

INTEGRITY AND OTHER LEGISLATION AMENDMENT BILL 2023

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Committee Secretary
Economics and Governance Committee
Parliament House
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By email only: egc@parliament.qld.gov.au

Dear Secretary

Integrity and Other Legislation Amendment Bill 2023

I welcome the opportunity to make a submission on the above Bill, as the Office of the Information Commissioner (**OIC**) is one of the core integrity bodies standing to be affected by the amendments proposed. This submission concerns provisions in the Bill intended to respond to the findings of the Coaldrake report *Let the sunshine in*.¹

About the OIC

The Information Commissioner is an officer of the Parliament² who leads the OIC in the performance of its independent functions under the *Right to Information Act 2009 (RTI Act)* and the *Information Privacy Act 2009 (IP Act)*. Those functions advance Parliament's intent to facilitate greater and easier access to information held by government agencies and assist agencies to safeguard personal information they hold.³

Integrity and Other Legislation Amendment Bill proposals

As a general comment, I welcome the measures proposed in this Bill to increase the independence of integrity agencies generally, and specifically the OIC. Professor Coaldrake observed "...of all the integrity functions, it is the Information Commissioner's role, which can be especially influenced by the culture of government".⁴ This was reinforced in the recent independent strategic review of the Office of the Information Commissioner, which was tabled in the house in January 2023.⁵

Professor Coaldrake recommended:

*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 executive government.*⁶

Enhanced arrangements that increase the financial independence of OIC and the appointment of the Information Commissioner are a significant and critical aspect to advance transparency, integrity and accountability in the public sector and build trust and confidence in government agencies.

¹ Professor Peter Coaldrake AO, '*Let the sunshine in. Review of culture and accountability in the Queensland public sector*', Final Report, 28 June 2022, page 70 (**Coaldrake Report**).

² Section 123(2) of the *Right to Information Act 2009* (Qld).

³ Further detail on the powers and functions of the Information Commissioner are set out in the Annual reports of OIC which are located on its website accessible at: <https://www.oic.qld.gov.au/about/our-organisation/our-performance/annual-reports>

⁴ Coaldrake Report, note 1 at p27.

⁵ Mr D McGann, '*How to let more sunshine in*', Strategic review of the Office of the Information Commissioner, 2022, Final report, 12 December 2022, p10. (Accessible at <https://documents.parliament.qld.gov.au/tp/2023/5723T23-F601.PDF>)

⁶ Coaldrake Report, note 1 at p71. It is noted that this recommendation in the body of the report is more comprehensive than the summary recommendation at p3.

Provisions in the Bill providing for greater budgetary autonomy, and direct Parliamentary committee approval of integrity agency funding proposals, are concrete steps in this regard. However, I consider that the Bill does not go far enough to fully address the specific recommendations made by Professor Coaldrake. I have set out in the appendix the substantive and more detailed issues that I consider need to be addressed to achieve effective independence for integrity agencies that are comparable to other jurisdictions. I concur with the Auditor-General's submissions to the Committee dated 18 July 2023 about this matter. I note that like the Auditor-General I also previously noted in a formal submission to Government that the draft Bill did not propose amendments that would provide a model as independent as other jurisdictions such as New Zealand or the ACT.

I note the constitutional and parity concerns raised by the Premier in introducing this Bill. This Bill should ensure Queenslanders have a strong integrity framework where there is greater separation of executive government and officers of Parliament that provide oversight and assurance on critical matters of concern to government. I recommend further enhanced settings to those outlined in the Bill be adopted through this legislative process to ameliorate some of Government's concerns. They include the following:

- Replace the direct role of portfolio Ministers of the executive branch in the appointment of Officers of Parliament and as the responsible Minister for financial administration of integrity agencies with the oversight of the Speaker of the Legislative Assembly. To maintain the accountability of the executive branch for overall fiscal management, consider amendments to the *Financial Accountability Act 2009* (Qld) which resemble provisions in the New Zealand *Public Finance Act*⁷. This could include a role for Queensland Treasury to assist integrity agencies in developing their annual budgets for the Parliamentary Committee consideration and for including these subsequently into the ordinary annual appropriation Act⁸.
- Regularise Parliamentary reporting by integrity agencies under the auspices of a single portfolio committee led by the Speaker of the House, in a manner similar to the Officers of Parliament Committee in New Zealand.⁹
- Include a 5-year statutory review clause in the Bill to enable a review of this process after 5 years have elapsed.

I would be pleased to attend the public hearing on the Bill on 11 August 2023 to discuss my submission in more detail and respond to any questions the Committee may have about this submission. This is a critical matter for transparency and accountability, and how the integrity framework operates within Queensland to contribute to building trust and confidence in government.

Yours sincerely



Rachael Rangihaeata
Information Commissioner

⁷ See Part 1 and section 26E *Public Finance Act 1989* (NZ) specifically.

⁸ This could also include adding the integrity agencies into the definition of 'department' in s8 of the *Financial Accountability Act 2009* (Qld).

⁹ A parliamentary select committee chaired by the Speaker of the New Zealand Parliament: see <https://www.parliament.nz/en/pb/sc/scl/officers-of-parliament/> (accessed 24 April 2023).

INTEGRITY AND OTHER LEGISLATION AMENDMENT BILL 2023 – APPENDIX TO THE SUBMISSION OF THE INFORMATION COMMISSIONER

Independence of integrity agency heads

I submit that the most significant step that can be taken to improve the independence of officers of Parliament is to replace the role for Ministers¹⁰ of the executive branch in the appointment of Officers of Parliament and in the financial administration of integrity agencies with the oversight of the Speaker of the Legislative Assembly. This would serve to ensure that officers of Parliament and integrity agencies are entirely separate from the executive and give full effect to Professor Coaldrake's specific recommendation that responsibility for both the financial arrangements and management practices of Queensland integrity agencies be aligned with the Speaker and the appropriate parliamentary committee, rather than the executive government.¹¹

A model of this kind is in effect in New Zealand, where matters concerning 'officers of Parliament'¹² are administered by the Officers of Parliament Committee.¹³ The Officers of Parliament Committee has 'several functions, including:

- *Recommending appointments of officers of Parliament when vacancies arise*
- *Approving and recommending the budgets for the officers*
- *Recommending the House's appointment of auditors for the officers*
- *Considering any proposals that might arise for the creation of a new type of officer of Parliament*
- *Developing or reviewing codes of practice for the officers, for example to decide how MPs and select committees can obtain assistance from the officers when carrying out their parliamentary roles.*¹⁴

The Speaker, as chair of the Officers of Parliament Committee, further 'acts as the main parliamentary contact for the officers of Parliament in their relations with the House'¹⁵ and is the "appropriation Minister"¹⁶ for purposes of appropriations for officers of Parliament.

I note the Government's concerns that adopting the New Zealand model in Queensland may require amendment of the *Constitution of Queensland 2001 (CoQ)*, partly on the basis that section 20(1) of the CoQ requires certain appropriations to occur separate to general government appropriation.¹⁷ I have not reviewed the legal advice referred to by the Government. However, it is my view that it may be possible to implement the New Zealand model in Queensland, without constitutional amendment by making consequential amendments to the *Financial Accountability Act 2009* (Qld) that are similar to those in the equivalent New Zealand legislation.¹⁸

¹⁰ Administering the respective legislation.

¹¹ Professor Peter Coaldrake AO, 'Let the sunshine in. Review of culture and accountability in the Queensland public sector', Final Report, 28 June 2022, page 70 (**Coaldrake Report**).

¹² Ombudsman, Controller and Auditor-General, and the Parliamentary Commissioner for the Environment: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/who-are-the-officers-of-parliament/> (accessed 14 July 2023).

¹³ A parliamentary select committee chaired by the Speaker of the New Zealand Parliament: see <https://www.parliament.nz/en/pb/sc/scl/officers-of-parliament/> (accessed 24 April 2023).

¹⁴ <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/who-are-the-officers-of-parliament/> (accessed 14 July 2023).

¹⁵ As above.

¹⁶ Section 2 of the *Public Finance Act 1989* (NZ).

¹⁷ OIC notes the Premier's comments on this issue in her Introductory Speech (Queensland, *Parliamentary Debates*, Legislative Assembly, 16 June 2023, 2073 (Annastacia Palaszczuk, Premier of Queensland and Minister for the Olympic and Paralympic Games), and additional discussion as occurred during the Committee's recent public briefing meeting with officers of the Department of the Premier and Cabinet (Evidence to Economic and Governance Committee, Legislative Assembly, Brisbane, 10 July 2023 (Rachel Welch).

¹⁸ Section 26E of the NZ *Public Finance Act 1989* makes specific provision for a procedure to develop the budgets of officers of parliament with involvement of the Parliamentary committee before such proposals are commended to the executive for inclusion in the annual Appropriations

I understand that appropriation for New Zealand's Officers of Parliament forms part of the general government appropriation and is distinct from the budget for Parliamentary Services and the Office of the Clerk. Budgetary independence is not a constitutional matter, but instead provided for by way of the *Public Finance Act 1989* (NZ):

The requirements of the Act in relation to departments are modified slightly to acknowledge that Offices of Parliament act on behalf of Parliament. For example, the Speaker of the House of Representatives is the responsible Minister in respect of an Office of Parliament.

*The appropriations for Offices of Parliament are determined not by the Government, but by Parliament on the recommendation of the Officers of Parliament Committee. They are commended by way of an address by the House of Representatives to the Governor General.*¹⁹

It is also my understanding that in practice officers of Parliament work with an assigned Treasury Vote analyst to develop their budgets before these are submitted to the Parliamentary Committee for consideration. This enables alignment of overall Crown fiscal management and responsibility, including maintaining Executive Council accountability due to the application of various other provisions of the Public Finance Act to such bids.

I note that the New Zealand model as canvassed above was cited as an exemplar of integrity and independence in the recent report on budget autonomy for independent officers of Parliament co-authored by the Victorian Ombudsman, Independent Broad-based Anti-corruption Commission and Victorian Auditor-General's Office, 'Budget independence for Victoria's Independent Officers of Parliament'.²⁰

Finally, I am aware that there are also concerns that making such changes for officers of Parliament could result incongruity with the current treatment of budget proposals for the Legislative Assembly and Parliamentary Services. I respectfully suggest that those arrangements could also be changed through consequential amendments to the *Financial Accountability Act 2009* (Qld).

Other matters

'Additional funding'

Under Clause 66 of the Bill, the role of the parliamentary committee in the process for establishing and approving OIC's budget would only apply to a request for 'additional funding', that being funding above that provided in the previous year. The goal of budgetary independence would, in my submission, be best achieved by extending the committee role to all funding requests including the initial appropriation.

Time limits

I support the imposition of a time limit within which the parliamentary committee is to decide on requests for approval of funding proposals. It may be prudent, however, to incorporate some flexibility into the deeming provision comprising new section 168C(5),²¹ to permit some additional time beyond 20 business days,²² where consultation of the kind envisaged by section 168E is underway but not completed.

¹⁹ <https://www.treasury.govt.nz/publications/guide/guide-public-finance-act#offices-of-parliament> (accessed 17 July 2023).

²⁰ Published 18 October 2022, accessible at <https://www.audit.vic.gov.au/sites/default/files/2022-23/Public%20sector%20perspectives/Budget%20independence%20for%20Victorias%20Independent%20Officers%20of%20Parliament%20October%202022.pdf> (accessed 27 April 2023).

²¹ Clause 66 of the Bill.

²² The period proposed in new section 168C(3)(a), unless shortened by the Treasurer in accordance with new section 168C(3)(b).

'Funding proposal'; 'implemented'

I also consider that the concepts of 'funding proposal'²³ and 'implemented'²⁴ could be better defined. Specifically, I note that it is unclear as to whether the definition of "funding proposal" as currently framed would include request for approval to access cash reserves in a financial year and what would constitute implementation of the funding proposal.

OIC has accessed cash reserves in many financial years following approval of requests from the Information Commissioner to the Minister under s.133 of the RTI Act as an adjustment to the annual budget. Usually, the Minister also seeks endorsement from the Under Treasurer. This results in an approved deficit for the relevant financial year. OIC utilises any underspends within the existing annual appropriation before the approved deficit is accessed. Such requests have been approved for temporary staffing prior to approval of ongoing staff, renewal of ICT fleet and engagement of an ICT consultant to assist ahead of consideration of the proposed legislative reforms.

Consistent with the proposed model, it would appear that approval of cash reserves would sit with the Speaker instead of the Minister and follow the Parliamentary Committee process after consultation with the Under Treasurer, or under the amendments I have recommended in this submission.²⁵

Scrutiny of Executive Government decisions to reduce OIC funding

I note the Bill will give the parliamentary committee the option of declining to approve a funding proposal.²⁶ I also consider it appropriate, however, for any proposal to *reduce* the funding for an Officer of the Parliament to be expressly approved by the parliamentary committee rather than it being deemed to be approved if no decision is made. The Crawford Report about NSW Integrity agencies also recognised that financial management mechanisms such as applying efficiency dividends and budget savings and reform measures '*create tensions with integrity agencies' independent status*'.²⁷

Even small amounts of \$100,000 (especially cumulative) reprioritisation or efficiency dividends have had a significant impact on the effectiveness to deliver statutory functions in a small budget where, for example OIC has \$1.4M in Supplies and Services and the majority is ongoing committed expenses such as accommodation and ICT expenses. The majority of OIC's overall expenditure – 84% in the 2021/22 financial year²⁸ – relates to ongoing personnel costs to perform statutory functions. The deeming provision may need to be reversed in the circumstances. It suggests that where a decision is not made within the required timeframe under the Act and it relates to a reduction in funding, then the proposal should be deemed to not be approved.

Amendment of section 194 of the *Information Privacy Act 2009* (Qld)

Clause 67 of the Bill proposes an amendment to section 185(1) of the RTI Act. Section 185(1) requires the Minister administering the RTI Act to prepare a report on the operation of the Act at the end of each financial year. In its current form, section 185(1) then requires the Minister to cause a copy of such a report to be tabled in the Assembly. The amendment in clause 67 will, if

²³ New section 168A of the RTI Act, as stated in clause 66 of the Bill.

²⁴ New section 168D(2) of the RTI Act.

²⁵ Alternatively it may be that the Speaker or Parliamentary Committee would also write to the Under Treasurer (as currently occurs) to consult. It is equally important that this process be timely given it impacts the current financial year.

²⁶ New section 168C(2)(c) of the RTI Act.

²⁷ Audit Office of New South Wales, The effectiveness of the financial arrangements and management practices in four integrity agencies (Special Report, October 2020), p3-4.

²⁸ OIC, Annual Report 2021-22, page 46. (Accessible at [Office of the Information Commissioner Annual Report 2021-22 \(oic.qld.gov.au\)](https://www.oic.qld.gov.au))

enacted, require the Minister to instead give a copy of the report required to be prepared under this section to the parliamentary committee.²⁹

A near identical provision to section 185(1) of the RTI Act appears in section 194(1) of the *Information Privacy Act 2009* (Qld) (**IP Act**). The Bill in its current form would not, however, amend that latter provision, so as to mirror proposed amendments to 185(1) of the RTI Act set out above; the only amendment proposed to the IP Act is an amendment of section 194(3) of the IP Act.³⁰

OIC considers that section 194(1) of the IP Act should be amended, consistently with the amendments proposed to its counterpart in section 185(1) of the RTI Act. Indeed, I note that the Explanatory Notes appear to envision such an amendment:³¹

...a minor amendment is made to the Information Privacy Act 2009 to resolve a resultant ambiguity (from the proposed Right to Information Act 2009 amendments) about the annual report tabling requirement. Section 194 of the Information Privacy Act 2009 puts the requirement to table the report on the Minister and amended section 185 of the Right to Information Act 2009 requires the chair of the parliamentary committee to table the annual report in the Assembly.

Mandatory Data Breach Notification

I recognise that the Bill reflects further steps by the Government to implement its response to the recommendations from the Coaldrake Report,³² and support the Government's actions in this regard.

I note that the Coaldrake Report also recommended introduction of a Mandatory Data Breach Notification (**MDBN**) scheme, to be administered by my Office. While not directly relevant to the Committee's present inquiry, I wish to take the opportunity to repeat support for a MDBN scheme,³³ and express the hope that the Government may soon be in a position to implement same.

²⁹ Rather than arrange for tabling of that report in the Assembly, which, as noted, is presently the case.

³⁰ Intended to harmonise section 194 of the IP Act with section 185 of the RTI Act, by removing references to 'annual report' in the former which do not appear in the latter. As the Explanatory Notes accompanying the Bill state '*...section 194(3) of the Information Privacy Act 2009 currently refers to an 'annual report' but section 185 of the Right to Information Act 2009 refers to a 'report'*' (page 38).

³¹ As above.

³² Following passage of the *Integrity and Other Legislation Amendment Act 2022*.

³³ Expressed in, for example, our 5 August 2022 submission in reply to the Department of Justice and Attorney-General's June 2022 discussion paper concerning review of the IP and RTI Acts.