

# **Integrity and Other Legislation Amendment Bill 2022**

## **Statement of Compatibility**

### **FOR**

### **Amendments to be moved during consideration in detail by the Honourable Grace Grace MP Minister for Education, Minister for Industrial Relations and Minister for Racing**

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

In accordance with section 38 of the *Human Rights Act 2019* (the HR Act), I, the Honourable Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, make this statement of compatibility with respect to the amendments moved during consideration in detail (ACiDs) of the Integrity and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the ACiDs are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

#### **Overview of the Bill**

On 28 June 2022, Professor Peter Coaldrake AO delivered *Let the Sunshine In: Review of culture and accountability in the Queensland public sector* to the Government.

The report makes 14 direct recommendations and recommends implementation of a suite of other recommendations from former reviews and inquiries, all with the purpose of strengthening the integrity and oversight framework in Queensland.

The objectives of the Bill are to effect amendments to the *Auditor-General Act 2009*, the *Integrity Act 2009*, the proposed *Public Sector Act 2022* and the *Ombudsman Act 2001* to better promote the independence and authority of the Queensland Auditor-General, the Queensland Ombudsman and the Queensland Integrity Commissioner.

Clause 15 of the Bill implements one of the recommendations from a former inquiry and review by amending section 35 of the *Auditor-General Act 2009* to give the Auditor-General discretion

to conduct audits of matters relating to the financial administration of public sector entities if requested by Parliament.

However, in the report on the Bill, the Chair of the Economics and Governance Committee in his foreword commented that the “bill would define the Auditor-General as an Officer of the Parliament, yet at the same time provides the Auditor-General with the capacity to ignore an audit request by the Queensland Parliament. This seems at odds with the primary democratic sovereignty and role of the Parliament and should be further considered.”

A policy objective of the ACiDs is to remove clause 15 from the Bill in response to the Chair’s concerns.

Amendments to the *Magistrates Act 1991* (Magistrates Act) which are unrelated to the Bill are also proposed to be progressed as ACiDs of the Bill. The objective of these amendments is to retrospectively validate the appointments of, and any relevant exercise of jurisdiction by, particular acting magistrates who, during the period between 27 June 2019 and 1 July 2022, were purportedly appointed to act as magistrates but were ineligible to be appointed because they were 70 years or more at the time of their appointments (invalidly appointed acting magistrates).

## Human Rights Issues

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

In my opinion, there are no human rights relevant to the removal of clause 15 of the Bill.

The human rights relevant to the ACiDs for the Magistrates Act are:

- right to a fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13, HR Act)**

#### ***Right to a fair hearing (section 31 of the HR Act)***

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

Section 31(1) of the HR Act affirms the right of all individuals to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing.

The amendments to the Magistrates Act limit this right by retrospectively validating the appointments of, and any relevant exercise of jurisdiction by, the invalidly appointed acting magistrates. While those acting magistrates were not eligible for appointment because of their age, they were otherwise eligible for appointment, being solicitors of five years standing. The amendments do not limit a person’s right to challenge their exercise of jurisdiction on any other grounds.

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

The purpose of the limitation is to provide certainty to individuals and the justice system as a whole by ensuring the validity of any decisions made by the invalidly appointed acting magistrates.

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

The limitation achieves the purpose by retrospectively validating the appointments of, and any relevant exercise of jurisdiction by, the invalidly appointed acting magistrates.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments.

- (e) the balance between the importance of the purpose of the amendments, 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

On balance, taking into account the nature and extent of the limitation and having regard to the information and analysis detailed above, I consider the importance of providing certainty to individuals and the justice system as a whole outweighs any limitation on the right to a fair hearing imposed by the amendments to the Magistrates Act.

***Rights in criminal proceedings (section 32 of the HR Act)***

- (a) the nature of the right

Section 32(4) of the HR Act provides that a person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with law.

The amendments to the Magistrates Act narrowly limit this right by removing the ability of a person to challenge a criminal conviction or sentence on the grounds that the acting magistrate who imposed the conviction or sentence was not validly appointed at the time, because of their age. The amendments do not limit the person's right to challenge the conviction or sentence on any other grounds.

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

The purpose of the limitation is to provide certainty to individuals and the justice system as a whole by ensuring the validity of any decisions made by those invalidly appointed acting magistrates who were ineligible for appointment because of their age at the time.

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

The limitation achieves the purpose by retrospectively validating the appointments of, and any relevant exercise of jurisdiction by, those invalidly appointed acting magistrates.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments.

- (e) the balance between the importance of the purpose of the amendments, 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

On balance, taking into account the nature and extent of the limitation and having regard to the information and analysis detailed above, I consider the importance of providing certainty to individuals and the justice system as a whole outweighs any narrow limitation imposed by the amendments on the review rights of a person convicted or sentenced.

## **Conclusion**

In my opinion, the ACiDs of the Bill are compatible with the human rights protected by the HR Act because they limit human rights only to the extent that it is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**THE HON GRACE GRACE**  
MINISTER FOR EDUCATION, MINISTER FOR INDUSTRIAL RELATIONS AND  
MINISTER FOR RACING