

## **Integrity and Other Legislation Amendment Bill 2022**

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**Submitter Comments:**

Your ref:

Our ref: Patrick Flemming [REDACTED]

## OFFICIAL

28 October 2022

Mr L Power MP  
Chair  
Economics and Governance Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Power

### **Integrity and Other Legislation Amendment Bill 2022**

Thank you for the opportunity to provide a submission on the *Integrity and Other Legislation Amendment Bill 2022*. My submission relates only to the proposed amendments to the *Auditor-General Act 2009* (AG Act) contained in the Bill.

The primary function of the Auditor-General is to assist parliament in holding the executive government to account. The Auditor-General achieves this by conducting audits on behalf of parliament and providing it with independent assurance on the accountability and performance of the executive government. To be fully effective, the Auditor-General therefore must be independent from the executive. Limitations on the Auditor-General's independence, real or perceived, diminish the level of assurance that parliament obtains from their work.

Absolute independence is not realistic as Auditors-General use public funds and should be subject to the same financial and performance accountability requirements that they help uphold. The difference is that such accountability should be directly to parliament and not to the executive government. This is best achieved by the parliamentary committee discharging its oversight responsibilities for the Auditor-General.

I believe the proposed amendments to the AG Act in the Bill are an important first step in adopting the recommendations in Professor Coaldrake's *Let the Sunshine In* report. These amendments will strengthen the independence of the Auditor-General and QAO while providing an appropriate level of accountability to parliament.

Not only do the amendments address some of the recommendations contained in Professor Coaldrake's report, they also reflect other recommended changes included in:

- the Electoral and Administrative Review Commission's (EARC) 1991 report on Public Sector Auditing
- various strategic reviews of the Queensland Audit Office (QAO)
- QAO's submission to the Finance and Administration Committee's (FAC) Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence in 2013.

I have enclosed a detailed submission of key aspects of the Bill under the following headings:

- amendments related to the office of the Auditor-General
- amendments related to the employment of QAO staff
- amendments to approval of basic fee rates
- amendments related to the Auditor-General's mandate.

While I am generally supportive of the amendments contained in the Bill, there is one aspect that I do not support as I believe it is not consistent with Professor Coaldrake's recommendations. This relates to the proposed amendments on determining and approving the basic fee rates that I am required to apply to my audits.

My staff have liaised with, and provided feedback to, representatives of the Integrity Reform Taskforce during the drafting of the Bill. The comments provided in my detailed submission are consistent with the feedback we provided on the draft Bill.

I note that there are several sections in the Bill that would directly apply to the committee. However, other than the requirement for the committee to approve the basic rates used to determine fees applied on audits, I do not see these as a significant change to the existing relationship between the committee and the Auditor-General. I look forward to working with the committee on implementing the requirements of the Bill should they be passed by parliament.

I welcome the opportunity to attend the public hearing on 7 November to provide further detail and answer any questions the committee may have on my submission. Please contact me if you would like any further information, or have one of your officer's contact Patrick Flemming, Assistant Auditor-General on 3149 6041.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'B.P. Worrall', written in a cursive style.

Brendan Worrall  
Auditor-General



## Detailed submission by the Auditor-General

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### Amendments related to the office of the Auditor-General

Several of the amendments in the Bill are aimed at reinforcing the status of the Auditor-General and their relationship with parliament. These include:

- formally recognising the Auditor-General as an officer of the Parliament
- requiring the Auditor-General to take an oath of office administered by the Speaker
- providing for the Auditor-General to notify the Speaker of intended leave rather than Premier.

Recognising the Auditor-General as an officer of the Parliament is consistent with the recommendation made by Professor Coaldrake. This, along with the other amendments, are also consistent with the recommendations the EARC made in its 1991 report, and QAO's submission to the 2013 FAC inquiry.

While the above amendments are largely symbolic, they are significant in recognising the independence of the Auditor-General and their relationship with parliament. Recognising the Auditor-General as an officer of the Parliament will also ensure the role has the same status as other Queensland integrity officers including the Ombudsman, Integrity Commissioner, and Information Commissioner. This is also consistent with legislation in other Australian and international audit jurisdictions.

The transitional provisions included in the Bill will require me to take the oath of office within 28 days of the proposed section commencing. I can confirm to the committee that I am happy to take the oath of office should the Bill be passed.

The Bill also provides that a person who stops holding office as Auditor-General cannot be employed by a public sector entity for 2 years after they stop holding office. This proposed amendment is consistent with an opportunity to strengthen the independence of the Auditor-General identified in the QAO's submission to the FAC inquiry.

The premise of the above requirement is to guard against the potential for real or perceived lack of independence as the Auditor-General approaches the end of their term. Placing a moratorium on the Auditor-General's post-appointment career ensures that no question can be raised about the final portion of the Auditor-General's term. This is also consistent with requirement in the private sector for lead auditors conducting audits under the *Corporations Act 2001*.

### Amendments related to the employment of QAO staff

The Bill provides for QAO staff to be employed under the AG Act, rather than the *Public Service Act 2008*. These amendments are consistent with the recommendation made by Professor Coaldrake. They will also address the recommendations the EARC originally made, and those in previous strategic reviews of QAO.

These amendments will strengthen the independence of the Auditor-General by providing greater autonomy for managing the staffing arrangements for the office. This goes beyond just determining the remuneration of staff. It will provide greater flexibility in:

- attracting appropriately qualified and experienced staff
- acting to retain good staff
- organising the human resources of the office in the most efficient and effective manner.

The amendments in the Bill provide for the preservation of existing staff entitlements and reversion back to public service.

As the amendments will require my office to develop an alternate framework for employing staff, an appropriate lead-in time will be required to allow this to happen before the amendments take effect. Accordingly, it is our understanding that these provisions would only become operative at a future date, once we have had sufficient opportunity to investigate, develop and implement an appropriate framework. This process will also include crucial consultation with staff and other key stakeholders.



The Bill also provides for the application of the proposed new *Public Sector Bill 2022* (presently being considered by the committee). It is our understanding that QAO will initially operate under the requirements of the new *Public Sector Bill* until such time as the new employment provisions in the AG Act take effect. At that time, QAO will be largely removed from operation of the new *Public Sector Act* (assuming it is passed by Parliament), except for certain general requirements, for example, equity and diversity in employment. I am satisfied that these proposed changes will be consistent with the requirements of the AG Act and maintain the independence of the Auditor-General.

## Amendments to approval of basic fee rates

Section 56 of the AG Act permits the Auditor-General to charge fees for any audit conducted. This section requires fees charged for audits to be based on the basic fee rates (hourly rates) approved by the Treasurer. Presently, fees are charged only for financial audits, with performance audits funded through parliamentary appropriations.

The requirement for the Treasurer to approve the Auditor-General's basic fee rates is unique when compared to other audit offices in Australia, and effectively provides the executive government with the ability to significantly influence, if not control, the financial resources available to the Auditor-General. As audit fees represent approximately 85 per cent of QAO's total annual revenue, any restriction on these fees will significantly impact on audit scope and that mandate of QAO's operations.

The effectiveness of s.56 of the AG Act was one of the key terms of reference in the 2013 FAC inquiry. This inquiry arose from the Auditor-General writing to the Chair of the FAC highlighting concerns after the Treasurer did not approve a requested 3.5 per cent increase in basic fee rates. In his letter, the Auditor-General advised that while budget outcomes could be sustained in the short-term, a continuation of rate freezes could potentially impact significantly on the Auditor-General's ability to discharge their audit mandate under the AG Act. This issue goes to the functional independence and effectiveness of the QAO.

In his report, Professor Coaldrake recommended that the Auditor-General be allowed to independently set basic rates for audit fees without the Treasurer's approval. While the Bill proposes amendments that remove this requirement, there are additional elements included in the proposed amendments that I do not support.

Under the proposed amendments, the Auditor-General can increase the basic rates of fees once each year with approval of the parliamentary committee. I have no concern with the parliamentary committee approving my basic fee rates and acknowledge the importance of maintaining an appropriate balance between independence, accountability and transparency.

However, the proposed amendments include a new provision where in deciding whether to approve a proposed increase in the basic rates of fees for a financial year, the parliamentary committee may:

- (a) have regard to the government indexation rate (GIR) for the financial year
- (b) obtain, and have regard to, advice from the Treasurer about the proposed increase.

My main concern relates to the appropriateness of the GIR as a basis for considering requested increases in basic fee rates. I have no concern with the committee obtaining and considering advice from the Treasurer if it so desires.

The GIR is an index determined by Treasury and applied by government agencies when deciding fees charged for their goods and services. Treasury's *Principles for fees and charges*, identifies that where regular comprehensive review is not cost effective, or no specific indexation method was approved by CBRC, agencies must apply the current GIR as advised by Treasury. In my opinion this is not relevant to the way QAO assesses and determines its basic rates of fees.

Under the proposed amendments, in deciding the basic rates of fees, the Auditor-General must have regard to:

- (a) the reasonable costs that may be incurred for conducting an audit
- (b) amounts ordinarily charged for conducting an audit by entities that provide audit services.



The audit fees we charge aim to recover both the direct and indirect costs associated with providing the audit services, but do not include a profit element. To ensure the audit fees are sufficient to recover the costs of providing the audit services it is imperative that the basic fee rates move in-line with the actual cost of providing the audit services.

The GIR is a general index applicable to a broad range of goods and services provided by government agencies. This means it does not specifically consider the relevant drivers, such as wages, technology and rent, that impact on the costs we incur in delivering audits. It would also appear to be inconsistent with the requirement for the Auditor-General to have regard to fees charged by entities that provide audit services. In discharging our audit mandate approximately 40 per cent of our financial audits are performed under contract by private sector audit firms. We regularly calibrate our rates against those used by the external firms who conduct audit work for us. These firms do not apply the GIR.

Further, under our present business model we seek approval of our basic fee rates for a 3-year period. This provides us with a level of budget certainty when planning for future expenditure, such as the cost of replacing laptops, and for investing in technologies required for delivering efficient audit services which must include safeguarding the significant amount of sensitive client information that we hold. This may be difficult to achieve if rates are approved annually given the GIR only gets released each year as part of the state budget.

It is also important to understand that our basic rates of fees are only one element of the audit fees we charge to our clients. The other is the extent of work required to conduct the audit (that is, the hours required to complete the audit). While increasing the basic fee rates can impact on the ultimate fee paid by the client, it does not automatically result in an increase in the audit fee.

We manage the audit fees we charge our clients by continually looking for greater efficiencies in conducting our audits. Our total audit fee revenue for the 2021-22 financial was \$39.8 million. This represents an increase of 5.8 per cent on audit revenue earned in the 2011-12 financial year. During the same period, the cumulative increase in our hourly fee rates approved by the Treasurer was 12.5 per cent.

The Australian Auditing Standards (ASAs) issued by the Australian Auditing and Assurance Standards Board (AUASB) establish the minimum level of audit work necessary for an auditor to issue an opinion on financial statements. Required audit effort is driven by considerations of risk at each audited entity, and this depends on the size and complexity of the entity and the nature of its operations. These risks can change from year to year due to restructures of government entities, introduction of new systems, and changes to government programs and priorities. To this extent, the required audit effort is out of the direct control of the auditor.

The standards also identify the quality assurance requirements for these audits. It is important that quality is not compromised by the inability to adequately resource the audit. However, we can reduce the level of audit effort (hours) required by adopting techniques, such as audit analytics, that support efficiencies and audit quality mechanisms. This however, requires investment in technology. If increases in basic fee rates were insufficient to support future investment in this technology, it would limit our ability to reduce the required level of audit effort and would be more likely to result in increased audit fees.

While I acknowledge that it is not compulsory for the committee to consider the GIR, the proposed amendment requires the committee to include details about whether it considered the GIR when reporting on their decision to approve the requested increase or not. Including these requirements in the legislation could be perceived or interpreted as giving the GIR a greater weighting than I believe is appropriate. It could also give rise to a perception that our basic rate of fees should in practice be linked to the GIR (a government policy requirement). This would go against the principle on which Professor Coaldrake's recommendation is based, that is, allowing the Auditor-General to independently set the basic rate of fees.

I acknowledge that the Auditor-General must remain accountable for ensuring the fees charged for audit services remain reasonable. In addition to the proposed new requirement for the committee to approve the basic fee rates, this will also be achieved through continuing existing practices including:

- establishing QAO's annual budget
- 5-yearly strategic reviews of QAO which typically includes an assessment of the reasonableness of our audit fees and the efficiency of the QAO
- communicating our proposed audit fees to the chief executives, boards, and audit committees of our clients in the audit plans we provide to them at the commencement of our annual financial audits.

I also highlight that our current audit fees represent less than 0.02 per cent of total state government expenses.



## Amendments related to the Auditor-General's mandate

The Bill proposes 2 amendments that directly impact on the Auditor-General's audit mandate. These amendments relate to:

- performance audits of government owned corporations (GOCs)
- audits at the request of parliament.

The amendment providing the Auditor-General with a clear mandate to conduct performance audits of GOCs is consistent with Professor Coaldrake's recommendation. This will remove a significant limitation currently imposed on the Auditor-General's performance audit mandate. If passed, this amendment will ensure the Auditor-General's mandate for GOCs is consistent with the mandate for other public sector entities.

Under the current requirements of s.35 of the AG Act, the Auditor-General must conduct an audit of a matter relating to the financial administration of a public sector entity, if requested by the Legislative Assembly. QAO's submission to the 2013 FAC inquiry identified this as an opportunity to strengthen the independence of the Auditor-General.

I am not concerned that this provision could be abused by parliament. However, the current section could limit the Auditor-General's ability to determine the priority given to audit matters as required under s.8 of the AG Act. Previous surveys of the independence of Australian audit jurisdictions have rated QAO's independence lower due to this lack of discretion provided to the Auditor-General under the current section.

By changing the word 'must' to 'may' the Auditor-General will be given the ability to assess the audit requested by parliament and determine where it sits within existing priorities. This would ensure the Auditor-General can consider a range of relevant factors before agreeing to conduct an audit requested by parliament. These considerations may include whether:

- the office has sufficient available funding and resources to conduct the audit
- conducting the audit would impact on the Auditor-General's ability to discharge other legislative aspects of their mandate
- the audit requested is in line with the Auditor-General's mandate under the AG Act
- QAO currently has the level of skill and/or expertise required to conduct the requested audit.

While s.35 has been scarcely used, we are often requested to conduct audits by parliamentary committees and members of parliament. We assess requests from committees as part of the formal consultation we conduct in developing our forward work plan each year. We have also recently developed a formal process for requests for audits from elected representatives that has increased the transparency of how we consider these requests. The Auditor-General will always strongly consider audits requested by parliament, its committees and its members.

