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Integrity and Other Legislation Amendment Bill 2023

Report No. 51, 57th Parliament

Economics and Governance Committee

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Economics and Governance Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Integrity and Other Legislation Amendment Bill 2023.

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 Bill seeks to implement a number of public sector integrity reforms in response to recommendations in *Let the sunshine in: Review of culture and accountability in the Queensland Public Sector*, by Professor Peter Coaldrake, and the *Strategic Review of the Integrity Commissioner's Functions*, by Mr Kevin Yearbury. This follows an initial series of reforms in response to these reports in last year's *Integrity and Other Legislation Amendment Act 2022.*

This second tranche of legislation includes amendments to strengthen the regulation of lobbying in Queensland and enhance the independence of certain statutory integrity bodies. In addition, the Bill would make some clarifying amendments to integrity and other related legislation and extend the jurisdiction of the Queensland Ombudsman to enable the Ombudsman to consider complaints about, and initiate investigations of, government services provided by non-government entities.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill.

I also thank the Department of the Premier and Cabinet and Public Sector Commission and our Parliamentary Service staff for their assistance.

I commend this report to the House.

Linus Power MP

Chair

Recommendations

Recommendation 1 **12**

The committee recommends the Integrity and Other Legislation Amendment Bill 2023 be passed. 12

1 Executive Summary

The Integrity and Other Legislation Amendment Bill 2023 (Bill), introduced by the Hon Annastacia Palaszczuk MP, Premier and Minister for the Olympic and Paralympic Games, on 16 June 2023, represents the second tranche of legislation to address recommendations from *Let the Sunshine In: Review of culture and accountability in the Queensland public sector,* by Professor Peter Coaldrake AO, and the *Strategic Review of the Integrity Commissioner's Functions,* by Mr Kevin Yearbury PSM.

The stated objectives of the Bill are to:

- increase regulation of lobbying activity to address the public perception of undue influence on governments, including by clarifying what lobbying activity is and enhancing the regulatory role of the Queensland Integrity Commissioner
- amend the conditions for registration as a lobbyist to reflect expectations around completing training and managing conflicts of interest
- introduce a prohibition on a registered lobbyist playing a 'substantial' role for a political party in an election campaign
- enhance the independence of certain statutory integrity bodies by increasing the involvement of parliamentary committees in additional funding proposals and contributing to key appointments
- enhance the jurisdiction of the Queensland Ombudsman to consider complaints about, and initiate investigations of government services provided by non-government entities
- establish the Office of the Queensland Integrity Commissioner as a statutory body
- clarify the trusts that the Auditor-General is required to audit.

As part of its examination on the Bill, the committee considered advice from the Department of the Premier and Cabinet and Public Sector Commission, and detailed feedback from stakeholders provided via 16 submissions and a public hearing held on Friday 11 August 2023.

There was general support for measures designed to increase transparency and improve the regulation of lobbying activity. However, some submitters took issue with various aspects of the provisions, including the definitions of what is and isn't lobbying activity, the application and requirements for registration, and the expression of the disqualification of a person from being a registered lobbyist where they have played a substantial role in an election campaign ('dual hatting').

There was also general support for measures to enhance the independence of the identified statutory integrity bodies, though some submitters expressed their concern that the proposed legislative changes do not go far enough to address the recommendations made by Professor Coaldrake to enhance integrity body independence via committee involvement in funding proposals, integrity body appointments, strategic reviews, and the tabling of reports.

There were also some conflicting views on the expansion of the Ombudsman's jurisdiction over non-government organisations and other providers of contracted government service delivery, though the underlying principle of accountability in the delivery of all government services was supported.

The committee identified and considered issues of fundamental legislative principle in the Bill and is satisfied that Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament, and that any potential breaches of fundamental legislative principle are justified. The committee also identified and considered human rights issues engaged by the Bill. Having considered the issues and the explanations provided in the statement of compatibility, the committee is satisfied that the Bill is compatible with the *Human Rights Act 2019*.

The committee recommends the Bill be passed.

2 Introduction

2.1 Policy objectives of the Bill

The objectives of the Bill are to:

- increase regulation of lobbying activity to address the public perception of undue influence on governments, including by clarifying what lobbying activity is and enhancing the regulatory role of the Queensland Integrity Commissioner
- amend the conditions for registration as a lobbyist to reflect expectations around completing training and managing conflicts of interest
- introduce a prohibition on a registered lobbyist playing a 'substantial' role for a political party in an election campaign
- enhance the independence of certain statutory integrity bodies by increasing the involvement of parliamentary committees in additional funding proposals and contributing to key appointments
- enhance the jurisdiction of the Queensland Ombudsman to consider complaints about, and initiate investigations of, government services provided by non-government entities
- establish the Office of the Queensland Integrity Commissioner as a statutory body
- clarify the trusts that the Auditor-General is required to audit.[1]

2.2 Background

In 2022, the Parliament passed the Integrity and Other Legislation Amendment Bill 2022 (2022 Bill), which was introduced to address some of the recommendations from 2 reviews that led to the following reports:

- *Let the Sunshine In: Review of culture and accountability in the Queensland public sector,* delivered by Professor Peter Coaldrake AO on 28 June 2022 (Coaldrake Report)
- *Strategic Review of the Integrity Commissioner's Functions,* delivered by Mr Kevin Yearbury PSM on 30 September 2021 (Yearbury Report).

The Coaldrake Report was the product of a review focussed on culture and accountability in the Queensland public sector, and included recommendations to strengthen the integrity and oversight framework in Queensland.

The Yearbury Report was the result of the 5-yearly review of the functions of the Integrity Commissioner,[2] and recommended proposed changes to the functions of the Integrity Commissioner and to supporting organisational arrangements and regulatory provisions.

The passing of the 2022 Bill, enacted as the *Integrity and Other Legislation Amendment Act 2022* (2022 Integrity Act), resulted in the implementation of:

- amendments to the *Auditor-General Act 2009* (Auditor-General Act) to enhance the independence of the Auditor-General and the Queensland Audit Office (QAO), including by making the Auditor-General an officer of the Parliament and having staff employed under the Auditor-General Act[3]

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[1] Explanatory notes, p 1.

[2] The full terms of reference are outlined on page 4 of the Yearbury Report. See Kevin Yearbury, *Strategic Review of the Integrity Commissioner's Functions*, 30 September 2021.

[3] The Act also contained amendments requiring parliamentary committee approval, rather than the approval of the Treasurer, for the Auditor-General to increase the basic rate of fees for an audit. However, these are yet to commence (they are to be commenced by proclamation).

- amendments to the *Integrity Act 2009* (Integrity Act) to enhance the independence of the Queensland Integrity Commissioner, including creating an Office of the Queensland Integrity Commissioner which is controlled by the Integrity Commissioner, ensuring the Integrity Commissioner is not subject to direction about the way in which they perform their functions or the priority given to integrity issues; and making unregistered lobbying an offence
- amendments to the *Ombudsman Act 2001* (Ombudsman Act) to reduce the strategic review period for the Office of the Ombudsman from 7 years to 5 years.[4]

Following on from these 2022 amendments, this Bill represents the second tranche of legislation to address the recommendations from the Coaldrake Report and Yearbury Report.

In introducing the proposed legislation, the Premier stated that '[t]his second bill continues our journey' in 'building a strong, contemporary and enduring integrity framework for Queensland' by implementing recommendations from the 2 reports to enhance the independence of the core integrity bodies and improve the regulatory framework for lobbying and lobbyists in Queensland.[5]

In addition to implementing a range of amendments in service of these 2 primary aims (see report sections 3 and 4), the Bill contains related integrity amendments to expand the jurisdiction of the Queensland Ombudsman (report section 5) and clarify the application of certain other provisions in integrity body legislation (report section 6).

The ensuing chapters of this report outline the committee's consideration of key issues raised during its examination of the Bill. They do not discuss all consequential, minor or technical amendments.[6]

A summary of the committee's consideration of legislative compliance matters and other issues raised by stakeholders is provided below.

2.3 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and *Human Rights Act 2019*.

2.3.1 Legislative Standards Act 1992

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified potential issues of fundamental legislative principle[7] (FLP) associated with a number of the Bill's provisions.

Issues relating to the following provisions are not canvassed further in this report, owing to the committee's satisfaction that they have sufficient regard to the rights and liberties of individuals:

- the new lobbying offences[8]

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4 See *Integrity and Other Legislation Amendment Act 2022*.

5 Record of Proceedings, 16 June 2023, p 2073.

6 This includes certain amendments to update legislation to re-order provisions or their expression to reflect contemporary drafting standards and improve readability.

7 The fundamental legislative principles are set out in section 4 of the LSA and require that legislation should have sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

8 The new offences are to prohibit unregistered persons from carrying out certain lobbying activities (Bill, cl 36, inserting proposed new ss 46 and 60 of the Integrity Act) and to prohibit success fees (Bill, cl 36, inserting proposed new s 66P of the Integrity Act). The penalties for the offences are consistent with existing offences in the Integrity Act, such as the penalty for a Minister failing to disclose a conflict of interest (s 40A),

- the requirement for the forfeiture of any success fees for lobbying to the State (replicating the current Integrity Act provision for the forfeiture of such fees, which are prohibited)[9]
- the requirement that a person provide certain information that has been requested by the Integrity Commissioner (in relation to suspected non-compliance with lobbying requirements and obligations), unless the person has a reasonable excuse[10]
- the Bill's authorisation for the Integrity Commissioner to give a registered lobbyist a compliance notice requiring the lobbyist to rectify a matter, and providing for sanctions for non-compliance.[11]

FLP issues identified by the committee which raised more significant concerns and are therefore explored in greater detail in this report included those relating to the Bill's:

- provision for the Integrity Commissioner to decide to approve or refuse to approve a lobbyist application (for registration) and to issue compliance notices[12] (see report sections 3.5.1 and 3.8.1)
- expansion of the Ombudsman's functions for administrative action to non-government entities administering State government functions (see report section 5.1)[13]

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and the existing penalties for the offences prohibiting success fees (s 69). The maximum penalties (200 penalty units – currently, $30,960) appear proportionate to the offences.

9 As per the preceding footnote, the Bill seeks to retain similar offence provisions to those currently in the Integrity Act, prohibiting success fees in relation to a lobbying activity. The Bill also proposes to retain similar existing provisions providing for forfeiture of a success fee, where a conviction is obtained against a person for one of these offences (Bill, cl 36, proposed new s 66P(3) of the Integrity Act). Legislation should provide for the compulsory acquisition of property only with fair compensation. In this case, the proposed forfeiture appears reasonable and justified. It appears appropriate that an individual who is convicted of an offence should not enjoy a right of compensation for interference with their property, where that property was acquired as a direct result of having committed the offence. Additionally, the Bill provides that if the conviction is quashed, a forfeited success fee must be returned (Bill, cl 36, proposed new s 66P(4) of the Integrity Act).

10 Clause 36 of the Bill (proposed new s 66D of the Integrity Act) provides that the Integrity Commissioner may, by notice, require a registered lobbyist (or another person who may have relevant information) to give the Integrity Commissioner information or a document relating to the Commissioner's suspicion that a registered lobbyist may be disqualified for being a previously registered individual who performed a substantial role during the relevant period in the election campaign of a political party (disqualified individual), or may have failed to comply with a condition of the lobbyist's registration, a code of conduct or a directive, or specified provisions. The registered lobbyist (or other person) must, unless they have a reasonable excuse, comply with the notice, within the reasonable period (of at least 15 business days) stated in the notice (or within any longer agreed timeframe). Legislation should not reverse the onus of proof in criminal matters without adequate justification (LSA, s 4(3)(d)). The explanatory notes state that the provisions are consistent with a recommendation of the Yearbury Report (Explanatory notes, p 24). The statement of compatibility states that entities will be entitled to refuse to give information on 'reasonable grounds', including that the information may incriminate the person (Statement of compatibility, p 10).

11 Bill, cl 36 (proposed new ss 66F and 66H-66K of the Integrity Act). The provision for the issuing of a compliance notice will apply if the Integrity Commissioner suspects a registered lobbyist may have failed to comply with: a condition of the lobbyist's registration, a code of conduct, a directive, certain information disclosure provisions, or other specified provisions, including the Bill's proposed restrictions on particular lobbying activity (such as where the applicant is a disqualified individual). Additionally, the Integrity Commissioner must believe a matter relating to the failure is reasonably capable of being rectified and it is appropriate to give the registered lobbyist an opportunity to rectify the matter.

12 Bill, cl 36 (proposed new ss 48-54 of the Integrity Act).

13 Clause 49 of the Bill (proposed new s 12A of the Ombudsman Act).

- delegation to the Integrity Commissioner of the power to approve a code of conduct[14] or a training course,[15] or make a directive[16] (see report section 3.6.4).

As outlined later in the report, the committee was ultimately satisfied that these provisions also have sufficient regard to FLPs, noting the purpose and nature of the provisions and the accompanying processes and requirements or safeguards.

Explanatory notes were tabled on the introduction of the Bill, as required by s 22 of the *Legislative Standards Act 1992*. While the explanatory notes generally contained the required information and a sufficient level of background detail and commentary to facilitate an understanding of the Bill's aims and origins,[17] the notes did not identify or address a number of potential FLP issues associated with the provisions.[18]

The committee has nonetheless managed to identify and form its own conclusions in relation to those matters, as set out in this report.

2.3.2 Human Rights Act 2019

The committee's assessments of the Bill's compatibility with the *Human Rights Act 2019* (HRA) identified potential impacts on the following rights:

- right to freedom of expression (s 21(2) of the HRA)
- right to privacy and reputation (s 25 of the HRA)
- right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination (s 15(3) and (4)), including on the basis of political belief or activity[19]
- right to freedom of association (s 22(2) of the HRA)
- right to take part in public life, including the right to participate in the conduct of public affairs (s 23(1) of the HRA)
- right not to be arbitrarily deprived of property (s 24(2) of the HRA)
- the right not to be compelled to testify against oneself or to confess guilt (s 32(2)(k) of the HRA).

In some cases, while the Bill's amendments engage with these rights, they do not have any limiting effect. Where limitations do occur, the committee believes those limitations are reasonable and proportionate, and therefore justified.

The committee is therefore satisfied that the Bill is compatible with the HRA. The identified issues the committee considered are discussed in the following sections of this report:

- 3.4.1, regarding the keeping of information in the lobbying register
- 3.5.2, regarding the information required in applications for registration (for the lobbying register)

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14 After consultation with the parliamentary committee. See Bill, cl 36 (proposed new s 55 of the Integrity Act).

15 Bill, cl 36 (proposed new s 56 of the Integrity Act).

16 That is, about the operation of a provision of the Bill's proposed lobbying activity amendments or the registered lobbyists code of conduct or the application of the policy relating to conflicts of interest for registered lobbyists, or other matters the Integrity Commissioner considers appropriate. Bill, cl 36 (proposed new s 57 of the Integrity Act).

17 As set out in s 23 of the LSA, which outlines the required content of explanatory notes for Bills.

18 Section 23(f) requires that the explanatory note contain a brief assessment of the consistency of the Bill with FLPs and, if it is inconsistent with FLPs, the reason for the inconsistency.

19 As recognised in s 7 of the *Anti-Discrimination Act 1991*.

- 3.6.4, regarding codes, training and directives
- 3.7.1, regarding the provision for the Integrity Commissioner to require information from a registered lobbyist or other person
- 3.8.2, regarding compliance notices
- 4.2.1, regarding committee involvement in integrity body appointments.
- 5.2, regarding the expansion of the Ombudsman's jurisdiction
- 6.2.2, regarding Ministerial staff member requests for advice on ethics or integrity issues.

A statement of compatibility was tabled on the introduction of the Bill. The statement contained a sufficient level of information to facilitate an understanding of the Bill in relation to its compatibility with human rights.[20]

2.4 Other issues raised by stakeholders

In introducing the Bill, the Premier advised that the enactment of the proposed legislation would mean 10 of the 14 summary recommendations[21] of the Coaldrake Report would be realised, 'with the remaining four continued to be worked on by government over this coming year'.[22] In addition, the Department of the Premier and Cabinet (DPC or department) advised in respect of the Yearbury Report that the Bill would address a further 7 recommendations in full and 2 in part, with the effect that all of the Yearbury Report recommendations involving legislative amendments would be addressed.[23]

Stakeholder commentary on the Bill included a range of views on the means and extent to which the relevant recommendations are to be implemented by the proposed provisions, as outlined in this report.

The Bill's provisions aside, a number of submitters also took the opportunity to highlight matters not addressed by the amendments, as well as outlining their interest in seeing further reforms and actions.[24] This included calls for:

- cabinet submissions (and their attachments), agendas and decisions papers to be proactively released and published online within 30 business days of such decisions (Coaldrake Report summary recommendation)[25]
- the development and continual reinforcement of a common framework to determine appropriate relationships among Ministers, their staff and senior public service officers (Coaldrake Report summary recommendation)[26]

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20 As required by s 38 of the HRA, which requires the statement to contain an explanation of the compatibility or otherwise of a Bill and the nature and extent of any incompatibility.

21 The Coaldrake Report contained a list of 14 summary recommendations, representing a summarised version of the broader list of 22 detailed recommendations set out in the report. See Chapter 2, summary recommendations (p 3) and 'Consolidated list of recommendations' (pp 91-94).

22 Record of Proceedings, 16 June 2023, p 2074.

23 Department of the Premier and Cabinet (DPC), correspondence, 13 July 2023.

24 See, for example: Auditor-General, submission 2, pp 2, 6-10, attachment 2; Organisation Sunshine Coast Association of Residents Inc (OSCAR), submission 8, pp 2-3; South East Queensland Community Alliance (SEQCA), submission 12, pp 1-3; Queensland Law Society (QLS), submission 13, pp 2, 6; Brisbane Residents United (BRU), submission 14, pp 2-5; Office of the Information Commissioner (OIC), submission 15, Appendix, p 6.

25 SEQCA, submission 12, p 1; BRU, submission 14, pp 3-5. Note: The SEQCA and BRU also called more broadly for amendments to Queensland's right to information laws to clarify provisions and better support the availability of public interest information to residents and taxpayers, in line with community expectations (pp 2-3).

26 QLS, submission 13, p 6.

- citizens' privacy rights to be protected by the implementation of mandatory reporting of data breaches (Coaldrake Report summary recommendation)[27]
- encouragement for the Auditor-General to carry out performance audits of the lobbying register, ministerial diaries and public records to ensure recordkeeping obligations are complied with (detailed Coaldrake Report recommendation)[28]
- legislative confirmation that the Auditor-General's power to access information is not limited by any rule of law relating to privilege, and the provision of discretion to the Auditor-General in determining whether to make information available to a commission of inquiry (earlier recommendations endorsed by a detailed Coaldrake Report recommendation).[29]

These matters are not considered further in this report, given they are outside the scope of the Bill. However, the committee wishes to acknowledge stakeholder comments and interest in seeing these related matters progressed.

Some stakeholders also called for consideration to be given to establishing a statutory review clause in the Bill to enable a review of the legislation after a stated period of time, with review timeframes of 4 years[30] and 5 years[31] respectively being proposed.

The department in response highlighted the provision in each of the respective integrity bodies' legislation requiring a strategic review to be conducted at least every 5 years, enabling relevant provisions of the Bill to be reconsidered.[32]

Committee comment

The committee notes the available review mechanisms provided by the 5-yearly strategic reviews of integrity bodies.

The committee acknowledges the preference among some stakeholders for a specific review of the legislation. However, the committee considers that the existing 5-yearly reviews can provide a means by which the changes in the Bill as experienced in relation to the affected integrity bodies can be appropriately and iteratively considered within the context of the broader, shared integrity framework, while avoiding any further, potentially duplicative review process.

[27] OIC, submission 15, p 6.

[28] OSCAR, submission 8, p 3; BRU, submission 14, pp 2; 4-5. OSCAR and BRU submitted that a funded annual audit by the Auditor-General would keep the penalties and compliances measures in the Bill in focus. Note: In respect of this matter, the DPC stated in its response to submissions: 'As the Queensland Audit Office is an independent integrity agency, this is a matter for it to consider'. See: DPC, correspondence, 4 August 2023, p 8.

[29] Auditor-General, submission 2, pp 6-7, 9. These reforms were cited in reference to the Coaldrake Report recommendation that 'Other outstanding recommendations from the 2013 FAC [Finance and Administration Committee] Inquiry and 2017 Strategic Review [of the Queensland Audit Office] be implemented'. The 2017 Strategic Review recommended the implementation of proposals outlined in the Queensland Audit Office submission to the 2013 FAC Inquiry, which included these 2 identified reforms.

[30] OSCAR, submission 8, p 3; BRU, submission 14, p 5.

[31] OIC, submission 15, p 2. See also public hearing transcript, Brisbane, 11 August 2023, p 31.

[32] DPC, correspondence, 4 August 2023, p 1.

2.5 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 2023 be passed.

3 Improving the regulatory framework for lobbying

In response to Yearbury Report and Coaldrake Report recommendations, the Bill proposes a range of changes to support a more robust and transparent approach to lobbying and its regulation, including with the aim of:

- more clearly defining and capturing lobbying activity within the regulatory scheme
- requiring the registration of any person or entity carrying out lobbying activity, including for a third party client, and clarifying who is not required to register as a lobbyist
- establishing a prohibition on lobbyists performing a senior role in a state campaign of a political party during an election period (‘dual hatting’)
- updating requirements for the maintenance of the lobbying register and applications for registration, to reflect the amended scheme requirements
- inserting a new requirement for mandatory annual training for all registered lobbyists
- providing enhanced powers for the Integrity Commissioner to seek explanations and require remedial action for non-compliance with registration and other lobbyist obligations
- clarifying responsibilities for the reporting of unregistered reporting.[33]

3.1 Definition of lobbying activity

Under the Integrity Act, in-house lobbyists (those who lobby to further their own entity’s interests) are currently excluded from the definitions of ‘lobbyist’.[34] Similarly, lobbying activity carried out by members of professional services firms (such as lawyers, accountants and consultants) in which lobbying is ‘occasional only and incidental to the provision of professional or technical services’, is characterised as ‘incidental’ lobbying that does not need to be regulated.[35]

As part of the review undertaken by Professor Coaldrake, consideration was given as to whether professional services firms who lobby should be should be regulated and subject to the same transparency obligations as traditional third party lobbyists. The Coaldrake Report concluded that such lobbying should be captured and included in any register of lobbyists and lobbying, stating: ‘The focus of regulation should be on the type of activity, and not the nature of the person’s employment’.[36] The resulting recommendation did not focus on the definition of lobbying, but instead on who should be registered (see recommendation over page).[37]

[33] Record of Proceedings, 16 June 2023, p 2074.

[34] Integrity Act, s 41.

[35] Coaldrake Report, p 49. See also Integrity Act, s 41(6).

[36] Coaldrake Report, p 51.

[37] Coaldrake Report, p 58. Note – This was one of a group of recommendations made in relation to lobbying regulation.

Coaldrake Report Recommendation – Lobbying regulation
Lobbying regulation be strengthened by requiring that all professionals offering paid lobbying services to third parties to register as lobbyists.

Similarly, the earlier Yearbury Report had also given consideration to whether the definition of 'lobbyist' under the Integrity Act is appropriate for the purposes of achieving the desired degree of transparency of lobbying activity. As part of this consideration, the report found that the definition of 'entity' as it relates to third party lobbyist is unclear, and made the recommendation below.[38]

Yearbury Report Recommendation 9 – definition of lobbyist
While not broadening the definition of 'lobbyist' in Section 41 of the Act, provide clarification as to the meaning of entity to include an individual, organisation or related party (as defined in the ASA 550 Auditing Standard).

The Bill removes the current definition of 'lobbyist' and instead broadens the definition of 'lobbying activity' to capture 'all those who attempt to influence government decision making', by focussing on 'the activity rather than the individual'.[39] In so doing, the name of the register is changed from 'Lobbyists Register' to 'Lobbying Register'.[40]

Replacing the current definitions of 'lobbyist' and 'third party client', the Bill's new activity focussed definition provides that an entity is considered to carry out lobbying activity if:

> …the entity communicates with a government representative in an effort to influence decision-making of the State government or a local government, or alternatively, communicates with an Opposition representative in an effort to influence decision-making of the Opposition.[41]

To aid with clarification about what is or isn't lobbying, the Bill removes the definition of 'incidental lobbying activities' (not considered to be lobbying), and instead includes an amendment to the list of activities that aren't lobbying activity. The proposed list provides that the activity of communicating with a government or Opposition representative is not lobbying where it is 'in the ordinary course of providing professional or technical services to a person', with the following example provided:

> An entity is engaged by a person to provide accounting, architectural, engineering or legal services. The entity communicates with a representative on behalf of the person. The communication is not a lobbying activity if the communication is part of the ordinary course of the entity providing the services to the person.[42]

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[38] Yearbury Report, p 48.

[39] Explanatory notes, p 3.

[40] See Integrity Act, s 49 and Bill, cl 36 (proposed new s 66L of the Integrity Act).

[41] Explanatory notes, p 18. See also Bill, cl 36 (proposed new s 42 of the Integrity Act).

[42] Bill, cl 36 (proposed new s 43 of the Integrity Act).

The explanatory notes also provide the following examples to illustrate the focus on the activity, rather than the role of the individual.[43]

It is not lobbying activity if:	**It is lobbying activity if:**
A lawyer makes representations to a government representative as part of settlement negotiations for a client	A lawyer makes representations to a government representative to try and influence a decision, beyond providing legal advice or negotiating a legal outcome for a client
A town planner discusses the particulars of a planning submission with a government representative to clarify any questions	A town planner advocates in an attempt to influence the decision of a government representative

The Bill also maintains the prohibition on an entity carrying out a lobbying activity for a third party client unless the entity is a registered lobbyist, and clarifies that such an activity could be for a commission, payment or other reward, whether pecuniary or otherwise.[44]

3.1.1 Stakeholder views and the department's response

3.1.1.1 What is lobbying activity

While there was general support for the change in focus to defining lobbying activity rather than who is a lobbyist, a number of stakeholders raised issues with aspects of the proposed definition of lobbying activity as outlined in the Bill.

The Integrity Commissioner raised concerns that because the definition (s 42(1)) is subject to the application of the definition of what is not lobbying activity (s 42(2)), it 'unnecessarily complicates the question of *what does* and *what does not* constitute a lobbying activity for the purposes of the proposed legislation' and 'may create conflict and limit the application' of the definition of lobbying activity because it is resolved by the definition of what is not lobbying.[45]

The Integrity Commissioner gave the following example:

> New subsection 42(a)(v) provides that lobbying activity includes 'the making of a decision about planning or the giving of a development approval under the *Planning* Act 2016'.
>
> However, new subsection 43(i) also provides that lobbying activity does not include communicating with a representative in the ordinary course of making an application, or seeking a review or appeal about a decision, under an Act'. Given that 'communicating with a representative in the ordinary course of making an application' under the *Planning Act 2016* would ordinarily involve some reference to those things required to achieve a desired outcome (i.e. a decision approving the application), the practical effect of new subsection 42(2) is that a registered lobbyist communicating with a representative about any aspect of an application made under the *Planning Act 2016* (including the desired outcome i.e. the decision) does not appear to constitute a lobbying activity.[46]

To address this issue, the Integrity Commissioner suggested that the definition of lobbying activity not be subject to the provision defining what is not lobbying activity, and stated that if the sections

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43 Explanatory notes, pp 18-19.

44 Bill, cl 36 (proposed new s 46 of the Integrity Act); explanatory notes, p 19.

45 Submission 16, p 13. See also public hearing transcript, Brisbane, 11 August 2023, pp 3-4.

46 Submission 16, pp 13-14.

defining what is and what is not lobbying are instead inclusive, non-exhaustive lists, this would allow for the regulator to issue guidance as issues arise.[47]

The department responded to this suggestion by advising that:

> Proposed new section 42(1) essentially replicates current section 42(1) and proposed new section 43 replicates current section 42(2).
>
> Neither the Yearbury nor Coaldrake Reports made any recommendations or suggestions for changes to the definition of lobbying activity or what is not lobbying activity other than in relation to 'incidental lobbying' which is dealt with in proposed new section 43(k).[48]

The Property Council of Australia (Property Council) submitted that the definition of lobbying activity is overly broad, and raised concerns with the inclusion of 'communicating with a government representative to influence decision-making about planning or the giving of a development approval under the *Planning Act 2016*' (s 42(1)(a)(v)). The Property Council stated that a proponent explaining details of the project or responding to requests for clarification from the assessment manager may reasonably speak positively about their project, raising concerns that under the current definition, this 'may be interpreted as a form of influencing or lobbying'.[49]

In addition, the Property Council disagreed with the reference in the Bill's provisions to the 'development, amendment or abandonment of a government policy or program' because it 'could be interpreted to include engagement with state officers and elected members on matters such as the preparation of a regional plan'.[50]

The Crime and Corruption Commission (CCC) raised issues with the definitions of 'government representative' and 'Opposition representative' (ss 44 and 45 respectively), which the Bill would replicate in the Integrity Act without change. The CCC considered that the current definitions 'create a regulatory gap which is a corruption risk' and called for the definitions for both government representative and Opposition representative to be expanded to include all members of Parliament and electorate officers.[51] In this regard, the CCC submitted:

> Members of Parliament promote and advocate the interests of their constituents and they are regularly approached by members of the community seeking to advance their special interests. This is a legitimate process and fundamental to informing and enhancing government policy. However, the close connections of Members of Parliament to the community and their advocacy role can place them at increased risk of being susceptible to improper influence — particularly in situations where they have received a benefit from the community member who is seeking their assistance and advocacy, or in situations where they have developed relationships with members of the community over a long period of time. While Members of Parliament may not necessarily have the same authority as Councillors, Ministers, Assistant Ministers, the Opposition Leader or the Deputy Opposition Leader to directly make decisions, they have the capacity to influence decisions and government priorities, including through parliamentary debates, party discussions, sponsoring petitions and their role on parliamentary committees.[52]

The department responded to this recommendation by advising: 'Proposed new sections 44 and 45 replicate the existing sections 44 and 47A in the Integrity Act. The Coaldrake and Yearbury Reports do not recommend amending the definition of government or Opposition representative'.[53]

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[47] Public hearing transcript, Brisbane, 11 August 2023, p 4.

[48] DPC, correspondence, 4 August 2023, p 13.

[49] Submission 11, pp 2-3.

[50] Submission 11, p 3.

[51] Submission 9, p 3.

[52] Submission 9, p 3.

[53] DPC, correspondence, 4 August 2023, p 18.

Stakeholders also proposed the following changes to the definition:

- 'the exercise of discretionary power' be included in the list of matters for which the definition applies, due to the likelihood that a lobbyist will be 'engaged by a client on a matter where the Government representative has a discretion, for example, appointing a person or recommending a person for appointment to a Board'[54]
- amending the definition of a 'lobbyist' to ensure it focuses on the activity of influencing (rather than the particular individuals or organisations, or the frequency of that behaviour), including by removing exemptions for in-house lobbyists, trade unions and other interest groups.[55]

The department responded to these suggestions, stating:

> The definition of lobbying activity in the Bill is the same as the current Integrity Act except for a small number of minor changes recommended such as inclusion of 'repeal' of an Act, and replacing 'contact' with 'communicating' to capture modern and emerging forms of communication such as electronic messaging…
>
> Neither the Yearbury nor Coaldrake Reports made any recommendations or suggestions for changes to the definition of lobbying activity or what is not lobbying activity other than in relation to 'incidental lobbying' which is dealt with in proposed new section 43(k)'.[56]

The department also stated: 'The Bill focuses on capturing the activity of lobbying rather than particular individuals or behaviour. Neither the Coaldrake nor Yearbury Reports recommended extending registration requirements to in-house lobbyists'.[57] In addition, the department advised:

> Communicating with a government representative in an effort to influence decision making of the State government or a local government on behalf of a third party client is lobbying activity and will require registration.
>
> This is the case regardless of who is the 'third party client'.
>
> The exemption that applies to non-profit entities that represent industry members applies to the actions of the non-profit entity (as opposed to the actions of a professional firm engaged to lobby for the non-profit) that could otherwise be described as lobbying (e.g. making representations on behalf of members).[58]

3.1.1.2 What is not a lobbying activity

Both the Australian Lawyers Alliance (ALA) and Queensland Law Society (QLS) expressed their support for the Bill's list of activities that are not to be considered as lobbying.[59]

The ALA stated that the exempted activities 'are day-to-day activities for engaging with the Queensland Government (including Queensland Parliament), which should not meet the threshold for a lobbying activity for the purposes of this Act' and that 'many of the activities listed in the new section 43 are already covered by other accountability and transparency measures'.[60]

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[54] Queensland Integrity Commissioner, submission 16, p 13; public hearing transcript, Brisbane, 11 August 2023, p 5. See also Queensland Integrity Commissioner, correspondence, 15 August 2023.

[55] CCC, submission 9, p 3; BRU, submission 14, p 3.

[56] DPC, correspondence, 4 August 2023, p 13.

[57] DPC, correspondence, 4 August 2023, pp 15-16.

[58] DPC, correspondence, 4 August 2023, pp 16-17.

[59] Submission 1, pp 6-7; submission 13, p 2.

[60] Submission 1, p 6.

Similarly, the QLS supported the revised drafting as it 'more accurately describes activities which should not properly be considered lobbying activity for the purposes of this legislation'.[61] However, the QLS also noted that while the proposed new subsection 43(k) includes legal services in the example provided for the provision, it considered the reference 'should refer to legal services as defined in the *Legal Profession Act 2007* (Qld)' to 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'.[62]

The department responded to this concern by advising: 'The term 'legal services' is a commonly understood term used extensively across Queensland legislation'.[63]

Other stakeholders also sought other amendments to proposed s 43(k), expressing concerns about lack of clarity regarding the application of the exemption for 'communicating with a representative in the ordinary course of providing professional and technical services to a person'.[64] In particular:

- The Planning Institute of Australia called for town planning to be explicitly identified among the other professions listed in the Bill's example (alongside those providing accounting, architectural, engineering or legal services), [65] to remove any doubt that this exclusion applies to planning – particularly as communicating with a government representative to influence a decision about planning or a development approval is specified as lobbying activity (in proposed s 42(a)(v)).[66]
- The Property Council, in addition to similarly calling for the explicit inclusion of town planners, also proposed recognition of applicants and developers, submitting of the exclusions that they 'should be extended to include all disciplines typically involved in lodging and assessing a development application, including (but not limited to) planners, traffic engineers, environmental consultants, acoustic engineers, project managers and development managers'.[67]

Further, the both of these stakeholders, together with the Integrity Commissioner, raised concerns that the phrase 'in the ordinary course of' is ambiguous and may present challenges in terms of its practical implementation. For example:

- The Planning Institute of Australia submitted that the phrasing potentially does not cover ad hoc communications and meetings planners are involved in the course of providing technical services, and therefore recommended clarification of the provision as follows:

  > (a) It is recommended a new clause is introduced which wholly exempts planners providing professional or technical services to a person in relation to a planning matter under the *Planning Act 2016* and *Economic Development Act 2012*.
  >
  > (b) Alternatively, it is recommended greater guidance be provided which assures planners that they can continue to make representations at the required times for each project throughout an application process, ensuring timely and accurate planning technical advice is made available for decision makers.[68]

- The Property Council noted that Queensland operates under a performance-based planning system which naturally requires people to explain the positive benefits of a development or a

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61 Submission 13, p 2.

62 Submission 13, p 3.

63 DPC, correspondence, 4 August 2023, p 15.

64 See, for example, submission 3, p 2; submission 11, p 3; submission 16, p 17.

65 Submission 3, p 2.

66 Submission 3, p 2.

67 Submission 11, p 3.

68 Submission 3, p 3.

project, such that some technical professional such as town planners will need to attend meetings with officials in which capacity they are required to discuss project benefits. The Property Council noted that the nature of the system may present challenges for determining at what point the activities of these professionals may be considered lobbying, as opposed to the communication in the ordinary course of providing professional technical services.[69]

- Similarly, the Integrity Commissioner raised concerns that it is 'very difficult to ascertain when communication with a representative, which would otherwise be lobbying activity, ceases to be in the ordinary course of services and becomes a lobbying activity that is captured under the regulatory scheme'.[70] Noting 'the huge amount of activity that could potentially be covered', the Integrity Commissioner considered that 'restricting the exemption to technical and procedural matters would provide further clarity':[71]

  > If the intent is to capture professional and technical services firms, then this can only be done by removing new subsection 43(k). This places professional services and technical firms on the same footing as a professional lobbying firm. If they wish to undertake work for a paying client which constitutes lobbying activity (irrespective of what proportion of services to the client it forms), then they must be registered. If in the course of providing services to that client, they communicate with a representative in an attempt to influence decision-making as defined in new section 42, then they must record that contact.[72]

In a broader sense, the Australian Professional Government Relations Association (APGRA) also called for further clarity regarding the exemptions generally, to address confusion among some public sector workers due to 'the changes that have been put in place in Queensland' which 'have had a bit of a chilling effect on the way professionals at my end contact ministers' offices in the fear of the unknown of getting in trouble for doing the wrong thing'.[73] APGRA considered it would be helpful for its members, for example, to specifically include the following in the list of activities that are not lobbying to address these concerns:

- engagement with communications professionals who are seeking to confirm the details of a Government media release as part of a joint announcement with their client (in this instance example (k) may be sufficient with the inclusion of 'communications professional')
- a formal invitation to government representatives for the opening of a facility or a sod turning
- an individual seeking information or clarity on a government decision/announcement.[74]

In response to these stakeholders, the department advised:

> The current Integrity Act (section 41(5)) provides a definition of incidental lobbying activities that do not need to be registered. The Coaldrake Report discussed the risk that a person was able to 'escape' regulation by virtue of their position or employment.
>
> The notion of 'incidental lobbying' has been incorporated in the Bill into proposed new section 43(k). The intention of this subsection is not to alter which activities or who should be subject to lobbying regulation, but to mitigate the risk in the current section 41(5) interpretation raised by the Coaldrake Report.

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69 Public hearing transcript, Brisbane, 11 August 2023, pp 9, 10.

70 Submission 16, p 16.

71 Public hearing transcript, Brisbane, 11 August 2023, p 4.

72 Submission 16, p 17.

73 Submission 7, p 2; public hearing transcript, Brisbane, 11 August 2023, p 8.

74 Submission 7, p 2. See also public hearing transcript, Brisbane, 11 August 2023, p 8.

> The Coaldrake Report did not otherwise recommend any changes to the scope of lobbying activity to capture other professional services provided by (e.g.) lawyers, town planners, engineers. The Coaldrake Report does state (page 48) "…it is important to avoid the temptation of overregulation, as this can drive activity underground."[75]

In addition, the department emphasised that the Bill's list of activities that are not lobbying is a 'non-exhaustive list of examples'.[76] As to including additional occupations in the list of persons providing professional or technical services, the department advised:

> It is not necessary to list all types of professional or technical services.
>
> Planning has been mentioned in the Explanatory Notes to aid interpretation in the event of any uncertainty. The provision aims to capture activity that is intended to influence the decision making of a government official. The ordinary course of providing information on (not advocating for) a planning submission would not be captured.
>
> The Coaldrake Report did not recommend any particular profession be wholly exempt and in instead indicated that 'registration and recording of lobbyist activities should cover third party lobbyists as well as those carrying out lobbying functions as part of their suite of professional services'.[77]

Finally, on a separate note, the Integrity Commissioner also raised the following concerns about the proposed definition of what is not lobbying activity:

- In respect of the Bill's provision that communicating about a non-business or non-commercial matter is not lobbying, the failure to define what constitutes a private or personal matter in this sense introduces a subjective and ambiguous element to the interpretation and application (s 43(h)).[78]
- The inclusion in the list of activities that are not lobbying of 'participating in an incidental meeting with a representative beyond the control of the representative' (s 43(j)) potentially poses risks in terms of providing registered lobbyists with the opportunity to engage in unregulated lobbying activity, because lobbying activity has still occurred but 'it is not required to be recorded as a lobbying contact'.[79]

To address the first issue, the Integrity Commissioner suggested the Western Australia *Integrity (Lobbyists) Act 2016* be considered as an alternative, which provides that 'a personal matter is a matter that relates only to a person's personal, family or household affairs and is not related to any business or commercial activity'.[80]

On the second issue, the Integrity Commissioner recommended that the application of subsection 43(j) be narrowed to exclude incidental meetings involving representatives and registered lobbyists: 'It would mean whether the lobbying activity was scheduled or not, it would be required to be entered into the lobbying register'.[81]

In response to these suggestions, the department stated that the Western Australian provisions 'incorporate policy changes from the policy intent of the current definitions and would expand the

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75 DPC, correspondence, 4 August 2023, pp 14-15.

76 DPC, correspondence, 4 August 2023, p 17.

77 DPC, correspondence, 4 August 2023, p 18.

78 Submission 16, p 15.

79 Submission 16, p 15.

80 Submission 16, p 15.

81 Submission 16, p 15.

matters that a Member of Parliament, who is also Minister, cannot discuss with a constituent'.[82] Further, the department added:

> Contact on 'non-business' issues is currently in the Integrity Act. The addition of 'non-commercial' is intended to make it clear that communications unrelated to the commercial or business activities of a registered lobbyist (i.e. not related to providing a lobbying service to a third party client), are not captured as lobbying activities.
>
> The example provided in the Bill explains this provision is not intending to exclude all unscheduled meetings. However, it would be unreasonable for every interaction however short and incidental to be required to be registered.[83]

3.2 Requiring the registration of any person carrying out lobbying, including for third party clients

As per the Coaldrake Report recommendation set out in section 3.1 of this report (regarding the need to capture professionals offering paid lobbying services to third parties within the lobbying regime), the Bill establishes a requirement for an entity carrying out a lobbying activity for a third party client for a commission, payment or other regard, to be registered. An offence with a maximum penalty of 200 penalty units applies if the entity engages in such activity without being registered as a lobbyist.[84]

Accompanying this registration requirement, the Bill specifies that if an applicant for registration has officers or employees, their application for registration must include a statement listing the name of each officer or employee of the applicant other than:

- an officer or employee who is already a registered lobbyist, or for whom registration as a lobbyist is sought by the application
- an employee whose role within the entity involves only administrative duties
- an employee whose role within the entity involves only work outside Queensland.[85]

In addition, where an applicant is a former senior government representative or Opposition representative, the Bill establishes a new requirement that the application must be accompanied by a statement setting out their official dealings as a former representative in the 2 years immediately before the person became a former representative.[86]

As well as clarifying these registration requirements, the Bill also clarifies that any of the following entities may carry out a lobbying activity without being a registered lobbyist if the purpose of the lobbying activity is to reflect the respective interests of the entity, its members or delegation:

- a non-profit entity
- an entity constituted to represent the interests of its members
- a member of a trade delegation, and
- an officer or employee of any of these groups.[87]

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[82] DPC, correspondence, 4 August 2023, p 13.

[83] DPC, correspondence, 4 August 2023, p 14.

[84] Bill, cl 36 (proposed new s 46 of the Integrity Act).

[85] Bill, cl 36 (proposed new s 50 of the Integrity Act); explanatory notes, p 20.

[86] Bill, cl 36 (proposed new s 50(2)(b) of the Integrity Act); explanatory notes, p 20.

[87] Explanatory notes, p 19; Bill, cl 36 (proposed new s 47 of the Integrity Act).

The Bill also provides greater detail to the current definition of non-profit entity (which refers generally to an entity which is not carried on for profit or gain to its individual members),[88] specifying that the entity must, under its constitution, be prohibited from making any distribution, whether in money, property or otherwise, to its members.[89]

3.2.1 Stakeholder views and the department's response

3.2.1.1 Registration requirements for professionals offering paid lobbying services to third parties

In respect of the proposed amendments, APGRA advised it does not support the requirement to list other officers or employees of registered lobbyists within Queensland in applications for registration, submitting that:

- it will place a significant administrative and compliance burden on government and on registered firms but is unlikely to have any material benefit in terms of addressing unregistered or incidental lobbying
- it is not reasonable or relevant to be required to list all staff members who are not engaging with government representatives in a lobbying capacity but whose role is not limited to administrative duties or work outside Queensland, particularly for registered firms that work across multiple jurisdictions and disciplines (e.g. an investor relations or communications advisor who works for a registered firm on Queensland matters from time to time – and is potentially based in another state)
- registering staff who are not engaging with government representatives would misrepresent the roles they undertake in their organisations and could see hundreds of individuals registered to ensure just a handful of staff (who would be registered) at a single firm are compliant (such as primarily communications firms with a limited government relations team)
- expanding the registration requirements to apply broadly to members of a registered firm would place an unreasonable administrative burden on officials in the Office of the Integrity Commissioner who are responsible for reviewing applications for registration
- firms would have to update their registration every time a new staff member is employed, which for some larger firms happens on a weekly to monthly basis.[90]

In response, the department advised:

> Only individuals who carry out lobbying activity are required to be registered as listed persons in the lobbying register. This is in line with Coaldrake's recommendation.
>
> All other employees, other than administrative staff and staff whose role involves work only outside Queensland will be included on the register but not as listed persons. This is in line with the commitment made by government and will ensure that all communications with a lobbying firm are transparent and not just the communications with the registered lobbyists employed by the firm.[91]

3.2.1.2 Exemption for non-profit entities and entities representing member interests

In respect of the Bill's clarification of the exemption for non-profit and other entities representing the interests of their members, the ALA, Property Council, QLS and Chartered Accountants Australia and New Zealand all conveyed their support for the provisions.[92]

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88 In s 41(5) of the Integrity Act.

89 Bill, cl 36 (proposed new s 47(2) of the Integrity Act).

90 Submission 7, pp 3-4.

91 DPC, correspondence, 4 August 2023, p 22.

92 Submission 1, p 7; submission 11, p 1; submission 13, p 3; submission 7, p 1.

The Queensland Council of Social Service (QCOSS) also welcomed the recognition of non-profit entities as entities that can undertake lobbying activity without registering as a lobbyist, but submitted that the extended definition of non-profit entity included in the Bill requires amendment. QCOSS raised concerns that many non-profit organisations operating in Queensland – and particularly grass roots organisations – would not meet this definition because:

> a. The organisation's constitution requires it has members and those members may be other non-profit organisations or people with the characteristics the organisation seeks to serve. The purpose of the organisation may be connected to achieving outcomes for members of the organisation. These benefits could be considered to be gains under s.47(2)(a) of the Bill;
>
> b. The legal structures of non-profit organisations are varied, including incorporated organisations (companies limited by guarantee, incorporated associations, cooperatives, propriety limited companies, indigenous corporations) and unincorporated organisations (a trust or an unincorporated association). While a company limited by guarantee is likely to have a clause in its constitution prohibiting distributions to members, depending on their structure, other non-profit organisations may not have this provision, and some will not have a constitution as their founding document.[93]

Further:

> ..we maintain the position that for the purposes of this act it should be a wide definition really including all non-government organisations that are operating in Queensland. It does not make sense to us that only organisations that have a particular legal structure would be included in the exemption from having to register as a lobbyist.[94]

As an alternative, QCOSS recommended the definition be widened to include all non-government organisations that are operating in Queensland, with the Bill amended to 'A charity, organisation, entity or other body that is not carried on for the profit of its individual members'.[95]

The department responded to QCOSS's recommendation by advising:

> The definition of non-profit entity has been taken from the *Electronic Transaction Act 2001*. If any of the groups, or their member not captured by this definition are only advocating for their own interests, they will still not be required to register (that is, not engaging in lobbying activity for a third party client as per new section 46).[96]

The Property Council welcomed the exclusion of peak bodies, but raised concerns that its board and divisional council members, who also work within the development industry, may not be exempt from registering when accompanying staff (as a representative of the Property Council) to meetings with government and council representatives on broader policy issues or to provide expert knowledge. The Property Council called for greater clarity and opposed the implementation if its corporate leaders would need to register, due to its impact on their ability to advocate for the industry.[97]

3.3 Prohibition on 'dual hatting' and accompanying provisions for disqualification

Professor Coaldrake's consideration of lobbying and influence of government included turning his focus to specialist lobbying firms operating both as lobbyists to governments and as political consultants to the parties competing for government.[98] Professor Coaldrake noted that as beneficial as the services of professional consulting firms are to government, the lines become blurred when they carry out work for

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93 Submission 5, p 2.

94 Public hearing transcript, Brisbane, 11 August 2023, p 14.

95 Submission 5, p 2; public hearing transcript, Brisbane, 11 August 2023, p 14.

96 DPC, correspondence, 4 August 2023, p 19.

97 Submission 11, p 2.

98 Coaldrake Report, p 56.

government while also working for their own clients – an issue 'acknowledged by many of those in government with whom they come into contact', and known to insiders as 'dual hatting'.[99]

The Coaldrake Report identified 'dual hatting' as a risk for government and concluded that, in the interests of transparency, firms need to be transparent about what 'hat' they are wearing and when, with a clear distinction made:[100] 'They can either lobby or provide professional political advice but cannot do both'.[101] Accordingly, Professor Coaldrake made the below recommendation.[102]

Coaldrake Report Recommendation – Lobbying regulation
Lobbying regulation be strengthened by an explicit prohibition on the "dual hatting" of professional lobbyists during election campaigns.

The Bill introduces provisions to this end by providing that a registered lobbyist must not perform a 'substantial role' during an election period for an election, in the election campaign of a political party.[103] A *substantial role* is defined in the Bill as a role at a senior level, whether paid or unpaid, that involves employment or engagement by the party and incorporates significant involvement in the party's election strategy or policy development. It does *not* include the following:

- general membership of a party
- volunteering for, or advising, a particular candidate
- door knocking, placing documents in letter boxes or other campaign communications
- media liaison
- handing out how to vote material.[104]

An *election period* means the period between the day on which the writ for the election is issued and the day on which the election is held.[105]

Further, if a registered lobbyist does perform such a role, the Bill makes it a requirement that the individual be disqualified from being a registered lobbyist for a specified period.[106]

The disqualification period begins when the lobbyist starts performing the substantial role and ends on the day on which the writ is issued for the first general election after the end of the election period for which the person performed the role. In other words, the individual is prohibited from engaging in

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99 Coaldrake Report, p 49.

100 Coaldrake Report, p 49.

101 Coaldrake Report, p 58.

102 Coaldrake Report, pp 58, 93. Note – This was one of a group of recommendations made in relation to lobbying regulation. The Coaldrake Report noted that the code of conduct issued by APGRA already explicitly prohibits member practitioners from playing a senior role in the conduct of an election, and Professor Coaldrake recommended this be embedded in the Integrity Act and accompanied by a ban on any practitioner who plays such a role engaging in lobbying activity for the next term of office (p 57).

103 Bill, cl 36 (proposed new s 58 of the Integrity Act).

104 Bill, cl 36 (proposed new s 41 (Definitions for chapter) of the Integrity Act).

105 Bill, cl 36 (proposed new s 41 (Definitions for chapter) of the Integrity Act).

106 Bill, cl 36 (proposed new s 49 of the Integrity Act); explanatory notes, pp 19-20.

lobbying activity for the next term of government. This disqualification will apply regardless of which political party forms government.[107]

To help support the operation of the disqualification provisions, the Bill also provides that if a writ has been issued for an election and a registered lobbyist intends to perform a substantial role in a political party's campaign for the election, the lobbyist 'must, immediately after forming the intention, give the Integrity Commissioner a notice' stating their intention.[108] Once the notification is received, the Integrity Commissioner must remove that person from the Lobbying Register.[109] However, regardless of whether or not the person complies with the requirement to notify the Integrity Commissioner, that person is disqualified from continuing to be a registered lobbyist or seeking to be re-registered as a lobbyist for that term of government.[110]

The Bill also clarifies that a person is taken not to be registered if they are disqualified as a result of their substantial involvement in the election period for a political party, even if that person's name remains on the lobbying register and is yet to be removed.[111]

The department advised that an individual who was in a completely unrelated profession or role before the election period, then plays a substantial role in an election campaign, is not captured by the disqualifications. Similarly, if a person withdraws from the lobbyist register in the months leading up to an election, but not immediately before, then plays a substantial role in an election campaign, that person is not precluded from registering as a lobbyist.[112] The department noted that the provisions intend to strike a balance in terms of reducing the risks of advantaged influence associated with dual hatting, without unduly restricting the ability of individuals to be employed as lobbyists.[113]

The compatibility of these provisions with the HRA are discussed in section 3.6.5.

3.3.1 Stakeholder views and the department's response

3.3.1.1 Disqualification period

A number of stakeholders commented on the identified disqualification period, both in terms of the time at which it is defined to commence, and the subsequent timeframe for disqualification.

In terms of the commencement of the period, the Integrity Commissioner raised concerns as to whether as currently defined, the period would appropriately cover the timeframe across which a person may commence playing a substantive role in election campaign. The Integrity Commissioner suggested, for example, that it 'would be reasonable to conclude, given what is required to mount an election campaign, that political parties and individual candidates commence planning and strategizing for an election campaign well before polling day'.[114] The Integrity Commissioner also raised concerns that the use of the word 'immediately' and the definition of 'election period', together means:

> … the disqualification period is the three weeks and five days before polling day – it can be argued that this close to an election, the substantive work on the long-term election campaign strategy (including

107 Explanatory notes, p 18. See also Bill, cl 36 (proposed new s 49(3) of the Integrity Act).

108 Bill, cl 36 (proposed new s 66A of the Integrity Act).

109 Bill, cl 36 (proposed new s 66N(3) of the Integrity Act).

110 Bill, cl 36 (proposed new s 49 of the Integrity Act).

111 Bill, cl 36 (proposed new s 46(2) of the Integrity Act); explanatory notes, p 19.

112 Public hearing transcript, Brisbane, 11 August 2023, p 36.

113 DPC, correspondence, 4 August 2023, pp 21-22

114 Submission 16, p 18.

> most if not all policy development) is completed, and at this point political parties would be well into the implementation stage.[115]

As a result, the Integrity Commissioner submitted that the Bill's amendments would permit:

- A registered lobbyist to play a substantial role in an election campaign and on policy development for a political party up until close to when the writ for the election is issued. At that point the lobbyist could cease all involvement in the campaign and consequently still be able to lawfully engage in lobbying activity in the next term of office.
- A registered lobbyist to de-register a short time before the writ for the election is issued after being substantially involved in the election campaign to that point, and then continue to play a substantial role. Following polling day, the person could re-register as a lobbyist and be able to lawfully engage in lobbying activity in the next term of office.[116]

As an alternative, the Integrity Commissioner suggested the implementation of Professor Coaldrake's recommendation could be better achieved by identifying 'when substantive work is typically done in formulating an election campaign strategy (including policy development) and implementing it' and then operationalising it 'by applying a term such as 'pre-election period'' for the purposes of the dual hatting provision (s 49) and giving that term a definition (in s 41).[117] The Integrity Commissioner submitted: 'A reasonable person could speculate that might be at least a six or twelve month period before a general election'.[118]

In terms of the duration of the period of disqualification following the election, the QLS confirmed its view that that disqualification from lobbying should extent across the entire next term of Parliament, as proposed.[119] APGRA in contrast raised a concern that the proposed period is 'too long' and 'limits the ability of someone to rightfully have a job in an area that they have expertise'.[120] As such, APGRA recommended 'a shorter period of disqualification of less than 2 years, consistent with the exclusion period for senior government representatives'.[121]

In response to the Integrity Commissioner's concerns about the proposed timing of the commencement of the disqualification period, the department advised:

> The Coaldrake Report did not include any discussion of an appropriate period of time before an election that would be considered the election period or a start point for an election campaign.
>
> In the circumstances where an extraordinary general election or by-election occurs with short warning, this could significantly harm the ability of individuals to be employed as a lobbyist. Commencing the 'election period' on the day the Writ is issued, provides a definable and exact date for a registered lobbyist to respond to, and will not result in inadvertent breach of the prohibition if an extraordinary or by-election occurs.[122]

Further, in response to APGRA's concerns about the duration of the disqualification period, the department noted that the Coaldrake Report identified that 'the influence or perceived influence will endure for the entirety of the term of new government'.[123]

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[115] Submission 16, p 19.

[116] Submission 16, pp 19-20.

[117] Submission 16, p 20.

[118] Submission 16, p 20.

[119] Public hearing transcript, Brisbane, 11 August 2023, p 20.

[120] Submission 7, p 2; public hearing transcript, Brisbane, 11 August 2023, p 7.

[121] Submission 7, p 2.

[122] DPC, correspondence, 4 August 2023, p 20.

[123] DPC, correspondence, 4 August 2023, p 21.

3.3.1.2 Application of the prohibition on dual hatting

In terms of the application of the provisions, APGRA noted that the dual hatting restriction applies only to the individual's role during the election period and 'does not take into account individuals who may hold senior roles within the party executive'.[124] APGRA suggested the inclusion of wording to the effect that individuals holding an executive role within a registered political party also be disqualified from registering, submitting that this would accord with APGRA's code of conduct, which states: 'Practitioners will not serve in an Executive Role with a political party'.[125]

The QLS and Integrity Commissioner also raised concerns about the application of the provisions – specifically, the use of term 'substantial role' and its associated definition, and potential inadvertent limitations arising from it.[126]

In this regard, the QLS noted that the definition of substantial role includes 'significant involvement' in the party's election strategy or policy development, with the QLS stating that 'when there are broad terms such as those it leaves the door open for unnecessary litigation once the legislation is implemented'.[127] As such, the QLS considered that 'the qualifier 'substantial' does not reflect the recommendations of the Coaldrake Report'.[128] The QLS therefore called for amendments to provide 'a more precise line with regard to what those activities are' or alternatively, the development of legislative guidance as to what constitutes a 'substantial role' and 'significant involvement'.[129]

The Integrity Commissioner, who expressed similar concerns about the interpretation of 'substantial role', identified a number of areas for possible amendment. In particular, the Integrity Commissioner submitted:

- the amendment limits the application of this definition to 'employment or engagement by the party' as opposed to employment or engagement by a candidate or other person or entity, which could be addressed by modification to 'involves employment or engagement by the party, a candidate or other entity or person'
- the terms 'employment' and 'engagement' fail to capture volunteer or pro bono work, which need to be captured to ensure the intent of the definition cannot be circumvented by a technical legal argument
- the term 'media liaison' (from the list of activities that do not comprise significant involvement) is not, but should be defined, as it could include services to a political party such as being as a spokesperson or designing and/or implementing a communications or media strategy, which could arguably represent significant involvement.[130]

In response to stakeholder comments about the use of the term 'substantial role', the department advised:

> The right to engage in political and public life is embedded in the *Human Rights Act 2019*, and is a fundamental right in a democracy. As discussed in the Coaldrake report, registered lobbyists who engage in political campaigns are in (or at least perceived to be in) a unique and unfairly advantaged position to lobby governments for clients. Narrowing the dual hatting prohibition to 'substantial' roles seeks to find

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[124] Submission 7, p 2.

[125] Submission 7, p 6; public hearing transcript, Brisbane, 11 August 2023, p 7.

[126] QLS, public hearing transcript, Brisbane, 11 August 2023, p 17; Submission 16, pp 20-22.

[127] Public hearing transcript, Brisbane, 11 August 2023, p 17.

[128] Submission 13, pp 3-4.

[129] Public hearing transcript, Brisbane, 11 August 2023, p 17.

[130] Submission 16, pp 21-22.

> a balance between these two competing rights and provide an 'even playing field' for input into and influencing government decisions.[131]

Further, in response to the Integrity Commissioner's particular suggestions for amendment, the department noted that the definition of 'substantial role' already includes voluntary or unpaid work and that: 'The role of 'media liaison' is a generally understood role concerning the relationship between an entity or individual and the media. It is not commonly used to describe a role that provides substantive policy or strategic input'.[132]

Committee comment

The committee welcomes the Bill's proposed amendments to ensure that lobbying activities are the focus and are appropriately captured in the regulatory scheme, in accordance with the Coaldrake Report's recommendations.

The committee recognises that while the definitions employed in the Bill incorporate a list of prescriptive examples to aid in interpretation, no such list can be definitive, and must necessarily be supported by appropriate guidance and education for all affected.

Noting the range of concerns raised by stakeholders about the practical application of the provisions, the committee considers it important that the implementation of the changes are accompanied by appropriate engagement with stakeholders and supporting education materials, to ensure they achieve their aims of providing a fair and transparent scheme without discouraging engagement in advocacy activities, which can make important contributions to public debate and decision making.

The committee encourages the department to engage closely with the Integrity Commissioner on these matters, particularly noting the issues raised by her office, and the critical educative and regulatory role she plays in this space.

3.4 Lobbying register

Under the Integrity Act, the Integrity Commissioner is required to keep a register of registered lobbyists which must contain certain particulars and be published on the Integrity Commissioner's website.[133]

The Bill establishes the equivalent requirements for the new lobbying register, which:

- is to be kept in a way the Integrity Commissioner considers appropriate, and
- as per current practice, is required to be published on the Integrity Commissioner's website.[134]

However, as previously noted (see report section 3.2), the Bill builds on the existing range of particulars required to be included on the lobbying register for each register of lobbyists, to also include:

- if the registered lobbyist has officers or employees:
    - the name of each employee or officer of the registered lobbyist other than an officer or employee who is a registered lobbyist or
    - an employee whose role involves only administrative duties or
    - an employee whose role within the entity exclusively involves work outside Queensland
- if the registration of the registered lobbyist has been suspended or cancelled, the date of, and grounds for, the cancellation or suspension.[135]

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[131] DPC, correspondence, 4 August 2023, p 22.

[132] DPC, correspondence, 4 August 2023, p 14.

[133] Integrity Act, s 49.

[134] Bill, cl 36 (proposed new ss 66L and 66M of the Integrity Act).

[135] Bill, cl 36 (proposed new s 66M of the Integrity Act).

In addition, the Bill establishes new requirements for the Integrity Commissioner to update the register if the Integrity Commissioner:

- becomes aware that a registered lobbyist is disqualified from being a registered lobbyist, or continuing to be a registered lobbyist (having performed a substantial role in an election campaign for a political party), the Integrity Commissioner must immediately remove from the lobbying register the individual's name as a registered lobbyist
- receives a notice that an individual who is registered lobbyist intends to perform a substantial role in an election campaign, the Integrity Commissioner must immediately remove from the lobbying register the individual's name as a registered lobbyist
- cancels or suspends an entity's registration as a lobbyist, the Integrity Commissioner must immediately update the lobbying register to reflect the cancellation or suspension.[136]

3.4.1 Human rights considerations

The statement of compatibility advises that as the provisions 'contemplate the collection and public disclosure of personal information about a registered lobbyist, the right not to have one's privacy unlawfully or arbitrarily interfered with (s 25(a) of the *Human Rights Act 2019*), is engaged'.[137]

Given the Integrity Commissioner was already required to keep a register of registered lobbyists under the existing Integrity Act, the statement of compatibility argues that any burden on this right will be 'incremental' and 'can be readily outweighed by the importance of the purpose of the amendments to better promote transparency in lobbying activities'.[138]

The statement of compatibility concludes that the interference is proportionate and not arbitrary, and hence the amendments do not limit the right to privacy.[139]

Committee comment

The committee considers the keeping of a lobbying register clearly serves the purposes of transparency, with any associated interference on rights representing an appropriate and reasonable condition of engaging in the practice of lobbying.

The committee considers the balance is appropriately struck in favour of the rights of the community to an effective and transparent democracy.

3.5 Application for registration on the lobbying register

The Bill replaces existing sections of the Integrity Act governing the process for applying for registration, to set out new, largely similar requirements for applications to register on the new lobbying register (replacing the 'register of lobbyists').[140]

As per current requirements, applications must be made to the Integrity Commissioner in the approved form, which may require the disclosure of any relevant criminal history of the applicant.[141]

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[136] Bill, cl 36 (proposed new s 66N of the Integrity Act)

[137] Statement of compatibility, p 13.

[138] Statement of compatibility, p 13.

[139] Statement of compatibility, p 13.

[140] Bill, cl 36 (proposed new ch 4, pt 3, 'Applying for registration').

[141] See Integrity Act, s 53; Bill, cl 36 (proposed new s 50 of the Integrity Act).

However, the Bill also sets out more detailed requirements, including providing that:

- where the applicant is a former senior government representative or Opposition representative, the application must be accompanied by a statement setting out their official dealings as a former representative in the 2 years immediately before the person became a former representative[142]
- if the applicant has officers or employees, the applicant must also provide a statement listing the name and role of each employee or officer, other than those already registered as lobbyists those whose only role is to carry out administrative duties, or those whose role only involves work outside Queensland.[143]

The first of these provisions is required as the Bill continues the existing 2-year ban on former representatives engaging in lobbying activity for a third party client where the activity relates to official dealings in which the person engaged in their official capacity in the 2 years immediately before they became a former representative (such that they are unable to register to engage in lobbying until the 2-year period has passed).[144] The second supports the operation of the Bill's provisions to better capture the activities of professional firms lobbying on behalf of a third party client (see report section 3.2)

Once an application has been made, the Integrity Commissioner must decide to approve or refuse an application as soon as practicable after it is made.[145] The Integrity Commissioner has the discretion to refuse an application on a number of specified grounds, including:

- if the application includes a materially false or misleading representation or declaration
- if the applicant, or other officer or employee of the applicant, has previously failed to comply with lobbying requirements or with the registered lobbyists code of conduct or a directive
- if the registration of the applicant (or other officer or employee of the applicant) as a lobbyist in another jurisdiction has been cancelled or suspended
- on another ground the Integrity Commissioner considers sufficient.[146]

In addition, the Bill provides that the Integrity Commissioner may decide to approve an application for an individual only if satisfied the individual is not disqualified for being a previously registered individual who performed a substantial role during the relevant period in the election campaign of a political party (disqualified individual) (see section 3.3 of this report).[147]

Before deciding the application, the Integrity Commissioner may give notice that they require the applicant to give further information or a document the Integrity Commissioner reasonably requires to decide the application.[148]

Registration as a lobbyist is also subject to the entity (or each listed person for the entity) undertaking an approved training course (see section 3.6.1) and meeting any other condition the Integrity Commissioner considers appropriate.[149]

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142 Bill, cl 36 (proposed new s 50 of the Integrity Act); explanatory notes, p 20.

143 Bill, cl 36 (proposed new s 50 of the Integrity Act); explanatory notes, p 20.

144 Bill, cl 36 (proposed new s 62 of the Integrity Act).

145 Bill, cl 36 (proposed new s 51 of the Integrity Act).

146 Bill, cl 36 (proposed new s 51(3) of the Integrity Act).

147 Bill, cl 36 (proposed new s 51(2) of the Integrity Act).

148 The Bill requires the applicant to provide the further information or document within the reasonable period (of at least 5 business days) stated in the notice, or within any agreed longer period, failing which the applicant is taken to have withdrawn the application. See Bill, cl 36 (proposed new s 52 of the Integrity Act).

149 Bill, cl 36 (proposed new s 53 of the Integrity Act).

3.5.1 Issues of fundamental legislative principle

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[150] Additionally, whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.[151]

The existing provisions of the Integrity Act include an administrative process and decision-making powers associated with applications for registrations as a lobbyist.[152]

The new provisions proposed by the Bill include some similarities. For example, the Bill retains similar provisions empowering the Integrity Commissioner to seek further information or a document from an applicant during the application process. Additionally, the Bill retains certain grounds for refusing an application, such as, where the application includes a materially false or misleading representation or declaration, or the applicant has previously failed to comply with obligations under the lobbyists code of conduct.

However, the Bill also seeks to introduce significant variations to the existing process. For example, the Bill:

- prevents the Integrity Commissioner from approving an application for registration for a disqualified individual
- does not retain the existing provisions where, if the Integrity Commissioner does not decide to register the applicant as a lobbyist, the Integrity Commissioner must ask the applicant to show cause why the application should not be refused.[153]

In light of (and in comparison to) the existing provisions, the absence of a show cause process in the Bill is likely to have a detrimental impact on individuals. For example, under the existing provisions of the Integrity Act:

- the Integrity Commissioner must, before refusing to register an applicant, give the applicant a show cause notice, which must state various matters, including the ground for the proposed refusal, the relevant facts and circumstances, and that the applicant may make written representations showing why the registration should not be refused[154]
- the Integrity Commissioner must consider all these written representations[155]
- then, if the Integrity Commissioner no longer believes the ground exists to refuse the registration, the Integrity Commissioner must make a decision to register the applicant as a lobbyist.[156]

The Bill proposes to include some provisions that appear consistent with natural justice, such as:

- specifying the grounds upon which the Integrity Commissioner may decide to refuse to approve an application for registration

[150] LSA, s 4(3)(a).

[151] LSA, s 4(3)(b).

[152] Integrity Act, ss 52-60.

[153] In this regard, the existing provisions provide for a show cause process that must occur before the Integrity Commissioner may decide to refuse to register an applicant.

[154] Integrity Act, ss 57 and 58.

[155] Integrity Act, s 58.

[156] Integrity Act, ss 60 and 66A.

- providing that the Integrity Commissioner may seek further information from the applicant as part of the application process (which avails an applicant with an opportunity to supply further information which may strengthen their application)
- providing that the Integrity Commissioner must give notice of the decision.

However, the Bill does not retain the existing show cause provisions.

Additionally:

- neither the existing provisions of the Integrity Act, nor the proposed amendments in the Bill, include an internal review mechanism for applicants who consider they have been aggrieved by the Integrity Commissioner's decision
- neither the Integrity Act, nor the Bill, refer to an available external review mechanism or the ability for an applicant to apply to a court or tribunal, such as the Queensland Civil and Administrative Tribunal, for a review of the decision.

Although the proposed amendments do not include a review process able to be directly accessed by a dissatisfied applicant, it would appear that an aggrieved applicant would potentially be able to access the statutory orders of review provisions in the *Judicial Review Act 1991*.[157] However, such a review would not consider the merits of the decision – just whether it was properly made.

Committee comment

While the committee notes that the decision to refuse an application for registration as a lobbyist does not include internal or external review mechanisms, and that the Bill removes the existing show cause process from the proposed provisions for a decision to refuse an application for registration as a lobbyist, we also note that the existing provisions in the Integrity Act similarly do not include internal or external review provisions. There are also some provisions which appear consistent with natural justice and it appears that aggrieved individuals may seek a judicial review.

The committee also considers that the Integrity Commissioner is an individual of suitably high office who, by virtue of that office, is understood to possess commensurate qualifications and experience appropriate to making decisions regarding registration.

The committee is therefore satisfied that the proposed amendments have sufficient regard to the rights and liberties of individuals, and consider that, given the importance of the community's expectations about independence and transparency of government, the absence of a merits review mechanism is appropriate in the circumstances.

3.5.2 Human rights considerations

Under section 25 of the HRA, a person has a right not to have their privacy unlawfully or arbitrarily interfered with. The Bill provides that applications for registration as a lobbyist using the approved form may provide for a written report about the criminal history of the applicant to be included.[158] The statement of compatibility identifies that this engages the right to privacy, because: 'Convictions, which take place in public, become part of a person's private life as they recede into the past'.[159]

It can be noted, however, that the Bill defines criminal history as excluding spent convictions and also provides that only particular offences are required to be enclosed in the criminal history report.[160]

[157] *Judicial Review Act 1991*, s 20.

[158] Bill, cl 36 (proposed new s 50 of the Integrity Act).

[159] Statement of Compatibility, p 7.

[160] See Bill, cl 36 (proposed new s 50(4) of the Integrity Act).

These are offences for which the person was sentenced to a term of imprisonment of at least 30 months, and offences involving fraud or dishonesty for which the person was convicted as an adult, which are not spent.[161]

The statement of compatibility argues that the convictions do not form part of the person's private life, 'such that any obligation to disclose those convictions would not limit the right to privacy'. Further, the statement concludes that even if the convictions are private matters, 'any interference with privacy would not be arbitrary', and that 'these provisions relating to criminal histories engage, but do not limit, the right to privacy'.[162]

Committee comment

Given the narrow focus on the types of offences to be included in the criminal history, the committee is satisfied that there is no arbitrary limitation imposed, and that the right to privacy therefore is not limited by this provision.

According to the statement of compatibility, prohibiting former representatives from undertaking certain lobbying activities will prevent those persons from exercising their freedom of expression and taking part in public life (ss 21 and 23 of the HRA respectively). The statement also acknowledges that the amendments will treat people differently on the basis of their political activity and having held a political role, which engages the right to recognition and equality before the law (s 15 of the HRA). Further, the amendments will prevent some people from practising as a lobbyist as an aspect of their private life, thereby impacting their right to privacy (which may also extend to protecting a person's ability to practise a profession as part of their private life (s 25 of the HRA)).[163]

The statement of compatibility contends that the prohibition is appropriately tailored to ensure that 'the knowledge and contacts formed while holding a position as a senior government representative or Opposition representative are not subsequently used to gain an advantage over others in the community in seeking to influence future decisions of government for a client'.[164] It also notes that the ban only applies for a prescribed period, to certain office holders, and is limited to lobbying activity related to former official dealings.[165]

Finally, the statement concludes that any impact on the human rights of former representatives is outweighed by the need to ensure transparency and to prevent the actual or perceived potential for undue influence. As such: 'any limit on human rights is considered proportionate and justified'.[166]

Committee comment

Given a key purpose of the Integrity Act is to ensure lobbying is conducted in accordance with public expectations of transparency and integrity, and noting that the ban on former representatives is specific to the dealings of the former representative and is time limited, the committee considers there is no arbitrary limitation imposed, and that any limitations are proportionate and justified.

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[161] Statement of Compatibility, p 8.

[162] Statement of Compatibility, p 8.

[163] Statement of Compatibility, p 8.

[164] Statement of Compatibility, p 8.

[165] Statement of Compatibility, p 8.

[166] Statement of Compatibility, p 8.

3.6 Codes, training and directives

3.6.1 Compulsory training on legislation guiding lobbying activity

The Yearbury Report found there is an 'appetite' within the community of registered lobbyists for enhanced education and training in relation to Chapter 4 of the Integrity Act ('Lobbying Activity'), its intent and the obligations it places on various parties.[167] As a result, the Yearbury Report included the below recommendation.[168]

Yearbury Report Recommendation 21 – ongoing education and training for lobbyists
To improve understanding of the requirements of Chapter 4 of the Act (Regulation of Lobbying Activities), its intent and obligations, the Integrity Commissioner: a) develop educational materials tailored to needs of registered lobbyists and relevant public officials and undertake training sessions b) create a compulsory training module that promotes best practice within the lobbying industry active in Queensland, and c) require successful completion of the module by all currently registered lobbyists and those who intend to register, as a condition for registration.

In response to this recommendation, the Bill establishes a new requirement for training as a condition of registration to 'ensure that lobbyists are aware of and continue to maintain awareness and education of their requirements under the lobbying regulation and to remind them of their obligations'.[169] Entities or each listed person for the entity must undertake an approved training course within a stated period after registration takes effect, or at regular intervals of no longer than 12 months if the Integrity Commissioner considers it appropriate.[170]

The Bill also provides the Integrity Commissioner with the discretionary power to approve the course, and if approved, the Integrity Commissioner is required to publish a description of the course on their website.[171]

Accompanying these new requirements, the Bill also adds to the Integrity Commissioner's statutory functions by recognising that it is a function of the Integrity Commissioner 'to provide education and training of government representatives, Opposition representatives and registered lobbyists about the operation of Chapter 4'.[172]

According to the explanatory notes, the new provisions regarding training will enhance lobbyists' understanding of their obligations and requirements.[173]

Potential FLP issues arising from the provisions are considered in report section 3.6.4.

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[167] Yearbury Report, p 59.

[168] Yearbury Report, p 60.

[169] DPC, public briefing transcript, Brisbane, 10 July 2023, p 5.

[170] Bill, cl 36 (proposed new s 53 of the Integrity Act); explanatory notes, p 21.

[171] Bill, cl 36 (proposed new s 56 of the Integrity Act).

[172] Bill, cl 29 (amending s 7 of the Integrity Act).

[173] Explanatory notes, p 22.

3.6.1.1 Stakeholder views and the department's response

APGRA advised it supports the inclusion of approved training, 'provided that training isn't cost or time prohibitive'. APGRA recommended incoming members of Parliament also undergo training as part of their induction process.[174]

The department advised in response that any training is a matter for the Integrity Commissioner.[175]

3.6.2 Code of conduct and conflict of interest policy

The Yearbury Report also raised concerns about the potential for conflicts of interest when lobbyists work with political parties. The Yearbury Report stated that 'a specific Conflict of Interest Policy that could be referenced as part of the Ministerial Code of Conduct to which Ministers commit, and lobbyists as part of their registration, may bring consistency and clarity in situations where lobbyists work for both political parties and non-government clients'.[176] The report included the below recommendation to this effect.[177]

Yearbury Report Recommendation 17 – Managing conflicts of interest when lobbyists work with political parties
In relation to lobbyists working in an advisory capacity to political parties, the Integrity Commissioner update the Lobbyists Code of Conduct to include a specific Conflict of Interest Policy that could be referenced as part of the Ministerial Code of Conduct to which Ministers commit, and lobbyists as part of their registration.

The Bill adds to the provisions regarding the establishment of a lobbyists code of conduct by providing that the code must include a policy relating to conflicts of interest for registered lobbyists.[178] According to the explanatory notes, the addition is 'consistent with the Yearbury Report recommendation to update the Lobbyists Code of Conduct to include a specific Conflict of Interest Policy, the purpose of which is to assist in the management of conflicts of interest and ensure the conduct of lobbyists is in keeping with public expectations'.[179]

FLP issues raised by these provisions are discussed in section 3.6.4 and the compatibility of these provisions with the HRA is discussed in report section 3.6.5.

3.6.3 Directives

In addition to the recommendation that lobbyists code of conduct include a specific conflict of interest policy, the Yearbury Report also made the following recommendation regarding the application of such policies.[180]

Yearbury Report Recommendation 18 – Managing conflicts of interest when lobbyists work with political parties
The Act provide for the Integrity Commissioner to issue directives from time to time concerning the application of policies as circumstances require.

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174 Submission 7, p 3.

175 DPC, correspondence, 4 August 2023, p 19.

176 Yearbury Report, p 56.

177 Yearbury Report, p 56.

178 Bill, cl 36 (proposed new s 55(4) of the Integrity Act).

179 Explanatory notes, p 22.

180 Yearbury Report, p 56.

In keeping with the Yearbury Report recommendation, the Bill provides the Integrity Commissioner with a discretionary power to issue a directive about:

- the operation of a provision regarding lobbying activities or the registered lobbyists code of conduct
- the operation of a policy relating to conflicts of interest for registered lobbyists, and
- any other matter the Integrity Commissioner considers appropriate.[181]

In doing so, it is intended the registered lobbyists code of conduct sets the standards of conduct for registered lobbyists, while directives set out operational, procedural and technical matters for registered lobbyists.[182]

Once a directive has been issued, the Integrity Commissioner is required to publish it on the Integrity Commissioner's website. Directives are only to apply to registered lobbyists and not to government or Opposition representatives.[183]

Issues of FLP regarding the directives provisions are discussed in section 3.6.4 and the compatibility of these provisions with the HRA are discussed in section 3.6.5.

3.6.3.1 Stakeholder views and the department's response

APGRA raised a concern 'that the proposed expansion in power for the integrity commissioner to make a directive, including into 'c) any other matter the integrity commissioner considers appropriate' in effect means unchecked power' because there is 'the potential for major changes to be made through regulation, not legislation, and with little Parliamentary oversight'.[184] APGRA recommended the proposed directive powers of the Integrity Commissioner be clarified.[185]

The department responded to this concern by stating:

> The Integrity Commissioner is limited by the Integrity Act to only use the powers in the Act to undertake the functions prescribed in the Act. Directives may be used to provide for operational, procedural and technical matters for registered lobbyists. If a conflict arises between the Act and a directive, the Act will override the directive to the extent of the conflict or inconsistency.
>
> The relevant parliamentary committee (currently the Economics and Governance Committee) has general oversight of the Integrity Commissioner and the OQIC functions. This will also include consideration of any inappropriate exercise of authority.[186]

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181 Explanatory notes, p 22. See Bill, cl 36 (proposed new s 57 of the Integrity Act).

182 Explanatory notes, p 22.

183 Explanatory notes, p 22.

184 Submission 7, p 3.

185 Submission 7, p 3.

186 DPC, correspondence, 4 August 2023, p 20.

3.6.4 Issues of fundamental legislative principle

The powers to approve a code of conduct or a training course,[187] or to make a directive, are potentially inconsistent with FLPs, because the Bill is effectively delegating legislative power to the Integrity Commissioner.

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
- sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[188]

It can be observed of the code of conduct, approved training and directives provisions respectively that:

- The code of conduct provisions share considerable similarities with the existing provisions in the Integrity Act,[189] including in relation to the purpose of the code and the publication requirement. However, the Bill also proposes that a code of conduct must include a policy relating to conflicts of interest for registered lobbyists.
- The approved training provisions are new and, other than stating their purpose, do not provide detail on the content of any proposed training courses.
- The directives provisions are new and, other than specifying two matters about which the Integrity Commissioner may make directives, do not otherwise clarify or detail additional matters that may be subject to a directive.

The Bill proposes that the registered lobbyists code of conduct, a description of an approved training course, and each directive made, must be published by the Integrity Commissioner on the Integrity Commissioner's website.[190]

Although the explanatory notes do not address whether these proposed provisions are consistent with matters of FLP, they do state that the Bill's code of conduct provisions, which seek to empower the Integrity Commissioner to approve a code of conduct, are consistent with the Yearbury Report recommendation to:

> … update the Lobbyists Code of Conduct to include a specific Conflict of Interest Policy, the purpose of which is to assist in the management of conflicts of interest and ensure the conduct of lobbyists is in keeping with public expectations.[191]

In contemplation of the proposed power for the Integrity Commissioner to approve a course to be completed before an individual can be, or continue to be, a registered lobbyist, the explanatory notes observe:

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[187] Although the Bill states that the Integrity Commissioner 'must' approve a training course, the discretion rests with the Integrity Commissioner in terms of the nature and the specific details of a course the Integrity Commissioner approves.

[188] LSA, s 4(4).

[189] Integrity Act, s 68.

[190] Bill, cl 36 (proposed new ss 52(2), 56(2) and 57(3) of the Integrity Act).

[191] Explanatory notes, p 22.

> This new provision enhances lobbyist understanding of their obligations and requirements under the *Integrity Act 2009* by requiring the successful completion of an approved course before they register as a lobbyist, consistent with the recommendation in the Yearbury Report.[192]

Commenting on the proposed power for the Integrity Commissioner to issue the specified directives, the explanatory notes advise:

> New section 57 is consistent with the Yearbury Report recommendation to provide the Queensland Integrity Commissioner with the power to issue directives concerning the applications of policies, the purpose of which is to assist in the management of conflicts of interest and ensure the conduct of lobbyists is in keeping with public expectations.[193]

In addition, the provisions requiring the Integrity Commissioner to publish the registered lobbyists code of conduct, a description of an approved training course, and each directive made on the Integrity Commissioner's website, provide transparency regarding the exercise of these delegated powers.[194]

Despite the availability of this information, however, these matters will not be subject to the scrutiny of the Legislative Assembly, as there is no requirement for the code, a description of an approved training course, or a directive, to be tabled and therefore be subject to a parliamentary disallowance motion.

Committee comment

The Bill seeks to implement certain recommendations from the Yearbury Report which are informed by the principle that the conduct of lobbyists ought to reflect public expectations.

The Bill leaves open to the Integrity Commissioner the discretion to consider what is appropriate regarding the content of any proposed training courses, as well as determining what other matters may be subject to a directive. In addition, while each of the registered lobbyists code of conduct, a description of an approved training course, or a directive made by the Integrity Commissioner will be required to be published on the Integrity Commissioner's website; these will not be subject to the scrutiny of the Legislative Assembly.

In general, the committee considers the Integrity Commissioner is an appropriate delegate, being a person holding a position of high office with concomitant responsibilities and expertise in these matters, and we are satisfied with these particular legislative powers effectively being subject to delegation. The committee considers it appropriate that the Integrity Commissioner be responsible for authorising standards of conduct, approving the extent and content of necessary training, and making directives setting out operational, procedural and technical matters, given the commissioner's regulatory role within the scheme.

In respect of the lobbyists code of conduct, we note that the Integrity Act requires the Integrity Commissioner to consult the parliamentary committee before approving the code, which provides some mechanism for parliamentary oversight of these matters. In addition, the committee was reassured by the Integrity Commissioner's advice during the public hearing that she intends to provide opportunities for stakeholder input and feedback in the development of the code, ensuring these matters will be subject to thorough consideration.[195]

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[192] Explanatory notes, p 22.

[193] Explanatory notes, p 22.

[194] The existing code of conduct can be found on the Integrity Commissioner's website here: https://www.integrity.qld.gov.au/lobbyists/obligations-code-of-conduct.aspx.

[195] Public hearing transcript, Brisbane, 11 August 2023, p 5.

In relation to directives, the committee also notes that while the Integrity Commissioner has discretion to make directives for 'any other matter' the Integrity Commissioner considers appropriate, these other matters are subject to the specified functions and powers of Integrity Commissioner under the Act.

Further, as the committee with oversight responsibility for the Integrity Commissioner, we expect to engage with the Integrity Commissioner in relation to any such directives made, and regarding any approved training course.

As such, the committee is satisfied that the provisions granting the proposed powers to the Integrity Commissioner have sufficient regard to the institution of Parliament and, by extension, to FLPs.

3.6.5 Human rights considerations

The Bill makes some significant amendments to the Integrity Act regarding registration and 'dual hatting' that would prevent people from engaging in lobbying activity, which therefore engages human rights.[196] These are in addition to the specific amendments regarding the lobbying register mentioned in section 3.4.1 and application for registration in section 3.5.2.

Amendments that may prevent people who are not registered or who have been deregistered from lobbying, and therefore engage human rights, are as follows:

- making it an offence for a person to carry out lobbying activity for a third party client for reward if they are not a registered lobbyist, with a penalty of up to 200 penalty units (along with exceptions for lobbying activity carried out for a non-profit entity or a trade delegation)[197]
- providing the Integrity Commissioner with the capacity to approve an application for registration if the applicant is not disqualified from being a registered lobbyist, or continuing to be a registered lobbyist, due to performing a substantial role for a political party during an election period[198]
- providing the Integrity Commissioner with the discretion to refuse an application on a number of specified grounds, including any ground the commissioner considers sufficient (in a way that is compatible with human rights)[199]
- requiring registered lobbyists to comply with the code of conduct for registered lobbyists as well as directives approved or made by the Integrity Commissioner[200]
- prohibiting a registered lobbyist from performing a substantial role, during an election period for an election, in the election campaign of a political party ('dual hatting')[201]
- disqualifying an individual from being a registered lobbyist, or continuing to be a registered lobbyist, if the individual performed a substantial role for a political party during an election period.[202]

The table below shows the engaged human rights and the ways in which they are engaged, according to the statement of compatibility (see table over page).[203]

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[196] Statement of compatibility, p 5.

[197] Bill, cl 36 (proposed new ss 46 and 47 of the Integrity Act).

[198] Bill, cl 36 (proposed new s 51(2) of the Integrity Act).

[199] Bill, cl 36 (proposed new s 51(3) of the Integrity Act).

[200] Bill, cl 36 (proposed new ss 55 and 57 of the Integrity Act).

[201] Bill, cl 36 (proposed new s 58 of the Integrity Act).

[202] Bill, cl 36 (proposed new s 49 of the Integrity Act).

[203] Statement of compatibility, pp 5-6.

Human Right	Impact of amendment
Right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination (s 15(3) and (4)), including on the basis of political belief or activity	Potential for treating people differently on the basis of their political activity of having engaged in a political campaign
Right to freedom of expression (s 21(2))	Not being registered may impact a person's right to freedom of expression, both in terms of lobbying and taking part in a political campaign
Right to freedom of association (s 22(2))	The prospect of being deregistered due to an involvement in an election campaign may inhibit people from associating with a political party – even though the disqualification only applies to people who play a substantial role in the campaign, people may err on the side of caution
Right to take part in public life, including the right to participate in the conduct of public affairs (s 23(1))	Not being registered may impact a person's right to take part in public life, both in terms of lobbying and taking part in a political campaign
Right not to be arbitrarily deprived of property in s 24(2)	Cases overseas suggest that the right to property may protect the goodwill a person builds up over time in their profession, and therefore requiring a lobbyist to be deregistered in certain circumstances may deprive them of that goodwill (only limited if the deprivation of property is arbitrary)[204]
Right not to have one's privacy unlawfully or arbitrarily interfered with (s 25(a))	This may extend to protect a person's ability to practice a profession as part of their private life. The amendments will prevent some people from practising as a lobbyist as an aspect of their private life (only limited if the interference with privacy is unlawful or arbitrary)

The statement of compatibility notes that there is already an existing requirement for lobbyists to be registered and that the purpose of preventing dual hatting is 'to ensure that the knowledge and contacts formed while working in a senior role on a political campaign are not subsequently used to gain an advantage over others in the community in seeking to influence future decisions of government for a client'.[205] It also notes that the Supreme Court accepted that preventing undue influence is a legitimate aim for the purposes of the HRA,[206] and that the registration requirements and prevention of dual hatting help ensure transparency and prevent undue influence.[207]

204 Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Non-arbitrariness and proportionality are different standards, but if the impact is proportionate under s 13 of the HRA, it will not be arbitrary.

205 Statement of compatibility, p 6.

206 *Australian Institute for Progress Ltd v Electoral Commission of Queensland* (2020) 4 QR 31; [2020] QSC 54

207 Statement of compatibility, p 6.

In relation to the provisions regarding dual hatting, the explanatory notes added:

> Whilst this section will impose a burden on the implied freedom as lobbying is a form of political communication, preventing undue influence in government is a legitimate purpose for imposing this burden. The proposed section will also prevent undue influence from arising by prohibiting such lobbying from taking place. The timeframe proposed is due to the risk of undue influence not dissipating at a certain time after the term of office commences (and would be present throughout its entirety).[208]

According to the statement of compatibility, the following alternatives were considered:

- requiring disclosure of a lobbyist's role in a political campaign, rather than requiring the lobbyist to be deregistered automatically
- imposing a shorter period of deregistration
- applying the amendments to a narrower category of lobbyists.[209]

However, it was determined that these alternatives would not be as effective in ensuring that lobbyists do not have undue influence over government decision-making. [210]

The statement of compatibility stated that, on balance, the impact on human rights is outweighed by the need to ensure transparency and to prevent the actual or perceived potential for undue influence. It concluded:

- the rights to property and privacy are not limited because the interference with property and privacy is proportionate, and therefore not arbitrary
- the rights to non-discrimination, freedom of expression, freedom of association and taking part in public life are limited by the amendments, but the limits on those human rights are proportionate and justified.[211]

Committee comment

The requirements in relation to the registration of lobbyists and the prevention of individuals performing a dual role in both engaging substantially in an election campaign of a party and later engaging as a lobbyist, serve the purposes of transparency, avoiding undue advantage, and preventing undue influence. These are purposes consistent with a free and democratic society.

The committee considers that the proposed registration procedures clearly connect the limitations imposed and their purposes, and the purposes of the limitations are of significant importance for the appropriate functioning of democracy in Queensland. While the rights affected are of high importance, those individuals (prospective lobbyists) who stand to have their rights affected will have choices available to them, namely the choice of employment in an election campaign or employment as a lobbyist.

The committee considers a balance is appropriately struck in favour of the rights of the community to an effective and transparent democracy, and that any limitations are proportionate and justified.

3.7 Requirement for information from a registered lobbyist or another person

The Integrity Act currently provides that a responsible person for a government representative or Opposition representative may give the Integrity Commissioner information about a lobbyist or lobbying

[208] Explanatory notes, p 20.

[209] Statement of compatibility, p 6.

[210] Statement of compatibility, p 6.

[211] Statement of compatibility, p 7.

activity if the person reasonably believes the information may be relevant to the functions or powers of the Integrity Commissioner. However, there is no requirement to provide this information.[212]

The Yearbury Report observed that the Integrity Commissioner 'relies on the provision of such information to be able to audit lobbyists' contacts and to check compliance with the requirements of the Act', but that 'the discretionary nature of the provision would leave the Integrity Commissioner unable to fulfil compliance monitoring in circumstances where a responsible person declines to provide relevant information when asked'.[213] The Yearbury Report identified this as an impediment to the Integrity Commissioner undertaking compliance monitoring activities, and made the following recommendation to address this.[214]

Yearbury Report Recommendation 12 – Monitoring and auditing lobbyist compliance
To enable auditing of lobbyists records and monitor compliance, the Act be amended to require government representatives or Opposition representatives to provide meeting records and other relevant information when requested by the Integrity Commissioner.

According to the explanatory notes, the Bill seeks to give effect to the recommendation by providing the Integrity Commissioner with a discretionary power to prepare a notice requiring a person (a registered lobbyist or another person who may have information about a registered lobbyist) to give the Integrity Commissioner information or a document relating to a suspicion that a person:

- is disqualified from being a registered lobbyist due to their substantial role in an election campaign for a political party, or
- failed to comply with a condition of registration or the registered lobbyists code of conduct.[215]

The Bill provides that the person must comply within the period stated in the notice of at least 15 business days or in a period agreed to between the Integrity Commissioner and the applicant, unless that person has a reasonable excuse.[216] While 'reasonable excuse' is not defined in the Bill, the explanatory notes advise that a reasonable excuse includes privilege against self-incrimination.[217]

The Integrity Commissioner may also require information or a document requested under a notice to be verified by statutory declaration.[218]

3.7.1 Human rights considerations

The requirement to provide information to the Integrity Commissioner engages a number of rights under the HRA, namely:

- the right to freedom of expression (s 21(2) of the HRA)
- the right not to have one's privacy unlawfully or arbitrarily interfered with (s 25(a) of the HRA)
- the right not to be compelled to testify against oneself or to confess guilt (s 32(2)(k) of the HRA).

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[212] Integrity Act, s 72A(2).

[213] Yearbury Report, p 50.

[214] Yearbury Report, p 50.

[215] Explanatory notes, p 24. See also Bill, cl 36 (proposed new s 66D of the Integrity Act).

[216] Bill, cl 36 (proposed new s 66D(3) of the Integrity Act).

[217] Explanatory notes, p 24.

[218] Bill, cl 36 (proposed new s 66E of the Integrity Act).

The statement of compatibility states that requiring information could limit a person's freedom of expression, which may include a right not to impart information, and a person's right not to have their privacy unlawfully or arbitrarily interfered with. It also states that: 'Whether a person's right not to be compelled to testify against oneself or to confess guilt (s 32(2)(k)) will be engaged or limited will depend on whether it is a reasonable excuse to withhold information on the basis of privilege against self-incrimination'.[219]

According to the statement of compatibility, the amendments are the least restrictive way of enabling the Integrity Commissioner to 'effectively audit lobbyist records and monitor compliance with the Integrity Act' as a means of upholding the purpose of the Act.[220] The Integrity Commissioner 'will have no further power to compel information' and it will not be an offence 'to refuse to provide information, although such refusal may be something the integrity commissioner can consider when determining registration status'.[221] Furthermore, entities will be able to refuse to give information on 'reasonable grounds', with the intention that this includes where the information may incriminate the person.[222]

Part of the purpose of the Integrity Act is to see lobbying conducted in accordance with public expectations of transparency and integrity.[223] The statement of compatibility concludes: 'The ability for the Integrity Commissioner to require information to determine that the lobbying activity is being undertaken in accordance with the Act and with registration, is essential if the integrity commissioner is to uphold this purpose'.[224]

Committee comment

It is in the public interest for lobbying to be conducted in a transparent way and with integrity. The committee considers the proposed amendment will give the Integrity Commissioner the capacity to establish whether an entity is meeting the statutory requirements of lobbyists, and thereby enable the Integrity Commissioner to determine whether there has been a breach of the Integrity Act.

Given there will be no direct power to compel information, and the privilege against self-incrimination is reserved, we consider an appropriate balance has been struck between the purpose of the limitation and the rights themselves, such that any limitation is reasonable and justifiable.

3.8 Compliance notices

Currently, if the Integrity Commissioner believes a registered lobbyist was registered because of a materially false or misleading representation or declaration, or the lobbyist has failed to comply with obligations under the lobbyists code of conduct, a show cause notice may be issued as to why the lobbyist's registration should not be cancelled.[225]

The Yearbury Report found the Integrity Commissioner has limited options in dealing with suspected non-compliance of registered lobbyists, stating:

> The legislative requirement that a show cause notice be issued before any remedial action can be taken is inflexible and severe. It is inefficient. In instances where the matter is minor in nature or one of

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219 Statement of compatibility, p 9.

220 Statement of compatibility, p 10.

221 Statement of compatibility, p 10.

222 Statement of compatibility, p 10.

223 Integrity Act, s 4.

224 Statement of compatibility, p 10.

225 Integrity Act, s 63.

> administrative oversight and readily remedied, the necessity to have to issue a 'show cause' notice imposes a disproportionate cost on the Integrity Commissioner and the lobbyist.[226]

To address this limitation, the Yearbury Report made the following recommendation.[227]

Yearbury Report Recommendation 13 – Monitoring and auditing lobbyist compliance
To improve the efficiency of the regulatory regime: a) the Act be amended to enable the Integrity Commissioner, to seek an explanation and/or issue a direction to take remedial action about a compliance matter, without first having to issue a show cause notice, and b) retain the 'show cause' provisions to deal with more serious instances of non-compliance.

To address this recommendation, the Bill provides the Integrity Commissioner with a discretionary power to prepare a compliance notice if the Integrity Commissioner suspects a registered lobbyist may have failed to comply with:

- a condition of the lobbyist's registration
- the registered lobbyists code of conduct or a directive
- provisions restricting particular lobbying activity, or
- certain provisions regarding information disclosure.[228]

In addition, the compliance notice may be given if the Integrity Commissioner believes a matter relating to the failure is reasonably capable of being rectified and it is appropriate to give the registered lobbyist an opportunity to rectify the matter. The compliance notice may require the person to rectify the matter by doing any act or refraining from doing an act.[229]

The Bill retains a show cause process where the Integrity Commissioner is considering taking action for non-compliance (eg for more serious matters as recommended by the Yearbury Report); and after considering any written response via the show cause process, the Integrity Commissioner may make a decision and must give notice of the decision, before the decision can take effect.[230]

The Bill also provides the Integrity Commissioner with the power to take the following actions if the entity has engaged in specified conduct:

- impose a condition on, or vary or remove a condition of, the registration
- suspend the registration for a stated period of not more than 12 months
- cancel the registration.[231]

The Bill enables the Integrity Commissioner to extend the suspension of registration if it is decided the facts and circumstances warrant it. The total period of suspension must not be more than 12 months

[226] Yearbury Report, p 51.

[227] Yearbury Report, p 51.

[228] Bill, cl 36 (proposed new s 66F of the Integrity Act).

[229] Bill, cl 36 (proposed new s 66F of the Integrity Act).

[230] Bill, cl 36 (proposed new s 66I and 66J)(see also existing section 63, which the Bill proposes to delete).

[231] Bill, cl 36 (proposed new s 66H of the Integrity Act).

and the Integrity Commissioner must give the entity notice of the further period of suspension before the initial period ends.[232]

The department provided the following example of a notice using the proposed new requirement for mandatory training:

> That might be a notice to undertake training as they have not done it yet or to request more information—in the case of training it would be to request information as to why the training has not been undertaken—before issuing a show cause notice. After a show cause notice, the Integrity Commissioner will have the authority to suspend or to cancel a registration if there is blatant and ongoing disregard for the requirements of registration, which in this instance would be related to the mandatory training they have to undertake.[233]

While stakeholders did not comment on the Bill's provisions relating to compliance notices, they have implications for FLPs and human rights. The committee's consideration of these matters is set out below.

3.8.1 Issues of fundamental legislative principle

As mentioned in section 3.5.1 of the report, legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review, and should be consistent with principles of natural justice.[234]

The existing provisions of the Integrity Act include an administrative process and decision-making powers associated with the Integrity Commissioner cancelling or suspending the registration of a lobbyist, or issuing a warning to the registrant.[235] The new provisions proposed by the Bill have both similarities with, and differences to, the current Integrity Act.

For example, the Bill generally retains certain grounds for cancelling a registration, such as where the registration was obtained because of incorrect or misleading information, or the registrant has failed to comply with obligations under the lobbyists code of conduct.[236]

The Bill also proposes to retain a show cause process for compliance actions, unlike the changes to the provisions regarding an application for registration.[237] However, the Bill also seeks to vary the existing process, for example, by:

- specifying additional grounds for taking action (such as, to include where the Integrity Commissioner believes the entity is a disqualified individual, or has been charged with an indictable offence)
- specifying an additional action the Integrity Commissioner may take (that is, to impose a condition on, or vary or remove a condition of, the registration).

Neither the existing provisions of the Integrity Act, nor the proposed amendments in the Bill, include an internal review mechanism for registrants who feel aggrieved by the Integrity Commissioner's decision to impose a condition on (or vary or remove a condition of) the registration, or suspend or cancel the registration.

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[232] Explanatory notes, p 25. See also Bill, cl 36 (proposed new s 66K of the Integrity Act).

[233] Public briefing transcript, Brisbane, 10 July 2023, pp 5-6.

[234] LSA, ss 4(3)(a) and 4(3)(b).

[235] Integrity Act, ss 52-60.

[236] Bill, cl 36 (proposed new s 66H of the Integrity Act).

[237] Bill, cl 36 (proposed new ss 66I and 66J of the Integrity Act). See also existing s 63, which the Bill would delete.

Furthermore, although a registrant will be able to receive certain information through the proposed show cause notice process,[238] neither the Integrity Act, nor the Bill, refer to an available external review mechanism or the ability for an applicant to apply to a court or tribunal for a review of the decision. However, similar to the refusal of an application for registration, it would appear that an aggrieved applicant would potentially be able to access the statutory orders of review provisions in the *Judicial Review Act 1991*.[239]

Committee comment

While the Bill does not include internal or external review mechanisms for aggrieved registrants, the committee notes that the show cause notice is retained and a judicial review appears to be an option for these registrants. We also note that the Integrity Act currently does not provide for such internal or external review mechanisms if the Integrity Commissioner makes a decision to cancel a registration.

Providing the Integrity Commissioner with the discretionary power to issue a compliance notice expands the range of options available to address a compliance matter. It also offers registrants the opportunity to address these matters in a more efficient manner, and avoid the more severe show cause notice process.

The committee is therefore satisfied that the proposed amendments have sufficient regard to the rights and liberties of individuals.

3.8.2 Human rights considerations

According to the statement of compatibility, the amendments enabling the compliance measures engage certain human rights, as outlined in the table below.[240]

Human Right	Impact of amendment
Right to freedom of expression (s 21(2)) Right to take part in public life, including the right to participate in the conduct of public affairs (s 23(1) Right to freedom of association (s 22(2)) Right not to be arbitrarily deprived of property (s 24(2)) Right to privacy and reputation (s 25)	The issuing of a compliance notice to a registered lobbyist which may require the lobbyist to rectify non-compliance by doing, or refraining from doing an act (directing remedial action) and The imposition of a condition, suspension or cancellation of a lobbyist's registration (restricting or preventing a person from practising as a lobbyist) may: • inhibit the registered lobbyist from carrying out activities associated with lobbying, and hence from exercising their freedom of expression or from taking part in public life • restrict a registered lobbyist's ability to associate with a political party • deprive them of goodwill from their clientele base, which is an aspect of the right to property • prevent someone from practising as a lobbyist as an aspect of their private life, impacting their right to privacy

238 Such as, the ground for the proposed action and an outline of the facts and circumstances forming the basis for the ground. See Bill, cl 36 (proposed new s 66I(2) of the Integrity Act).

239 *Judicial Review Act 1991*, s 20.

240 Statement of compatibility, pp 11-12.

Right to privacy and reputation (s 25)	Encouraging an entity to give information to the Integrity Commissioner (either via a written response to the proposed action for non-compliance or when the Integrity Commissioner takes an action because the entity does not have a reasonable excuse for failing to comply with a compliance notice) may impact on the entity's right to privacy

As set out in the table, the compliance measures engage freedoms of expression and association, and rights to property, privacy and to participate in public life, in different ways (depending on whether the Integrity Commissioner is seeking an explanation, issuing a direction to take action, or issuing a show cause notice).

The statement of compatibility explains that, while the rights mentioned above are engaged, enabling the Integrity Commissioner to seek an explanation or issue a direction to take action to remedy a compliance matter without first having to issue a show cause notice improves 'the efficiency of the regulatory regime so as to better address integrity issues as they arise'. [241] The amendments will also 'reduce the severity and inflexibility of sanctions which may be imposed where the non-compliance issue is minor or is an administrative oversight...'. [242]

The statement of compatibility also advises that no alternative ways to achieve the purpose of the Bill were considered 'as the amendments seek to ease the burden on registrants and improve natural justice and the rights of registrants'.[243]

According to the statement of compatibility, the interference with property and privacy is incremental and outweighed by the need to promote transparency in the political process, and therefore proportionate, and not arbitrary. As such, it concludes that the rights to property and privacy are not limited by the provisions.[244]

The rights to freedom of expression, freedom of association and taking part in public life are limited by the amendments, but the statement of compatibility argues that the limits on those human rights are proportionate and justified because the impact is 'outweighed by the legitimate purpose of ensuring transparency and promoting public confidence in the integrity of the political system'.[245]

Committee comment

The overarching purpose of the compliance measures is to enhance the operation of the regulatory regime to promote accountability and transparency in relation to lobbying activity. The specific purposes are to enable some flexibility and avoid overly severe sanctions where these are not warranted by the nature of particular conduct, and to also deal with more severe non-compliance through a show cause regime, which preserves due process.

The committee considers that the measures outlined in the Bill stand to increase the efficiency of the current regime with appropriate flexibility and fairness, such that any limitations can be clearly linked to the purposes outlined. Accordingly, we consider that an appropriate balance has been struck.

While the impacts on rights are mostly negligible, in cases where more serious impacts are likely – for example, in the case of sanctions being imposed on an individual lobbyist – these limitations are for legitimate purposes and are therefore reasonable and justifiable.

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[241] Statement of compatibility, p 12.

[242] Statement of compatibility, p 12.

[243] Statement of compatibility, p 12.

[244] Statement of compatibility, p 12.

[245] Statement of compatibility, p 13.

3.9 Reporting of unregistered lobbying

The Integrity Act currently requires that where a government representative or Opposition representative is aware of unregistered lobbying activity occurring, details of the unregistered organisation and lobbyist must be provided to the Integrity Commissioner.[246] The Yearbury Report found that there is some uncertainty as to whether statutory officers are captured within the definition of a government representative.[247] As a result, the following recommendation was made.[248]

Yearbury Report Recommendation 10 – reporting provisions
For the avoidance of doubt, Section 44 of the Act [definition of a government representative] should be amended to include reference to Statutory Officers as responsible persons for reporting unregistered lobbying activity.

To address this recommendation, the Bill amends the definition of a government representative to include a public sector officer, and inserts a definition of such an officer.[249] A public sector officer is defined in the Bill as the chief executive of, or a person employed by, one of the following:

- a department or public service entity
- a local government or local government entity
- a registry or other administrative office of a court or tribunal
- the parliamentary service
- a government owned corporation
- a government rail entity (under the *Transport Infrastructure Act 1994*)
- an entity, prescribed by regulation, that is assisted by public funds.[250]

3.9.1 Stakeholder views and the department's response

APGRA supported the wording of the new provisions and recommended 'further education among public servants and Ministerial staff to ensure a widespread understanding of lobbying regulation, its definition and reporting obligations'.[251]

In contrast, the Property Council opposed the inclusion of the definition of public sector officer, stating that 'such a broad definition potentially captures any interaction with government and council officers, including those assessing an application or negotiating an infrastructure agreement'.[252] The Property Council submitted that this:

- could 'potentially require anyone engaging with government on a proposed project to be a registered lobbyist and for all interactions between a proponent and government (council) officers to be registered'
- 'will result in a reluctance from government and council officers to engage with a proponent, effectively removing any communication opportunities'.[253]

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246 Integrity Act, s 71(3) and 71(4).

247 Yearbury Report, p 48.

248 Yearbury Report, p 49.

249 Bill, cl 36 (proposed new ss 44 and 41 of the Integrity Act).

250 Bill, cl 36 (definition comprising parts (a) to (i) in proposed new s 41 of the Integrity Act ('Definitions for chapter')).

251 Submission 7, p 3.

252 Submission 11, p 2.

253 Submission 11, p 2.

The department stated in response:

> The Bill does not introduce new definitions that would change interactions with government representatives that should be subject to registration. Discussing the technicalities of a development application is not now and will not be captured as lobbying activity. Education of government representatives will allow them to identify when the threshold of lobbying activity is satisfied.[254]

4 Strengthening the independence of statutory integrity bodies

The Coaldrake Report identified that, noting one of the key functions of any statutory body that has an integrity role is to scrutinise and report upon the actions of the executive government:

- it is important these bodies are able to do so in as independent a manner as possible
- independence from the executive government over the appointment of key officials and the financial management of integrity bodies is vital.[255]

Professor Coaldrake considered these bodies' independence could be enhanced by shifting responsibility for appointments and budget setting further away from executive government, with parliamentary committees having greater involvement in these matters.[256] The Coaldrake Report included a recommendation to effect such a change, as follows:[257]

Coaldrake Report Recommendation – Independence of Integrity Bodies
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 recommendation was directed specifically at the 5 integrity bodies described by Professor Coaldrake as the 'core' integrity institutions of the state – the QAO, CCC, Queensland Integrity Commissioner, Ombudsman's Office, and Office of the Information Commissioner (OIC).[258]

The Bill contains a series of amendments in response to the recommendation, as set out below.[259]

4.1 Committee involvement in additional funding proposals

In relation to financial arrangements for the integrity bodies, the Bill seeks to involve parliamentary portfolio committees in the consideration of additional funding proposals for each of the QAO, CCC, Queensland Integrity Commissioner, Ombudsman's Office, and OIC.[260]

'Additional funding' for a financial year is defined in the Bill as funding from the state for the relevant integrity body that is 'in addition to the allocated amount for the financial year'.[261]

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254 DPC, correspondence, 4 August 2023, p 18.

255 Coaldrake Report, p 69.

256 Coaldrake Report, pp 3, 70-71.

257 Coaldrake Report, recommendation – Independence of Integrity Bodies, pp 71, 93. See Coaldrake Report, summary recommendation 12, p 3.

258 Coaldrake Report, p 6. Note – Professor Coaldrake distinguished between these 'core' institutions established solely or primarily to carry out integrity functions and others which may have some integrity functions, but which are not primarily an integrity body.

259 Coaldrake Report, p 3.

260 DPC, correspondence, 30 June 2023, p 4.

261 See Bill, cl 11 (proposed new s 29E of the Auditor-General Act); cl 24 (proposed new s 260A of the *Crime and Corruption Act 2001* (CC Act)); cl 41 (proposed new s 85E of the Integrity Act); cl 54 (proposed new s 85A of the *Ombudsman Act 2001* (Ombudsman Act); cl 66 (proposed new s 168A of the *Right to Information Act 2009* (RTI Act)).

The department advised that such funding may be sought, for example, to finance short-term projects or cover costs associated with an expansion of functions for the integrity body:

> An example that we looked at occurred through the COVID pandemic, where the Ombudsman received significantly more complaints from the public than in previous years or in subsequent years. It might be that a sudden and dramatic increase in workload due to an external factor such as that would require some additional funding to be able to address those complaints in the time frames needed. We would envisage that the Ombudsman would provide a funding proposal seeking some short-term increases to enable the staff to address the increased workload.
>
> Another example … might be that government introduces a new function to the Information Commissioner that would require additional staff or an additional unit to be created. In those circumstances we anticipate that government would allocate funding before that legislation passes, but it might be that the funding that has been provided by government does not meet the need and, in this example, the Information Commissioner might want to seek further additional funding because the amount that has been allocated for the new function is not enough.[262]

Currently, written requests for any such additional funding, which can be for one or more years, are submitted directly to the relevant Minister for their decision.[263] Under the proposed amendments: [264]

A funding proposal (written request) for the additional funding for the integrity body must be prepared and provided to the relevant parliamentary committee[265] and a copy of the proposal provided to the Minister.

The committee must review the funding proposal and give the Minister a report approving one of the following:

- the funding proposal
- a funding proposal for a different amount or a different purpose, or both
- a proposal that provides for no additional funding.

The committee is taken to have approved the integrity body's funding proposal if it does not give its report to the Minister within the **20 business day timeframe or other shorter period** notified by the Treasurer.

The committee's report must be provided to the Minister:

- within **20 business days** after the committee's receipt of the funding proposal, or
- within a shorter period if the Treasurer has notified the committee of the shorter period and the reasons for the shorter period (eg so the Minister's response to the proposal can be considered in the preparation of the State budget).

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262 DPC, public briefing transcript, Brisbane, 10 July 2023, p 7.

263 By the Auditor-General, CCC CEO, Integrity Commissioner, Ombudsman and Information Commissioner in respect of the entities for which they are responsible.

264 Bill, cl 11 (proposed new pt 2, div 6 'Funding proposals' of the Auditor-General Act); cl 24 (proposed new ch 6, pt 1, div 6A 'Funding proposals' of the CC Act); cl 41 (proposed new ch 5, pt 4 'Funding proposals' of the Integrity Act); cl 54 (proposed new pt 8, div 4A of the Ombudsman Act; and cl 66 (proposed new ch 4, pt 7 of the RTI Act).

265 Currently, the Economics and Governance Committee for additional funding proposals for the QAO or Queensland Integrity Commissioner, and the Legal Affairs and Safety Committee for additional funding proposals for the CCC, Ombudsman's Office or OIC.

The committee was advised that the **20 business day timeframe** 'was developed to enable the committee to have an appropriate period to consider' proposals whilst also 'having regard to efficiency and effectiveness in making those decisions for the relevant body'.[266]

In relation to the committee's report to the Minister, the Bill provides that the committee:

- **must** prepare the report in consultation with 'the appropriate officers of Queensland Treasury'[267]
- **may** obtain advice from any of the following persons (for the purposes of preparing the report):
    - the Treasurer
    - the Minister
    - the relevant integrity body head (eg the Auditor-General, CCC chief executive officer, Integrity Commissioner, Ombudsman, or Information Commissioner)
    - for funding proposals other than for the QAO – an officer of the department under which the integrity body's legislation is administered.[268]

According to the explanatory notes:

> The intent of these provisions is to enable the parliamentary committee to seek relevant advice or information in making its recommendations and provides flexibility for the parliamentary committee in relation to the forum that may be used for consultation.[269]

In relation to the consultation process:

- the Bill clarifies that nothing in the provisions requires the relevant integrity body head or any other person to include in a funding proposal or give the parliamentary committee any details that would prejudice a current audit, investigation, review or other integrity matter, or information 'that is privileged or subject to a duty to maintain confidentiality under an Act or other law'[270]
- the relevant parliamentary committee standing rules and orders will apply, in addition to relevant duties and legislative obligations of Queensland Treasury officers, in relation to the confidentiality of the information which may be relevant to the consultation process.[271]

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[266] Ms Jenny Lang, Deputy Commissioner, Public Sector Commissioner, public briefing transcript, Brisbane, 10 July 2023, p 7.

[267] Bill, cl 11 (proposed new s 29G(4) of the Auditor-General Act); cl 24 (proposed new s 260C(4) of the CC Act); cl 41 (proposed new s 85G(4) of the Integrity Act); cl 54 (proposed new s 85C(4) of the Ombudsman Act); cl 66 (proposed new s 168C(4) of the RTI Act).

[268] Bill, cl 11 (proposed new s 29I of the Auditor-General Act); cl 24 (proposed new s 260E of the CC Act); cl 41 (proposed new s 85I of the Integrity Act); cl 54 (proposed new s 85E of the Ombudsman Act); cl 66 (proposed new s 168E of the RTI Act). Note: Proposed new s 29I provides that, in preparing a report on an additional funding proposal from the Auditor-General (for the QAO), the committee may obtain advice only from the Treasurer, Minister or Auditor-General.

[269] Explanatory notes, p 3.

[270] Bill, cl 11 (proposed new s 29J of the Auditor-General Act); cl 24 (proposed new s 260F of the CC Act); cl 41 (proposed new s 85J of the Integrity Act); cl 54 (proposed new s 85F of the Ombudsman Act); cl 66 (proposed new s 168F of the RTI Act).

[271] Explanatory notes, pp 12, 15-16, 28, 32, 36.

Following the committee's provision of its report to the Minister:

The report, either supported by the Minister, or with an alternative proposal from the Minister, would then be incorporated into a Cabinet Budget Review Committee submission for decision by government.[272]

Once the government's decision has been implemented (for example, when 'the decision on a funding proposal has been reflected in the Appropriation Bill'[273]), the Minister would be **required to table in the Legislative Assembly**, 'for each proposal approved by, or taken to be approved by, the parliamentary committee':

- **the committee's report**, if any
- **the Minister's response** to the funding proposal.[274]

An accompanying amendment to the *Parliament of Queensland Act 2001* would also be made to recognise the role of portfolio committees in considering additional funding proposals, by making provision for them to report and make recommendations not only to the Legislative Assembly, but also 'as provided under another Act' (eg to the Minister).[275]

In introducing the Bill, the Premier stated that the new process for seeking additional funding 'will establish parliamentary committees as independent arbiters of the appropriateness and the need for the additional funding', while preserving executive government responsibility 'for the way in which the state's consolidated revenue is distributed'.[276]

Accompanying these provisions, the Bill omits existing statutory requirements for the Auditor-General, Ombudsman and Information Commissioner to prepare and submit budget estimates for their entities to the designated Minister for each financial year, and for the Minister to consult the relevant parliamentary committee on the proposed budget for the QAO and Ombudsman's Office.[277] The provisions are being omitted as under current processes, the budgetary requirements of integrity bodies are presumed to be the same as the previous year, such that a budget submission is only required where the integrity body is seeking additional funding (in which case the proposal would be covered by the new provisions).

4.1.1 Stakeholder views

Stakeholders including the Organisation Sunshine Coast Association of Residents Inc (OSCAR), the CCC, the Ombudsman's Office, the Auditor-General, the Integrity Commissioner and the Information Commissioner all expressed general support for the Bill's provision for an enhanced role for parliamentary committees in relation to integrity body funding.[278] In addition, the QLS specifically welcomed the inclusion of protections on confidential information in respect of the provision of

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272 Explanatory notes, p 4.

273 Explanatory notes, pp 12, 16, 28, 33, 36.

274 Bill, cl 11 (proposed new s 29H of the Auditor-General Act); cl 24 (proposed new s 260D of the CC Act); cl 41 (proposed new s 85H of the Integrity Act); cl 54 (proposed new s 85D of the Ombudsman Act); cl 66 (proposed new s 168D of the RTI Act).

275 Bill, cl 61 (amending s 92 of the *Parliament of Queensland Act 2001*).

276 Record of Proceedings, 16 June 2023, p 2073.

277 Bill, cl 6 (omitting s 21 'Estimates' from the Auditor-General Act); Bill, cl 56 (omitting s 88 'Estimates' from the Ombudsman Act); cl 63 (omitting s 133 'Budget and performance' from the RTI Act).

278 Submission 2, p 3; submission 8, p 2; submission 9, p 2; submission 4, p 2; submission 15, p 3.

budgetary advice to committees, stating that this will 'better protect or provide grounds to refuse to disclose of, information subject to legal professional privilege'.[279]

These positive sentiments aside, each of the Auditor-General, Integrity Commissioner and Information Commissioner sought to highlight that the proposed amendments do not fully implement the specific recommendation of Professor Coaldrake in terms of shifting responsibility for financial arrangements and management practices to the Speaker of the Legislative Assembly.[280]

The Auditor-General and Information Commissioner highlighted that a model of this kind is in effect in other jurisdictions including the United Kingdom, New Zealand and the Australian Capital Territory (ACT), as well as noting that this approach has been cited as the exemplar of integrity and independence in recent evaluations of these matters.[281]

Both acknowledged comments made by the Premier when introducing the Bill, which referenced legal advice that substituting the Speaker for the responsible minister for progressing an integrity body's budget would require constitutional amendment and would give those officers greater independence from the executive government than Parliament itself.[282]

However, in response to these constitutional and parity concerns:

- the Information Commissioner submitted that it is her view that it may be possible to implement the New Zealand model in Queensland without constitutional amendment and without placing significant additional burden on the Speaker, by making consequential amendments to the *Financial Accountability Act 2009* that are similar to those in equivalent New Zealand legislation[283]
- the Information Commissioner and Auditor-General indicated that they considered arrangements for the Legislative Assembly and Parliamentary Service could also be changed in this manner,[284] with the Auditor-General noting that the approach adopted in the ACT applies equally to officers of the parliament and the office of that legislative assembly, as reflects 'the special relationship between the parliament and those roles identified as officers of the Parliament'[285]
- the Auditor-General affirmed his belief that 'having a budget process that protects both the parliament and officers of the parliament is integral to the independence of these roles' and

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279 QLS, submission 13, p 4.

280 Submission 2, p 5; submission 15, pp 3-4; submission 16, p 7.

281 Submission 15, p 4; submission 2, pp 3-4. Specifically, the OIC cited the October 2022 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, titled *Budget independence for Victoria's Independent Officers of Parliament* (https://www.ibac.vic.gov.au/media/243/download); while the Auditor-General cited the March 2020 report of the Australasian Council of Auditors General, titled *Independence of Auditors General: A 2020 update of a survey of Australian and New Zealand legislation* (https://www.qao.qld.gov.au/sites/default/files/2020-11/ACAG_Independence_of_Auditors_General_Report_May2020_V3_WEB%5B1%5D.pdf).

282 Auditor-General, submission 2, p 4; OIC, submission 15, p 3.

283 OIC, submission 15, pp 3-4; Information Commissioner, public hearing transcript, Brisbane, 11 August 2023, p 29.

284 Auditor-General, submission 2, p 4; OIC, submission 15, p 4.

285 Auditor-General, submission 2, p 4. The Information Commissioner also clarified that she was not suggesting that funding for integrity agencies be included in the Appropriation Bill for the Legislative Assembly, but rather, that amendments to the *Financial Accountability Act 2009* could be made 'to require that appropriations to integrity agencies are separated in both the process and reporting from other government departments and agencies'. The Information Commissioner stated: 'This would ensure the government of the day retains its budget decision-making authority but also gives independence to the budget process for integrity agencies'. See: public hearing transcript, Brisbane, 11 August 2023, p 29.

> supports the separation of powers, which is a key principle of Westminster government and 'is of even greater importance when there is only one parliamentary chamber'.[286]

Further, the Information Commissioner also suggested that parliamentary reporting by integrity bodies be regularised under the auspices of a single portfolio committee, similar to the Officers of Parliament Committee in New Zealand.[287]

In terms of the application of the provisions, the Auditor-General and Information Commissioner raised concerns that they would apply only to additional funding proposals and not to the initial appropriation or reductions in funding (including the application of efficiency dividends), or other budgetary variations during the course of the year.[288] Citing examples of budgetary challenges for their own offices, both highlighted the potential for this whole range of funding decisions to influence the extent and effectiveness with which integrity bodies are able to discharge their mandates and deliver statutory functions.[289]

Concerns were also expressed in relation to the Bill's imposition of a 20 business day time limit for decision making and accompanying provision for approval to be deemed in the absence of a response to the minister within this timeframe. The Information Commissioner submitted that it may be prudent to incorporate some flexibility to permit additional consideration time beyond 20 business days where the committee is in the process of obtaining budgetary or other information and advice to inform its decision.[290] In addition, the Information Commissioner submitted that if provision is made for committee involvement in decisions to reduce funding as recommended, given the significant impacts on the OIC of only minor budgetary reductions or reprioritisation amounts, the deeming provision may need to be reversed, such that the proposal should be deemed not to be approved without a committee response.[291] (For further discussion of the Bill's use of deeming provisions, see report section 4.2.2.)

4.1.2 The department's response

In response to stakeholder comments, the department stated that the Bill's provisions for the involvement of parliamentary committees in the consideration of additional funding proposals provide 'the necessary independence for integrity bodies' funding decisions, removing any perception of undue influence'.[292]

In respect of the expressed preferences of the Auditor-General, Information Commissioner and Integrity Commissioner for the full alignment of the financial management of integrity bodies with the Speaker, as referenced by Professor Coaldrake and employed in other Commonwealth jurisdictions, the department drew the committee's attention once again to the Premier's comments on introducing the Bill:[293]

> 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

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[286] Submission 2, p 5. See also public hearing transcript, Brisbane, 11 August 2023, p 22.

[287] Submission 15, p 2; Information Commissioner and Right to Information Commissioner, public hearing transcript, Brisbane, 11 August 2023, pp 30, 31-32.

[288] Auditor-General, public hearing transcript, Brisbane, 11 August 2023, p 23; OIC, submission 15, p 5; Information Commissioner, public hearing transcript, Brisbane, 11 August 2023, pp 29-30;

[289] Auditor-General, public hearing transcript, Brisbane, 11 August 2023, pp 26, 28; OIC, submission 15, p 5; Information Commissioner, public hearing transcript, Brisbane, 11 August 2023, p 30.

[290] OIC, submission 15, p 4.

[291] OIC, submission 15, p 5.

[292] DPC, correspondence, 4 August 2023, p 2.

[293] DPC, correspondence, 4 August 2023, pp 3-4.

> Assembly and Parliamentary Services. It cannot be interpreted to enable inclusion of any other entity's budget.
>
> Further, the budget proposals for the Legislative Assembly and Parliamentary Services are provided by the Clerk of the Parliament to the Premier as responsible minister, and not the Speaker prior to the budgets' approval. This would mean that, were we to substitute the Speaker for the responsible minister for progressing an integrity body's budget, the incongruous situation that would arise is an officer of the parliament would have greater independence from the executive government than the parliament itself. I am advised this situation was not contemplated in the report, nor was constitutional change, and as such the government is implementing the recommendation as outlined.[294]

In addition, the department noted that a single portfolio committee for officers of Parliament was not proposed by Professor Coaldrake.[295]

Regarding the funding matters to be considered under the Bill, the department confirmed that the provisions are to apply only to base funding provided to integrity bodies. In respect of potential application to other budgetary variations and reductions, the department advised:

> Cash reserves are part of budget allocations and would not be considered 'funding proposals' under the amendments proposed in the Bill. The authority needed to access cash reserves varies between statutory bodies, depending upon their status under the Financial Accountability Act 2009 (FAA) and the Financial Accountability Regulation 2019 (FAR). The Information Commissioner's status under the FAA and the FAR is a matter for the government and not dealt with in this Bill.
>
> The Bill does not address reductions of an integrity body's budgets.[296]

The department also sought to highlight the transparency mechanisms associated with the requirement for committee involvement, emphasising that while the ultimate decision on the funding proposal is retained by the government:

> The Minister will be required to table a response to the committee report, along with the committee report [approving the requested additional funding or approving an alternative funding amount]. If the funding approved by Government is different to that approved by the committee in its report, the response will need to provide reasons for the difference.[297]

Finally, in relation to the 20 business day timeframe for decision making, the Deputy Public Sector Commissioner noted:

> … it is 20 business days, not 20 days. It is a minimum of four weeks and public holidays are also accommodated in that period. It is an attempt to provide the committee with adequate time to consider these important matters while also ensuring these important matters are able to be advanced and progressed in a timely and appropriate way.[298]

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[294] Record of Proceedings, 16 June 2023, p 2073.

[295] DPC, correspondence, 4 August 2023, p 2.

[296] DPC, correspondence, 4 August 2023, p 3.

[297] DPC, correspondence, 4 August 2023, p 2.

[298] Public hearing transcript, Brisbane, 11 August 2023, p 34.

4.2 Committee involvement in integrity body appointments

In Queensland, the appointment of each of the Auditor-General, Integrity Commissioner, Ombudsman and Inspector of Detention Services,[299] and Information Commissioner, is currently managed through a process whereby:[300]

1. The responsible Minister undertakes a selection process and identifies an individual for nomination for appointment.

2. Before proceeding with appointment, the Minister is required to consult the relevant parliamentary committee on the appointment, as well as consulting the committee on the process of selection for the appointment.

The Coaldrake Report identified that these requirements to 'consult' are:

> … often taken to mean no more than advising a committee of the proposed appointment, raising concerns that this reduces the role of the committee, and in effect parliament, in respect of the appointment process.[301]

The Coaldrake report noted that this issue was previously considered by the Committee System Review Committee (CSRC) in 2010, with the CSRC concluding that a requirement for bipartisan support of appointments is best practice and should be used for all officers where there is a requirement for consultation with parliamentary committees.[302] Professor Coaldrake stated:

> The CCC is the only body requiring nomination of its chairperson, deputy chairperson, ordinary commissioner or CEO to be made with the bipartisan support of the relevant parliamentary committee. Recently, however, the PCCC recommended to the Government that the definition of bipartisan support in its legislation be revisited to ensure its plain meaning is reflected in the context of its committee. It also suggested the consideration by government of developing a mechanism to ensure the appropriate consideration of nominees. This is in line with the spirit of the CSRC recommendations, and ought to be revisited by government.[303]

The Bill proposes to address the report's associated recommendation regarding parliamentary committee involvement in the appointments of statutory officers, by amending relevant legislation governing the appointment of the following heads of 4 of the 'core' integrity bodies:

- Auditor-General
- Integrity Commissioner

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299 From 9 December 2022, the Ombudsman has also held the role of Inspector of Detention Services (under section 33 of the *Inspector of Detention Services Act 2022*), with functions of reviewing, monitoring, inspecting and reporting on the operation of youth detention centres, prisons which are secure facilities, and other places of detention (see s 8 of the *Inspector of Detention Services Act 2022*) for a full list of functions.

300 Auditor-General Act, s 9(2)(b); Integrity Act, s 74(1)(b); Ombudsman Act, s 59(1)(b); RTI Act, ss 135(1)(b); 151(1)(b).

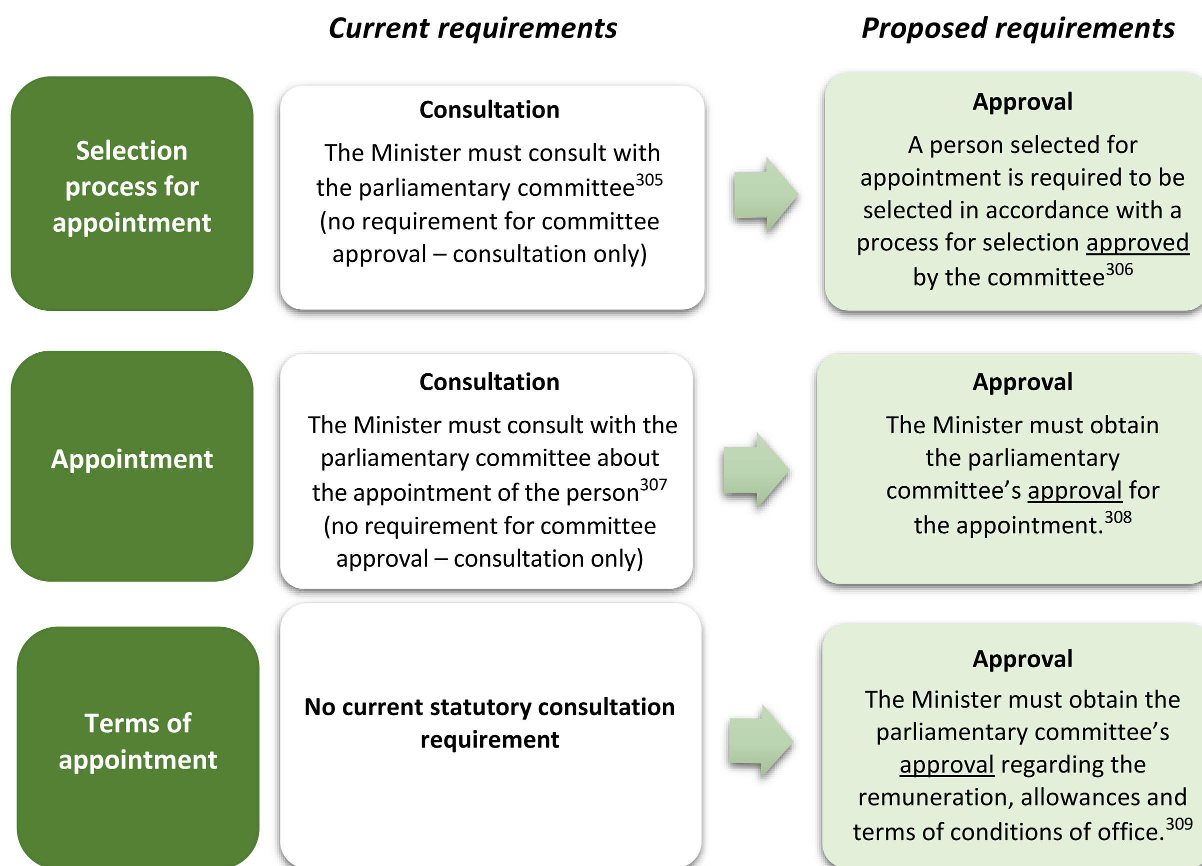
301 Coaldrake Report, p 69.

302 Coaldrake Report, p 69. See also Committee System Review Committee, *Review of the Queensland Parliamentary Committee System*, December 2010, p 49 (Recommendation 45). The CSRC's recommendation made specific reference to the appointment of the Auditor-General, the Chairperson and other Commissioners of the Crime and Misconduct Commission (predecessor to the CCC); the Information Commissioner, Right to Information Commissioner and privacy commissioner; the Integrity Commissioner; and the ombudsman (as well as the electoral commissioner and criminal organisation public interest monitor).

303 Coaldrake Report, p 69.

- Ombudsman and Inspector of Detention Services
- Information Commissioner.[304]

A summary of the proposed changes, which would replace current consultation requirements with approval requirements in respect of these appointments, is set out below.



In relation to the parliamentary committee's decision on the approval of the appointment of these officers and of their terms of appointment, the Bill would impose a **20 business day timeframe** for decision making.

304 Ie the Auditor-General Act, Integrity Act, Ombudsman Act, and RTI Act.

305 Auditor-General Act, s 9(2)(b)(i); Integrity Act, s 74(1)(b)(i); Ombudsman Act, s 59(1)(b)(i); RTI Act, ss 135(1)(b)(i), 151(1)(b)(i).

306 Bill, cl 4 (proposed replacement s 9(2)(b) of the Auditor-General Act); cl 37 (proposed replacement s 74(1)(b) of the Integrity Act); cl 50 (proposed replacement s 69(1)(b) of the Ombudsman Act); and cl 64 (proposed replacement s 135(1)(b) of the RTI Act.

307 Auditor-General Act, s 9(2)(b)(ii); Integrity Act, s 74(1)(b)(ii); Ombudsman Act, s 59(1)(b)(ii); RTI Act, ss 135(1)(b)(ii), 151(1)(b)(ii).

308 Bill, cl 4 (proposed new s 9(2)(c) of the Auditor-General Act); cl 37 (proposed new s 74(1)(c) of the Integrity Act); cl 50 (proposed new s 59(1)(c) of the Ombudsman Act); cl 64 (proposed new s 135(1)(c) of the RTI Act).

309 Bill, cl 5 (amending s 11 of the Auditor-General Act); cl 38 (amending s 76 of the Integrity Act); cl 51 (amending s 62 of the Ombudsman Act); and cl 65 (amending s 137 of the RTI Act).

That is, under the proposed amendments:[310]

The parliamentary committee must decide to give or not give the approval within **20 business days** after receiving the request for the approval from the Minister.

The parliamentary committee is taken to have approved the appointment and/or terms of appointment if it does not notify the Minister of its decision within the **20 business day** timeframe.

The explanatory notes advise that the inclusion of an approval timeframe 'is intended to ensure timely decisions on key appointments'.[311]

The committee approval requirements and statutory timeframe for decision making would also apply in relation to the reappointment of a person as the Integrity Commissioner, Ombudsman and Inspector of Detention Services, or Information Commissioner (the Auditor-General's appointment is for a fixed, non-renewable term[312]).[313]

Existing provisions of the *Crime and Corruption Act 2001* which require consultation with and bipartisan support of the parliamentary committee for the appointment of a person to the office of Chairperson, Deputy Chairperson, Ordinary Commissioner or CEO of the CCC, would remain unaffected by the Bill.[314] These provisions do not require committee approval of the selection process or terms of appointment for these officers and are not subject to a statutory decision making timeframe.[315]

The department's written briefing on the Bill advised that the provisions governing the appointment of CCC officers are not proposed to be amended as they 'already require approval and input from the Parliamentary Crime and Corruption Committee'.[316]

4.2.1 Human rights considerations

The statement of compatibility identifies that the Bill's changes to the basis on which key integrity body appointments are to be made engage with the right of equal access to join the public service and to be appointed to public office as a public official, as recognised in section 23(2)(b) of the HRA.[317]

However, the statement contends that the amendments promote rather than limit this right, by providing for 'more independence from the executive government and greater oversight by the parliamentary

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310 Bill, cls 4 and 5 (proposed new 9(3) and amended s 11 of the Auditor-General Act); cls 37 and 38 (proposed new s 74(2A) [renumbered as s 74(3)] and amended s 76 of the Integrity Act); cls 50 and 51 (proposed new s 59(1A) [renumbered as 59(2)] and amended s 62 of the Ombudsman Act); cls 64 and 65 (proposed new s 135(1A) [renumbered as 135(2)] and amended s 137 of the RTI Act).

311 Explanatory notes, p 4.

312 Auditor-General Act, s 10.

313 See Bill, cls 37 (amending s 74(3) [to be renumbered s 74(4)] of the Integrity Act); cl 50 (amending s 59(2) [to be renumbered as 59(3)] of the Ombudsman Act); and cl 64 (amending s (135(2) [to be renumbered as s 135(3) of the RTI Act). Note – as is currently the case, provisions relating to committee consultation/approval of the selection process would not apply for a reappointment.

314 DPC, correspondence, 30 June 2023, p 4.

315 CC Act, s 228.

316 DPC, correspondence, 30 June 2023, p 4.

317 Statement of compatibility, pp 2 (Auditor-General Act amendments), 14 (Integrity Act amendments), 18 (Ombudsman Act amendments), 19 (RTI Act amendments).

committee when it comes to appointment decisions', as is expected to help 'ensure public confidence in the integrity of appointments'.[318]

The statement also highlights that transitional provisions will ensure that the amendments will not affect existing appointments (those 'in effect immediately before commencement'[319]).[320]

Committee comment

The committee is satisfied that the provisions do not detract from the right of equal access to join the public service. As outlined in the statement of compatibility, the enhanced involvement of parliamentary committees will provide an additional level of scrutiny and due consideration, as befits the importance of the positions these officers hold.

4.2.2 Stakeholder views

Stakeholders including OSCAR, Brisbane Residents United (BRU), the Ombudsman's Office, the Auditor-General and the Integrity Commissioner all expressed general support for the proposed amendments in terms of their provision for an enhanced role for parliamentary committees in the selection of key appointments.[321]

However, some of these and other stakeholders also raised concerns about aspects of the provisions and identified opportunities to enhance the amendments as proposed, with BRU emphasising the importance of ensuring the provisions do not 'allow the politicisation of these core integrity bodies or that they become political footballs'.[322]

Of particular focus was the Bill's provision for committee approval to be taken as given in the absence of a committee response within the stated 20 business day timeframe. In respect of these provisions, the Auditor-General submitted that while he appreciates that the intent of the requirement is 'to ensure the appointment process is not unduly delayed', in the absence of a committee decision and a response 'in a way, that is then an appointment by the government'.[323] In this regard, the Auditor-General further noted that there could be 'a time when the committee is in disagreement and that disagreement might be in a period when there are weather events, periods of leave of things like that which may not resolve' (such that an approval could be taken as given without the support of the committee).[324] The QLS, raising similar concerns, noted that the provision for deemed approval does not necessarily sit with the objective of ensuring transparency around decision-making.[325]

Each of the Auditor-General, QLS and Integrity Commissioner suggested the provisions should involve a deliberate decision or action by the committee,[326] with the QLS and Auditor-General suggesting the committee be required to have taken active steps to advise the Minister as to whether they approve or do not approve the proposal, and a positive response provided before the Minister can proceed.[327]

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318 Statement of compatibility, pp 2 (Auditor-General Act amendments), 14 (Integrity Act amendments), 18 (Ombudsman Act amendments), 19 (RTI Act amendments).

319 See transitional provisions – Bill, cl 20 (s 98); cl 45 (s 105); cl 58 (s 116); and cl 71 (s 206F).

320 Statement of compatibility, p 18.

321 Submission 4, p 2; submission 8, p 3; submission 14, p 5; submission 2, p 3; submission 16, p 6.

322 Submission 14, p 3.

323 Public hearing transcript, Brisbane, 11 August 2023, p 27. See also submission 2, p 3.

324 Public hearing transcript, Brisbane, 11 August 2023, p 27.

325 Public hearing transcript, Brisbane, 11 August 2023, p 20.

326 Public hearing transcript, Brisbane, 11 August 2023, pp 18, 20, 27, 32.

327 QLS, public hearing transcript, Brisbane, 11 August 2023, pp 18, 19; Auditor-General, public hearing transcript, Brisbane, 11 August 2023, p 27.

In this regard, the QLS stated:

> … that particular process, as to how that occurs in practice, should be as transparent as possible to ensure that the candidates that are sought approval of by the minister from the committee are actively considered by the committee and the reasons for that are proactively provided in support of that or not in support of that so the minister can make an informed decision.[328]

In respect of the committee approval for the selection process and appointments, the QLS, Auditor-General and Integrity Commissioner also submitted that the provisions should require bipartisan, majority support,[329] with the QLS noting that the Coaldrake Report emphasised the importance of bipartisan support within the context of integrity body appointments.[330] This included referencing the conclusion and recommendation of the Committee System Review Committee (2010) that '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'.[331] In reference to the proposed provisions, the QLS noted the 'innate difficulty of achieving true bipartisanship appointments in circumstances where the parliamentary committee Chair holds the casting vote', as is currently the case.[332] To this end, these stakeholders encouraged further consideration of this matter, with:

- the Auditor-General suggesting that an alternative might be via support from the chair and deputy chair, 'which would then cover government and non-government mandates'[333]
- the QLS suggesting 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'.[334]

In relation to the Bill's provision for the committee to approve the terms and conditions of appointment of integrity officers, including their remuneration, the Auditor-General also pointed to the QAO's previous submission to a former Finance and Administration Committee inquiry,[335] which suggested 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.[336] The Auditor-General submitted:

> 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).[337]

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328 QLS, public hearing transcript, Brisbane, 11 August 2023, p 20.

329 QLS, public hearing transcript, Brisbane, 11 August 2023, pp 19, 20; Information Commissioner, public hearing transcript, Brisbane, 11 August 2023, p 32; Auditor-General, public hearing transcript, Brisbane, 11 August 2023, p 27.

330 Submission 13, p 5.

331 Submission 13, p 5. See also Coaldrake Report, p 69.

332 Submission 13, p 5.

333 Auditor-General, public hearing transcript, Brisbane, 11 August 2023, p 27.

334 Submission 13, p 5. See also: QLS, public hearing transcript, Brisbane, 11 August 2023, p 20.

335 Finance and Administration Committee (Queensland Parliament), *Inquiry into the legislative arrangements assuring the Auditor-General's independence, conducted from 2013 to 2016*.

336 Submission 2, p 3.

337 Submission 2, p 3.

4.2.3 The department's response

In response to stakeholder commentary about the proposed 20 business day timeframe for decision making, the committee was advised that:

- decision-making timeframes in a range of other jurisdictions were considered in the formulation of the provisions
- the selected 20 business day timeframe, which was a decision of government, represents a minimum of 4 weeks and accommodates public holidays
- the timeframe seeks to strike a balance in terms of providing the committee with adequate time to consider these important matters, while also ensuring they can be advanced and progressed in a timely way.[338]

In respect of comments about deemed approval, the Deputy Public Sector Commissioner noted potential concerns about leaving statutory officer positions vacant for extended periods of time and explained that it was considered that a deeming provision was required to ensure a position is reached, with the option being to either deem that an appointment is approved or deem that it is not approved:

> There are pros and cons with both; they are a matter for government, obviously. Deeming approved means that a highly suitable candidate who may otherwise have been approved if the committee had been able to make a quorum does not miss out, but ultimately the end effect of the committee not being able to form a quorum is a deeming of an approval…[339]

In relation to stakeholder calls for bipartisan, majority committee approvals, the department noted that committee membership is determined by the composition of the Parliament, which may vary at different times.[340] While advising that the decision in relation to this aspect of the Bill is a matter of government policy, the Deputy Public Sector Commissioner noted:

> What I can say is that the provisions in the bill relating to appointments are a significant change to what is currently there, with the appointment provisions requiring the approval of a committee before submission to Governor in Council. [341]

In relation to the Auditor-General's proposal that the remuneration of integrity officers be set by the Queensland Independent Remuneration Tribunal, rather than being approved through the committee process, the department stated:

> Current practice aligns remuneration and allowances of statutory officers with the chief executive remuneration framework. This framework is guided by a standard job evaluation framework and contains flexibility to consider factors like market competition for similar roles and experience of the candidate. This approach is rigorous, transparent and independent from political interference. The Queensland Independent Remuneration Tribunal determines the salaries, allowances and entitlements of members and former members of the Queensland Legislative Assembly. It does not have any role in remuneration for other public or private sector positions.[342]

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[338] Ms Jenny Lang, Deputy Commissioner, Public Sector Commission, public hearing transcript, Brisbane, 11 August 2023, pp 34, 35.

[339] Public hearing transcript, Brisbane, 11 August 2023, p 35.

[340] DPC, correspondence, 4 August 2023, p 8.

[341] Public hearing transcript, Brisbane, 11 August 2023, p 34.

[342] DPC, correspondence, 4 August 2023, p 7.

4.3 Committee involvement in strategic reviews and the independent audit of the Queensland Audit Office

In line with its provision for increased committee involvement in the appointment of statutory integrity office holders, the Bill makes similar provision for enhanced committee involvement in relation to the periodic strategic reviews of the integrity bodies these office holders are responsible for – that is, the QAO, Queensland Integrity Commissioner, Ombudsman's Office and OIC. [Note – the Parliamentary Crime and Corruption Committee undertakes 5-yearly reviews of the CCC's activities itself, and therefore does not appoint a reviewer.[343]]

More specifically, where currently the relevant Minister is required only to 'consult with' the parliamentary committee about the appointment of a reviewer and terms of reference for a strategic review of the integrity body (with no requirement to adhere to any resulting committee advice),[344] under the proposed amendments:[345]

The Minister may make a recommendation to the Governor in Council regarding the appointment of a reviewer or the terms of reference for a strategic review only 'with the **approval** of the parliamentary committee'.

The parliamentary committee must decide to give or not give the approval within **20 business days** after receiving the request for the approval from the Minister.

The committee is taken to have approved the appointment of the reviewer or terms of reference for a strategic review as stated in the Minister's request if it does not notify the Minister of its decision within the **20 business day** timeframe.

The Minister will also continue to be required to consult with the head of the relevant integrity body on the appointment of the strategic reviewer and terms of reference for the review before proceeding with recommending the appointment to the Governor in Council.[346]

On the completion of the resulting strategic reviews, the relevant legislation currently sets out a process whereby:

1. The review report is required to be provided to the Minister and head of the integrity body for them to make any comments within a 21 day period, with the reviewer to then incorporate any agreed amendment or, if there is not agreement on how to dispose of the comment, include the comment, in full, in the report.
2. The final review report is then provided to the Minister and integrity body head.
3. The Minister tables the report in the Legislative Assembly within 3 sitting days after receipt.[347]

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[343] See CC Act, s 292(f), which requires the parliamentary committee to review the activities of the CCC every 5 years and table a report on its review by the end of the 5-yearly period.

[344] See Auditor-General Act, s 68(5); Integrity Act, s 86(6); Ombudsman Act, s 83(7); RTI Act, s 186(8).

[345] Bill, cl 15 (replacement s 68(5) and proposed new s 68(5A) [to be renumbered as s 68(6)] of the Auditor-General Act); cl 42 (replacement s 86(6) and proposed new s 86(6A) [to be renumbered as s 86(7)] of the Integrity Act); cl 52 (replacement s 83(7) and proposed new s 83(7A) [to be renumbered as s 83(8) of the Ombudsman Act); cl 68 (replacement s 186(8) and proposed new s 186(8A) [to be renumbered as s 186(9)] of the RTI Act).

[346] See Bill, cl 15 (proposed replacement s 68(5)(b) of the Auditor-General Act); cl 42 (proposed replacement s 86(6)(b) of the Integrity Act); cl 52 (proposed replacement s 83(7)(b) of the Ombudsman Act); cl 68 (proposed replacement s 186(8)(b) of the RTI Act).

[347] Auditor-General Act, s 70(6); Integrity Act, s 88(6); Ombudsman Act, s 85(6); RTI Act, s 188(6).

The Bill would alter the second and third steps in this process, by providing for:

1. The final review report to be provided **to the parliamentary committee** as well as the Minister and integrity body head.

2. Responsibility for the tabling of the report to be shifted from the Minister **to the parliamentary committee**, with the **Chair of the committee to table the review report** in the Assembly within 3 sitting days after receiving it.

The explanatory notes advise that the amendments to enhance committee involvement in strategic review processes are consistent with the following Coaldrake report recommendation.[348]

Coaldrake Report Recommendation
Other outstanding recommendations from the 2013 FAC Inquiry and 2017 Strategic Review be implemented.

The cited FAC inquiry was an inquiry of the former Finance and Administration Committee (FAC) into the legislative arrangements assuring the Queensland Auditor-General's independence.[349] The 2017 Strategic Review was the most recent previous strategic review of the QAO.[350] The Coaldrake Report noted that the FAC inquiry concluded its work in 2016 without making any recommendations, but the 2017 strategic review report endorsed the QAO's suggestions in its submissions to the FAC inquiry and recommended they be implemented.[351]

This included the following suggestions, which were described by the QAO as 'substantive' in terms of their impact on independence, with reference to the principles of supreme audit institution independence identified by declaration of the International Organization of Supreme Audit Institutions:[352]

> The parliamentary committee appointing the strategic reviewer and deciding the terms of reference for the review under Part 4 of the AG Act.
>
> Requiring the strategic reviewer to provide their report on the review directly to the parliamentary committee, rather than the Minister.[353]

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[348] Explanatory notes, p 13. See also Finance and Administration Committee Inquiry report, p 127 (recommendation 8.6(ii)). The FAC recommended: 'The Auditor-General's independence be strengthened in line with suggestions made by the QAO in its submission to the Finance and Administration Committee's inquiry into "the legislative arrangements assuring the Auditor-General's independence".'

[349] Finance and Administration Committee, *Report No. 23, 56th Parliament – Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence,* June 2016, https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2016/5516T816.pdf.

[350] Philippa Smith and Graham Carpenter, *Strategic Review of the Queensland Audit Office*, March 2017.

[351] Coaldrake Report, p 20.

[352] International Organisation of Supreme Audit Institutions (INTOSAI), *ISSAI 10: Mexico Declaration on SAI Independence, 2007.* Note: INTOSAI is the umbrella organisation of supreme audit institutions of countries that belong to the United Nations.

[353] QAO, submission to the FAC Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence, p 12, https://documents.parliament.qld.gov.au/com/FAC-D297/IQAGLAPSED-33C4/submissions/00000004.pdf.

Under the Bill, existing strategic reviews conducted before the commencement of the relevant amendments would continue in accordance with the current provisions, provided the review report has not been given.[354]

Similar provisions would also apply in relation to the annual independent audit of the QAO, with the Bill including equivalent amendments that would require the relevant parliamentary committee to:

- approve the appointment of the external auditor to undertake the independent audit (subject to the same 20 business day timeframe, and with the appointment to be taken as approved if the committee does not respond to the Minister within this timeframe)[355]
- receive a copy of the independent audit report (along with the Premier, Treasurer and Auditor-General), and table report in the Assembly within 3 sitting days after receiving it.[356]

4.3.1 Stakeholder views

OSCAR, the Auditor-General and the Integrity Commissioner all expressed general support for the Bill's provision for greater parliamentary committee involvement in integrity body strategic reviews and in independent audits of the QAO.[357]

However, the Auditor-General also sought to highlight that the proposed amendments retain responsibilities for the relevant Minister and Treasurer, in terms of requiring:

- the provision of the strategic review report to the responsible Minister as well as the committee
- the provision of reports on independent audits of the QAO to the Premier and Treasurer, in addition to the parliamentary committee.[358]

The Auditor-General submitted that this aspect of the provisions was inconsistent with the shift in responsibility from the executive government to parliament, appearing to serve to maintain a level of accountability to executive government.[359] Independence could be further enhanced, he suggested, if the relevant parliamentary committees were given full responsibility for overseeing the strategic reviews and independent audit of the QAO without any direct involvement from 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.[360]

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[354] See transitional provisions – Bill, cl 20 (proposed s 99 of the Integrity and Other Legislation Amendment Act 2023); cl 45 (proposed new s 106 of the Integrity and Other Legislation Amendment Act 2023); cl 58 (proposed new s 117 of the Integrity and Other Legislation Amendment Act 2023); and cl 71 (proposed new s 206G of the Integrity and Other Legislation Amendment Act 2023).

[355] Specifically, the Bill provides that a person may only be appointed as the independent auditor of the QAO for a financial year if the parliamentary committee has approved the appointment. See Bill, cl 17 (amending s 71 of the Auditor-General Act).

[356] Bill, cl 18 (amending s 72 of the Auditor-General Act). Note: The amendments would not apply to an audit conducted before commencement for which an independent audit report has not been given (under transitional provisions in cl 20, proposed s 100).

[357] Submission 8, p 3; submission 16, p 8; submission 2, p 5.

[358] Submission 2, p 3.

[359] Submission 2, p 3.

[360] Submission 2, p 4.

The Auditor-General also considered there to be a lack of clarity around what is meant by the term 'audit report' as arising from the conduct of the independent audit of the QAO, stating that 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.[361]

The Auditor-General submitted that if an 'audit report' is the former:

- this would need to be attached to the financial statements before tabling
- it could mean that the audited financial statements of the QAO would likely need to be tabled before the QAO's annual report, which is currently prevented by section 42 of the Financial and Performance Management Standard 2019 (which states that a statutory body's financial statements must not be released prior to the tabling of the body's annual report).[362]

4.3.2 The department's response

In response to stakeholder comments, the department advised that the provisions for the parliamentary committee to approve the terms of reference and nominee for appointment as strategic reviewer 'are intended to provide greater oversight responsibility to the relevant Parliamentary Committee for strategic reviews'.[363]

The department also noted that while the responsible Minister will receive a copy of the report (and for the independent audit of the QAO, also the Treasurer), the Chair of the relevant committee will be responsible for tabling the reports and committees will also retain their existing responsibility for subsequently inquiring into the strategic review reports.[364]

In relation to the Auditor-General's concerns as to the clarity of the term 'audit report', the department advised that:

> The 'audit report' from an independent audit to be tabled is the same report referred to by the current section 72 ['report about the audit'], which, under current section 72(2) is required to be given to the Premier, the auditor-general and the Treasurer. The report must be included by the auditor-general in the annual report of the audit office.[365]

Further:

> Section 42 of the Financial and Performance Management Standard 2019 (FPMS) states:
>
> However, the accountable officer or statutory body does not contravene subsection (1) by giving the annual financial statements, or a copy of them, to—
>
> (a) a person under an authority given by the appropriate Minister for the department of statutory body; or
>
> (b) the Treasurer under section 26 Act; or
>
> (c) another person if the accountable officer or statutory body is required or permitted under law to giver the statements or a copy to the person.[366]

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[361] Submission 2, p 4.

[362] Submission 2, p 4.

[363] DPC, correspondence, 4 August 2023, p 5.

[364] DPC, correspondence, 4 August 2023, pp 4-5.

[365] DPC, correspondence, 4 August 2023, p 5.

[366] DPC, correspondence, 4 August 2023, pp 4-5.

Accordingly, the department advised: 'The amended provision would provide for the Auditor-General Act to override the FPMS'.[367]

4.4 Committee role in tabling of reports

Currently, the annual reports of each of the 5 bodies described by Professor Coaldrake as the 'core integrity bodies' are tabled in the Legislative Assembly by the Speaker (Integrity Commissioner and OIC annual reports)[368] or relevant Minister (QAO, Ombudsman's Office and CCC annual reports).[369]

The Bill would amend relevant legislation to make parliamentary committees responsible for tabling the annual reports of the QAO, Integrity Commissioner, Ombudsman's Office and OIC.[370] (No change is proposed to the current approach for the tabling of the CCC annual report.)

In particular, rather than presenting their annual reports specifically to the Speaker or appropriate Minister for tabling, under the proposed amendments:

- the 4 affected integrity bodies would be required to give their annual report to each of the parliamentary committee, Speaker, appropriate Minister and Treasurer
- the chair of the parliamentary committee would be required to table the report within the time stated in the financial and performance management standard.[371]

The current Financial and Performance Management Standard 2019 requires annual reports to be tabled within 3 months after the end of the financial year, unless the Minister extends the tabling period, with the reports required to be provided to the Minister for tabling on a date agreed with the Minister to enable this.[372]

The new committee tabling requirements would not apply in the financial year in which the provisions commence, but would apply in financial years thereafter.[373]

In implementing the requirement, the Bill would also somewhat address one of the QAO's suggestions as endorsed and recommended in the 2017 strategic review of the QAO (and in turn, in the Coaldrake

[367] DPC, correspondence, 4 August 2023, p 6.

[368] Integrity Act, s 85; RTI Act, s 184(2).

[369] Pursuant to s 63 of the *Financial Accountability Act 2009*. See also s 87 of *the Ombudsman Act.*

[370] Explanatory notes, p 4.

[371] Bill, cl 19 (proposed new s 72AA of the Auditor-General Act); cls 39, 41 (amending and renumbering s 85 of the Integrity Act as s 85K, and inserting new s 85L); cl 55 (amending s 87 of the Ombudsman Act); cl 66 (proposed new s 168G of the RTI Act). Note: the provisions require the annual reports to be tabled within the timeframe specified in s 63(2) of the *Financial Accountability Act 2009*, which in turn refers to the timeframe stated in the financial and performance management standard.

[372] Financial and Performance Management Standard 2019, s 47.

[373] Bill, cl 20 (inserting transitional provision s 102 for the Integrity and Other Legislation Amendment Act 2023); cl 45 (inserting transitional provision s 108); cl 58 (inserting transitional provision s 119); cl 71 (inserting transitional provision s 206I).

Report), which called for responsibility for tabling of the QAO's annual report to be shifted away from the executive (though the initial suggestion was that the Speaker or Clerk be responsible for tabling).[374]

4.4.1 Stakeholder views

OSCAR, BRU, the Ombudsman's Office, and the Auditor-General all expressed support for the Bill's provisions for parliamentary committee involvement in the tabling of integrity bodies' annual reports,[375] with the Auditor-General submitting that having the committee table the annual report of the QAO better reflects the Auditor-General's position as an officer of the Parliament.[376]

The Auditor-General also considered that the amendments would address concerns about delays between the finalisation and provision of the QAO's annual report and the tabling of the report by the responsible Minister.[377] However, the Auditor-General suggested the amendments could be further enhanced if a timeframe for tabling by the committee chair was also included in the provisions, citing as possible examples:

- within 3 sitting days after the committee receives the report, or
- on the next sitting day as per the requirements for the Speaker or Clerk's tabling of other QAO reports to Parliament (under s 67 of the Auditor-General Act).[378]

In addition, the Auditor-General queried the rationale for retaining requirements for the Auditor-General to give the annual report of the QAO to both the responsible Minister (Premier) and Treasurer in addition to the committee – requirements that would also apply for the annual reports of the Ombudsman's Office and OIC. The Auditor-General submitted that:

- 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 should be sufficient for the Auditor-General to give the annual report to the Speaker and the parliamentary committee, with the Treasurer and Premier then able to access it once tabled.[379]

Further, the Information Commissioner identified that the Bill amends the relevant section of the *Right to Information Act 2009* (RTI Act) to require the tabling of the annual report on the operation of the Act by the parliamentary committee, but does not make an equivalent amendment to section 194(1) of the *Information Privacy Act 2009* (IP Act), which continues to place the onus on the Minister to cause a copy of the annual report on the operation of the IP Act to be tabled.[380]

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[374] QAO, submission to the Finance and Administration Committee Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence, p 13, https://documents.parliament.qld.gov.au/com/FAC-D297/IQAGLAPSED-33C4/submissions/00000004.pdf. The 2017 strategic review of the QAO recommended (recommendation 8.6(i)) that 'the Auditor-General's independence be strengthened in line with the suggestions made by the QAO in its submission to the Finance and Administration Committee's inquiry into 'the legislative arrangements assuring the Auditor-General's independence'. See Phillipa Smith and Graham Carpenter, *Strategic Review of the Queensland Audit Office*, March 2017, p 14.

[375] Submission 4, p 2; submission 14, p 5; submission 4, p 2; submission 2, p 6.

[376] Submission 2, p 6.

[377] Submission 2, p 6.

[378] Submission 2, p 6.

[379] Submission 2, p 6.

[380] Submission 15, p 6.

The Information Commissioner advised that the OIC considers 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.[381]

4.4.2 The department's response

In response to these comments, the department provided reassurance that the Bill's requirements for copies of integrity body annual reports to be provided to the Treasurer and responsible Minister when supplied to the committee for tabling 'is not intended to increase authority or oversight by the Treasurer in the financial arrangements of integrity bodies'.[382] Rather, the department advised: '… it will simply provide contextual awareness for the Treasurer and Treasury Department for matters relating to the state budget. The proposed process is consistent across the integrity bodies'.[383]

In response to the Information Commissioner's submission, the department advised that an amendment to section 194 of the IP Act is not required:

> … given currently, sub-section (3) provides that:
>
> > *(3) An annual report under this section may be included as part of an annual report the Minister is required to give under the Right to Information Act.*
>
> A combined Annual Report for the *Right to Information Act 2009* and *Information Privacy Act 2009* is currently prepared.[384]

4.5 Establishing the Office of the Queensland Integrity Commissioner as a statutory body

Among the various findings and recommendations of the Yearbury report was a call for the Office of the Queensland Integrity Commissioner (OQIC) to be established as an 'independent unit' of the Department of the Premier and Cabinet for administrative purposes; a position echoed by the Coaldrake Report.[385]

The 2022 Integrity Act went some way towards this goal by creating the OQIC as a separate public service office and providing the Integrity Commissioner with the employing powers of a chief executive (with staff employed under the *Public Sector Act 2022*).[386] However, the Bill seeks to further build on these changes by establishing the OQIC as a statutory body for the purposes of the *Financial Accountability Act 2009*, Financial and Performance Management Standard 2019*, Statutory Bodies Financial Arrangements Act 1982* and Statutory Bodies Financial Arrangements Regulation 2007.[387]

This would realise financial independence for the OQIC, with the Integrity Commissioner subsequently able to control the funds of the office as a separate legal entity.[388]

In taking on this statutory body status, the OQIC will be required to:

> … prepare financial statements and a more detailed annual report (with the financial statements to be audited by the Queensland Audit Office; develop strategic and operational plans; develop a budget (as part of the portfolio budget SDS); and establish risk and internal control systems.[389]

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[381] Submission 15, p 6.

[382] DPC, correspondence, 4 August 2023, p 6.

[383] DPC, correspondence, 4 August 2023, p 6.

[384] DPC, correspondence, 4 August 2023, pp 23-24.

[385] Yearbury Report, recommendation 24(a), p 70; Coaldrake Report, p 31-32.

[386] Bill, explanatory notes, p 6.

[387] Bill, cl 40 (inserting new s 85BA of the Integrity Act).

[388] Explanatory notes, p 6.

[389] Explanatory notes, p 6. See also DPC, correspondence, 30 June 2023, p 6.

4.5.1 Stakeholder views

Stakeholders who addressed these provisions were all in support of the proposed amendments.[390]

The Integrity Commissioner submitted of the change:

> I consider the establishment of my office as an independent statutory body as a necessity given my jurisdiction and functions. As an Officer who provides integrity and ethics advice to all Members of Parliament, independence from the Government of the day, whichever party that is, is an important element of the governance arrangements for the office.[391]

5 Expanding the Ombudsman's jurisdiction

Under the Ombudsman Act, the Queensland Ombudsman is responsible for investigating complaints about the actions and decisions of state government departments and agencies (including state schools and TAFE), local councils, and public universities. In addition, the Office of the Ombudsman provides training and advice to help agencies improve their decision-making and administrative practices.[392]

During the most recent (2018) strategic review of the Office of the Queensland Ombudsman, the then Ombudsman made reference to the increasing outsourcing of areas of service delivery provided by these public sector agencies to non-government organisations (NGOs).[393] Noting that these NGOs fall outside the jurisdiction of the Ombudsman, the Ombudsman raised concern that this was potentially diluting the level of oversight available in relation to such services and recommended amendments to allow their capture within the office's jurisdiction.[394] While this proposal ultimately was not supported by the strategic reviewer or the government at that time,[395] the role of contracted service delivery providers emerged as a recurring theme of Professor Coaldrake's review consultations, giving cause for the Ombudsman's proposal to be revisited.[396]

While acknowledging that NGOs 'may be subject to contractual provisions requiring adherence to quality standard frameworks', Professor Coaldrake considered 'it is imperative that the public maintain oversight of agency actions via the Ombudsman, and in particular, when those functions are contracted out'.[397] The Coaldrake Report therefore recommended the expansion of the Ombudsman's jurisdiction to include these non-government service providers, as follows (see recommendation over page).[398]

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390 OSCAR, submission 8, p 3; BRU, submission 14, p 3; OQIC, submission 16, p 6.

391 Submission 16, p 6.

392 Office of the Queensland Ombudsman, *Annual Report 2021-22,* 2022, p ii.

393 As cited in Simone Webbe, Strategic Review of the Office of the Queensland Ombudsman, January 2018, p 48.

394 Simone Webbe, Strategic Review of the Office of the Queensland Ombudsman, January 2018, p 48.

395 The reviewer concluded that the timing was not practical for the establishment of this additional jurisdiction (noting the range of other recommended structural and organisational changes coming out of the review) and suggested these considerations be deferred for 'inclusion in a more comprehensive whole of government review of the accountability framework for contracted service providers'. See Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 49.

396 Coaldrake report, p 26.

397 Coaldrake report, p 26.

398 Coaldrake report, p 26.

Coaldrake Report Recommendation – Ombudsman
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.

The Bill would serve to implement this recommendation. While it would not amend the section referenced in the recommendation, it would insert a new section into the Ombudsman Act with the same effect, enabling the Ombudsman to investigate administrative action taken for an agency, or in the performance of functions conferred on an agency, by an entity that is not an agency.[399] The committee was advised that this would mean, for example, that 'should the department of child safety delegate decision-making in relation to a child under the Child Protection Act to a non-government organisation then that organisation, in relation to that function, would be captured' in the Ombudsman's jurisdiction, where currently that is not the case.[400]

In particular, under the proposed amendment, the Ombudsman would be able to:

Investigate administrative actions taken by these non-government entities on reference from the Assembly or a statutory committee of the Assembly; on complaint; or on the Ombudsman's own initiative.[401]

Consider the administrative practices of the entity and make recommendations to the entity about appropriate ways of addressing the effects of inappropriate administrative actions, or for the improvement of the administrative practices and procedures.[402]

Provide advice, training, information or other help to the entity about ways of improving the quality of the entity's administrative practices and procedures.[403]

In introducing the Bill, the Premier emphasised that while the 'vast majority' of government service partners 'apply and uphold standards of excellence in delivering government services on the government's behalf', the implementation of this Coaldrake Report recommendation would provide an avenue of recourse where 'occasionally a person who has received a service may have reason to complain about the decision making and administrative actions of a non-government provider'.[404]

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[399] Bill, cl 49 (proposed new s 12A of the Ombudsman Act; in reference to existing s 10(c)). See also explanatory notes, p 6.

[400] Ms Jenny Lang, Deputy Commissioner, Public Sector Commission, public briefing transcript, Brisbane, 10 July 2023, p 9.

[401] Bill, cl 49 (proposed new s 12A(2)(a) of the Ombudsman Act).

[402] Bill, cl 49 (proposed new s 12A(2)(b) of the Ombudsman Act).

[403] Bill, cl 49 (proposed new s 12A(2)(c) of the Ombudsman Act).

[404] Record of Proceedings, 16 June 2023, p 2074.

5.1 Issues of fundamental legislative principle

The explanatory notes to the Bill acknowledge the potential impacts on the rights and liberties of individuals of the expansion of the Ombudsman's functions to NGOs.[405]

However, the explanatory notes:

- highlight the important public interest purpose of the amendments, to ensure effective oversight of the public services delivered to Queenslanders by non-government entities administering government functions[406]
- advise that any FLP inconsistency is lessened by the fact that the expanded jurisdiction applies only to the decision-making, practices and procedures relating to administrative action taken for, or in the performance of, the government functions conferred on the non-government entity (and not to any other actions of the entity).[407]

It can also be noted that while the definition of an 'entity' includes a person,[408] the amendments will likely relate primarily to NGOs delivering services on behalf of agencies, rather than individuals.

5.2 Human rights considerations

The potential impacts on the rights and liberties of individuals engaged in non-government entities that provide government services, as referenced above, include possible impacts on certain human rights of those individuals. As an example, the Bill would enable the use in respect of these individuals of existing powers in the Ombudsman Act which:

- engage with the right to freedom of movement by making provision for the Ombudsman to require the physical attendance of a person to give evidence
- engage with rights to privacy and expression, by providing for the Ombudsman to require these individuals to give information and documents and enabling the Ombudsman to enter a place occupied by an entity.[409]

As noted above, the purpose of these limitations is to ensure proper oversight of public functions by private entities delivering public services, and the Bill explicitly limits these powers to the decision making practices and procedures of the entity that are carried out in the context of its contracted public functions (and not to any other decisions and procedures).[410]

The statement of compatibility also emphasises that:

- the Ombudsman already exercises its functions and powers with respect to government agencies, so the extension of those functions to oversee certain NGOs represents only an incremental burden on human rights
- the Ombudsman Act contains appropriate safeguards with respect to the exercise of powers by the Ombudsman.[411]

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405 Explanatory notes, p 8.

406 Explanatory notes, pp 6-7.

407 Explanatory notes, p 8.

408 *Acts Interpretation Act 1954*, sch 1.

409 Statement of compatibility, p 16.

410 See Bill, cl 49 (proposed new s 12A(3) of the Ombudsman Act).

411 Statement of compatibility, p 18.

Further:

> The purpose of ensuring appropriate oversight of entities delivering public services, and enabling the administrative actions and decisions of these entities to be independently investigated, outweighs any limits that may be imposed.[412]

5.3 Stakeholder views

OSCAR, BRU, the CCC and the Ombudsman's Office all expressed support for the Bill's provisions to extend the jurisdiction of the Ombudsman's Office to cover government services provided by NGOs.[413] The Ombudsman's Office confirmed that the proposed amendments would:

- effectively implement the Coaldrake Report's recommendation
- address the current limitations of the Ombudsman Act which have precluded it from investigating or making recommendations to non-government service providers regarding their delivery of public services.[414]

In addition, the Ombudsman's Office noted that the Bill would enable it to 'provide advice, training, information and other help about ways of improving the quality of the NGO's administrative practices and procedures as it relates to the performance of functions conferred by the government agency'.[415]

The Queensland Council for Social Service (QCOSS), however, expressed some concerns about the proposed change. While acknowledging the importance of appropriate oversight of the discharge of government agency functions,[416] QCOSS questioned the extent to which the proposed changes reflect the policy drivers of the bill, raising concerns that the outcomes and impacts of the reform go beyond their intended scope and are not fit-for-purpose.[417]

More specifically, QCOSS submitted:

- The provisions are drafted in a manner that lacks clarity and creates uncertainty in terms of the scope of the functions that will be subject to the Ombudsman's extended jurisdiction.[418]
- Determining whether a non-government entity's decision making practices and procedures relate to 'taking administrative action for, or in the performance of functions conferred on an agency' may not be the straightforward exercise it appears, potentially requiring the consideration of complex legal and factual issues on an ongoing basis. The net effect may be to capture activities non-government entities are engaging in that are not traditionally public functions.[419]
- Community services are already subject to a rigorous regulatory framework where there are multiple standards against which services are assessed, with many NGOs subject to the jurisdiction of various regulators, industry-specific regulation and other requirements, placing a significant compliance burden on operators already facing unprecedented pressures on their services. QCOSS has received feedback from some members that the regulatory and

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412 Statement of compatibility, p 18.

413 Submission 8, p 3; submission 14, pp 3, 5; submission 9, p 2.

414 Office of the Queensland Ombudsman, submission 4, pp 1-2.

415 Office of the Queensland Ombudsman, submission 5, p 2.

416 QCOSS, submission 5, p 2; Ms Aimee McVeigh, CEO, Queensland Council of Social Service (QCOSS), public hearing transcript, Brisbane, 11 August 2023, p 14.

417 QCOSS, submission 5, p 3.

418 Submission 5, p 3; public hearing transcript, Brisbane, 11 August 2023, p 15.

419 Submission 5, p 3; public hearing transcript, Brisbane, 11 August 2023, p 14.

administrative impacts of the expansion of the Ombudsman's jurisdiction have the potential to 'significantly interfere in service delivery to Queensland's most vulnerable populations'.[420]

- The Bill's one-size-fits-all approach to widening the jurisdiction will create significant issue as government and community organisations function very differently and have different levels of resourcing available – a fact that has been acknowledged and addressed in New South Wales by having a separate instrument to broaden the jurisdiction of the NSW Ombudsman to community organisations performing a public function.[421]

To address these concerns, QCOSS recommended:

- the definition of 'non-profit entity' be amended to be 'A charity, organisation, entity or other body that is not carried on for the profit of its individual members'
- the Bill be amended so only entities that are contracted service providers delivering services on behalf of a government agency pursuant to explicit contractual arrangements are subject to the jurisdiction of the Ombudsman, and only in the delivery of those services ('entity' for the purposes of the Ombudsman Act should be clearly defined in this way)
- transitional arrangements be included which afford non-government entities at least 2 years for prepare for the expansion of the Ombudsman's jurisdiction.[422]

QCOSS also noted that the 2018 strategic review of the Ombudsman's Office emphasised the need to comprehensively review the accountability framework for contracted service providers before considering an expansion of the Ombudsman's jurisdiction, and stated that the analysis of accountability frameworks in the Coaldrake Report 'does not consider the regulatory framework currently applicable to community service organisations'.[423]

5.4 The department's response

In response to QCOSS' concerns, the department sought to provide reassurance that the Ombudsman's expanded function will apply only in relation to non-government entities' decision making practices and procedures that relate to taking administrative action for, or in the performance of, functions conferred on the entity by the government agency.[424] In this respect, the explanatory notes advise:

> It is not the policy intent to duplicate investigative activity where a particular complaints entity or ombudsman already exists in relation to the matter subject of complaint. Nor is it the intent for the functions of the ombudsman to extend to the entity's administrative decision making, practices and procedures more generally.[425]

The department also advised that the Queensland Government has committed $5.035 million in services funding for the Queensland Ombudsman over 4 years and 10.5 ongoing FTEs to support the expected increase in service demands associated with the expansion in the office's jurisdiction.[426] This funding amount was determined 'based on similar experiences in other Australian jurisdictions'.[427]

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420 Submission 5, p 4; public hearing transcript, Brisbane, 11 August 2023, p 16.

421 Submission 5, p 4. (Submission refers to the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW).

422 Submission 5, p 5; public hearing transcript, Brisbane, 11 August 2023, p 15.

423 Submission 5, p 3.

424 DPC, correspondence, 4 August 2023, p 23.

425 Explanatory notes, p 7.

426 DPC, correspondence, 4 August 2023, p 23.

427 Explanatory notes, p 7.

Committee comment

The committee expresses its support for the expansion of the Ombudsman's jurisdiction, which will ensure the delivery of state government services in Queensland is uniformly subject to appropriate scrutiny and accountability, regardless of who is delivering them.

The committee notes the potential FLP and human rights implications for individuals who are engaged by non-government entities that will now fall within this jurisdiction. However, we consider that any potential impacts on rights represent a reasonable and justifiable condition of doing business on behalf of government and are consistent with community expectations for accountability in government service delivery.

The committee notes the concerns raised by QCOSS about the lack of clarity and understanding about the application of the provisions to the important work of the community sector, and considers more can be done to engage with the sector to:

- ensure its members are provided with appropriately detailed guidance about the role of the Ombudsman and their requirements in respect of any matters the subject of complaint
- help prevent any undue administrative impost or potential interruptions to the delivery of services on implementation, noting the valuable support these entities provide to some of our most vulnerable Queenslanders.

Moving forward, government agencies should also take care as far as possible to ensure contract documentation is updated to clearly reflect the expectations and requirements for service deliverers, including outlining the application of Ombudsman's jurisdiction and associated complaints framework for continuous improvement in service delivery.

The committee welcomes the commitment of funding for the Ombudsman's Office to support the expected increase in service demands for the Office.

6 Clarifying and other amendments

6.1 Long title of the *Integrity Act 2009*

Accompanying its various changes to the regulatory scheme for lobbying and related amendments, the Bill would replace the long title of the Integrity Act to better reflect the objectives underpinning the amended scheme.

In particular, the proposed new long title would:

- provide for both the Integrity Commissioner *and* Office of the Queensland Integrity Commissioner (currently only the Integrity Commissioner is recognised)
- facilitate the giving of advice to Ministers, chief executives and others on ethics or integrity issues (currently chief executives are not recognised)
- ensure Ministers, chief executives and others appropriately manage conflicts of interest (currently chief executives are not recognised)
- reflect the Bill's regulatory focus on particular lobbying activities with government representatives and Opposition representatives.[428]

[428] Bill, cl 28 (amending the long title of the Integrity Act).

In addition, as noted in section 3.7.1 of this report, the Bill amends the functions of the Integrity Commissioner to provide that the Integrity Commissioner has the functions to provide education and training of government representatives and registered lobbyists about the operation of Chapter 4 ('Lobbying Activity') of the Integrity Act.[429]

6.1.1 Stakeholder views and the department's response

The Integrity Commissioner submitted that the proposed long title and amended functions of the Integrity Commissioner 'omit the important responsibility of the Integrity Commissioner to set lobbying standards through the development, and after consultation with the parliamentary committee, approval of the registered lobbyists code of conduct'.[430]

The Integrity Commissioner noted that 'the Long Title is important when applying legal interpretation to the proposed legislation as it determines the strategic purpose of the legislation to the reader' and that similarly, the Act's listing of the functions of the Integrity Commissioner 'would commonly be the starting point for the ordinary reader to understand what my statutory functions are'.[431] The Integrity Commissioner therefore considered that the long title and functions should be amended to also include the development and approval of a code of conduct.[432]

In response to these comments, the department advised that long titles of Acts are 'not intended to be overly prescriptive and can be broad provided they do not contradict the body of the legislation' and the 'preference for long titles is for them to be concise'.[433]

In terms of recognising this particular function of the Integrity Commissioner, the department stated:

> Clause 36, new Chapter 4, Part 4 specifically prescribes the functions and powers the Integrity Commissioner has with respect to the Code of Conduct, training and directives. These new sections are consistent with the proposed new Long Title.[434]

6.2 Ministerial staff member requests for advice on ethics or integrity issues

Under the Integrity Act, a designated person may ask for the Integrity Commissioner's advice on an ethics or integrity issue involving the person.[435] A Ministerial staff member who gives, or a person engaged to give, advice to a Minister is a designated person, and therefore can unilaterally seek the Integrity Commissioner's advice.[436] The Yearbury report identified a risk to Ministers if Ministerial staff seek the Integrity Commissioner's advice without the Minister's knowledge. The concern arose because 'a Minister cannot fulfil the obligation to ensure a staff member is complying with the Code of Conduct if they are left uninformed of advice being sought by a staff member and for what purpose'.[437]

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[429] Bill, cl 29 (amending s 7 of the Integrity Act)

[430] Submission 16, p 4.

[431] Submission 16, p 9.

[432] Submission 16, p 4.

[433] DPC, correspondence, 4 August 2023, p 8.

[434] DPC, correspondence, 4 August 2023, p 8.

[435] Integrity Act, s 15(1).

[436] Integrity Act, s 12(1)(f).

[437] Explanatory notes, p 17.

As a result, the Yearbury Report suggested it was appropriate that a Minister be informed when a Ministerial staff member is intending to seek advice and is satisfied as to the scope and nature of the advice being sought. The resulting Yearbury Report recommendation is set out below. [438]

Yearbury Report Recommendation 5(a) – Ministerial staff seeking Integrity Commissioner advice
To ensure Ministers and Assistant Ministers are aware of Integrity Commissioner advice being sought by a member of their staff and full contextual information is provided to the Integrity Commissioner: a) Section 12(1)(f) of the Act (that allows a Ministerial staff member who gives, or person engaged to give, advice to a Minister to unilaterally seek the Integrity Commissioner's advice) be amended to read "Chief of Staff with the knowledge of the Minister"…

Consistent with this recommendation, the Bill proposes that a Ministerial staff member ('who performs the role of Chief of Staff (however called) in the office of a Minister' – as defined in an uncommenced provision of the 2022 Integrity Act[439]) may ask for advice from the Integrity Commissioner only if that person has notified the relevant Minister of the request.[440]

The explanatory notes state: 'Since the reason for seeking advice can only have to do with their official duties in assisting the Minister to fulfil their portfolio responsibilities, the Minister is entitled to know the nature of the matter at issue'.[441]

6.2.1 Stakeholder views and the department's response

The QLS stated it is supportive of the intention of the Yearbury recommendation, but raised concerns that it 'may deter a designated person from seeking advice from the Integrity Commissioner about the Minister themselves, should the need arise'.[442] The QLS proposed 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'.[443]

The department responded to this concern by advising that the designated person may only seek advice on an ethics or integrity issue 'involving the person', and that only a Minister or Assistant Minister may seek advice on an ethics of integrity issue involving another person (listed designated persons).[444] The department also referred to the Yearbury Report, which noted that a Ministerial staff member could 'disclose alleged impropriety' under the *Public Interest Disclosure Act 2010*, and added that concerns about corrupt or criminal conduct of a Minister may be referred to the CCC or the Queensland Police Service.[445]

6.2.2 Human rights considerations

Under section 21 of the HRA, a person has the right to freedom of expression which includes the right to seek, receive and impart information. The Bill potentially limits this freedom in providing that a

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[438] Yearbury Report, p 38.

[439] Yearbury Report, p 38 (recommendation 5).

[440] Bill, cl 31 (amending s 15 of the Integrity Act).

[441] Explanatory notes, p 17.

[442] Submission 13, p 5.

[443] Submission 13, p 5.

[444] DPC, correspondence, 4 August 2023, p 9.

[445] DPC, correspondence, 4 August 2023, p 10.

Ministerial staff member who gives advice to a Minister may only request advice from the Integrity Commissioner if the Ministerial staff member has given notice of the request to their Minister.

The statement of compatibility advises that the purpose of the limitation is to: 'ensure that the Minister has oversight of their staff, has the information needed to ensure their staff comply with the Code of Conduct for Ministerial staff members, and ultimately to be accountable for the actions of their office'.[446]

The statement of compatibility also advises that the limit on freedom of expression is 'carefully tailored to ensure it is the least restrictive way of ensuring Ministers have oversight over their staff' – that is, the Minister only needs to be notified, rather than provide their approval of the request.[447]

The statement concludes by stating that the 'impact on the right of Ministerial staff members to seek and receive information is relatively minor and is outweighed by the importance of ensuring Ministers have oversight of their staff'.[448]

Committee comment

Given the amendment helps Ministers to achieve their responsibilities regarding oversight of staff in the least restrictive way, and that the Minister merely needs to be notified of the request rather than approve it, the committee considers an appropriate balance has been struck between the importance of the purpose of the limitation and the importance of preserving the human right.

We therefore consider that any limit on the right to freedom of expression associated with the requirement for a Ministerial staff member to notify the Minister when seeking advice from the Integrity Commissioner is reasonable and justifiable.

6.3 Auditor-General mandate for auditing trusts

The Auditor-General has previously raised concerns with the definition of a controlled entity in the Auditor-General Act, particularly in relation to determining which trusts are automatically captured by the Act. Currently, the definition of 'controlled' means that a trust that is controlled by a public sector entity for the benefit of that public sector entity, with any such entities automatically subject to audit.[449]

However, this does not apply to trusts that are managed or controlled by one or more public sector entities in which one or more public sector entities have a beneficial interest of 50 percent or more. The department advised the committee, 'Many of the trusts that are managed by public sector entities in Queensland are actually for the benefit of other public sector entities, not the one that is controlling it, and in some cases for the benefit of multiple public sector entities'.[450]

The QAO currently audits some of these trusts under the Auditor-General Act's 'by-arrangement' provision, which provides that the Auditor-General may audit an entity that is not a public sector entity if asked by the Minister or a public sector entity, and if the entity agrees to the audit.[451] However, there is no requirement for the entity to agree to an audit.

The QAO has previously recommended that legislative change be made to clarify 'the Auditor-General's mandate for auditing trusts created and/or used by public sector entities in performing their functions', as a measure to further strengthen the QAO's independence. This recommendation was

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446 Statement of compatibility, p 3.

447 Statement of compatibility, p 4.

448 Statement of compatibility, p 4.

449 Public briefing transcript, Brisbane, 10 July 2023, p 4.

450 Public briefing transcript, Brisbane, 10 July 2023, p 4.

451 Auditor-General Act, s 36.

made to the 2013 FAC inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence,[452] and endorsed in the 2017 strategic review of the QAO.[453]

As mentioned in sections 4.4 and 4.5 of this report, the Coaldrake Report recommended that outstanding recommendations from the 2013 Finance and Administration Committee Inquiry and 2017 strategic review (of the Queensland Audit Office) be implemented, to support the strengthening of the independence of the Auditor-General.[454]

In response to these recommendations, the Bill amends the Auditor-General Act to:

> …mandate that the Auditor-General audits particular trusts, where one or more public sector entities control the trust because at least one or more public sector entities are the trustees of the trust and one or more public sector entities hold directly or indirectly at least a 50 percent interest in the trust or the assets of the trust.[455]

According to the department, the intention of this amendment 'is not to expand the scope or number of trusts audited by the Queensland Audit Office, but to clarify those trusts that should automatically be audited and not reliant for auditing on an agreement under section 36 of the *Auditor-General Act 2009*'.[456]

The department provided the following scenario regarding the Queensland Investment Corporation, which invests money on behalf of the Department of State Development, Infrastructure, Local Government and Planning and the Department of Transport and Main Roads into a major road construction, to illustrate the issue:

> Because the beneficiary is not the Queensland Investment Corporation, the current reading of the bill would not capture that trust. The expanded definition would say, `Well, it is two public entities that are the beneficiary,' so now the changes will capture that trust. At the moment there is a 'by arrangement' in place and those sorts of trusts are still audited by the QAO, by arrangement with the QIC.[457]

The Bill also provides that the Auditor-General must prepare a report to the Legislative Assembly on each audit of a trust and a report to the Legislative Assembly on an audit of a trust may be included in a report to the Legislative Assembly on an audit of a public sector entity.[458]

6.3.1 Stakeholder views

The Auditor-General supported these amendments, and advised that he does not believe the amendments will extend the Auditor-General's current mandate beyond the trusts presently audited by QAO. The Auditor-General also advised:

> 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. [459]

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452 QAO, submission to the Finance and Administration Committee's Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence, p 12.

453 Phillipa Smith and Graham Carpenter, *Strategic Review of the Queensland Audit Office*, March 2017, section 8.6, p 127.

454 Coaldrake Report, p 23.

455 Explanatory notes, p 5.

456 DPC, correspondence, 29 June 2023 (received 30 June 2023), attachment, p 2.

457 Public briefing transcript, Brisbane, 10 July 2023, p 4.

458 Bill, cl 14 (proposed new section 60A of the Auditor-General Act).

459 Submission 2, p 5.

6.4 Removing redundant references to the Auditor-General in Acts

Another of the recommendations of the QAO's submission to the 2013 FAC inquiry (as endorsed in the 2017 strategic review and in turn by the Coaldrake Report) was to review 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 Auditor-General Act.[460]

The explanatory notes advise that a preliminary audit of Queensland legislation identified certain Acts containing obsolete references or contradictory functions to those in the Auditor-General Act.[461]

The Bill makes a small number of amendments to address some of these provisions, removing those inapplicable or inconsistent references.[462]

6.4.1 Stakeholder views and the department's response

The Auditor-General acknowledged the proposed amendments, but noted they address issues in only 4 pieces of legislation, which falls significantly short of the 37 Acts for which the QAO considers references to the Auditor-General should be removed or incorporated within the Auditor-General Act.[463]

The Auditor-General noted that, as an example, the QAO has identified 5 Acts that require the Auditor-General to conduct audits of superannuation funds created under those acts when:

- 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.[464]

Further:

> 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.[465]

In response to these comments, the department advised that while its review of legislation identified further provisions for potential amendment, the Bill does not include any further amendments 'for a number of reasons'.[466] This includes that:

- the provision was identified as not inconsistent with the powers and responsibilities of the Auditor-General
- the provision related to a previous policy decision (for example, references in National Laws that have been adopted by other jurisdictions)
- the relevant administering department did not support the amendment
- the relevant administering department elected to include amendments in their own omnibus Bills.[467]

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[460] QAO, submission to the Finance and Administration Committee's Inquiry into legislative arrangements assuring the independence of the Auditor-General, p 13.

[461] Explanatory notes, p 38.

[462] DPC, correspondence, 3 July 2023, p 6.

[463] Submission 2, p 5.

[464] Submission 2, p 5.

[465] Submission 2, p 5.

[466] DPC, correspondence, 4 August 2023, p 24.

[467] DPC, correspondence, 4 August 2023, p 24.

Appendix A – Submitters

Sub #	Submitter
001	Australian Lawyers Alliance
002	Auditor-General, Queensland Audit Office
003	Planning Institute of Australia Queensland
004	Office of the Queensland Ombudsman
005	Queensland Council of Social Service
006	Chartered Accountants Australia and New Zealand
007	Australian Professional Government Relations Association
008	Organisation Sunshine Coast Association of Residents Inc. (OSCAR)
009	Crime and Corruption Commission
010	Local Government Association of Queensland
011	Property Council of Australia
012	South East Queensland Community Alliance Inc. (SEQCA)
013	Queensland Law Society
014	Brisbane Residents United
015	Office of the Information Commissioner
016	Queensland Integrity Commissioner

Appendix B – Officials at public departmental briefing

Department of the Premier and Cabinet

- Ms Rachel Welch, Executive Director, Integrity Reform Taskforce

Public Sector Commission

- Ms Jenny Lang, Deputy Commissioner

Appendix C – Witnesses at public hearing

Office of the Queensland Integrity Commissioner

- Ms Linda Waugh, Queensland Integrity Commissioner
- Ms Lesley Symons, Deputy Integrity Commissioner
- Ms Jayne Hartley, Director, Legal and Operations

Australian Professional Government Relations Association

- Mr Andrew Cox, President

Property Council of Australia

- Ms Jen Williams, Queensland Executive Director

Queensland Council of Social Service

- Ms Aimee McVeigh, Chief Executive Officer

Queensland Law Society

- Ms Bridget Cook, Senior Policy Solicitor
- Mr Calvin Gnech, Chair, Occupational Discipline Law Committee

Queensland Audit Office

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

Office of the Information Commissioner

- Ms Rachael Rangihaeata, Information Commissioner
- Ms Stephanie Winson, Right to Information Commissioner

Department of the Premier and Cabinet and Public Sector Commission

- Ms Jenny Lang, Deputy Commissioner, Public Sector Commission
- Ms Rachel Welch, Executive Director, Integrity Reform Taskforce

7 Statement of Reservation

Statement of Reservation

Stalled integrity reforms

The State Government states that this second integrity Bill implements the outstanding recommendations from the Coaldrake "Let the Sunshine In – Report of the Review of Culture and Accountability in the Queensland Public Sector" and the 2021 Yearbury Strategic Review of the Integrity Commissioner functions.

The Premier has claimed that the passing of this Bill will see 10 of the 14 recommendations implemented. However, several key recommendations remain outstanding or abandoned. These include a failure to deliver:

- The release of cabinet documents within 30 days.
- The establishment of a complaints clearing house.
- A Mandatory Data Breach Reporting scheme.

Other important integrity reforms that should have been included in this bill are recommendations to strengthen the independence of the State Archivist and reform their powers to ensure compliance with the Public Records Act.

Accurate public records go to the heart of transparency and accountability in government decision making. The Public Records Act governs the maintenance of official government records and controls the permissible destruction of records. Minister Mark Bailey's use of private emails for official business, and his deletion of said emails, highlights the need to address this issue in this legislation.

Loopholes in Lobbying Laws

During committee hearings it was revealed that it is possible for a registered lobbyist to de-register themselves for the 6-week election period with no restriction on them re-registering after the election and actively work as a lobbyist during that 4-year term of government.
This is clearly a fault in the legislation and needs to be addressed as it is contrary to the spirit of public commitments to clean up the inappropriate influence of powerful lobbyists who profit from their influence and access to government decision makers while also helping these decision makers get elected by running their campaigns. The State Government's use of key Labor lobbyists to help run their 2020 State campaign, while ensconced in 1 William Street was inappropriate. These amendments do not prevent this from occurring again.

In regard to the definition of lobbying, numerous stakeholders also raised concerns about ambiguity in drafting. QCOSS also requested more clarity around definition of the non-profit entities and whether these non-profit entities could be investigated by the Ombudsman. For legislation to be effective, it also needs to be clear.

Ray Stevens MP
Deputy Chair
Member for Mermaid Beach

Michael Crandon MP
Member for Coomera

Daniel Purdie MP
Member for Ninderry