

**Parliamentary Committee Briefing Note
for the Economics and Governance Committee
Integrity and Other Legislation Amendment Bill 2023
July 2023**

Background and policy intent

The background and policy intent of the Integrity and Other Legislation Amendment Bill 2023 (the Bill) are outlined in detail in the Explanatory Notes for the Bill. The accompanying Statement of Compatibility with Human Rights addresses the human rights issues raised by the Bill.

The Bill implements integrity reforms arising from recommendations made by Professor Peter Coaldrake AO in his report, *Let the sunshine in: Review of Culture and accountability in the Queensland public sector* (Coaldrake Report) and reforms recommended by Mr Kevin Yearbury PSM in his *Strategic Review of the Integrity Commissioner's functions* (Yearbury Report).

The Bill is the second package of legislative amendments to implement the Coaldrake and Yearbury Reports. The *Integrity and Other Legislation Amendment Act 2022* established the Office of the Integrity Commissioner, strengthened the independence of the Auditor-General and made unregistered lobbying a criminal offence.

The Bill builds on these reforms to further enhance the independence of the Auditor-General and the other four integrity bodies (the Ombudsman, Integrity Commissioner, Information Commissioner and Crime and Corruption Commission) and significantly strengthen the regulation of lobbying activity in Queensland.

To achieve these objectives, the Bill amends the *Auditor-General Act 2009*, the *Crime and Corruption Act 2001*, the *Integrity Act 2009*, the *Ombudsman Act 2001*, the *Parliament of Queensland Act 2001*, and the *Right to Information Act 2009*. Minor amendments are also made to the *Education (General Provisions) Act 2006*, the *Right to Information Act 2009*, the *Local Government Act 2009*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Water Act 2000*.

The Coaldrake Report

Professor Coaldrake AO provided the Coaldrake Report to the Government on 28 June 2022. The Coaldrake Report makes 14 recommendations, a number of which require legislative amendments.

The *Integrity and Other Legislation Amendment Act 2022* and the *Public Sector Act 2022* addressed two of these recommendations:

- Recommendation 1 – The independence of the Auditor-General be strengthened, extending its scope and according it status as an Officer of the Parliament
- Recommendation 14 – Stability of government and performance of public service be strengthened by appointment of agency CEOs (including Directors-General) on fixed term, five-year contracts, unaligned to the electoral cycle

The Bill finalises Recommendation 1 reforms and implements a further three:

- Recommendation 3 – Lobbying regulation be strengthened through a requirement to register all professionals offering paid lobbying services for third parties, and explicit prohibition of lobbyists “dual hatting” as political campaigners
- Recommendation 12 – Integrity bodies’ independence be enhanced by involvement of parliamentary committees in setting their budgets and contributing to key appointments
- Recommendation 13 – The Ombudsman be provided with the authority to investigate complaints against private organisations carrying out functions on behalf of the government.

Recommendation 1 – The independence of the position of the Auditor-General be strengthened, extending its scope and according it status as an Officer of the Parliament.

The Bill amends the *Auditor-General Act 2009* to clarify the Auditor-General’s requirement to audit trusts that are managed or controlled by one or more public sector entities in which one or more public sector entities have a beneficial interest of 50 percent or more.

The intention of this amendment is not to expand the scope or number of trusts audited by the Queensland Audit Office, but to clarify those trusts that should automatically be audited and not reliant for auditing on an agreement under section 36 of the *Auditor-General Act 2009* which provides for audits ‘by-arrangement’.

Recommendation 3 - Lobbying regulation be strengthened through a requirement to register all professionals offering paid lobbying services for third parties, more transparent description of meeting purposes, extension of ministerial diaries to include staff meetings with lobbyists and explicit prohibition of lobbyists “dual hatting” as political campaigners

The Coaldrake Report reinforces the recommendations from the *Report on the Strategic Review of the Integrity Commissioner’s Functions* by Mr Kevin Yearbury PSM in September 2021 (the Yearbury Report).

Both Reports stress the need to strengthen the regulation of lobbying. The Bill implements the recommendations from these reports in 3 key ways: clarifying lobbying definitions, in particular ‘incidental lobbying’; prohibiting ‘dual hatting’; and providing greater powers for the Integrity Commissioner to ensure compliance with lobbying regulation.

The Bill replaces Chapter 4 (Regulation of lobbying activities) with a new Chapter 4. The new chapter uses contemporary drafting standards and retains much of the preexisting content but is re-ordered and crafted to improve readability.

Lobbying Definitions

The Definition of lobbying activity has been broadened to include all activities that attempt to influence government decision making. The definition of ‘lobbyist’ has been removed to focus the regulation on the activity rather than the individual.

This is complemented by removing the term ‘incidental’ and instead clarifying that communication with a government representative in the ‘ordinary course’ of providing professional or technical services for a client, is not lobbying.

These amendments address commentary from the Coaldrake Report that regulation should be on the type of activity and not the person, ensuring that only work that is 'truly' incidental to a professional or technical service is excluded from regulation (Coaldrake Report, page 51).

Prohibition of Dual Hatting

The Bill amends the *Integrity Act 2009* to introduce a prohibition of 'dual hatting'. Registered lobbyists will be prohibited from performing a substantial and senior role in a Queensland state election campaign, for a political party, during the 'election period'.

The amendments provide for a registered lobbyist to notify the Integrity Commissioner of an intention to undertake such a role for a political party during an election period, and for the Integrity Commissioner to remove the person from the register.

The election period is defined as commencing from the issuance of the Writ and concluding at the end of the day the election is held.

The prohibition will not apply to other roles a person may take in an election campaign, such as volunteering to hand out 'how-to-vote' cards, or taking general membership in a political party.

The Bill also introduces a disqualification for registration, for a registered (or registered immediate before the election) lobbyist who performs a substantial and senior role during the election period for a political party. This disqualification will apply for the term of the government formed from the election (up to 4 years), and will apply regardless of which political party the person performed the role with.

The Coaldrake Report noted that the code of conduct issued by the Australian Professional Government Relations Association already explicitly prohibits member practitioners from playing a senior role in the conduct of an election. The Coaldrake Report recommends embedding this in the *Integrity Act 2009* and taking it further, to ban the practitioner from engaging in lobbying activity for the next term of office (Coaldrake Report, page 57).

Integrity Commissioner Powers

The Bill amends the *Integrity Act 2009* to provide the Integrity Commissioner with greater scope to manage non-compliance or breach of lobbying regulation. Notably, the Bill introduces:

- Authority for the Integrity Commissioner to approve, and to require mandatory training as a condition of registration
- Powers for the Integrity Commissioner to seek explanations, issue warnings and issue compliance notices to rectify a breach before taking more serious steps of issuing show cause notices, de-registering or suspending a registered lobbyist
- Powers for the Integrity Commissioner to request information from a registered lobbyist, Opposition representative or government representative
- Requirement for the Integrity Commissioner to include a conflict of interest policy in the lobbyist code of conduct
- Power for the Integrity Commissioner to issue directives for procedural and operational matters applying to registered lobbyists.

These reforms implement the recommendations in chapter 7 of the Yearbury Report that the Integrity Commissioner be given authority to compel the production of documents and apply

proportionate corrective action in the course of monitoring compliance (Yearbury Report, page 50).

Recommendation 12 – Integrity bodies’ independence be enhanced by involvement of parliamentary committees in setting their budgets and contributing to key appointments

To enhance the independence of the five core integrity bodies, the Bill amends the:

- *Auditor-General Act 2009*
- *Crime and Corruption Act 2001*
- *Integrity Act 2009*
- *Right to Information Act 2009*
- *Ombudsman Act 2001*

Independence is enhanced by insertion of the relevant parliamentary committee in funding decisions and decisions on key appointments for the integrity bodies.

The Bill amends all five Acts to require integrity bodies to submit funding proposals for additional funding, to the appropriate portfolio parliamentary committee.

‘Additional funding’ is defined as being in addition to the allocated amount for the financial year. This may be proposal for increases to annual budgets submitted during a budget cycle, or for additional funding during a financial year for, e.g., a new function or short term project.

The committee will have 20 business days to consider the proposal and provide a report to the appropriate Minister approving the funding proposal or an alternative proposal (including for no additional funding). If a report is not provided within 20 business days, the committee will be taken to have approved the proposal in full.

The Minister and Government will then progress the proposal, with the committee’s report, through the appropriate funding process.

The Minister will be required to table a response to the committee report, along with the committee report. If the funding approved by Government is different to that approved by the committee in its report, the response will need to provide reasons for the difference.

Except for appointments for the Crime and Corruption Commission (CCC), the four core integrity officer appointments will also be presented to parliamentary committees for approval prior to the appointment being submitted to the Governor-in-Council.

Parliamentary committees will be asked to approve, or not approve, the recruitment strategy, terms and conditions and candidate selected for appointment to the four core integrity roles.

The key appointments for the CCC already require approval and input from the Parliamentary Crime and Corruption Committee.

Committee approval will also be required for statutory reviewers and terms of reference and for the independent auditor for the Queensland Audit Office.

In all instances, the committee will have 20 business days to make a decision on key appointments. If the committee's decision is not provided within 20 business days, the committee will be taken to have approved the candidate, terms and conditions, strategic review, terms of reference or independent auditor.

The Coaldrake Report highlights the current risk of either real or perceived undue influence being applied by government controlling budgets and appointments (Coaldrake Report, pages 69 and 70). The Bill fully implements Recommendation 12, and as noted by the Premier in the Explanatory Speech on 16 June, the Bill seeks to balance integrity bodies' independence with the Executive Government's responsibility for distribution of consolidated funds.

Recommendation 13 – The Ombudsman be provided with the authority to investigate complaints against private organisations carrying out functions on behalf of the government

The Bill amends the *Ombudsman Act 2001* to expand the Ombudsman's jurisdiction over non-government entities providing services on behalf of Queensland government agencies.

The amendments will enable the Ombudsman to investigate administrative action taken by a non-government entity, and make recommendations on administrative practices to the entity.

The Ombudsman will be able to draw upon all necessary functions and powers that can currently be used for investigating complaints made against government agencies.

The Bill does limit the scope to the decisions, practices and procedures of a non-government entity, specifically related to the functions conferred on the non-government entity by the government agency (e.g. under a contract).

The Coaldrake Report discussed the changing nature of government services and the increased use of non-government partners to deliver services. The Coaldrake Report noted that these partners may be subject to contractual provisions that require adherence to quality standards, but that it is also imperative that the public is able to maintain oversight of government agency actions, in particular, when those functions and services are contracted out (Coaldrake Report, page 26).

The Bill specifically addresses Recommendation 13 to give the Ombudsman that oversight.

Other amendments

Integrity Commissioner Independence

The Yearbury and Coaldrake Reports call for the Office of the Queensland Integrity Commissioner (OQIC) to be an 'independent unit' of the Department of the Premier and Cabinet.

The *Integrity and Other Legislation Amendment Act 2022* created the Office of the Queensland Integrity Commissioner as a separate public service office and provided the Integrity Commissioner with employing powers, with staff employed under the *Public Sector Act 2022*.

The Bill builds on this independence by establishing the Office of the Queensland Integrity Commissioner as a statutory body for the purposes of the: *Financial Accountability Act 2009*, *Financial and Performance Management Standard 2019* and the *Statutory Bodies Financial Arrangements Act 1982*.

Extraneous references to Auditor-General in Queensland Legislation

A recommendation from the Queensland Audit Office's submission to the 2013 Finance and Administration Committee Inquiry was to review Queensland legislation to ensure references to the Auditor-General were consistent with the discretion provided to the Auditor-General in the *Auditor-General Act 2009*.

The Bill makes a small number of amendments to various Acts to remove references to the Auditor-General where the references have been identified as obsolete or inconsistent.

Consultation

Targeted consultation on a confidential draft of the Bill was undertaken over four weeks with:

- The Speaker and Clerk of Parliament
- The five core integrity bodies
- Relevant peak industry organisations for:
 - o Law
 - o Government relations
 - o Development planning
 - o Resources
 - o Social services
 - o Medical
 - o Pharmacy
 - o Management consulting
 - o Accountancy
 - o Company and internal auditing
- Selected major law, consultancy and lobbying firms operating in Queensland
- The Local Government Association of Queensland
- Property Council of Australia
- Queensland Council of Unions
- The Public Trustee of Queensland
- Queensland Investment Corporation
- Queensland Treasury Corporation

Feedback received during the consultation process was taken into account in finalising the Bill.

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