



Integrity and Other Legislation Amendment Bill 2022

**Report No. 38, 57th Parliament
Economics and Governance Committee
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Economics and Governance Committee

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Contents

Chair’s foreword	ii
Recommendations	iii
Executive Summary	iv
1 Introduction	1
1.1 Policy objectives of the Bill	1
1.2 Background	1
1.3 Should the Bill be passed?	1
2 Examination of the Bill	2
2.1 Amendment of the <i>Auditor-General Act 2009</i>	2
2.1.1 Submitter comments	3
2.1.1.1 Issues raised on the employment of staff	3
2.1.1.2 Issues raised on the approval of basic fees	5
2.2 Amendment of the <i>Integrity Act 2009</i>	6
2.2.1 Submitter comments	7
2.2.1.1 Proposed offence for unregistered lobbying	7
2.3 Amendment of the <i>Ombudsman Act 2001</i>	8
2.4 Amendments to the <i>Public Sector Act 2022</i> and <i>Superannuation (State Public Sector) Act 1990</i>	8
3 Compliance with the <i>Legislative Standards Act 1992</i>	8
3.1 Fundamental legislative principles	8
3.1.1 Rights and liberties of individuals	8
3.1.1.1 Ordinary activities should not be unduly restricted—Clause 10 (new section 19A)	8
3.1.1.2 Privacy—Clause 14 (new sections 28 and 29)	9
3.1.1.3 Rights and liberties of individuals—Clause 25 (new section 95)	10
3.1.1.4 Penalties should be reasonable and proportionate—Clause 51	11
3.1.2 Institution of Parliament	11
3.1.2.1 Delegation of legislative power—Clauses 6, 34, 56	11
3.1.2.2 Delegation of legislative power—Clause 57 (new section 85D)	11
3.1.2.3 Act amendment only by another Act—Clause 6 (new section 8C)	12
3.2 Explanatory notes	12
4 Compliance with the <i>Human Rights Act 2019</i>	12
4.1 Human rights compatibility	12
4.2 Statement of compatibility	13
Appendix A – Submitters	14
Appendix B – Officials at public departmental briefing	15
Appendix C – Witnesses at public hearing	16

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Integrity and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Integrity and Other Legislation Amendment Bill 2022 makes changes to the role of the Queensland Auditor-General, the Queensland Ombudsman and the Queensland Integrity Commissioner.


The Bill implements some of the recommendations from the *Let the Sunshine In: Review of culture and accountability in the Queensland public sector*, delivered by Professor Peter Coaldrake AO, and the *Strategic Review of the Integrity Commissioner's Functions*, delivered by Mr Kevin Yearbury PSM.

This bill would define the Auditor-General as an Officer of the Parliament, yet at the same time provides the Auditor-General with the capacity to ignore an audit request by the Queensland Parliament. This seems at odds with the primary democratic sovereignty and role of the Parliament and should be further considered.

The Bill also seeks to allow the Parliamentary Committee with oversight to be able to set fees, effectively giving the committee a role in the budget process, this is certainly a circumstance that should not be extended as the Auditor-General noted in the Public Hearings.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of the Premier and Cabinet.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1	1
The committee recommends the Integrity and Other Legislation Amendment Bill 2022 be passed.	1

Executive Summary

The objectives of the Integrity and Other Legislation Amendment Bill 2022 are to amend current legislation to promote the independence and authority of the Queensland Auditor-General, the Queensland Ombudsman and the Queensland Integrity Commissioner.

The Bill implements some of the recommendations from the *Let the Sunshine In: Review of culture and accountability in the Queensland public sector*, delivered by Peter Coaldrake, and the *Strategic Review of the Integrity Commissioner's Functions*, delivered by Mr Kevin Yearbury.

Amendment of the Auditor-General Act 2009

The Bill provides that the Queensland Audit Office (QAO) is not a public sector entity for the proposed Public Sector Act 2022, making the Auditor-General an Officer of the Parliament, and employing staff under the *Auditor-General Act 2009*.

The Bill allows the Auditor-General to increase the basic rates of fees once each financial year, with approval of the parliamentary committee who may consider the government indexation rate and advice from the Treasurer. The Bill provides that a person who has held office as Auditor-General may not hold an office in, or be employed by, a public sector entity within 2 years after the person stops holding the office.

The Bill removes the Auditor-General's obligation to conduct audits at the request of the Legislative Assembly, and expands the object of a performance audit, allows the Auditor-General to initiate a performance audit of the activities of a government owned corporation and enables the Auditor-General to conduct specified audits without first requiring approval or direction.

Submitters raised concerns with the employment of staff under the *Auditor-General Act 2009* rather than the proposed Public Sector Act 2022, and the parliamentary committee using the government indexation rate when considering approval of a proposed increase in the basic rates of fees.

Amendment of the Integrity Act 2009

The Bill's amendments to the *Integrity Act 2009* include creating an Office of the Queensland Integrity Commissioner, the position of a Deputy Commissioner, and providing for the Deputy Commissioner and staff to be employed by the Integrity Commissioner. The Deputy Commissioner and staff would be subject only to the direction of the Integrity Commissioner, and the Integrity Commissioner must approve a ruling under the proposed Public Sector Act 2022 that applies to the Office.

The Bill provides that the Integrity Commissioner is not subject to direction about the way the Integrity Commissioner performs their functions or the priority to be given to integrity issues. The Bill also removes requirements regarding statutory office holder declarations of interests, amends the definition of 'designated person' to remove senior officers and an Assistant Minister staff member, and defines 'ministerial advisor'. The Bill introduces a simple offence for unregistered lobbying, with a penalty of 200 penalty units.

The introduction of the simple offence and penalty raised submitter concerns that the Bill does not distinguish between inadvertent unregistered lobbying resulting from administrative or technical errors and the deliberate, systematic attempts of some unregistered lobbyists.

Amendment of the Ombudsman Act 2001

The Bill reduces the strategic review period from 7 years to 5 years.

Amendments to the Public Sector Act 2022 and Superannuation (State Public Sector) Act 1990

The Bill amends the proposed Public Sector Act 2022 and the *Superannuation (State Public Sector) Act 1990* due to amendments in this Bill of the *Integrity Act 2009* and the *Auditor-General Act 2009*.

The committee recommended the Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The objectives of the Bill are to amend current legislation ‘to better promote the independence and authority of the Queensland Auditor-General, the Queensland Ombudsman and the Queensland Integrity Commissioner’.¹

The Acts to be amended by the Bill are the:

- *Auditor-General Act 2009* (Auditor-General Act)
- *Ombudsman Act 2001* (Ombudsman Act)
- *Integrity Act 2009* (Integrity Act).

The Bill also amends the proposed Public Sector Act 2022² (Public Sector Act) and the *Superannuation (State Public Sector) Act 1990*.³

1.2 Background

The Bill implements some of the recommendations from two reports:

- *Let the Sunshine In: Review of culture and accountability in the Queensland public sector*, delivered by Peter Coaldrake (the Coaldrake Report)
- *Strategic Review of the Integrity Commissioner’s Functions*, delivered by Mr Kevin Yearbury (the Yearbury Report).⁴

The Coaldrake Report is the product of a review focussed on culture and accountability in the Queensland public sector. The report includes recommendations made by Professor Coaldrake, as well as a range of other recommendations from former reviews and inquiries, aimed at strengthening the integrity and oversight framework in Queensland.⁵

The Yearbury Report is the result of the 5-yearly review of the Integrity Commissioner’s functions to assess whether those functions are being performed economically, effectively and efficiently. This report makes recommendations regarding changes to the functions of the Integrity Commissioner.

The explanatory notes advise there will be a second Bill to implement the other recommendations.⁶

1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Integrity and Other Legislation Amendment Bill 2022 be passed.

¹ Explanatory notes, p 1.

² The Public Sector Bill 2022 is under concurrent inquiry by the Economics and Governance Committee, with a reporting date of 25 November 2022.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

⁵ Explanatory notes, p 1.

⁶ Explanatory notes, p 1.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Amendment of the *Auditor-General Act 2009*

The Bill proposes to enhance the independence of the Auditor-General and the QAO in a number of ways.

The Bill provides that the QAO is not a public sector entity for the proposed Public Sector Act 2022, but is to comply with obligations regarding equity, diversity, respect and inclusion.⁷ A regulation may also apply particular provisions of the Public Sector Act to the QAO.⁸

To enhance the independence of the Auditor-General, the Bill proposes making the Auditor-General an Officer of the Parliament and introducing a requirement that the Auditor-General take an oath.⁹

QAO staffing arrangements will also change. The Deputy Auditor-General will be employed as a member of staff of the QAO, and not under the Public Sector Act. Before acting as the Auditor-General, the Deputy Auditor-General must make an oath or affirmation, and the Auditor-General may appoint a person to act as the Deputy Auditor-General when there is a vacancy or absence.¹⁰

QAO staff will be appointed under the Auditor-General Act, rather than the Public Sector Act, and secondees from the public service will similarly be considered a QAO staff member to whom the Public Sector Act does not apply.¹¹ An employee or secondee cannot be employed unless they provide consent for their criminal history information to be obtained.¹²

The Bill includes amendments preserving the rights of the Auditor-General, Deputy Auditor-General, staff and secondees, including to leave and superannuation, as if service were a continuation of service as a public service employee.¹³ Staff will have a right of return to being a public service employee if they elect to return to the public service within 6 months after commencement.¹⁴

The Bill removes the requirement for the Treasurer's approval of basic rates of fees of the Auditor-General and provides that the Auditor-General may increase the basic rates of fees once each financial year, with approval of the parliamentary committee. When deciding whether to approve a proposed increase in fees, the parliamentary committee may take into consideration the government indexation rate (GIR) and advice from the Treasurer.¹⁵ Upon making its decision, the parliamentary committee must report its decision and the reasons for the decision to the Legislative Assembly.¹⁶

⁷ Integrity and Other Legislation Amendment Bill 2022, cl 6.

⁸ Integrity and Other Legislation Amendment Bill 2022, cl 6.

⁹ Explanatory notes, pp 1-2.

¹⁰ Integrity and Other Legislation Amendment Bill 2022, cl 13.

¹¹ Explanatory notes, p 2; Integrity and Other Legislation Amendment Bill 2022, cl 14.

¹² Integrity and Other Legislation Amendment Bill 2022, cl 14.

¹³ Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 1; Integrity and Other Legislation Amendment Bill 2022, cl 14.

¹⁴ Integrity and Other Legislation Amendment Bill 2022, cl 25.

¹⁵ Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 1.

¹⁶ Integrity and Other Legislation Amendment Bill 2022, cl 20.

Regarding the work undertaken by the Auditor-General and the QAO, the Bill:

- amends the Auditor-General’s obligation to conduct audits at the request of the Legislative Assembly so that the Auditor-General may conduct an audit but is not required to do so¹⁷
- expands the object of a performance audit by providing that the Auditor-General may identify any opportunities for the public sector entity to achieve its objectives more economically, efficiently and effectively, which is beyond the current requirement that the Auditor-General decide whether the objectives are being achieved economically, efficiently and effectively¹⁸
- removes the obligation on the Auditor-General to have received a request by the Legislative Assembly, parliamentary committee, Treasurer or Minister as a prerequisite to conducting a performance audit of the activities of a public sector entity that is a Government-Owned Corporation (GOC) or a controlled entity of a GOC¹⁹
- enables the Auditor-General to conduct specified audits without first requiring approval or direction.²⁰

The Bill will also restrict the employment of a person who has held office as Auditor-General upon the termination of that office, so that the person may not hold an office in, or be employed by, a public sector entity within 2 years after the person stops holding the office.²¹

2.1.1 Submitter comments

The Auditor-General supported the provisions in the Bill that:

- reinforce the status of the Auditor-General and the position’s relationship with parliament, that is, formally recognising the Auditor-General as an Officer of the Parliament, requiring the Auditor-General to take an oath of office administered by the Speaker and providing for the Auditor-General to notify the Speaker of intended leave rather than the Premier²²
- provide that a person who stops holding office as Auditor-General cannot be employed by a public sector entity for 2 years after they stop holding office
- provide the Auditor-General with a clear mandate to conduct performance audits of GOCs
- gives the Auditor-General the ability to assess an audit requested by Parliament relating to the financial administration of a public sector entity so that the Auditor-General can determine where it sits within existing priorities, but not be required to undertake the audit.²³

2.1.1.1 Issues raised on the employment of staff

The Auditor-General supported the provisions for QAO staff to be employed under the Auditor-General Act, rather than the *Public Service Act 2008* (proposed to be replaced by the Public Sector Act) because it will provide ‘greater autonomy for managing the staffing arrangements for the

¹⁷ Integrity and Other Legislation Amendment Bill 2022, cl 15; Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 1.

¹⁸ Integrity and Other Legislation Amendment Bill 2022, cl 16; Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 1.

¹⁹ Integrity and Other Legislation Amendment Bill 2022, cl 16; Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2.

²⁰ Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2.

²¹ Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 1.

²² Submission 1, attachment, p 1.

²³ Submission 1, attachment, p 1, 4.

office'.²⁴ According to the Auditor-General, greater autonomy includes determining the remuneration of staff, as well as providing greater flexibility in attracting appropriately qualified and experienced staff, acting to retain good staff and organising the human resources of the office in the most efficient and effective manner.²⁵

The Auditor-General also advised an appropriate lead-in time to develop an alternate framework for employing staff will be required before the amendments take effect.²⁶

Together Queensland Industrial Union of Employees (Together Queensland) did not support the amendments, arguing that it 'strongly prefers the arrangements provided for other independent statutory offices like the Integrity Office which strikes a better balance between independence and fairness'.²⁷ Together Queensland argued:

- the framework and the minimum conditions and standards of the Public Sector Act 'are appropriate to be applied as widely as possible' and 'where things have to be limited in order to provide independence, it happens to the minimum extent required'²⁸
- for agencies which are excluded from the Public Sector Act 2022 to 'have public sector employment conditions and standards applied through other mechanisms such as their establishing Act', or alternatively 'through the negotiation of an appropriate industrial instrument' such as certified agreements²⁹
- that the public sector conditions and standards applied are the same or equivalent to those which would be applied were they considered to be a public sector entity or public service office to the greatest extent practicable.³⁰

Together Queensland added they 'accept there should be some limitations for the Audit Office, but they should be minimised to only those ones that genuinely interfere with the independence of the office and their capacity to do that work independently'.³¹

Together Queensland also raised concerns that:

- there is no requirement for consultation with the staff of the QAO or the Union in relation to a regulation applying particular provisions of the Public Sector Act 2022 which will set conditions of employment and there have been no commitments made by the Auditor-General about the application of provisions or directives³²
- there appears to be no protection for a public service employee from being seconded without their agreement to a position with reduced conditions and entitlements.³³

In response to the issue of staff being employed under the Auditor-General Act, the Department of the Premier and Cabinet (department) responded to Together Queensland's concerns by advising the change is a key recommendation of the Coaldrake Report, and it aligns the QAO with other core

²⁴ Submission 1, attachment, p 1.

²⁵ Submission 1, attachment, p 1.

²⁶ Submission 1, attachment, p 1.

²⁷ Submission 4, p 2.

²⁸ Public hearing transcript, Brisbane, 7 November 2022, p 8.

²⁹ Submission 4, p 2; public hearing transcript, Brisbane, 7 November 2022, p 8.

³⁰ Submission 4, p 2.

³¹ Public hearing transcript, Brisbane, 7 November 2022, p 9.

³² Submission 4, p 2.

³³ Submission 4, p 2.

integrity bodies (the Queensland Crime and Corruption Commission and the Queensland Ombudsman).³⁴

The department also referred to the regulation-making power included in the Bill to enable the QAO to 'opt-in' to aspects of the new Public Sector Act and stated, 'a regulation is the most appropriate mechanism as it will enable the QAO to consider and determine, where appropriate, the employment arrangements and directives under the new Public Sector Act which could be applied to QAO staff without imperiling their independence'.³⁵

On the issue of staff being consulted on the contents of the regulation, the department submitted, 'it would be expected that the Auditor-General would consult with staff. In addition, as regulations are subject to the disallowance process in the Legislative Assembly, Parliamentary oversight and scrutiny is provided for'.³⁶ The department also noted 'that these employment provisions commence on proclamation up to 1 year after the passage of the Bill. This will enable the Auditor-General time to develop and consult with staff on a new employment framework'.³⁷

In relation to the concerns regarding secondment, the department advised 'a public service employee will not be forced to take a secondment. As is currently the case, it is anticipated that an employee will take up a secondment opportunity if they believe it is in their own best interests for professional or personal development'.³⁸

2.1.1.2 Issues raised on the approval of basic fees

The Auditor-General raised concerns with the provision that the parliamentary committee may have regard to the GIR when deciding whether to approve the basic rates of fees because the GIR 'is not relevant to the way QAO assesses and determines its basic rates of fees'.³⁹

The Auditor-General explained that the 'GIR is a general index applicable to a broad range of goods and services provided by government agencies', which means 'it does not specifically consider the relevant drivers, such as wages, technology and rent, that impact on the costs we incur in delivering audits'.⁴⁰ It is a rate 'for the government to charge external parties', and 'not an internal rate'.⁴¹

The Auditor-General also submitted that committee consideration of the GIR would 'appear to be inconsistent with the requirement for the Auditor-General to have regard to fees charged by entities that provide audit services', the resourcing of audits, and would make it difficult to achieve a level of budget certainty when planning for future expenditure.⁴²

The Auditor-General also suggested it 'could be perceived as an attempt to link QAO's rates back to a government policy requirement'.⁴³ The Auditor-General noted that 'any constraints on my resources will limit my ability to discharge my legislative mandate' which 'goes against the fundamental principles of auditor-general independence'.⁴⁴

In response to the Auditor-General's concern, the department advised:

³⁴ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 2.

³⁵ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 2.

³⁶ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 2.

³⁷ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 2.

³⁸ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 3.

³⁹ Submission 1, p 2.

⁴⁰ Submission 1, p 3.

⁴¹ Public hearing transcript, Brisbane, 7 November 2022, p 3.

⁴² Submission 1, p 3.

⁴³ Public hearing transcript, Brisbane, 7 November 2022, p 2.

⁴⁴ Public hearing transcript, Brisbane, 7 November 2022, p 2.

...whether the GIR is considered by the parliamentary committee in the approval process for an increase in the basic rates of fees is a matter of discretion for the committee. Similarly, the parliamentary committee may or may not have regard to any advice provided by the Treasurer (section 56A(5)).

It will also be open to the Auditor-General, when seeking the Committee's approval of the basic rate of fees, to outline why the GIR should not be applied.

...

Providing for the parliamentary committee to consider the GIR and advice from the Treasurer enables the parliamentary committee to consider broader economic factors that may impact on appropriate annual costs to government of audits.⁴⁵

The department also advised the 'drivers of audit costs mentioned in the Auditor-General's submission would be considered in setting the GIR as these are also drivers of costs for government agencies to which GIR is applied'.⁴⁶

2.2 Amendment of the *Integrity Act 2009*

Amendments to the Integrity Act to enhance the independence of the Queensland Integrity Commissioner include creating an Office of the Queensland Integrity Commissioner, which is controlled by the Integrity Commissioner.⁴⁷ The Bill also provides for a Deputy Commissioner, to be employed by the Integrity Commissioner, who is afforded the same protections as the Integrity Commissioner.⁴⁸ Staff are similarly employed by the Integrity Commissioner.⁴⁹ Under the Bill, the Integrity Commissioner may delegate their functions to the Deputy Integrity Commissioner.⁵⁰

In addition, the Deputy Commissioner and staff within the Office are subject only to the direction of the Integrity Commissioner.⁵¹ Furthermore, the industrial relations Minister or the Chief Executive of the Public Service Commission require the approval of the Integrity Commissioner to make a ruling under the Public Sector Act that applies specifically to the Integrity Office.⁵²

The Bill provides that the Integrity Commissioner is not subject to direction about the way the Integrity Commissioner performs their functions or the priority given to integrity issues.⁵³

The Bill also removes a number of current requirements:

- stated statutory officer holders providing a copy of their declaration of interests to the Integrity Commissioner
- the Integrity Commissioner reporting annually on compliance by stated statutory office holders and departmental chief executives in relation to declarations of interests.⁵⁴

⁴⁵ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 4.

⁴⁶ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, p 5.

⁴⁷ Explanatory notes, p 2; Integrity and Other Legislation Amendment Bill 2022, cls 29 & 33.

⁴⁸ Integrity and Other Legislation Amendment Bill 2022, cls 29, 32 & 57.

⁴⁹ Integrity and Other Legislation Amendment Bill 2022, cl 57.

⁵⁰ Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2; Integrity and Other Legislation Amendment Bill 2022, cl 54.

⁵¹ Explanatory notes, p 2; Integrity and Other Legislation Amendment Bill 2022, cl 33.

⁵² Integrity and Other Legislation Amendment Bill 2022, cl 57; Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2.

⁵³ Explanatory notes, p 2; Integrity and Other Legislation Amendment Bill 2022, cl 29.

⁵⁴ Integrity and Other Legislation Amendment Bill 2022, cl 50; explanatory notes, p 3.

The Bill amends the definition of ‘designated person’ to remove senior officers and an assistant minister staff member who provides advice to an Assistant Minister, from being able to directly request advice from the Integrity Commissioner.⁵⁵

The Bill defines ‘ministerial advisor’, noting that a person who is a ‘designated person’ is not a ministerial advisor.⁵⁶ The Bill also sunsets the ability for former ministerial advisors to make requests of the Integrity Commissioner. Ministers and Assistant Ministers will be able to seek integrity advice involving a ministerial advisor without needing to make the ministerial advisor a designated person.⁵⁷

The Bill introduces a simple offence for unregistered lobbying, with a penalty of 200 penalty units.⁵⁸

2.2.1 Submitter comments

The Acting Queensland Integrity Commissioner advised that the views expressed by the office of the Integrity Commissioner during consultation on the Bill ‘have been adequately reflected in the Bill’ and the ‘provisions of the Bill that affect the office of the Integrity Commissioner meet the policy intentions of the previous processes and are fit for purpose’.⁵⁹

Support was expressed for the provisions regarding the Integrity Commissioner in the Bill, particularly the provisions for the independence of the Integrity Commissioner and Integrity Officers from direction from outside the Integrity Office, and those regarding the employment framework.⁶⁰

2.2.1.1 Issues raised on the proposed offence for unregistered lobbying

The Australian Professional Government Relations Association (APGRA) raised concerns that the current drafting of the Bill does not appear to distinguish between inadvertent unregistered lobbying due to the potential for administrative or technical errors and the deliberate, systematic attempts of some unregistered lobbyists who seek to operate outside the lobbying regulatory framework entirely.⁶¹

To address this concern APGRA proposed a warning system whereby a person who is alleged to have engaged in unregistered lobbying is notified of a potential breach by the Integrity Commissioner and given an opportunity to explain the circumstances.

APGRA also sought clarification on:

- how reports of unregistered lobbying will be managed and substantiated under the new offence proposed in section 71A of the Bill
- whether there are any mechanisms through which integrity bodies will seek to monitor and identify unregistered lobbying
- whether reports of unregistered lobbying can only be made by government and opposition representatives, or potentially industry participants as well.⁶²

⁵⁵ Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2; Integrity and Other Legislation Amendment Bill 2022, cl 34.

⁵⁶ Integrity and Other Legislation Amendment Bill 2022, cl 35; Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2.

⁵⁷ Integrity and Other Legislation Amendment Bill 2022, cls 42 & 49; Department of the Premier and Cabinet, correspondence dated 19 October 2022, attachment, p 2.

⁵⁸ Explanatory notes, p 3; Integrity and Other Legislation Amendment Bill 2022, cl 51.

⁵⁹ Submission 3, p 1.

⁶⁰ Submission 4, p 2.

⁶¹ Submission 2, p 3.

⁶² Submission 2, pp 4-5.

APGRA recommended that ‘the Government introduces an exclusion at section 42(2) of the Integrity Act to clarify that contact with government and opposition representatives for administrative purposes is not considered to be ‘lobbying activity’’.⁶³

In response to these issues, the department advised that the investigation and enforcement of the proposed new offence will be a matter for the Queensland Police Service. The department also advised it is currently exploring the replacement of the existing register with an improved platform.⁶⁴

2.3 Amendment of the *Ombudsman Act 2001*

The Bill amends the Ombudsman Act to reduce the strategic review period for the Ombudsman’s Office from 7 years to 5 years. This is in keeping with the discussion on the functions of the Ombudsman in the Coaldrake Report, which stated that ‘reversion back to five years would be consistent with the timeframes for strategic reviews required of other integrity bodies ... It would also provide the Ombudsman with a more frequent opportunity to raise matters which may require reform’.⁶⁵ The Bill provides that the current review period will apply to the next strategic review.⁶⁶

2.4 Amendments to the *Public Sector Act 2022* and *Superannuation (State Public Sector) Act 1990*

The Bill amends the Public Sector Act and the *Superannuation (State Public Sector) Act 1990* to reflect the relevant amendments in this Bill regarding the Integrity Act and the Auditor-General Act.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

We bring the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Ordinary activities should not be unduly restricted—Clause 10 (new section 19A)

Clause 10 inserts new section 19A in the Auditor-General Act to prohibit a person who stops holding office as Auditor-General holding an office in, or being employed by, a public sector entity for 2 years.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, it does not, without sufficient justification, unduly restrict ordinary activities.⁶⁷

⁶³ Submission 2, p 5.

⁶⁴ Department of the Premier and Cabinet, correspondence dated 3 November 2022, attachment, pp 5-6.

⁶⁵ Professor Peter Coaldrake AO, *Let the sunshine in: Review of culture and accountability in the Queensland public sector*, 28 June 2022, p 25.

⁶⁶ Integrity and Other Legislation Amendment Bill 2022, cl 62.

⁶⁷ OQPC, *Fundamental Legislative Principles: The OQPC Notebook* (OQPC Notebook), p 118.

A committee has referred to Parliament, without express objection, provisions prohibiting categories of persons from holding office.⁶⁸

The explanatory notes provide the following justification for the prohibition:

... this provision seeks to achieve the main objects of the Act by strengthening provisions relating to the independence of the [auditor-general] in carrying out independent audits of the Queensland public sector and related entities.

Given this key function, it is essential to safeguard the potential for any real or perceived lack of independence of the [auditor-general] and audit office.

... It is intended that including this provision will reinforce the independence of the [auditor-general] and support increased community confidence in the integrity and impartiality of the role.

... The approach adopted in the Bill is consistent with a requirement in sections 324CI and 324CJ of the Commonwealth *Corporations Act 2001*, which provides that a private sector auditor cannot become an officer of a former audit client for a two year period.⁶⁹

Committee comment

Given the objective of the provision is to reinforce the independence of the role of the Auditor-General, we are satisfied the provision has sufficient regard for the rights and liberties of individuals, such that any breach of fundamental legislative principle is justified.

3.1.1.2 Privacy—Clause 14 (new sections 28 and 29)

Clause 14 inserts new sections 26–29 and 29A–29D in the Auditor-General Act. New sections 28 and 29 provide that a person must not be employed or seconded unless the person has given the Auditor-General written consent to obtain a written report about the person’s criminal history and a brief description of the circumstances of a conviction mentioned in the criminal history report.

The right to privacy, and the disclosure of private or confidential information (including criminal history information), are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.⁷⁰

In considering Bill provisions that allow for a criminal history to be obtained, committees have considered whether adequate safeguards are included, for example, whether:

- the criminal history can only be obtained with consent
- there are strict limits on further disclosure of that information
- the criminal history information must be destroyed when it is no longer required.⁷¹

In this instance, the Bill provides that:

- the Auditor-General may request the information only if the person consents (section 29(2))
- before using the information, the Auditor-General must disclose the information to the person and allow the person a reasonable opportunity to make representations (section 29(5))
- it is an offence for a person to directly or indirectly disclose criminal history information to another person unless its authorised (section 29A(2) and (3))

⁶⁸ OQPC Notebook, p 118, referring to Scrutiny of legislation Committee, [Alert Digest, 2004/3, paras 3 to 10](#).

⁶⁹ Explanatory notes, p 4.

⁷⁰ OQPC, *Fundamental legislative principles: The OQPC Notebook*, pp 95, 113-115. (OQPC Notebook) See also *Legislative Standards Act 1992* (LSA), s 4(2)(a).

⁷¹ See for example, [Transportation and Utilities Committee, Report No. 13, 55th Parliament—Plumbing and Drainage and Other Legislation Amendment Bill 2015, March 2016](#), p 24.

- the criminal history information⁷² must be destroyed as soon as practicable after it is no longer needed for the purpose it was requested (section 29A(4)).

The explanatory notes do not discuss the issue of privacy, but it is justified from a human rights perspective in the statement of compatibility:

An officer of the audit office is expected to investigate a range of financial matters, necessitating access to sensitive financial records that would otherwise be restricted. It is also possible that staff of the audit office may also be required to conduct on-site investigations on premises where children and young people are present, such as schools and detention centres.

Given this position of trust and the functions of the role, it is necessary for all prospective staff members to be subject to a robust screening regime.⁷³

Committee comment

Given the functions of officers of the Queensland Audit Office and their position of trust, and the safeguards to be put in place, we are satisfied sufficient regard has been had to the privacy of individuals and the confidentiality of information.

3.1.1.3 Rights and liberties of individuals—Clause 25 (new section 95)

Clause 25 inserts transitional provisions (new sections 90–96) for the office of the Auditor-General. New section 95 provides that on commencement a person who is the existing Auditor-General or an existing staff member is taken to be employed under the Auditor-General Act and stops being employed as a public service employee.

Section 95(3) provides that the change in a person’s employment does not:

- prejudice the person’s existing or accruing rights to superannuation or recreation, sick, long service or other leave
- interrupt continuity of service
- constitute a termination of employment, retrenchment or redundancy.

Under new section 96, these persons may, within 6 months after the commencement, elect to return to being a public service employee by giving written notice to the Auditor-General. On the person’s return to the public service:

- the person is taken not to have stopped being a public service employee when the person’s employment changed
- the person’s service as a public service employee is taken to have continued while the person was employed under the Auditor-General Act, and
- the person’s terms of employment are the same terms of employment that applied to the person immediately before the person’s employment changed.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.

The explanatory notes contend that:

... any potential breach is balanced by the protections offered to eligible employees. Clauses 14 and 25 of the Bill include provisions to continue the terms of employment of staff currently appointed, employed or seconded to the audit office until new employment arrangements are negotiated in the future. The Bill ensures that staff retain existing rights to superannuation and leave entitlements, as well as continuity

⁷² Integrity and Other Legislation Amendment Bill, clause 14, new section 29A(5) defines ‘criminal history information’ to mean a report or information given to the auditor-general under section 29.

⁷³ Statement of Compatibility, p 6.

of service. The Bill also contains transitional provisions to ensure existing employees retain a right to remain a public servant if they so choose.⁷⁴

Committee comment

Given the protections offered to eligible employees under the Bill, we are satisfied that any impact the provisions have on the rights and liberties of individuals are justified and appropriate in the circumstances.

3.1.1.4 Penalties should be reasonable and proportionate—Clause 51

Clause 51 inserts new section 71A in the Integrity Act. This section prohibits an unregistered lobbyist:

- carrying out a lobbying activity for a third party client
- carrying on, or purporting to carry on, a business of providing services constituting lobbying activities for third parties, or
- holding out to be (or taking or using a name that indicates the lobbyist is) a registered lobbyist, a listed person for a registered lobbyist or authorised to carry out lobbying activity under the Act.

A maximum penalty of 200 penalty units apply.

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, a penalty is proportionate and relevant to the offence.

While the explanatory notes do not address this issue of fundamental legislative principle, overall, the penalties appear to be proportionate to the offences to which they relate and are generally consistent with the broader legislative framework.

Committee comment

We are satisfied that the penalties proposed for the provisions are reasonable and proportionate, such that the provisions have sufficient regard to the rights and liberties of individuals.

3.1.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Delegation of legislative power—Clauses 6, 34, 56

Clauses 6 (new section 8C of the Auditor-General Act), 34 (amends section 12(1)(f) of the Integrity Act), and 56 (amends section 85(2) of the Integrity Act) provide for matters to be dealt with by regulation, rather than primary legislation. Clause 34 also allows a regulation to prescribe a designated person.

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.⁷⁵ The explanatory notes do not raise this issue of fundamental legislative principle.

3.1.2.2 Delegation of legislative power—Clause 57 (new section 85D)

New section 85D delegates from the Parliament to the Minister and the Public Sector Commissioner the power to make a direction. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons. The explanatory notes do not address this issue of fundamental legislative principle.

⁷⁴ Explanatory notes, p 4.

⁷⁵ LSA, s 4(4)(a).

3.1.2.3 *Act amendment only by another Act—Clause 6 (new section 8C)*

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of an Act only by another Act.⁷⁶

Clause 6, inserts new section 8C which allows a regulation to apply particular parts of the Public Sector Act 2022 (including directives) to the Queensland Audit Office, the auditor-general and employees, and to provide how the provisions are to apply. The explanatory notes do not address this issue of fundamental legislative principle.

Committee comment

We are of the view the provisions regarding the delegation of legislative power via regulations and the power for the Minister and the Public Service Commissioner to make a direction have sufficient regard for the institution of Parliament.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.⁷⁷

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).⁷⁸

The HRA protects fundamental human rights drawn from international human rights law.⁷⁹ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

The Statement of Compatibility identifies the following provisions as relevant to the human rights of:

Taking part in public life (section 23 of the HRA)

⁷⁶ LSA, s 4(4)(c).

⁷⁷ HRA, s 39.

⁷⁸ HRA, s 8.

⁷⁹ The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

- restrictions that a person must not hold an office in or be employed by a public sector entity for two years after the person stops holding the office of Auditor-General (clause 10, new section 19A amending the Auditor-General Act)
- restriction on employment in the QAO unless consent has been given to the Auditor-General to obtain certain information about their criminal history (clause 14, new section 29 amending the Auditor-General Act)
- change in access to Integrity Commissioner advice so that a ‘senior officer’, ‘ministerial staff member’ (except Chiefs of Staff for a Minister) and ‘assistant minister staff member’ are no longer a ‘designated person’ able to request advice from the Integrity Commissioner (clause 34 which amends section 12 of the Integrity Act)
- replacing the power of Ministers and Assistant Ministers to designate a person or person within a class of person with the power to designate a person of a class by regulation (clause 34 which amends section 12 of the Integrity Act).

Privacy and reputation (section 25 of the HRA)

- restriction on employment in the audit office unless consent has been given to the Auditor-General to obtain certain information about their criminal history (clause 14, new section 29 amending the Auditor-General Act)

Freedom of expression (section 21 of the HRA)

- a new offence for unregistered lobbyists in relation to certain lobbying activities (clause 51 amending the Integrity Act).

Committee comment

Upon examination of the Bill, we find the Bill does not limit any human rights protected by the HRA, and it is therefore unnecessary to consider whether any limitations are justified under section 13 of the HRA.

However, we note section 20 of the HRA, which relates to freedom of thought, conscience, religion and belief and is stated in language wide enough to encompass more than religious belief. It also protects atheistic, agnostic, cultural, philosophical, academic, social or personal beliefs. To further promote this right, we suggest updating the following parts of the Bill that amend the Auditor-General Act to include the words ‘or affirmation’, in addition to oath, as follows:

- the headings in clauses 11A, 25A and 92
- clause 11A(2)

For the purposes of consistency, we also suggest the Bill be amended to update sections 48(2) and (3) of the existing Auditor-General Act to include the word ‘affirmation’.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill’s compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Audit Office
002	Australian Professional Government Relations Association
003	Queensland Integrity Commissioner
004	Together Queensland Industrial Union of Employees

Appendix B – Officials at public departmental briefing

Department of the Premier and Cabinet

- Ms Jenny Lang, Deputy Director-General, Integrity Reform Taskforce
- Ms Rachel Welch, Executive Director, Integrity Reform Taskforce

Appendix C – Witnesses at public hearing

Queensland Audit Office

- Mr Brendan Worrall, Auditor-General
- Mr Patrick Flemming, Assistant Auditor-General
- Mr Paul Christensen, Senior Director

Australian Professional Government Relations Association Via teleconference

- Mr Andrew Cox, Management Committee Member

Together Queensland Industrial Union of Employees

- Mr Daniel Goldman, Director, Industrial Policy