

# Integrity and Other Legislation Amendment Bill 2023

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Olympic and Paralympic Games make this statement of compatibility with respect to the *Integrity and Other Legislation Amendment Bill 2023* (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

To progress public sector integrity reforms, the Queensland Government committed to implementing the recommendations from Professor Peter Coaldrake AO's 28 June 2022 report, *Let the Sunshine In: Review of culture and accountability in the Queensland public sector* (Coaldrake Report) and Mr Kevin Yearbury PSM's *Strategic Review of the Integrity Commissioner's Functions* (Yearbury Report).

The *Integrity and Other Legislation Amendment Act 2022*, passed by Parliament in November 2022, implements some of the Yearbury Report and Coaldrake Report recommendations.

A second Bill is required to implement the outstanding recommendations from the Coaldrake and Yearbury Reports, with the purpose of strengthening the integrity and oversight framework in Queensland. Changes include strengthening the regulation of lobbyists and lobbying activities through amendments to the *Integrity Act 2009* and enhancing the independence of core integrity bodies through changes to the *Auditor-General Act 2009*, *Ombudsman Act 2001*, *Right to Information Act 2009*, *Integrity Act 2009* and *Crime and Corruption Act 2001*.

The Integrity and Other Legislation Amendment Bill 2023 (the Bill) will:

- increase regulation of lobbying activity to address the public perception of undue influence on governments, including 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 core integrity bodies' independence 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 Queensland Auditor-General is required to audit.

## Human Rights Issues

### Human rights relevant to the Bill (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

#### Amendments to *Auditor-General Act 2009*

##### Changes to appointment procedure, remuneration and conditions of Auditor-General

Part 2 of the Bill amends the *Auditor-General Act 2009*.

Clauses 4, 5, 15 and 17 amend the *Auditor-General Act 2009* to:

- require approval of the parliamentary committee for appointing a person as auditor-general, rather than requiring only consultation with the parliamentary committee
- amend the terms of appointment of the auditor-general, including a new requirement that the parliamentary committee approve the remuneration, allowances, and terms and conditions of office
- require approval of the parliamentary committee for the appointment of a reviewer for a strategic review
- require approval of the parliamentary committee for the appointment of a person to conduct an audit of the audit office.

By changing the basis on which a person is selected to be appointed, the amendments engage the right of equal access to join the public service and to be appointed to public office as a public official in section 23(2)(b) of the *Human Rights Act*. The value underlying that right is appointment on merit and preventing privileged groups from monopolising the public service: *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324]. The amendments promote – rather than limit – this right by providing for more independence from the executive government and greater oversight by the parliamentary committee when it comes to appointment decisions. Greater parliamentary committee oversight serves to ensure public confidence in the independence of appointments of integrity bodies (see Coaldrake Report, page 69).

There will be no impact on the right of access to the public service and public office of people with existing appointments. That is because clause 20 of the Bill will insert a new transitional provision in section 98 of the *Auditor-General Act 2009*, which will provide that the amendments will not affect existing appointments.

#### Funding proposals

Clause 11 inserts a new part 2, division 6 into the *Auditor-General Act 2009* in relation to funding proposals. Under a new section 29G, the auditor-general will be required to prepare a funding proposal for additional funding. New s29J includes a safeguard to protect the right to privacy. It provides that the auditor-general is not required to disclose confidential or privileged information in a funding proposal. This safeguard promotes the right to privacy and reputation

in section 25 of the *Human Rights Act 2019* and potentially the right to property in section 24 of the *Human Rights Act 2019* (in relation to commercial in confidence information).

### **Amendments to *Crime and Corruption Act 2001***

Part 3 of the Bill amends the *Crime and Corruption Act 2001*.

#### **Funding proposals**

Clause 24 inserts a new chapter 6, part 1, division 6A into the *Crime and Corruption Act 2001* in relation to funding proposals. Under a new section 260C, the chief executive officer will be required to prepare a funding proposal for additional funding. New section 260F includes a safeguard to protect the right to privacy. It provides that the chief executive officer is not required to disclose confidential or privileged information in a funding proposal. This safeguard promotes the right to privacy and reputation in section 25 of the *Human Rights Act 2019* and potentially the right to property in section 24 of the *Human Rights Act 2019* (in relation to commercial in confidence information).

### **Amendments to the *Integrity Act 2009***

Part 4 of the Bill amends the *Integrity Act 2009*.

#### **Notice requirement for request for advice from Ministerial staff member**

Clause 31 amends s15 of the *Integrity Act 2009* so that a 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. This amendment implements recommendation 5 of the Yearbury Report 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. As the Yearbury Report explains (on page 38), a Minister cannot fulfil their obligation to ensure a staff member is complying with the Code of Conduct for Ministerial staff members if they are left uninformed of advice being sought by a staff member and for what purpose. Given the Minister is ultimately accountable for actions taken in the name of the Ministerial office, the Minister may wish to provide further contextual information.

By placing a fetter on the ability to request advice, the amendment limits freedom of expression in section 21 of the *Human Rights Act 2019*, which includes a right to seek and receive information of all kinds.

The limit on freedom of expression is reasonable and justified under section 13 of the *Human Rights Act 2019* as follows:

#### **(a) the nature of the right**

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. What is at stake, in human rights terms, is the ability of Ministerial staff members to freely seek ethical advice.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of requiring notice to the Minister for a request for advice from the integrity commissioner by a Ministerial staff member 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. Those purposes align with Ministerial responsibility and are consistent with the values of our society.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The requirement of notice helps to achieve those purposes.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

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. In particular, the Minister only needs to be notified, rather than provide their approval of the request. As the Yearbury Report pointed out (on page 38), this change does not impact the ability of Ministerial staff members to disclose alleged impropriety. The *Public Interest Disclosure Act 2010* exists to facilitate disclosure in the public interest of alleged wrongdoing.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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.

Accordingly, although clause 31 limits freedom of expression, that limit is nonetheless reasonable and justified.

- (f) any other relevant factors

Not applicable.

Clause 36 replaces chapter 4 of the *Integrity Act 2009* relating to lobbying activity.

Registration requirement for lobbyists and ban on ‘dual hatting’

New section 46 makes 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. The penalty is up to 200 penalty units. New section 47 provides certain exceptions for lobbying activity carried out for a non-profit entity or a trade delegation. Under new section 51, the integrity commissioner may approve an application for registration if the applicant is not disqualified under new section 49. The

integrity commissioner also has a discretion to refuse an application on a number of specified grounds, including any ground the commissioner considers sufficient. However, as a public entity, the integrity commissioner will be required to exercise that discretion in a way that is compatible with human rights. Registered lobbyists are required to comply with the code of conduct for registered lobbyists as well as directives approved or made by the integrity commissioner under new sections 55 and 57.

New sections 49 and 58 are designed to prevent ‘dual hatting’. Section 49 provides that an individual is disqualified 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. Section 58 provides 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.

The election period is defined as commencing on the day the writ is issued and ending on the day of the election. A substantial role is defined to mean a role at a senior level that involves employment or engagement by the party, and incorporates significant involvement in the party’s election strategy or policy development. There are certain things excluded from the definition, such as general membership of the party. The period of disqualification runs until the writ is issued for the next general election (that is, for the term of government).

These amendments implement a key recommendation from the Coaldrake Report that if an individual plays a substantive role in the election campaign of a prospective government, they should be banned from engaging in lobbying activity for the next term of office (page 57).

These amendments engage the following human rights within the *Human Rights Act 2019*:

- the right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination in section 15(3) and (4), including on the basis of political belief or activity
- the right to freedom of expression in section 21(2)
- the right to freedom of association in section 22(2)
- the right to participate in the conduct of public affairs in section 23(1)
- the right not to be arbitrarily deprived of property in section 24(2)
- the right not to have one’s privacy unlawfully or arbitrarily interfered with in section 25(a).

Preventing people who are not registered or who have been deregistered from lobbying will prevent those people from exercising their freedom of expression and taking part in public life. The amendments directed to ‘dual hatting’ will treat people differently on the basis of their political activity of having engaged in a political campaign. This may also have the effect of inhibiting people who would otherwise take part in public life and exercise their freedom of expression by taking part in a political campaign. The amendment may also 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.

As to property, cases overseas suggest that the right to property may protect the goodwill a person builds up over time in their profession. Requiring a lobbyist to be deregistered in certain circumstances may deprive them of that goodwill. Similarly, the right to privacy 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.

Some of those rights have internal limitations. For example, the right to property will only be limited if the deprivation of property is arbitrary, and the right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. 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 section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, lawfulness and arbitrariness will be considered below when considering proportionality.

(a) the nature of the right

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Similarly, the right to take part in public life is key to building and sustaining a robust democracy. Freedom of association is also closely connected with civil society as one of the preconditions for democracy. The other human right value at stake is the dignity and autonomy of one's profession, underlying the rights to property and privacy.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

There is an existing requirement for lobbyists to be registered, to ensure transparency. 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. In *Australian Institute for Progress Ltd v Electoral Commission of Queensland* (2020) 4 QR 31; [2020] QSC 54, the Supreme Court accepted that preventing undue influence is a legitimate aim for the purposes of the *Human Rights Act 2019*.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Requiring lobbyists to be registered and preventing dual hatting will help to achieve those purposes of ensuring transparency and preventing undue influence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The following alternatives were considered:

- requiring disclosure of 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.

However, these alternatives would not be as effective in ensuring that lobbyists do not have undue influence over government decision-making.

Disclosure is already an aspect of requiring lobbyists to be registered. While disclosure is no doubt important, it is not as effective to reduce the potential for undue influence or the

perception of undue influence compared to preventing dual hatting altogether: *McCloy v New South Wales* (2015) 257 CLR 178, 211 [61]. Simply disclosing that that a lobbyist undertook a substantial role during the election campaign would not achieve the intent of limiting actual or perceived undue influence as the impression of a reciprocal relationship would still exist, although transparently.

A shorter period of disqualification would mean that the person could return to lobbying within the term of government which they may have assisted to win office. The actual or perceived potential for influence does not dissipate at a certain time after the term of office commences but would be present throughout the entirety of the term.

Finally, the dual hatting disqualification is already narrowly confined to people who performed a substantial role for a political party during an election period. There are important exceptions to ensure people can continue to exercise their democratic rights, such as by being a member of a political party or handing out how to vote cards.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Requiring lobbyists to be registered and preventing dual hatting may, in some circumstances, impose deep limits on the human rights of some people to exercise their political rights as members of our community. However, that impact on human rights is outweighed by the need to ensure transparency and to prevent the actual or perceived potential for undue influence. Doing so ultimately enhances our democratic system.

(f) any other relevant factors

The prohibition will apply to any registered lobbyist seeking to undertake a significant role for any political party. Likewise, the ongoing disqualification for the next term of government also applies regardless of which political party subsequently forms government to avoid any preferential treatment related to political affiliation.

The interference with property and privacy is proportionate, and therefore not arbitrary. Accordingly, the rights to property and privacy are not limited. 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.

#### Application for registration as lobbyist

New section 50 will allow for applications for registration as a lobbyist to be made in an approved form. The form may provide for a written report about the criminal history of the applicant. This engages the right to privacy under section 25 of the *Human Rights Act 2019*. Convictions, which take place in public, become part of a person's private life as they recede into the past. Ordinarily, a conviction recedes into the past at the point that it becomes spent under the spent convictions regime: *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35; [2015] AC 49, 65-6 [18].

New section 50(4) defines criminal history as excluding spent convictions under the *Criminal Law (Rehabilitation of Offenders) Act 1986*. Further, only particular offences are required to

be enclosed in the criminal history report, namely 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.

This likely means 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. Even if the convictions are private matters, any interference with privacy would not be arbitrary. By only requiring the disclosure of convictions for particular kinds of offences that are not spent, new section 50 of the *Integrity Act 2009* 'balanc[es] the risk of blighting the prospects of ex-offenders and the risk of appointing unsuitable people to sensitive positions': *MC v United Kingdom* (2022) 74 EHRR 24, 861 [54].

Accordingly, these provisions relating to criminal histories engage, but do not limit, the right to privacy in section 25(a) of the *Human Rights Act 2019*.

#### Ban on lobbying by former representatives for two years

New sections 59-62 continue the existing ban on lobbying activity by former representatives relating to official dealings for two years after the person becomes a former representative.

Prohibiting former representatives from undertaking certain lobbying activities will prevent those persons from exercising their freedom of expression (s 21) and taking part in public life (s 23). The amendments will treat people differently on the basis of their political activity, having held a political role (s 15). The right to privacy may also extend to protect a person's ability to practise a profession as part of their private life (s 25). The amendments will prevent some people from practising as a lobbyist as an aspect of their private life.

The purpose of the ban is 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. The prohibition is appropriately tailored: the ban only applies for a prescribed period, to certain office holders, and is limited to lobbying activity related to former official dealings. Any impact on the human rights of those former representatives is outweighed by the need to ensure transparency and to prevent the actual or perceived potential for undue influence. Accordingly, any limit on human rights is proportionate and justified.

#### Obligations of representatives

New sections 63 and 64 continue the prohibition on a representative knowingly permitting an entity to carry out a lobbying activity with the representative in contravention of section 46 (the ban on lobbying activities by unregistered entities) and section 62 (the 2 year ban on certain lobbying activities by former representatives).

This amendment does not impose any limit on human rights. In any event, even if these provisions did limit a human right (for example by imposing a minor limit on freedom of expression), that limit would be justified as a means of making more effective, the prohibitions in section 46 and section 62.



### Information disclosure

New sections 65-66B impose mandatory requirements on lobbyists, certain individuals, and representatives to provide information to the integrity commissioner. Under sections 66D, if the integrity commissioner suspects that a registered lobbyist may be disqualified from being a registered lobbyist, or may have failed to comply with a condition of registration, a code of conduct or directive, or certain provisions of the Act, the integrity commissioner may require a person to give information to the commissioner relating to the suspicion. The person must comply unless the person has a reasonable excuse. ‘Reasonable excuse’ is not defined. Under section 66E, the commissioner can require the information be given by statutory declaration. The amendments engage the following from the *Human Rights Act 2019*:

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

By requiring a person to provide information, the amendments could limit a person’s freedom of expression (s 21(2)), which may include a right not to impart information (*Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080), and a person’s right not to have their privacy unlawfully or arbitrarily interfered with (s 25(a)).

Although the ‘minimum guarantees’ in section 32 of the *Human Rights Act 2019* are for persons ‘charged with a criminal offence’, in *Re Application under Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415, Warren CJ held that the equivalent Victorian right extends to protect uncharged suspects (although the protection may not crystallise until the point in time that the person is actually charged) (at 452 [161]-[163], 453 [167] (Warren CJ)). The issue was not decided in *SQH v Scott* (2022) 10 QR 215.

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.

#### (a) the nature of the right

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. The purpose of the right not to have one’s privacy arbitrarily interfered with is to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere: *Director of Housing v Sudi* (2010) 33 VAR 139, 145 [29]. It also protects privacy in the narrower sense including personal information, data collection and correspondence.

The privilege against self-incrimination defines the relationship between the individual and the state and protects people against aggressive behaviour of those in authority. It reflects the philosophy that the state must prove its case without recourse to the suspect: *Re Application under Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415, 448 [146].

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the information disclosure requirements is to enable the integrity commissioner to effectively audit lobbyist records and monitor compliance with the Act.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

At present, the integrity commissioner has no powers to determine if an entity may be in breach of the *Integrity Act 2009*. The information disclosure requirements will give the integrity commissioner some capacity to consider whether an entity has fulfilled, or otherwise the requirements of registration and the *Integrity Act 2009*.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The measures being included in the Bill are the least restrictive that could be applied. The integrity commissioner will have no further power to compel information and it is not an offence to refuse to provide information, although such refusal may be something the integrity commissioner can consider when determining registration status.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Entities will be entitled to refuse to give information on ‘reasonable grounds’. It is intended that ‘reasonable grounds’ includes that the information may incriminate the person. There is no intention that an entity should be required to provide information to the Information Commissioner that may incriminate the entity. The Explanatory Notes also explains this intent. The overarching purpose of the *Integrity Act 2009* is to regulate the action of lobbying ‘so that lobbying is conducted in accordance with the public expectations of transparency and integrity.’

The Bill does not alter this purpose. 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.

- (f) any other relevant factors

Nil.

#### Compliance measures

New section 66F empowers the integrity commissioner to give a compliance notice to a registered lobbyist where the integrity commissioner suspects a registered lobbyist may have failed to comply with: a condition of the lobbyist’s registration, the code of conduct or a directive, the restrictions on particular lobbying activity in part 5, or the obligations imposed

on registered lobbyists under sections 65, 66, 66A and 66D of the *Integrity Act 2009*. The compliance notice may require the lobbyist to rectify the matter by doing an act or refraining from doing an act. This amendment aims to overcome the inefficiencies in Queensland's lobbying regulation identified in the Yearbury Report by authorising 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.

New section 66G sets out the matters that must be included in a compliance notice. This includes: the compliance issue identified by the integrity commissioner, the steps required to be taken to rectify the issue, the timeframe to take the steps, and that failure to comply may lead to the integrity commissioner taking an action under part 9 (ss 66H-66K). If the compliance notice requires the registered lobbyist to refrain from doing an act, it must also state the period for which the requirement applies or that the requirement applies until further notice.

New part 9 (ss 66H – 66K) outlines the sanctions which may be imposed by the integrity commissioner for non-compliance. Section 66H empowers the integrity commissioner to impose a condition on, or vary or remove a condition of, a lobbyist's registration, suspend the registration for a stated period of not more than 12 months, or cancel the registration. New section 66I requires the integrity commissioner to give a show cause notice to the entity before taking an action under section 66H. The show cause notice must include the matters specified in section 66I(2), including a statement that the entity may, within a specified timeframe, give the integrity commissioner a written response to the proposed action. New section 66J provides that the integrity commissioner may decide to take, or not to take, further action after considering any written response received under section 66I(2)(e). New section 66K empowers the integrity commissioner to extend the suspension of a registration of a lobbyist, provided the total period of suspension is not more than 12 months.

These amendments engage the following human rights within the *Human Rights Act 2019*:

- the right to freedom of expression in section 21(2)
- the right to freedom of association in section 22(2)
- the right to participate in the conduct of public affairs in section 23(1)
- the right not to be arbitrarily deprived of property in section 24(2)
- the right not to have one's privacy unlawfully or arbitrarily interfered with in section 25(a).

Empowering the integrity commissioner to issue a compliance notice to a registered lobbyist which may require the lobbyist to rectify non-compliance by doing, or refraining from doing an act, 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. Where a non-compliance notice directs remedial action which may interfere with a lobbyist's work, this may also restrict a registered lobbyist's ability to associate with a political party. Similarly, the imposition of a condition, suspension or cancellation of a lobbyist's registration will limit these rights by restricting or preventing a person from practising as a lobbyist.

Requiring a lobbyist to take action in accordance with a non-compliance notice may deprive them of goodwill from their clientele base, which is an aspect of the right to property. This will also occur if a person's registration is made conditional, suspended or cancelled.

The right to privacy is also engaged as the amendments will prevent some people from practising as a lobbyist as an aspect of their private life. The right to privacy will also be engaged by the ability for an entity to show cause under section 66I(2)(e) and by empowering the integrity commissioner to take an action under section 66H(2) where the integrity commissioner believes the entity does not have a reasonable excuse for failing to comply with a compliance notice. These provisions encourage an entity to give information to the information commissioner. This may impact on the person's right to privacy. The right not to be compelled to testify against oneself or to confess guilt in section 32(2)(k) of the *Human Rights Act 2019* is not engaged, as the amendments do not require or compel the entity to show cause in response to a notice given under section 66I.

(a) the nature of the right

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Similarly, the right to take part in public life is key to building and sustaining a robust democracy. Freedom of association is also closely connected with civil society as one of the preconditions for democracy. The other human rights value at stake is the dignity and autonomy of one's profession, underlying the rights to property and privacy.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of 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, is to improve the efficiency of the regulatory regime so as to better address integrity issues as they arise. 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, in accordance with the recommendations of the Yearbury Report (p 51).

The purpose of maintaining the show cause regime and sanctions in part 9, is to ensure more serious issues of non-compliance in lobbying activity are addressed so as to promote transparency. The nature of the purpose of these amendments is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Empowering the integrity commissioner to direct that action be taken to remedy a matter of non-compliance will help to improve the efficiency of the regulatory regime and promote transparency.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No alternative ways were considered as the amendments seek to ease the burden on registrants and improve natural justice and the rights of registrants.

The amendments are appropriately tailored to reduce the severity and inflexibility of the prior scheme, by ensuring minor issues of non-compliance can be addressed and remedied, without requiring a formal sanction to be imposed. For more severe issues of non-compliance, section 66I and section 66J contain appropriate safeguards with respect to the exercise of the commissioner's power to impose a sanction, by providing that the commissioner may decide to impose a less severe sanction after considering any written response received from the entity during the show-cause process.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As the integrity commissioner already has powers to suspend or cancel a lobbyist's registration under the *Integrity Act 2009*, extending those powers to remedy more minor issues of non-compliance, and to clarify the circumstances where more severe sanctions can be imposed, will place only an incremental burden on human rights. While the imposition of sanctions relating to a lobbyist's registration may, in certain circumstances, have a significant interference with an individual's freedom of expression and political rights to participate in public life, these impacts are outweighed by the legitimate purpose of ensuring transparency and promoting public confidence in the integrity of the political system. This ultimately enhances our democratic system.

The limits imposed on the right to privacy by the operation of the show cause regime, are also incremental and are equally outweighed by the need to promote transparency in the political process. As an entity is not required or compelled to disclose any information to the information commissioner, this safeguard ensures that the right to privacy is promoted insofar as is possible, consistently with the purpose of the statutory scheme.

(f) any other relevant factors

The interference with property and privacy is proportionate, and therefore not arbitrary. Accordingly, the rights to property and privacy are not limited. The rights to 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.

#### Lobbying register

New sections 66L-66N require the integrity commissioner to keep a lobbying register, which is to be kept in a way the integrity commissioner considers appropriate and published on the integrity commissioner's website. As these 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. The integrity commissioner was required to keep a register of registered lobbyists under the former *Integrity Act 2009*, hence, any burden on this right will be incremental. The burden on the right to privacy can be readily outweighed by the importance of the purpose of the amendments to better promote transparency in lobbying activities. As the interference with privacy is proportionate, it is not arbitrary. Hence, the amendments do not limit the right to privacy in section 25(a) of the *Human Rights Act 2019*.

### Other offences

New section 66O provides that a person who is not a registered lobbyist must not conduct a business constituting or including a lobbying activity for another person or purport to be a registered lobbyist. The provision imposes a maximum penalty of 200 penalty units. This offence will limit the right to freedom of expression in section 21 of the *Human Rights Act 2019*, and the right to take part in public life in section 23 of the *Human Rights Act 2019*.

The *Integrity Act 2009* previously made it an offence for an unregistered lobbyist to carry on a business of providing services constituting, or including lobbying activities for a third party client, or to purport to be a registered lobbyist. The offence is intended to encourage “ethical” lobbying and recognises the fact that lobbying can and does have a significant impact on the business of government. The burden on freedom of expression and the right to take part in public life can be readily justified by the aim of the offence provision, which is targeted to promoting transparency and integrity.

New section 66P prohibits a person from giving, or agreeing to give, to another person (a lobbyist), a success fee in relation to lobbying activity carried out by or for the lobbyist. It also imposes a maximum penalty of 200 penalty units. This offence will also engage the right to freedom of expression, the right to take part in public life, and the right to property in section 24 of the *Human Rights Act 2019*, insofar as it may remove a person’s entitlement to compensation or reward for engaging in a lobbying activity. However, the interference with these rights is readily outweighed by the importance of the purpose of the provision, which is to ensure that lobbying is conducted ethically and not with the promise of reward for success.

### Changes to appointment procedure, remuneration and conditions of integrity commissioner

Clauses 37, 38 and 42 amends the *Integrity Act 2009* to:

- require approval of the parliamentary committee for appointing a person as the integrity commissioner, rather than requiring only consultation with the parliamentary committee
- amend the terms of appointment of the integrity commissioner, including a new requirement that the parliamentary committee approve the remuneration, allowances, and terms and conditions of office
- require approval of the parliamentary committee for the appointment of a reviewer for a strategic review.

As noted above, by changing the basis on which a person is selected to be appointed, the amendments engage the right of equal access to join the public service and to be appointed to public office as a public official in section 23(2)(b) of the *Human Rights Act 2009*. The value underlying that right is appointment on merit and preventing privileged groups from monopolising the public service: *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324]. The amendments promote – rather than limit – this right by providing for more independence from the executive government and greater oversight by the parliamentary committee when it comes to appointment decisions. Greater parliamentary committee oversight serves to ensure public confidence in the independence of appointments of integrity bodies (see Coaldrake Report, page 69).

There will be no impact on the right of access to the public service and public office of people with existing appointments. That is because clause 45 of the Bill will insert a new transitional provision in section 105, which will provide that the amendments will not affect existing appointments.

### Funding proposals

Clause 41 inserts new parts 4 and 5 to chapter 5 of the *Integrity Act 2009* in relation to funding proposals. Under a new section 85G, the integrity commissioner will be required to prepare a funding proposal for additional funding. New section 85J includes a safeguard to protect the right to privacy. It provides that the integrity commissioner is not required to disclose confidential or privileged information in a funding proposal. This safeguard promotes the right to privacy and reputation in section 25 of the *Human Rights Act 2019* and potentially the right to property in section 24 of the *Human Rights Act 2019* (in relation to commercial in confidence information).

### Tabling requirements

New sections 85(4), 85H, 85L and 88(6) impose requirements to table certain documents. As noted above, a tabling requirement will mean the document is protected by parliamentary privilege which might impact on the right of access to the courts. However, parliamentary privilege has been found to be compatible with that right in cases overseas.

### **Amendments to *Ombudsman Act 2001***

Part 5 of the Bill amends the *Ombudsman Act 2001*.

### Extension of Queensland Ombudsman's functions

Clause 49 inserts new section 12A into the *Ombudsman Act 2001*. Section 12A extends the jurisdiction of the ombudsman to oversee non-government entities performing functions or providing services on behalf of a government agency.

Under the new section, the ombudsman is empowered to investigate administrative action taken by the entity on reference from the Legislative Assembly or a statutory committee of the Assembly, on complaint, or on the ombudsman's own initiative. The ombudsman is also authorised to consider administrative practices and procedures of the entity and make recommendations to the entity. Further, the ombudsman may provide advice, training, information or other help to the entity about ways of improving the quality of the entity's administrative practices and procedures.

Section 12A(4) makes it clear that the functions of the ombudsman apply only in relation to the non-government entity's decision-making practices and procedures that relate to taking administrative action for, or in the performance of functions conferred on, the agency. By extending the scope of the ombudsman's functions to such entities, parts 3 to 6 of the *Ombudsman Act 2001* (which provide for the investigation of administrative actions, the powers and procedures for investigations, and the making of reports and recommendations) will have wider application.

Relevantly, parts 3 to 6 of the Act provide the ombudsman with powers to:

- require a person to give the ombudsman documents or information (s 28)
- require a person to attend before the ombudsman and to give documents or information (s 29)
- enter a place occupied by the entity (s 34)
- apply to a magistrate for a warrant for the arrest of a person if the person fails to comply with an investigation requirement and certain other circumstances apply (s 36).

A person must comply with an investigation requirement unless the person has a reasonable excuse (s 30). It is not a reasonable excuse that complying with the investigation requirement might tend to incriminate the person (s 30(4)). However, a person otherwise has the equivalent privileges that a person has as a witness in court for the giving of information and the production of documents or other things (s 45(3)), and section 48 provides the person with direct and derivative use immunity with respect to any information obtained under the investigation requirement. An agency is not entitled to any privilege that would apply to the production of documents, or the giving of evidence, relevant to the investigation, in a legal proceeding (s 45(2)).

The amendment engages the following human rights within the *Human Rights Act 2019*:

- the right to freedom of movement in section 19
- the right to freedom of expression in section 21(2)
- the right not to be arbitrarily deprived of property in section 24(2)
- the right not to have one's privacy unlawfully or arbitrarily interfered with in section 25(a)
- the right not to have one's reputation unlawfully attacked in section 25(b)
- the right not to be compelled to testify against oneself or to confess guilt in section 32(2)(k).

The amendment will extend the circumstances in which a person can be required to physically attend before the ombudsman to give evidence. This may limit a person's freedom of movement. The amendment will also extend the circumstances in which a person can be required to give information to the ombudsman. This may impact a person's right to privacy. Freedom of expression may also include the right not to impart information. As to property, the amendments will extend the circumstances in which the ombudsman can require a person to give documents or other stated things to the ombudsman. However, because the right protects against arbitrary deprivations, the right is unlikely to be limited.

By providing for the publication of reports with respect to certain investigations into administrative actions (ss 52-57B), a person's reputation may be subject to attack. However, section 55 of the *Ombudsman Act 2001* requires the ombudsman to give a person an opportunity to make submissions about any proposed adverse comment prior to publication, and state their defence in the report if the ombudsman still proposes to make the comment. Further, the publication of reports is lawful under the *Ombudsman Act 2001*, and thus the right is unlikely to be limited.

The exclusion of self-incrimination as a reasonable excuse for failing to comply with an investigation requirement in section 30 may affect a person's right not to be compelled to testify



against oneself or confess guilt. However, the direct and derivative use immunity provided by section 48 alleviates any impact.

(g) the nature of the right

Freedom of movement (s 19) – The purpose of the right to freedom of movement in section 19 is to protect the individual’s right to liberty of movement within Queensland and their right to live where they wish. It is directed to restrictions on movements which fall short of physical detention: *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 124 [588].

The right to freedom of expression (s 21(2)) – The freedom to impart information under section 21(2) may include a freedom not to impart information: *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

The right to privacy (s 25(a)) – The purpose of the right not to have one’s privacy arbitrarily interfered with is to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere: *Director of Housing v Sudi* (2010) 33 VAR 139, 145 [29]. It also protects privacy in the narrower sense including personal information, data collection and correspondence.

The right not to be compelled to testify against oneself or to confess guilt (s 32(2)(k)) – The privilege against self-incrimination defines the relationship between the individual and the state and protect people against aggressive behaviour of those in authority. It reflects the philosophy that the state must prove its case without recourse to the suspect: *Re Application under Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415, 448 [146].

(h) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of extending the ombudsman’s functions to oversee non-government entities performing functions or providing services on behalf of a government agency is to ensure appropriate oversight of entities delivering public services, and to enable the administrative actions and decisions of these entities to be independently investigated should a complaint be made. It provides the public with oversight of agency actions when those functions are contracted out, consistent with the recommendation of the Coaldrake Report (page 26).

(i) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Extending the ombudsman’s functions to include oversight of non-government entities that perform functions for agencies will ensure appropriate oversight of entities delivering public services, and enable the administrative actions and decisions of these entities to be independently investigated should a complaint be made.

(j) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to ensure appropriate oversight of non-government entities delivering public services, and the independent investigation of such administrative actions and decisions.

The scope of the ombudsman's functions and powers with respect to non-government entities is appropriately tailored by section 12A(4), which provides that the *Ombudsman Act 2001* is to apply only in relation to the entity's decision-making practices and procedures that relate to taking administrative action for, or in the performance of functions conferred on, the agency. That is, it does not apply to the actions of non-government entities more broadly. The *Ombudsman Act 2001* also contains appropriate safeguards with respect to the exercise of powers by the ombudsman.

(k) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Taking into account that the ombudsman already exercises its functions and powers with respect to government agencies, extending those functions to also oversee certain non-government agencies imposes an incremental burden on human rights. 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.

(l) any other relevant factors

Not applicable.

#### Changes to appointment procedure, remuneration and conditions of Ombudsman

Clauses 50, 51 and 52 amends the *Ombudsman Act 2001* to:

- require approval of the parliamentary committee for appointing a person as the ombudsman, rather than requiring only consultation with the parliamentary committee
- amend the terms of appointment of the ombudsman, including a new requirement that the parliamentary committee approve the remuneration, allowances, and terms and conditions of office
- require approval of the parliamentary committee for the appointment of a reviewer for a strategic review.

By changing the basis on which a person is selected to be appointed, the amendments engage the right of equal access to join the public service and to be appointed to public office as a public official in section 23(2)(b) of the *Human Rights Act 2019*. The value underlying that right is appointment on merit and preventing privileged groups from monopolising the public service: *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324]. The amendments promote – rather than limit – this right by providing for more independence from the executive government and greater oversight by the parliamentary committee when it comes to appointment decisions. Greater parliamentary committee oversight serves to ensure public confidence in the independence of appointments of integrity bodies (see Coaldrake Report, page 69).

There will be no impact on the right of access to the public service and public office of people with existing appointments. That is because clause 58 of the Bill will insert a new transitional provision in section 116, which will provide that the amendments will not affect existing appointments.

### Funding proposals

Clause 54 inserts a new part 8, division 4A into the *Ombudsman Act 2001* in relation to funding proposals. Under a new section 85C, the ombudsman will be required to prepare a funding proposal for additional funding. New section 85F includes a safeguard to protect the right to privacy. It provides that the ombudsman is not required to disclose confidential or privileged information in a funding proposal. This safeguard promotes the right to privacy and reputation in section 25 of the *Human Rights Act 2019* and potentially the right to property in section 24 of the *Human Rights Act 2019* (in relation to commercial in confidence information).

### Amendments to *Parliament of Queensland Act 2001*

Part 6 of the Bill amends the *Parliament of Queensland Act 2001*.

Clause 61 amends section 92(3)(b) regarding the role of parliamentary committees and provides for the ability of committees to consider funding proposals and to report and make recommendations about such proposals (ahead of government consideration), and to provide this report to the Minister, rather than the Legislative Assembly.

This amendment does not impose any additional burden on human rights.

### Amendments to *Right to Information Act 2009*

Part 7 of the Bill amends the *Right to Information Act 2009*.

Clauses 64, 65 and 68 amend the *Right to Information Act 2009* to:

- require approval of the parliamentary committee for appointing a person as the information commissioner, rather than requiring only consultation with the parliamentary committee
- provide the parliamentary committee power to approve the remuneration, allowances, and terms and conditions of office for the information commissioner
- require approval of the parliamentary committee for the appointment of a reviewer for a strategic review.

By changing the basis on which a person is selected to be appointed, the amendments engage the right of equal access to join the public service and to be appointed to public office as a public official in section 23(2)(b) of the *Human Rights Act 2019*. The value underlying that right is appointment on merit and preventing privileged groups from monopolising the public service: *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324]. The amendments promote – rather than limit – this right by providing for more independence from the executive government and greater oversight by the parliamentary committee when it comes to appointment decisions. Greater parliamentary committee oversight serves to ensure public confidence in the independence of appointments of integrity bodies (see Coaldrake Report, page 69).

There will be no impact on the right of access to the public service and public office of people with existing appointments. That is because clause 71 of the Bill will insert a new transitional provision in section 206F, which will provide that the amendments will not affect the existing appointment of the information commissioner or a reviewer.

Clause 66 inserts a new chapter 4, part 7 into the *Right to Information Act 2009* in relation to funding proposals. Under a new section 168C, the information commissioner will be required to prepare a funding proposal for additional funding. New section 168F includes a safeguard to protect the right to privacy. It provides that the information commissioner is not required to disclose confidential or privileged information in a funding proposal. This safeguard promotes the right to privacy and reputation in section 25 of the *Human Rights Act 2019* and potentially the right to property in section 24 of the *Human Rights Act 2019* (in relation to commercial in confidence information).

### **Other amendments**

Part 8 and the schedule of the Bill provide for various other amendments.

These amendments do not impose any limit on human rights.

## **Conclusion**

In my opinion, the Integrity and Other Legislation Amendment Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**THE HON ANNASTACIA PALASZCZUK**  
PREMIER AND MINISTER FOR THE OLYMPIC AND PARALYMPIC GAMES

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