes an offence for unlawful disclosure of confidential information.

## Alternative ways of achieving policy objectives

Whilst a non-legislative approach has been considered, establishment of the Cross-Border Commissioner as an independent statutory role is important to achieve the desired outcomes. This new and discrete office will be in a unique position to connect with, and advocate for, Queensland's cross-border communities, to work across levels of government, with other jurisdictions and counterparts. Identifying and addressing barriers in service delivery between the states will enhance social and economic outcomes for Queensland's cross-border communities.

The proposed legislative approach delivers clarity and certainty to cross-border communities about the form, function, and Government's ongoing commitment to supporting the role.

The announcement of the establishment of a Cross-Border Commissioner has been widely supported in the media by the Local Government Association of Queensland, Goondiwindi Regional Council, Southern Gold Coast Chamber of Commerce, the Balonne Shire Council, and other cross-border stakeholders.

## Estimated cost for government implementation

The Queensland Government will incur an additional cost in the implementation and support of the Cross-Border Commissioner. Initial funding over three years from 2023-24 to 2025-26 was committed under the 2024-25 Queensland Budget. The commitment will fund the Commissioner and two staff members.

The department as the administering authority, will support the office through engagement support and with corporate services as required. Financial accountability requirements will be met through departmental reporting. The additional support costs associated with providing corporate and engagement support will be funded through the realignment of existing resources within the department.

## Consistency with fundamental legislative principles

The Bill has been drafted having regard to fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA). The principles include requiring that legislation has sufficient regard to the rights and liberties of individuals. Potential breaches of FLPs are addressed below. Potential breaches are considered justified and appropriately constrained.

### **Legislation should have sufficient regard to the rights and liberties of individuals –LSA, section 4(2)(a)**

#### Clause 25 (Exchange of information)

Clause 25 of the Bill provides that the Commissioner may enter information-sharing arrangements with other relevant government agencies or related entities for the purpose of supporting the Commissioner's functions. This raises a potential FLP issue that such a provision that could involve private information must have sufficient regard to the rights and liberties of individuals. The sharing of information is necessary for the Commissioner to adequately undertake its core functions, such as collaborating with other agencies to advocate

for cross-border communities. The potential infringement of this FLP is mitigated by clause 26 which provides that it is an offence to disclose confidential information obtained in performing a function under the Act outside certain parameters. Moreover, the *Information Privacy Act 2009* and its privacy principles provide safeguards for the collection and handling of personal information by agencies (which include any other body established by government to help perform functions connected with the agency).

#### Clause 26 (Confidentiality)

Clause 26 of the Bill provides that it is an offence for a person who obtains confidential information while performing a function under the Act to unlawfully disclose that information. The imposition of a new offence for this conduct raises a potential FLP issue that proposed offences must have sufficient regard to the rights and liberties of individuals. Such an offence is necessary to uphold public confidence in the Commissioner and to foster confidence in individuals that engage with the Commissioner that their private information will be appropriately handled. This offence also mitigates the potential FLP issue that the Commissioner's ability to enter into an information-sharing arrangement with a relevant agency should have sufficient regard to the rights and liberties of individuals (clause 25).

The penalty for committing an offence against this provision is proportionate to like offences in other legislation. The maximum penalty of 50 penalty units for the disclosure of confidential information obtained by a person performing a function under the Act is the same as for similar conduct in section 38 of the *Small Business Commissioner Act 2022*.

## **Consultation**

Consultation was not carried out on the Bill. Key stakeholders have been widely reported in the media as being supportive of the establishment of a Queensland Cross-Border Commissioner. These include the Local Government Association of Queensland, Goondiwindi Regional Council, Southern Gold Coast Chamber of Commerce, and the Balonne Shire Council.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with, or complementary to, the legislation of the Commonwealth or another state. However, many Australian jurisdictions have established a cross-border commissioner function, although most are non-statutory. South Australia has established their cross-border commissioner through a similar statutory appointment. The legislative approach taken by South Australia has been considered in preparing the Bill.

# Notes on provisions

## Part 1 Preliminary

*Clause 1* states that, when enacted, the Bill will be cited as the *Cross-Border Commissioner Act 2024* (the Act).

*Clause 2* sets out the main objects of the Act. The Act will establish the office of the cross-border commissioner. The commissioner will benefit cross-border communities by enhancing stakeholder engagement and facilitating collaboration between the State and other jurisdictions in areas of mutual interest. The commissioner will help identify issues and advocate for the resolution of issues related to residing in cross-border communities that impede regional economic development, community resilience and service delivery.

*Clause 3* sets out definitions for key terms in the Act.

## Part 2 Cross-border commissioner

### Division 1 Establishment

*Clause 4* establishes that there is to be a cross-border commissioner.

*Clause 5* sets out the main functions of the commissioner, namely to:

- facilitate the operation of cross-border agreements
- build effective relationships with stakeholders in cross-border communities and stakeholders whose activities affect cross-border communities
- enhance stakeholder engagement and facilitate collaboration between the State and a relevant jurisdiction to advocate for both the resolution of issues affecting cross-border communities, and improved access to services for cross-border communities
- provide general advice to stakeholders in cross-border communities on government policy and programs relevant to cross-border communities
- provide advice to the government on issues affecting cross-border communities
- perform any other function given to the commissioner under this or another Act.

The clause also clarifies that the commissioner has the powers necessary to perform the commissioner's functions. The commissioner does not have regulatory powers and does not assume powers of referral under other Queensland legislation. The functions performed by the commissioner are not intended to detract from any provision in other Queensland legislation.

*Clause 6* clarifies that the commissioner is not a statutory body for the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1982*.

*Clause 7* states that the commissioner may perform their functions inside and outside Queensland. This is necessary due to the cross-border nature of the role.

*Clause 8* permits the commissioner to delegate the powers of the commissioner under this Act to a public service officer who is appropriately qualified to exercise the powers delegated. There are no limitations on the powers that may be delegated. As delegation can only occur to

an appropriately qualified public service officer, it is considered that the delegation of administrative powers is appropriate and not a breach of a FLP. This provision ensures that the Commissioner can be appropriately supported in their performance of the functions of the role.

## **Division 2 Appointment**

*Clause 9* provides for appointment of the commissioner by the Governor in Council on the recommendation of the Minister. It establishes that the Minister may recommend a person only if the person is appropriately qualified to perform the functions of the commissioner.

*Clause 10* provides that the commissioner holds the office for a term of not more than 3 years, as determined by the commissioner's instrument of appointment. It further provides a person can be reappointed as commissioner only once for a further term of not more than 3 years.

*Clause 11* provides that the commissioner is to be paid the remuneration and allowances, and holds the office on conditions, decided by the Governor in Council. It further provides that the commissioner is appointed under this Act and not the *Public Sector Act 2022*.

*Clause 12* establishes that that if a person who is a public service officer is appointed as commissioner, that person keeps all rights accrued or accruing as a public service officer as if their service as commissioner was a continuation of service as a public service officer. The clause also provides that at the end of the person's term as commissioner, their service as commissioner is to be taken to be service of a like nature in the public service for the purpose of deciding the person's rights as a public service officer.

*Clause 13* provides that the office of commissioner becomes vacant if the commissioner resigns or is removed by the Governor in Council.

*Clause 14* provides that the commissioner may resign by giving the Minister a signed letter of resignation. The clause further provides that the resignation takes effect when the Minister receives the letter, or on the day stated in the letter of resignation, whichever is later.

*Clause 15* provides that the Governor in Council may remove a person from office as the commissioner at any time on the recommendation of the Minister. However, the Minister may only recommend removal of the person to the Governor in Council if satisfied of a ground mentioned in clause 15.

This clause further provides that it does not otherwise limit section 25 of the *Acts Interpretation Act 1954*, which, among other provisions, provides that the power to appoint a person includes the power to suspend a person appointed to an office and to reappoint a person.

*Clause 16* provides that the Minister may appoint a person to act as commissioner during a vacancy in the office, or for a period when the commissioner is absent from duty, or cannot, for another reason, perform the functions of office.

## **Division 3 Cross-border commissioner office**

*Clause 17* establishes the office of the cross-border commissioner and sets out the function of the office. It also establishes who the office consists of.

*Clause 18* provides the commissioner's staff are employed under the *Public Sector Act 2022*.

*Clause 19* establishes that the commissioner controls the office. However, nothing prevents the attachment of the office to the department to ensure the office has the administrative support services required to perform its function effectively and efficiently.

*Clause 20* establishes that a staff member of the office is not subject to direction by any person other than the commissioner or a person authorised by the commissioner, about the way in which the office's function is to be performed.

#### **Division 4 Role of Minister and reporting requirements**

*Clause 21* provides the Minister may give the commissioner a written direction about a matter relevant to the performance of the commissioner's functions. It further provides that the commissioner must comply with a direction given by the Minister. The commissioner must include in its annual report, details of directions given during the financial year to which the report relates, and any actions taken by the commissioner as a result of the direction.

*Clause 22* provides that the Minister may give the commissioner a statement in writing about the Minister's expectations for performance of the commissioner's functions. The commissioner must have regard to these expectations when performing their functions. The clause further provides that the statement of expectations may state a period for which the statement applies and provide for the nature and scope of the commissioner's activities for a particular period.

*Clause 23* establishes that the commissioner must keep the Minister reasonably informed about the functions performed by the commissioner. It further provides that if the Minister reasonably requests information about functions performed by the commissioner, the commissioner must comply with this request.

*Clause 24* requires the commissioner to prepare and give to the Minister an annual report about the functions performed by the commissioner. The commissioner must provide this within three months after the end of each financial year. The Minister is required to table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

### **Part 3 Miscellaneous**

*Clause 25* empowers the commissioner to enter into an arrangement with a relevant agency for the purposes of sharing or exchanging information.

The arrangement may only relate to information that assists the commissioner's performance of functions or assists the relevant agency in performing its functions.

*Clause 26* makes it an offence for a person performing a function under or related to this Act to disclose personal information. Subsection (3) provides that it is not an offence to disclose information in the circumstances set out in that subsection.

*Clause 27* provides that the commissioner is not civilly liable for acts done or omissions made under this Act. The immunity is limited to acts done or omissions made honestly and without negligence. Any potential liability instead attaches to the State.

*Clause 28* establishes that the Act is to be reviewed. The Minister must review the Act as soon as practicable after the day that is 3 years from the day the Act commenced. The Minister must table a report about the review in the Legislative Assembly as soon as practicable after the finishing the review.

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