

RIGHT TO INFORMATION AND INTEGRITY (OPENNESS AND TRANSPARENCY) AMENDMENT BILL 2012

Explanatory Notes

Short title

Right to Information and Integrity (Openness and Transparency) Amendment Bill 2012

Policy objectives and the reasons for them

The objectives of the Bill are to:

- (i) amend the *Right to Information Act 2009* to provide new disclosure log requirements in respect of right to information applications made to departments and Ministers; and
- (ii) amend the *Integrity Act 2009* to:
 - a. extend the application of the lobbying provisions of the Act to the Leader of the Opposition, the Deputy Leader of the Opposition and staff members of the office of the Leader of the Opposition;
 - b. clarify the meaning of “third party client” of a lobbyist; and
 - c. make it clear that the Lobbyists’ Code of Conduct may specify that lobbyists report to the Integrity Commissioner on their lobbying activity.

The Bill gives effect to the Government’s commitment to openness and accountability for both the Government and the Opposition, and in particular to extend the lobbyists requirements in the *Integrity Act 2009* to the Opposition.

The Bill is also consistent with the Government’s commitment to release as much government information as possible to the community.

Achievement of policy objectives

Amendments to the Right to Information Act 2009

The current disclosure log requirements do not oblige agencies to place the actual documents that have been accessed on the disclosure log. The amendments place new obligations on certain agencies, namely departments and Ministers, to publish on the disclosure log the applicant’s name and the actual documents that have been accessed through right to information applications, with appropriate deletions, as soon as practicable after the documents have been released to the applicant. .

The amendments allow for appropriate deletions to be made from the information to be published including where it is prevented by law, may be defamatory or would unreasonably invade an individual’s privacy.

The amendments also require right to information applications to indicate whether access is sought for the benefit of, or use by the applicant or another entity. If access is sought for the benefit of, or use by an entity other than the applicant then the name of the entity is also to appear on the disclosure log after the applicant has accessed the documents. .

In addition departments and Ministers are , as soon as practicable after an application has been made, required to include on the disclosure log details of the information being sought and the date the application was made.

Amendments to the Integrity Act 2009

The *Integrity Act 2009* provides the legislative framework for the regulation of the lobbying industry in Queensland. Lobbyists are required to apply to be listed on the Lobbyists Register prior to undertaking lobbying activities. Government representatives (currently including Ministers, Assistant Ministers, councillors, public sector officers and Ministerial staff members) are not permitted to allow lobbying activity except by registered lobbyists.

The Bill will extend the current operation of the Act to Opposition representatives, to ensure that the Leader of the Opposition, the Deputy Leader of the Opposition and staff members of the office of the Leader of the Opposition are bound by the same standards in relation to lobbying activity, as the Government. This will enhance the accountability of current operations of the Opposition.

To extend the application of the lobbying provisions to the Leader and Deputy Leader of the Opposition and staff members of the office of the Leader of the Opposition, the Bill will insert a new definition of “Opposition representative” and amend the definition of “lobbying activity” to apply to efforts to influence Opposition decision-making.

In addition, to improve the current operation of the lobbying provisions of the Act, the Bill inserts a new definition of “third party client” of a lobbyist. This new definition makes it clear that, in order to conduct lobbying activity, a lobbyist must be delivering lobbying services for a client for a fee or other reward that is agreed before the services are provided.

The Bill also inserts a new provision to make it clear that the Lobbyists’ Code of Conduct may include obligations for lobbyists to provide information about their lobbying activities to the Integrity Commissioner.

Alternative ways of achieving policy objectives

Legislative amendments, as opposed to amendments to the ministerial guidelines under section 78 of the *Right to Information Act 2009*, are necessary because new mandatory requirements are being introduced for departments and Ministers.

Amendments to the *Integrity Act 2009* are necessary in order to achieve the objectives of extending the scope of the lobbying provisions to the Opposition.

Estimated cost for government implementation

The amendments to the *Right to Information Act 2009* are expected to have cost implications for departments. These cost implications will be dealt with as part of the usual budget process.

Costs associated with compliance with the new requirements under the Integrity Act 2009 are expected to be minimal and will be met from within existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles.

Consultation

The community has not been consulted on the Bill.

The Acting Information Commissioner was provided with a draft of the amendments to the *Right to Information Act 2009*. The Integrity Commissioner was consulted, and provided input into, the proposed amendments to the *Integrity Act 2009*.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on Provisions

Part 1 - Preliminary

Clause 1 Provides the short title for the Act.

Clause 2 Provides that Part 2 of the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Right to Information Act 2009

Clause 3 provides that this part amends the *Right to Information Act 2009*

Clause 4 amends section 24 to provide that the right to information application is to state whether access is sought for the benefit of, or use of the document by the applicant or another entity. The clause gives as an example of the latter a journalist making an application for use of the document by an electronic or print media organisation.

Clause 5 amends section 54(2)(a)(iii) and (iv) of the *Right to Information Act 2009* (provisions dealing with notices to applicants) consequential to the amendments being made to the disclosure log requirements.

Clause 6 omits existing section 78 of the *Right to Information Act 2009* - Disclosure Logs - to insert new sections 78, 78A and 78 B.

New section 78 contains the new disclosure requirements following a valid access application being made to a department or a Minister.

Under new section 78, where a person makes a valid access application to a department or Minister; the department or Minister must, as soon as practicable after the valid access application is made, include details on the disclosure log of the information being sought by the applicant, and the date of the application.

A valid application is defined in new section 78(8) to mean an application that is compliant with all relevant application requirements; and is not an application to which section 32 of the *Right to Information Act 2009*, which deals with applications outside the scope of the Act, applies.

New section 78 further provides that if the department or Minister decides to give access to a document that does not contain the applicant's personal information, a copy of the document and the name of the applicant must be included in a disclosure log as soon as practicable after the applicant accesses the document. Where access to the document was sought for the benefit of, or use of the document by, an entity other than the applicant then the name of the entity is to be included. If the applicant does not access the document within the period specified in the Act, details identifying the document and how it may be accessed and any applicable charge, must be included in a disclosure log.

The section provides that any information included in a disclosure log is subject to new section 78B(2) which requires the deletion from any document or information included in a disclosure log certain information outlined in new section 78B(2). This includes information the publication of which is prevented by law, information that may be defamatory, or information that unreasonably invades an individual's privacy. An applicant's name may be deleted under this section.

New section 78A contains the disclosure log requirements that apply to agencies that are not departments or Ministers. These reflect the current disclosure log requirements contained in existing 78 of the *Right to Information Act 2009*.

New section 78B contains requirements for disclosure logs generally, including that agencies maintaining disclosure logs must ensure that disclosure logs comply with any guidelines published by the Minister to the extent they are consistent with the Act. As noted above, new section 78B(2) requires the deletion of certain information from any document or information included in a disclosure log. This requirement will apply to all agencies subject to the RTI Act.

Clause 7 makes amendments to section 170 to include a reference to new section 78A.

Clause 8 makes amendments to section 171 consequential to the amendments regarding disclosure logs contained in clause 5.

Clause 9 makes amendments to section 173 consequential to the amendments regarding disclosure logs contained in clause 6.

Clause 10 inserts a definition of disclosure log into the Dictionary. The definition provides that disclosure log means a part of an agency's website called a disclosure log. This is the same definition that appears in existing section 78 of the *Right to Information Act 2009*.

Part 3 Amendment of Integrity Act 2009

Clause 11 provides that the Part amends the *Integrity Act 2009*

Clause 12 amends the long title of the Integrity Act to include a reference to contact between lobbyists and key representatives for the Opposition, in addition to contact between lobbyists and government representatives.

Clause 13 amends section 4 (Purpose) to include a reference to contact between lobbyists and key representatives for the Opposition, in addition to contact between lobbyists and government representatives.

Clause 14 amends section 41 (Meaning of *lobbyist* and related concepts) to insert a new definition of "third party client". This definition provides that a third party client is an entity that has engaged a lobbyist for a fee or other reward that is agreed before the lobbying services are provided.

In inserting the new definition of "third party client", the Bill also omits current subsection 41(2) which provides that lobbying activity can occur even if no fees have been paid. This ensures that there needs to be a clearly defined professional relationship between a lobbyist and a client in order for lobbying activity to occur.

Clause 15 amends section 42 (Meaning of *lobbying activity* and *contact*) to alter the definition of "lobbying activity" to apply to the functions of the Opposition.

To do this, the clause inserts a new subsection 42(1)(b) which provides that lobbying activity includes contact with an Opposition representative to attempt to influence the Opposition's decision-making. This includes the Opposition's decisions about the making or amendment of legislation, the development or amendment of policies or programs, or the Opposition's position or views in relation to government decisions including those made under subsection 42(1)(a).

The clause also makes minor consequential amendments to insert a reference to "Opposition representatives" in addition to a current reference to "government representatives"; add the Leader of the Opposition to the example in subsection 42(2)(h); and change a reference to "client" to "third party client" consistent with the new definition being inserted in section 41.

Clause 16 amends section 45 (Meaning of *former senior government representative*) to clarify that this definition does not include an Opposition representative.

Clause 17 inserts new section 47A (Meaning of *Opposition representative*) and 47B (Meaning of *former Opposition representative*).

The new section 47A defines “Opposition representative” as the Leader of the Opposition, the Deputy Leader of the Opposition and staff members in the office of the Leader of the Opposition.

The new section 47B defines “former Opposition representative” as a person who was formerly an Opposition representative (as previously defined) and who is not a government representative. This definition is necessary for the restriction on lobbying by former senior government representatives and former Opposition representatives under section 70.

Clause 18 amends section 49 (Register) to insert a reference to “former Opposition representative” in addition to a current reference to “former government representative”, and change a reference to “client” to “third party client” consistent with the new definition being inserted in section 41.

Clause 19 amends section 68 (Lobbyists code of conduct) to make it clear that the Lobbyists’ Code of Conduct, which establishes standards of conduct for lobbyists, can include requirements for lobbyists to report on their lobbying activity to the Integrity Commissioner. This will strengthen the ability of the Integrity Commissioner to monitor the extent and conduct of lobbying activity in Queensland.

The clause also inserts a reference to contact between lobbyists and Opposition representatives in addition to a current reference to contact between lobbyists and government representatives.

Clause 20 replaces section 70 (Related lobbying by former senior government representative prohibited) to ensure that the restrictions on former senior government representatives conducting lobbying activity also apply to Opposition representatives. This amendment will prohibit a former senior government representative or a former Opposition representative from conducting lobbying activity on a matter on which they have had official dealings in the preceding two years, either as an Opposition representative or a government representative.

Clause 21 amends section 71 (Lobbying by unregistered entity prohibited) to insert a reference to “Opposition representative” in addition to a current reference to “government representative”.

Clause 22 amends section 72 (Act not to require contact or limit particular contact) to insert a reference to “Opposition representative” in addition to a current reference to “government representative”.

Clause 23 amends section 72A (Disclosure of information) to insert a reference to “Opposition representative” in addition to a current reference to “government representative”, and change a reference to “client” to “third party client” consistent with the new definition being inserted in section 41.

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Clause 24 amends schedule 2 (Dictionary) to insert definitions and references to definitions of “Deputy Leader of the Opposition”, “former Opposition representative”, “Opposition”, “Opposition representative”, “responsible person” for an Opposition representative, “staff member” in the office of the Leader of the Opposition, and “third party client”.

The definition of “responsible person” for an Opposition representative provides that the Leader of the Opposition is the person responsible for providing information about lobbying activity to the Integrity Commissioner under section 72A of the Act, on behalf of the Deputy Leader of the Opposition and staff members in the office of the Leader of the Opposition.