

INTEGRITY AND OTHER LEGISLATION AMENDMENT BILL 2023

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Committee Secretary
Economic and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email: EGC@parliament.qld.gov.au

Dear Committee Secretary

Integrity and Other Legislation Amendment Bill 2023

The Queensland Law Society (QLS) thanks the Economic and Governance Committee for the opportunity to comment on the Integrity and Other Legislation Amendment Bill 2023 (**Bill**).

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS notes that the Bill represents the second key tranche of legislation to implement the Government's response to recommendations from *Let the sunshine in: Review of culture and accountability in the Queensland public sector (Coaldrake Report)* and the *Strategic Review of the Integrity Commissioner's Functions (Yearbury Report)*.

This submission has been prepared in consultation with the QLS Occupational Discipline Law Committee, whose members have substantial expertise in this area.

QLS makes the following introductory remarks in relation to the Bill.

- QLS welcomes the modernisation of section 43 of the *Integrity Act 2009* (Qld) (**Integrity Act**). The revised drafting more accurately describes activities which should not properly be considered lobbying activity for the purposes of this legislation. QLS particularly welcomes the clear exclusion of activities reflecting community engagement in law reform, by way of responding to calls for submissions, or raising issues of public concern, by way of petitions.
- QLS also welcomes the continued recognition, in new subsection 43(k) of the Integrity Act, that a lobbying activity is not communicating with a representative in the ordinary

course of providing legal services. QLS considers the new drafting is preferable to the approach in current section 41 of the Integrity Act.

- QLS is concerned that the "dual hatting" drafting in new section 58 of the Integrity Act does not reflect the recommendations of the Coaldrake Report. The inclusion of the term 'substantial' is open to interpretation and introduces uncertainty.
- QLS has also commented on the benefit of bipartisan support from relevant parliamentary committees for the key integrity appointments of the Queensland Auditor-General, Queensland Integrity Commissioner, Queensland Ombudsman and Queensland Information Commissioner.
- With regard to parliamentary committee decision-making mechanisms, QLS notes the innate difficulty of achieving true bipartisan appointments in circumstances where the parliamentary committee Chair holds the casting vote.
- QLS encourages the ongoing consultation and development of reforms that give effect to the important recommendations in the Coaldrake Report that do not appear to be addressed in the current Bill.

New section 43 What is not a lobbying activity

QLS welcomes the re-drafted section 43, '*What is not a lobbying activity*' proposed to be included in the Integrity Act.

QLS considers the modernised drafting more accurately describes activities which should not properly be considered lobbying activity for the purposes of this legislation.

Clarification that participation in legislative debate is not lobbying

QLS particularly welcomes the new section 43 of the Integrity Act (inserted by clause 36 of the Bill) which clearly excludes certain activities reflecting community engagement in law reform or raising issues of public concern such as:

- responding to a call for submissions (new subsection 43(c));
- petitioning or campaigning of a grassroots nature (new subsection 43(d)); and
- responding to a request for information by a representative (new subsection 43(g)).

Providing legal services is not lobbying

QLS also recognises that new subsection 43(k) of the Integrity Act (inserted by clause 36 of the Bill) contemplates that a lobbying activity is not communicating with a representative in the ordinary course of providing professional or technical services to a person. The example then specifically mentions legal services.

QLS notes the use of 'legal services' replaces the concepts in current section 41(6) of the Integrity Act in relation to an entity carrying on the business of providing legal services (as Australian legal practitioner or a law practice under the *Legal Profession Act 2007* (Qld) which engages in 'lobbying activity' as occasional or incidental activities to the professional services.

We suggest that the reference to legal services in the example should refer to legal services as defined in the *Legal Profession Act 2007* (Qld). This will avoid any confusion about which entities or persons provide legal services of the kind contemplated in subsection 43 (k) in clause 36 of the Bill.

Under the *Legal Profession Act 2007* (Qld) only an Australian legal practitioner holding a current practicing certificate can provide legal services¹.

New section 47 of the Integrity Act - Certain entities not required to be registered

QLS welcomes the modernised drafting of the new section 47 (in clause 41 of the Bill), which is intended to replace existing sections 41(3) to (6) of the Integrity Act.

The new section specifically clarifies that an entity identified in this clause is not required to be registered, rather than simply stating that it is not a 'lobbyist', as expressed in the current drafting.

QLS also supports the drafting approach taken in the revised section 47(1)(b) (in clause 41 of the Bill) to:

- identify an entity constituted to represent the interests of its members, but only if the purpose of the lobbying activity is to represent the interests of its members; and
- expressly identify QLS as a relevant professional body.

Dual hatting – new section 58 of the Integrity Act – Registered lobbyist must not perform substantial role in election campaign of political party during election period

QLS is concerned the drafting of the new section 58 of the Integrity Act to include the term 'substantial' is open to interpretation and introduces uncertainty. The provision will be open to abuse by registered lobbyists until the scope of the concept of 'performing a substantial role' is clarified.

Further, the qualifier 'substantial' does not reflect the recommendations of the Coaldrake Report.

Recommendation 3 called for an explicit prohibition of lobbyists 'dual hatting':

"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."²

In the body of the report, the following comments are made:

- At page 57 of the report, Professor Coaldrake states " ... the Review proposes to go further and suggest that if an individual plays a substantive role in the election campaign

¹ Legal Profession Act 2007 (Qld) s 5, 6 and 24(1)

² Coaldrake AO, P (2022) *Let the sunshine in: Review of culture and accountability in the Queensland public sector: Final Report*, available at <https://www.coaldrakereview.qld.gov.au/reports.aspx> and accessed 20 July 2022.

of a prospective government, they should be banned from engaging in lobbying for the next term of office";

- At page 58 of the report, the recommendation states: "Lobbying regulation be strengthened by ... 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."

QLS recognises the use of the word "substantive" in the commentary in the report, but highlights the final recommendation comprises an explicit prohibition of lobbyists 'dual hatting' as political campaigners (see Recommendation 3 and page 58 of the report).

As drafted, this provision will not prevent a lobbyist 'dual hatting', which is inconsistent with the recommendation and the report.

If the policy intent is to implement the recommendations of the Coaldrake Report, we recommend this provision be reconsidered.

Confidential information provisions

QLS welcomes the drafting approach taken in the Bill to insert proposed new section 260F of the *Crime and Corruption Act 2001* (Qld), section 85J of the Integrity Act, section 85F of the *Ombudsman Act 2001* (Qld) (Ombudsman Act), section 168F of the *Right to Information Act 2009* (Qld) and section 29J of the *Auditor-General Act 2009* (Qld) which deal with the disclosure of confidential information.

These sections specifically carve out privileged information, or information subject to a duty to maintain confidentiality under an Act or other law, as information which is not required to be disclosed to the relevant portfolio committee. This will better protect, or provide grounds to refuse to disclose of, information subject to legal professional privilege.

Appointment of integrity positions

QLS welcomes the intent of the Bill to enhance core integrity bodies' independence by increasing the involvement of parliamentary committees in key appointments such as the appointment of the Queensland Auditor-General, Queensland Integrity Commissioner, Queensland Ombudsman and Queensland Information Commissioner³. This is consistent with the recommendations of the Coaldrake Report.

New subsection 74(3) of the Integrity Act (and equivalent sections in the other amended Acts⁴) requires the parliamentary committee to decide whether to give or not give approval within 20 days from receiving the request for the approval from the Minister and is taken to have approved the appointment of a person if the committee does not notify the Minister of its decision

³ The relevant clauses in the Bill for each of the positions include: clause 4 for the appointment of the Queensland Auditor-General, clause 37 for the Queensland Integrity Commissioner, clause 50 for the Queensland Ombudsman and clause 64 for the Queensland Information Commissioner.

⁴ Proposed s 9(3)(a) *Auditor General Act 2009* (Qld); Proposed s 59(1A)(1) *Ombudsman Act 2001*; Proposed s 135(1A)(a) *Right to Information Act 2009*.

within this timeframe. QLS considers that 20 business days is an appropriate timeframe within which to require the committee's approval.

The statutory processes outlining the parliamentary committee's appointment of integrity bodies' key officials should seek to enhance accountability and independence and foster public confidence in the process. Accordingly, QLS suggests that in order to give greater effect to the intent of recommendation 12 in the Coaldrake Report, consideration should be given to how procedural steps such as the specific selection and appointment process can be reflected in proposed section 74 (as set out in clause 37 of the Bill).

Furthermore, QLS observes that the Coaldrake Report highlights the importance of bipartisan support in the context of integrity body appointments and refers to the recommendation of the Committee System Review Committee (2010), namely that "the requirement for bipartisan support of appointments is best practice and should be used for all officers where there is a requirement for consultation with a parliamentary committee".⁵

The Bill indicates the selection process and appointment must be approved by the relevant parliamentary committee. With regard to parliamentary committee decision-making mechanisms, QLS notes the innate difficulty of achieving true bipartisan appointments in circumstances where the parliamentary committee Chair holds the casting vote.

To this end, QLS encourages further consideration of this matter. An option for consideration might be requiring the parliamentary committee to reach agreement by a majority which includes the chair and deputy chair of the committee, in order to require the support of at least one non-Government member to the decisions.

Clause 31 – Amendment of s 15 (Request for Advice) – Integrity Act

Clause 31 amends section 15 of the Integrity Act, specifically to insert new subsection (3) which requires a designated person to notify the Minister in whose office they are employed of any request the designated person has made for advice from the integrity commissioner.

We note that this is consistent with recommendation 5(a) of the Yearbury Report to ensure that Ministers and Assistant Ministers are aware of advice being sought from the integrity commissioner by a member of their staff and that full contextual information is provided to the integrity commissioner. QLS is supportive of this intention.

However, QLS is concerned that it may deter a designated person from seeking advice from the integrity commissioner about the Minister themselves, should the need arise. Thus, we propose that there might be a need for an exception to this requirement to enable a designated person to seek integrity advice about the Minister without needing to disclose these intentions to the person who is the subject of the advice.

⁵ Coaldrake AO, P (2022) *Let the sunshine in: Review of culture and accountability in the Queensland public sector: Final Report*, available at <https://www.coaldrakereview.qld.gov.au/reports.aspx> and accessed 20 July 2022 (page 67)

General Comments

Finally, QLS takes this opportunity to note that the Bill does not currently address several of the recommendations from the Coaldrake Report. These include, for example:

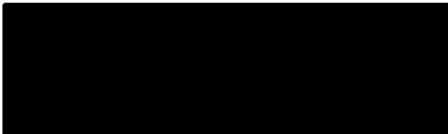
- (a) section 10 of the Ombudsman Act be amended to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery; and
- (b) development and continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior public service officers;

In responding to the release of the Coaldrake Report, the Premier indicated that the Government would accept all of the recommendations and implement them "lock, stock and barrel".⁶

QLS therefore encourages the Government to continue to work towards developing further reforms that give effect to these important recommendations and provide a public update on the intended approach to achieve these reforms.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on (07) [REDACTED].

Yours faithfully



Chloé Kopilović
President

⁶ Premier and Minister for the Olympics, the Hon Anastacia Palaszczuk, ' "Lock, stock and barrel" Premier embraces Goa/drake Review' (media statement 28 June 2022) accessed 9 May 2023 at <https://statements.qld.gov.au/statements/95531>.