

## INTEGRITY AND OTHER LEGISLATION AMENDMENT BILL 2023

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<b>Submitted by:</b>	Auditor-General, Queensland Audit Office
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## OFFICIAL

18 July 2023

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 2023

Thank you for the opportunity to provide a submission on the *Integrity and Other Legislation Amendment Bill 2023*. My submission focuses largely on the proposed amendments to the *Auditor-General Act 2009* (AG Act) contained in the Bill. However, some of my comments are relevant to recommendations made by Professor Coaldrake for all integrity agencies.

As I previously outlined to the committee in my submission to its inquiry on the *Integrity and Other Legislation and Amendment Bill 2022*, the primary function of the Auditor-General is to assist parliament in holding the executive government to account.

Some 32 years have elapsed since the Electoral and Administrative Review Commission (EARC) made recommendations to enhance the independence of the Auditor-General. In 2013, these recommendations formed the basis of QAO's submission to an inquiry by the Finance and Administration Committee. They have also been the basis for subsequent recommendations by QAO strategic reviewers. Successive governments over this period have failed to fully support and action recommended enhancements to the independence of the Auditor-General.

I am greatly concerned that the recommendations made by Professor Coaldrake will add to this list if not fully actioned by government. By not ensuring the ongoing independence of the Auditor-General from the executive government, it limits the very nature of the independence, real or perceived. It also diminishes the level of assurance that parliament and the Queensland community obtain from the position.

As outlined in my letter to the committee on 30 June 2023, my main concern is that in drafting the Bill, the government appears only to have focused on the wording of the summary recommendations on page 3 of Professor Coaldrake's report *Let the sunshine in*. They do not address the full recommendations contained in the body of the report. I also wrote to the Premier on 22 May 2023 outlining this concern.

In the speech introducing the Bill, the Premier expressed my concern as me 'expanding on the Coaldrake recommendation'. This is a misrepresentation of the concerns I raised. In the letter to the Premier, I highlighted that the recommendations made by Professor Coaldrake in the body of his report were more comprehensive than the summary recommendations appearing in section 2 of the report.

I have included in [Appendix 2](#) to this letter a comparison of the summary recommendations with the full report recommendations. I also provide an example of the summary recommendation, per section 2 of the report below:

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

However, on pages 71 and 93 of the report, this recommendation is expressed as:

#### RECOMMENDATION

The independence of integrity bodies in Queensland be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive government.

The amendments proposed in the current Bill are consistent with the summary recommendation in that they provide an enhanced role for the committee in several areas, which I support. They do not, however, shift the existing responsibilities of Ministers to the Speaker as suggested in the full recommendation. This change would further enhance the independence of integrity offices and reflect their status as independent Officers of the Parliament, per each body's legislation.

I acknowledged in my submission on the 2022 Bill that absolute independence of Auditors-General is not realistic as they use public funds and must be subject to the same financial and performance accountability requirements that they help uphold. However, such accountability should be directly to parliament and not the executive government. This is achieved by the parliamentary committee discharging its oversight responsibilities for the Auditor-General.

I have attached a copy of my previous letters to the Premier and the committee in support of this submission. I have also enclosed a detailed submission of key aspects of the Bill under the following headings:

- amendments related to the appointment of the Auditor-General
- amendments related to the approval of QAO's budget
- amendments related to the Auditor-General's audit mandate of trusts
- amendments related to the strategic review and external audit of QAO
- amendments related to the tabling of QAO's annual report
- amendments related to recommendations for previous reviews of QAO.

The comments provided in this detailed submission are consistent with the feedback my office and I provided to representatives of the Integrity Reform Taskforce during the drafting of the Bill. They also reflect better practice identified in other jurisdictions and referred to in the Australasian Councils of Auditors-General (ACAG) [2020 survey on independence of Auditors General](#).

I would welcome the opportunity to attend the public hearing on the Bill on 11 August to provide further detail and answer any questions the committee may have on this 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.

Here in 2023, the government has the opportunity to improve transparency, accountability and oversight of the performance of public sector entities. As Professor Coaldrake said, '*a culture of integrity and mutual respect needs to be demonstrated by both political parties and professional leaders.*' I will continue to promote the need for the further change.

Yours sincerely

Brendan Worrall  
Auditor-General

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Detailed Submission by the Auditor-General

Appendix 1 – Opportunities to further strengthen independence

Appendix 2 – Comparison of Coaldrake's summary recommendations to full recommendations

Letter to the Economics and Governance Committee 30 June 2023

Letter to the Premier and Minister for Olympic and Paralympic Games

## Detailed submission by the Auditor-General

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

Clauses 4 and 5 of the Bill propose amendments requiring the parliamentary committee to approve:

- the selection and process for the appointment of the Auditor-General
- the appointment of the person as Auditor-General.
- the remuneration, allowances, and terms and conditions of office for the Auditor-General.

I support these amendments to the extent they provide the parliamentary committee with an enhanced role in these areas. However, I believe there are opportunities to further enhance these proposed requirements.

While the proposed amendments require the parliamentary committee approve the appointment of the Auditor-General, I also note that if this does not happen within 20 business days after receiving the request from the Minister it is taken to be automatically approved. I appreciate the intent of this requirement is to ensure the appointment process is not unduly delayed. However, this could also be perceived as a limitation on the independence of the process. As the recommendation to the committee is made by the Minister, if there is no actual approval by the committee this could be seen as an appointment by the Minister not the committee.

The QAO submission to the Finance and Administration Committee's (FAC) 2013 *Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence* identified that the Auditor-General's independence could be strengthened by having the Queensland Independent Remuneration Tribunal determine the remuneration and allowances to be paid to the Auditor-General. While I acknowledge this would require amendment to the *Queensland Independent Remuneration Tribunal Act 2013*, this would be consistent with better practice identified in other jurisdictions including the Commonwealth, New Zealand, Western Australia and Australian Capital Territory (ACT).

### Amendments related to the approval of QAO's budget

Clause 11 of the Bill proposes amendments to the process for establishing and approving QAO's budget. It is our understanding that this will only apply to a request for 'additional funding', that being funding above that provided in the prior year.

Under the proposed amendments, the Auditor-General would submit funding proposals to the parliamentary committee who must review the proposal and provide the Minister with a report, in consultation with Queensland Treasury, identifying whether the proposal is supported. The Minister is then responsible for:

- taking the proposal to the Cabinet Budget Review Committee for decision
- tabling in parliament the committee's report about the proposal and the Minister's response.

The Bill also proposes similar requirements for other integrity offices.

While we support the enhanced role of the parliamentary committee in approving QAO's budget, we believe that the proposed amendments still fall short of best practice by retaining a significant role for the Minister in the process. The *Independence of Auditors General: A 2020 update of a survey of Australian and New Zealand legislation* notes the following on best practice in establishing budgets for Auditors-General:

*'The usual Westminster appropriation process requires the Government to be held accountable for the budget and that it therefore should determine the budget's overall make-up and composition. However, leaving the budget for the Auditor General in the hands of the Executive could enable the Executive to starve the Auditor General of financial resources, thereby rendering him or her ineffectual.'*

*In the United Kingdom, as part of the reforms introduced in 1983, and continued under more recent legislation, the Comptroller and Auditor General presents the National Audit Office budget to the Public Accounts Commission. The Treasury is able to make submissions to the Commission about the budget, but it is the Commission that makes a recommendation to the House of Commons about whether to accept the budget.'*

*In New Zealand, the Parliament decides on the level of funding for the Auditor-General, who submits his or her annual budget through the Speaker to Parliament directly. As in the United Kingdom, this approach reverses the decision-making process, with the Parliament making the decision after considering submissions from the Executive. Further, under the New Zealand approach, the Speaker is the “Vote Minister” responsible for the Auditor General’s appropriation, ensuring that the Executive is not able to constrain the use of the appropriation. The New Zealand model provides much stronger protection to the financial independence of the Auditor General.*

*In the Commonwealth the Joint Committee of Public Accounts and Audit is required to consider the draft estimates of the Auditor General and to make recommendations to both Houses of Parliament and to the Minister who administers the Auditor-General Act 1997.*

*In the Australian Capital Territory, the Public Accounts Committee through the Speaker recommends financial appropriation [for] the Officers of the Parliament and if the Appropriation Bill is less than the recommended appropriation the Treasurer must present a statement to the Assembly on the reasons. The Committee may also recommend additional amounts if the Auditor General is of the opinion that the appropriated funds are insufficient to enable certain audits to be undertaken promptly.’*

In the ACT, this process operates under Assembly Budget Protocols agreed to by the Speaker and Chief Minister. These protocols apply to the budget and funding arrangements for:

- the Office of the Legislative Assembly and
- Officers of the Assembly, including the:
  - Auditor-General
  - Electoral Commissioner
  - ACT Integrity Commissioner
  - Ombudsman.

As part of these agreed protocols the Speaker effectively acts as the responsible Minister of these agencies when dealing the matters contained in the document. A copy of this document is available at [ACT Assembly Budget Protocols](#).

We note that in her speech introducing the Bill the Premier stated that:

*‘Government has fully considered this more extensive model and sought expert legal advice on its application. Government has been advised that aligning budgets of integrity bodies with the budget of the Legislative Assembly is potentially unconstitutional. The Constitution of Queensland strictly prescribes what the parliamentary appropriations bill, as opposed to the general appropriations bill, must contain. It clearly limits this to the budgets for the Legislative Assembly and Parliamentary Services. It cannot be interpreted to enable inclusion of any other entity’s budget.’ (underline added)*

We further note that in the public hearing held by the committee on 10 July 2023, Ms Welch from the Department of the Premier and Cabinet referred to s.20 of the *Constitution of Queensland 2001* as the basis for this.

In correspondence to the Premier dated 22 May 2023, I acknowledged that the current provisions may prevent the budget for the Auditor-General and other integrity offices from being included in the Appropriation Act for Parliament. However, in light of the recommendation made by Professor Coaldrake and the best practice examples identified in other jurisdictions I implored the government to continue exploring available options to address this matter in a way that represents best practice.

I also note that in her speech the Premier stated that were the government to substitute the Speaker for the responsible minister for progressing an integrity body’s budget, these officers of the parliament would have greater independence from the executive government than the parliament itself. In response to this comment, I would merely note that the protocol adopted in ACT not only applies to officers of the parliament but the office of the legislative assembly as well. This reflects the special relationship between the parliament and those roles identified as officers of parliament.

This is acknowledged in the preamble of the document which states:

*'The agreement gives further effect to the 'separation of powers doctrine', acknowledging and supporting the exclusive right of the Executive to develop and frame appropriations for consideration by the Legislature and preserving the independence of the Legislature, and Officers of the Assembly, to hold the Executive to account.'*

I believe that having a budget process that protects both the parliament and officers of the parliament is integral to the independence of these roles. This would not only be consistent with a Westminster system of government, but it would also support the separation of powers doctrine as acknowledged in the ACT budget protocol. This independence is of even greater importance where there is only one parliamentary chamber.

If the government supports truly independent integrity offices, I am keen to work with them in seeking ways to address the current limitations. I would also appreciate any support from the committee in addressing these limitations.

## Amendments related to the Auditor-General's audit mandate for trusts

QAO's submission to the FAC inquiry in 2013 identified an opportunity to clarify the Auditor-General's mandate for auditing trusts created and/or used by public sector entities. Presently, the Auditor-General may conduct an audit of these trusts where:

- the trust is controlled by a public sector entity, thereby meeting the definition of a public sector entity in the AG Act, or
- the audit is conducted on a by-arrangement basis under s.36 of the AG Act.

Given the legal nature of a trust it is often difficult to establish that the trust is controlled by a public sector entity even where the entity is either the trustee or the primary beneficiary of the trust. Under s.36 of the AG Act, a by-arrangement audit can only be conducted where the Auditor-General is requested to perform the audit and the entity consents to the Auditor-General conducting the audit.

I believe the amendments proposed in clause 12 of the Bill will provide clarity in this area by providing greater surety over my mandate for public sector trusts without needing to rely on the by-arrangement provisions.

My officers liaised closely with the Taskforce in developing the wording proposed in the Bill. I do not believe these amendments extend the current mandate beyond the trusts presently audited by QAO. Most of the trusts this definition will apply to are investment funds managed by QIC Limited which are currently audited by QAO. Both my office and the Taskforce discussed the intent of these proposed amendments with QIC Limited.

## Amendments related to the strategic review and external audit of QAO

Clauses 15 and 16 of the Bill propose amendments to the process for conducting strategic reviews of QAO. This includes requiring the parliamentary committee to approve the appointment of the reviewer and the terms of reference for the review. The amendments also provide for the strategic reviewers to provide their final report to the parliamentary committee with the chair of the committee responsible for tabling the report.

Similarly, clauses 17 and 18 of the Bill propose amendments to the external audit requirements of QAO. This includes approval of the external auditor by the parliamentary committee and requiring the auditor to give a report about the audit to the parliamentary committee.

While I support this enhanced role for the parliamentary committee, the proposed amendments retain responsibilities for the Minister and the Treasurer. with a requirement for the auditor to give their report to the Minister and the Treasurer. This would appear to indicate an intent to maintain a level of accountability to the executive government rather than shift this from the executive government to the parliament.



There is also a lack of clarity around what is meant by the term ‘audit report’ in the revised s.72. From an audit perspective, an audit report may refer to either:

- the independent auditor’s report, including the auditor’s opinion, issued on an entity’s financial statements, or
- a report issued by an auditor to management of an entity identifying the results, key findings and any recommendations arising from an audit.

If it is the former, this would need to be attached to the financial statements before tabling. It could also mean that the audited financial statements of QAO would likely need to be tabled before QAO’s annual report. This is currently prevented for all departments and statutory bodies by s.42 of the *Financial and Performance Management Standard 2019*.

I believe that independence would be further enhanced if the parliamentary committee was given full responsibility for overseeing the strategic review and external audit processes, without any direct involvement from the executive government. This would be consistent with role of the parliamentary committee provided for in the Auditor-General Act and better practice adopted in other jurisdictions including ACT, Western Australia and Victoria.

## Amendments related to the tabling of QAO’s annual report

The Bill proposes a new s.72AA enabling the Auditor-General to give QAO’s annual report to the Speaker and the parliamentary committee. The chair of the committee will be responsible for tabling the annual report in Parliament instead of the Premier. I support this amendment as it better reflects the Auditor-General’s position as an officer of the Parliament.

I believe this amendment will address concerns I previously raised about delays occurring between the date QAO’s annual report is finalised and provided to the Department of the Premier and Cabinet for tabling, and the date the annual report is tabled in Parliament by the Premier. However, I believe this could be enhanced if a timeframe for tabling by the chair was also included in the section. This could, for example be:

- within 3 sitting days after the committee receives the report as proposed for the new s.72(4), or
- on the next sitting day as per the requirements for tabling of other QAO reports under s.67 of the AG Act.

However, despite the new requirement for the chair of the committee to table the report, I note the Auditor-General is still required to give the annual report to both the Premier and Treasurer. The requirement to give the Treasurer a copy of the annual report is new and it is unclear why this was included. This would appear to indicate an intent to increase the level of oversight by the executive government rather than shift the oversight from the executive government to the parliament.

It is also unclear what the intent of providing the Treasurer and the Premier with a copy of the report is before it is tabled in parliament. In my opinion it should be sufficient for the Auditor-General to give the annual report to the Speaker and the parliamentary committee.

## Other amendments related to previous reviews of QAO

QAO’s submission to the 2013 FAC *Inquiry into legislative arrangements ensuring the Auditor-General’s independence*, identified 25 opportunities to strengthen the Auditor-General’s independence. These opportunities formed the basis for my submission to Professor Coaldrake’s review.

In his final report, Professor Coaldrake recommended that other outstanding recommendations from the 2013 FAC inquiry be implemented. Of these:

- 12 have been fully addressed through amendments or proposed amendments to the AG Act
- 9 have been partially addressed through amendments or proposed amendments to the AG Act
- 3 have not been addressed through amendments or proposed amendments to the AG Act
- 1 was previously considered by Parliament and was not supported

The recommendations I consider to be partially addressed typically relate to matters where the role of the parliamentary committee has been enhanced, but the Minister still has some oversight or responsibility. Several of these are discussed in the previous sections.

One of the areas identified as being partially addressed through the current Bill relates to:

*Reviewing other Queensland legislation to ensure any requirements for the Auditor-General to conduct audits are consistent with the discretion provided to the Auditor-General under the AG Act.*

In liaising with the Taskforce on this matter my office identified 37 pieces of legislation where we believed references to the Auditor-General should be removed or incorporated within the AG Act. The current Bill proposes removing redundant references to the Auditor-General in 4 pieces of legislation. I understand it is intended to amend some other legislation at a later time. However, I also understand this is likely to fall short of the 37 Acts identified by QAO.

An example of the types of provisions identified by my office includes 5 Acts which would require the Auditor-General to conduct audits of superannuation funds created under those Acts. In liaising with the Taskforce on this issue my office recommended these references to the Auditor-General be removed on the following basis:

- to date no superannuation funds have been created under these provisions
- superannuation funds created under these provisions would be unlikely to meet the definition of a public sector entity under the AG Act and would not fall under the Auditor-General's legislated mandate.

It should also be noted that QAO does not currently conduct audits of any superannuation funds. Given the specialist knowledge required to conduct such audits, it is unlikely QAO would agree to conducting an audit of a superannuation fund unless it met the definition of a public sector entity and fell directly within the Auditor-General's mandate under the AG Act.

Those opportunities that have not been addressed either through the *Integrity and Other Legislation Amendment Act 2022* or *Integrity and Other Legislation Amendment Bill 2023* include:

- establishing the Auditor-General as a corporation sole
- identifying that the Auditor-General's powers to access information is not limited by any rule of law relating to legal professional privilege
- giving the Auditor-General discretion in deciding whether to make information available to a commission of inquiry.

Establishing the Auditor-General as a corporation sole was initially recommended by the Electoral and Administrative Review Commission in 1991. We understand that this is now a largely outdated concept that is rarely applied to Queensland government entities.

The issue of accessing information subject to legal professional privilege was discussed with the Taskforce in drafting the *Integrity and Other Legislation Amendment Bill 2022*. However no proposed amendments were included in the that Bill or the 2023 Bill. While my office can generally work within this limitation, in extreme cases where information of material importance to an audit is not provided, the consequences can be significant. These consequences can include:

- issuing a qualified auditor's opinion on the financial statements due to an inability to form an opinion on the specific matter for which the information is relevant
- significant delays and additional cost to conducting the audit while the auditors try to identify alternate sources of information to enable them to form an opinion on the matter.

I understand that the *Ombudsman Act 2001* currently includes provisions enabling privileged information to be provided to the Ombudsman. This is an area we will continue to pursue with the government.

A full listing of these opportunities and our assessment of the status is included in Appendix 1.



## Appendix 1 - Opportunities to further strengthen independence

The table below represents opportunities to strengthen Auditor-General independence identified in QAO's submission to the Finance and Administration Committee's 2013 *Inquiry into legislative arrangements ensuring the Auditor-General's independence*.

The status column represents QAO's assessment of these opportunities reflecting changes to the *Auditor-General Act 2009* through the *Integrity and Other Legislation Amendment Act 2022* and proposed changes included in the *Integrity and Other Legislation Amendment Bill 2023*.

Opportunity to strengthen independence	Status
1. Recognising the Auditor-General as an 'independent officer of the Parliament' in the AG Act.	Addressed in <i>Integrity and Other Legislation Amendment Act 2022</i> .
2. Requiring the Auditor-General and Deputy Auditor-General to take an oath of office administered by the Speaker or, if there is no Speaker or the Speaker is unavailable, the Clerk of the Parliament.	Addressed in <i>Integrity and Other Legislation Amendment Act 2022</i> .
3. The Queensland Independent Remuneration Tribunal determining the remuneration and allowances to be paid to the Auditor-General. This would also need to be recognised in the Queensland Independent Remuneration Tribunal Act 2013.	Partially addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – parliamentary committee to approve terms and conditions instead of QIRT.
4. The Auditor-General being entitled to take leave upon giving notice to the Speaker or the Chair of the parliamentary committee, rather than requiring the approval of the Minister.	Addressed in <i>Integrity and Other Legislation Amendment Act 2022</i> .
5. The parliamentary committee appointing the strategic reviewer and deciding the terms of reference for the review under Part 4 of the AG Act.	Addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> .
6. Requiring the strategic reviewer to provide their report on the review directly to the parliamentary committee, rather than the Minister.	Partially addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> - while the report is to be given to the committee there is still a requirement to provide the report to the Minister.
7. Requiring the parliamentary committee to manage the selection and appointment process for the position of Auditor-General.	Partially addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – the parliamentary committee will be responsible for approving the selection process, the actual process will still be managed by the Department of the Premier and Cabinet.
8. Requiring the Auditor-General to be appointed by Governor-in-Council on address by the Legislative Assembly.	Partially addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – the appointment will be made by Governor-in-Council on recommendation of the Minister after the proposed appointment has been approved by the parliamentary committee.
9. Restricting the Auditor-General's employment in the public sector for two years after their term.	Addressed in <i>Integrity and Other Legislation Amendment Act 2022</i> .
10. Recognising in the AG Act that a person acting in the role of Deputy Auditor-General may also act as Auditor-General in the absence of both the Auditor-General and Deputy Auditor-General.	Addressed in <i>Integrity and Other Legislation Amendment Act 2022</i> .
11. Clarifying the Auditor-General's mandate for auditing trusts created and/or used by public sector entities in performing their functions.	Addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> .
12. Amending the AG Act to enable Parliament to request but not require the Auditor-General to conduct audits of matters relating to the financial administration of public sector entities.	Previously considered by Parliament – this amendment was proposed in the <i>Integrity and Other Legislation Amendment Bill 2022</i> but was not supported by Parliament and was not included in the final Act.
13. Providing the Auditor-General with the discretion to initiate performance audits of government owned corporations.	Addressed in the <i>Integrity and Other Legislation Amendment Bill 2023</i> .

Opportunity to strengthen independence	Status
14. Reviewing other Queensland legislation to ensure any requirements for the Auditor-General to conduct audits are consistent with the discretion provided to the Auditor-General under the AG Act.	<b>Partially addressed</b> in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – this Bill will remove redundant references to the Auditor-General in 4 pieces of legislation. We understand there is intent to also amend further legislation to remove references to the Auditor-General. However, this is likely to fall short of the 37 pieces of legislation identified by QAO where references should either be removed or moved to the <i>Auditor-General Act</i> .
15. Identifying that the Auditor-General's power to access information is not limited by any rule of law relating to legal professional privilege. Disclosure of information to the Auditor-General should not otherwise affect the operation of the rule of law relating to the privilege.	<b>Not addressed</b> - a proposed amendment was initially included in an early draft of the <i>Integrity and Other Legislation Amendment Bill 2022</i> but was removed from the Bill before it was tabled in parliament.
16. Giving the Auditor-General discretion in deciding whether to make information available to a commission of inquiry.	<b>Not addressed</b> – during the year QAO was required to provide information to a Commission of Inquiry on forensic DNA testing even though it related to an audit that was still in progress.
17. Establishing the Auditor-General as a corporation sole under the AG Act.	<b>Not addressed</b> – this recommendation was originally made by EARC in 1991. The notion of a corporation sole is largely outdated now and rarely used in government. Examples include QTC and Public Trustee. Even if created as a corporation sole, QAO would need to be classified as either a department or a statutory body for purpose of financial accountability requirements.
18. Establishing the Auditor-General as the employer and employing QAO staff under the AG Act and not the Public Service Act.	<b>Addressed</b> in <i>Integrity and Other Legislation Amendment Act 2022</i> .
19. Giving the Auditor-General authority to appoint the staff necessary to exercise the Auditor-General's functions.	<b>Addressed</b> in <i>Integrity and Other Legislation Amendment Act 2022</i> .
20. Enabling the Auditor-General to determine the remuneration and other terms and conditions for the appointment of QAO staff.	<b>Addressed</b> in <i>Integrity and Other Legislation Amendment Act 2022</i> .
21. Involving the parliamentary committee in the process for setting the QAO's budget, including: <ul style="list-style-type: none"> <li>• requiring the Auditor-General to provide the annual estimates for the QAO to the parliamentary committee</li> <li>• the estimates being considered by the parliamentary committee and tabled in Parliament with such modifications the committee thinks fit</li> <li>• including the annual estimates for the QAO in the Appropriation Bill for the Parliament</li> <li>• adopting the same process for any supplementary funding requested by the Auditor-General during the year.</li> </ul>	<b>Partially addressed</b> in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – the Bill includes a new process for approving funding proposals for QAO which includes greater involvement of the parliamentary committee. However, the process still includes oversight by the Premier and QAOs appropriations are still included within general appropriations.
22. Removing from the AG Act the requirement for the Treasurer to approve the basic rates of audit fees.	<b>Partially addressed</b> in the <i>Integrity and Other Legislation Amendment Act 2022</i> – The Act removes the requirement of the Treasurer to approve these rates and replaced it with the requirement for them to be approved by the parliamentary committee. While QAO is satisfied with this aspect of the new process the new section includes references to the committee considering the Government Indexation Rate (GIR) when approving the rates. This can be perceived as an attempt to link any approval back to government policy.

Opportunity to strengthen independence	Status
23. The Auditor-General providing the QAO's annual report to the Speaker or Clerk for tabling in Parliament, instead of to the Minister.	<b>Addressed</b> in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – QAO's annual report will now be provided to the Speaker and the chair of the parliamentary committee who is to table the report in parliament. A copy of the annual report is also to be provided to the Premier and Treasurer.
24. Appointing the external auditor of the QAO by resolution of the Parliament on the recommendation of the parliamentary committee.	<b>Partially addressed</b> in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – QAO's external auditor will be appointed by the Governor-in-Council on recommendation of the Minister but only after approval has been obtained from the parliamentary committee.
25. Requiring the external auditor of the QAO to report on the results of audits performed directly to Parliament or to Parliament through the parliamentary committee.	<b>Partially addressed</b> in the <i>Integrity and Other Legislation Amendment Bill 2023</i> – QAO's external auditor will now report to the parliamentary committee but will also still give the report to the Premier and the Treasurer.



## Appendix 2 – Comparison of Coaldrake’s summary recommendations to full recommendations

The table below compares the summary recommendations contained in section 2 of Professor Coaldrake’s *Let the sunshine* report against the recommendations that appear in the body of the report and under the heading of Consolidated Recommendations on pages 91–94 of the report.

Summary recommendation	Consolidated list of 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.	<ul style="list-style-type: none"> <li>• The Auditor-General become an independent Officer of Parliament.</li> <li>• The Auditor-General Act 2009 (Qld) be amended to allow for the Auditor-General’s employment of QAO staff under that Act rather than under the Public Service Act 2008 (Qld).</li> <li>• The Auditor-General be allowed to independently set basic rates for audit fees without the Treasurer’s approval.</li> <li>• The Auditor-General be given the discretion to undertake performance audits on government owned-corporations.</li> <li>• Other outstanding recommendations from the 2013 FAC Inquiry and 2017 Strategic Review be implemented.</li> </ul>
2. Cabinet submissions (and their attachments), agendas, and decisions papers be proactively released and published online within 30 business days of such decisions.	The Department of Premier and Cabinet develop a policy requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet, subject only to a number of reasonable exceptions which should be outlined in the policy.
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.	<p>Lobbying regulation be strengthened by:</p> <ul style="list-style-type: none"> <li>• requiring that all professionals offering paid lobbying services to third parties to register as lobbyists;</li> <li>• abandoning the ‘drop down’ menu on the lobbying contact log in favour of a requirement that lobbyists provide a short description of the purpose and intended outcome of contact with government;</li> <li>• requiring the publication of diaries of ministers and their staff. Diaries should record all external contacts designed to influence government decisions, should readily link to the lobbying register and should be easily accessible and searchable;</li> <li>• an explicit prohibition on the “dual hatting” of professional lobbyists during election campaigns. They can either lobby or provide professional political advice but cannot do both;</li> <li>• encouraging the Auditor-General to carry out performance audits of the lobbying register, ministerial diaries and public records to ensure recordkeeping obligations are being complied with.</li> </ul>

Summary recommendation	Consolidated list of recommendation
4. Development and continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior public service officers. The tone set at the top is essential.	Development and continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior public service officers. The tone set at the top is essential.
5. The rejuvenation of the capability and capacity of the Queensland public sector be a major and concerted focus. This should emphasise a culture of performance and integrity. The Public Service Commission must accept its key role.	The rejuvenation of the capability and capacity of the Queensland public sector be a major and concerted focus. This should emphasise a culture of performance and integrity. The Public Service Commission must accept its key role.
6. Establishment of a single clearing house for complaints, with capacity for the complainants and agencies to track progress and outcomes. Technology enablement and proper training of staff will be critical.	<p>Consideration be given to the establishment of a technologically-enabled clearing house which will:</p> <ul style="list-style-type: none"> <li>act as a first point of contact for complainants to report concerns and complaints, including complaints about alleged corruption, administrative decisions, and customer complaints;</li> <li>assess each complaint and determine whether: <ul style="list-style-type: none"> <li>the complaint should be referred to an integrity body;</li> <li>the complaint should be referred to an agency complaints-handling process or for departmental investigation; or</li> <li>no further action be taken (for vexatious or trivial complaints); and</li> </ul> </li> <li>operate through the creation and use of a central reporting portal, accessible to integrity agencies, ethical standards units and complainants, the purpose of which would be to rationalise and streamline reporting and compliance administration to enable agencies to focus on their core business in a timely manner and reduce administrative burden.</li> </ul>
7. The Crime and Corruption Commission (CCC) to avail itself of the opportunity provided by the clearing house and the other cultural changes prompted by this Review to redouble its attention on serious corruption and major crime.	The CCC avail itself of the opportunity provided by the clearing house and the other cultural changes prompted by this Review to redouble its attention on serious corruption and major crime.
8. Those complaints against senior public sector employees which the CCC devolves must include ongoing oversight by the Public Service Commission and an independent Director-General.	Those complaints against senior public sector employees which the CCC devolves must include ongoing oversight by the Public Service Commission and an independent Director-General.
9. Departments more robustly account for the benefits derived from engaging consultants and contractors, with regular monitoring by the Auditor-General.	Departments to more robustly account for the benefits derived from engaging consultants and contractors, with regular monitoring by the Auditor-General.
10. Citizens' privacy rights be protected by implementation of mandatory reporting of data breaches.	A MDBN scheme be established in Queensland, forthwith.
11. Whistleblowers be protected by the Government immediately activating its promised review of Public Interest Disclosure legislation.	The Government proceed with its promised review of PID legislation as a matter of urgency, and at least within the next six months.

Summary recommendation	Consolidated list of recommendation
12. Integrity bodies' independence be enhanced by involvement of parliamentary committees in setting their budgets and contributing to key appointments.	The independence of integrity bodies in Queensland be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive government.
13. The Ombudsman be provided with the authority to investigate complaints against private organisations carrying out functions on behalf of the government.	Section 10(c) of the Ombudsman Act 2001 (Qld) be amended to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery.
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.	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.



Your ref:  
Our ref: 12675

## OFFICIAL

30 June 2023

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 2023**

I am writing to provide some background information to assist the committee in its consideration of the *Integrity and Other Legislation Amendment Bill 2023* (the Bill) referred to it last week. This Bill includes proposed amendments to the *Auditor-General Act 2009*.

In her speech introducing the Bill on 16 June 2023, the Premier made the following comments on proposed amendments for approving funding proposals made by the Auditor-General and other integrity offices:

*I note that the new processes do not go as far as some may prefer—to remove funding decisions for integrity bodies entirely from government—but ultimately the executive government is responsible for the way in which the state's consolidated revenue is distributed. This is because executive government is made up of individuals elected by the people of Queensland.*

*The Auditor-General made representations to government about further strengthening the independence of the Auditor-General by expanding on the Coaldrake recommendation. This potential expansion would align the budgets of integrity bodies to the budget for the Legislative Assembly and replace the role of responsible ministers in determining budgets with the Speaker.*

*Government has fully considered this more extensive model and sought expert legal advice on its application. Government has been advised that aligning budgets of integrity bodies with the budget of the Legislative Assembly is potentially unconstitutional. The Constitution of Queensland strictly prescribes what the parliamentary appropriations bill, as opposed to the general appropriations bill, must contain. It clearly limits this to the budgets for the Legislative Assembly and Parliamentary Services. It cannot be interpreted to enable inclusion of any other entity's budget.*

Accordingly, I thought it was appropriate to provide the committee with a copy of a letter I wrote to the Premier expressing some concerns I had with proposed amendments contained in the Bill. In my letter to the Premier, I stated that I would write to your committee once the Bill was tabled. I believe this letter will provide context to, and clarification of, the statements made by the Premier.

My letter to the Premier clarifies that I was not seeking to expand on Professor Coaldrake's recommendation but expressing my belief that the proposed amendments do not fully address the recommendation made in Professor Coaldrake's final report. I note that in the Premier's speech she referred to the government receiving expert legal advice that the recommendation proposed by Professor Coaldrake may be potentially unconstitutional. While this legal advice was discussed with me, the actual advice received was not shared with me.

In the letter I acknowledge that fully addressing Professor Coaldrake's recommendation may take additional time and effort, including further legislative amendments, but that I believe this can still be achieved. Accordingly, I have implored the government to continue to explore opportunities to implement these recommendations in a manner that represents best practice. This is something the committee may wish to explore in its consideration of the Bill, including:

- what are the potential constitutional barriers
- whether there are options available to fully address Professor Coaldrake's recommendations given the purported constitutional limits.

I am aware you have invited submissions addressing any aspect of the Bill and I will provide more detail in a formal submission to the committee shortly. However, I note the committee is holding a public briefing with officials from the Department of the Premier and Cabinet on 10 July 2023 and I believe my letter to the Premier may have some value for that purpose.

If you would like any further information, please contact me, or have your committee secretary contact [REDACTED], Assistant Auditor-General, on [REDACTED] or at [REDACTED].

Yours sincerely

[REDACTED]

Brendan Worrall  
Auditor-General

Enc.

Your ref:  
Our ref: 12675

## OFFICIAL

22 May 2023

The Honourable A Palaszczuk MP  
Premier and Minister for the Olympic and Paralympic Games  
1 William Street  
BRISBANE QLD 4001

By email: [REDACTED]

Dear Premier

### **Proposed amendments to the *Auditor-General Act 2009***

As you would be aware, a draft Bill has been prepared addressing several recommendations in Professor Coaldrake's *Let the sunshine in* report.

My office provided feedback to the Integrity Reform Taskforce on the draft Bill highlighting several ways it could be improved to better safeguard the independence of the Auditor-General. I have also met personally with the Director-General of your department and the new Public Sector Commissioner to discuss this feedback. In my discussions with the Director-General and Public Sector Commissioner I expressed my concern that the proposed amendments did not fully address the recommendations made by Professor Coaldrake.

One of Professor Coaldrake's key recommendations was:

*'The independence of integrity bodies in Queensland be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive government.'*

Based on my review of the draft Bill, I believe that while the role of parliamentary committees is enhanced, which I support, the Bill does not shift the existing responsibilities of Ministers to the Speaker. Consequently, it only partially addresses Professor Coaldrake's recommendation.

I accept that there is a role for the Treasurer in the process for developing the Queensland Audit Office's (QAO) budget given their responsibility for the overall State budget. However, the role of Ministers in other aspects of the Bill, for example, the appointment of the Auditor-General and the strategic review of the QAO, represents a continuing limitation on the independence of the QAO and other integrity bodies.

During our discussions with the Taskforce, they advised they have adopted a narrower interpretation of the recommendation. The Taskforce appear to have focused on the wording of the summary recommendation in Section 2 of Professor Coaldrake's report, which only refers to involvement of parliamentary committees. This only came to light when my officers were first provided with the draft Bill. I am disappointed with the Taskforce's narrow interpretation of the recommendations given Professor Coaldrake's report was issued in June 2022 and they have had nearly 12 months to consider all the recommendations in the report.

This narrow interpretation fails to address the full recommendation included in the body of the report (refer pages 71 and 93) as quoted above, and does not consider the overall context in which Professor Coaldrake made the recommendation.

In his final report, Professor Coaldrake acknowledges previous opportunities and recommendations which remain unactioned, including some that were informed by recommendations made by the Electoral and Administrative Review Commission (EARC) in 1991. These include recommendations made in:

- QAO's submission to the 2013 Finance and Administration Committee's (FAC) inquiry into the legislative arrangements assuring the Auditor General's independence
- the previous strategic review of QAO in 2017.

Professor Coaldrake has recommended that outstanding recommendations from the FAC inquiry and the 2017 Strategic Review be implemented. While this was not included in the summary recommendations in Section 2 of the report, it was included as part of the detailed recommendations to enhance the Auditor-General's independence on pages 23 and 91 of the report.

I believe that it is necessary to understand the fundamental nature of these previous recommendations, and the basis on which they were made, to appropriately interpret the full recommendations made by Professor Coaldrake. By adopting a narrow interpretation of Professor Coaldrake's recommendations, based only on the summary recommendations in Section 2, I do not believe the government could claim to have fully addressed them.

I understand from my discussions with the Director-General for the Department of the Premier and Cabinet and the Public Sector Commissioner that addressing the recommendations in a way that truly safeguards the independence of the Auditor-General will require further consideration and potential amendment of the *Constitution of Queensland 2001* and other legislation. While this may take additional time and effort, I believe this can still be achieved. I implore the government to continue to explore opportunities to implement these recommendations in a manner that represents best practice.

In our feedback on the Bill, we provided examples where the Speaker or parliamentary committee are directly responsible for managing decisions related to the position, role, and financing of the Auditor-General. This included models in other jurisdictions both in Australia (ACT) and overseas (New Zealand and the United Kingdom).

As you may be aware the Australasian Council of Auditors-General (ACAG) regularly rates the independence of Auditors-General in Australia and New Zealand. In the last survey conducted, our independence rating fell from 3rd to 6th (out of 10 jurisdictions). While the proposed amendments would likely improve our ACAG independence ranking, it would still fall below the rating for offices, such as New Zealand and ACT, where the legislative framework is more reflective of Professor Coaldrake's recommendation.

Like Queensland, both the New Zealand and ACT parliaments are unicameral. The greater independence provided to integrity bodies in these jurisdictions reflects the heightened role they play in assisting parliament to hold the executive government accountable where there is only one parliamentary chamber.

It is also my understanding that in Queensland, the Speaker effectively performs the role of the designated Minister for the Legislative Assembly and Parliamentary Services (LAPS), including in the development of the budget for LAPS. This is reflected in the recognition of the Speaker, not the Premier, as part of the key management personnel of LAPS in their annual financial statements. As officers of the parliament, it would seem logical and appropriate that the 'Minister' for all integrity bodies is also the Speaker.

It is my understanding the Bill may be tabled in parliament shortly. Thus I acknowledge that implementing these additional changes would not be possible within the timeframe proposed for the current Bill.

Successive governments over the last 30 years have failed to fully support and action recommended enhancements to the independence of the Auditor-General. I am greatly concerned that the recommendations made by Professor Coaldrake will add to this list if not fully actioned by your government and I will continue to promote the need for the further amendments. The Director-General and Public Sector Commissioner have expressed their support in continuing to work with my office to action the remaining recommendations. I also seek your support in continuing the work required to ensure complete and satisfactory implementation in the current parliament.

Once the present Bill is tabled, I will write to the Economics and Governance Committee regarding my position and desire to see further amendments to ensure that Professor Coaldrake's recommendations are fully addressed both in practice and in spirit.

Thank you for your time. If you would like to discuss this further, please do not hesitate to contact me or have one of your officers contact [REDACTED], Assistant Auditor-General, on [REDACTED] or at [REDACTED].

Yours sincerely

[REDACTED]  
Brendan Worrall  
Auditor-General