

Integrity and Other Legislation Amendment Bill 2023

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

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 Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to amendments to be moved during consideration in detail of the *Integrity and Other Legislation Amendment Bill 2023* (the Bill).

In my opinion, the amendments are 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 in November 2022, implemented some of the Yearbury Report and Coaldrake Report recommendations.

The *Integrity and Other Legislation Amendment Bill 2023* (the Bill) will address other recommendations from the Coaldrake and Yearbury Reports, to strengthening the integrity and oversight framework. 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*.

During the inquiry on the Bill, stakeholders raised a small number of operational issues. Subsequently, the Queensland Integrity Commissioner and other key stakeholders raised concerns regarding the operation of the proposed dual hatting provisions related to lobbying. The Department of the Premier and Cabinet recommends amendments be moved during consideration in detail to address these issues. The proposed amendments do not alter the policy intent of the Bill and relate to the:

- tabling of independent audit reports of the Queensland Audit Office;
- Long Title of the *Integrity Act 2009*;
- definition and use of ‘third party client’ in lobbying regulation;
- authority of the Premier to nominate a person to be a designated person for a 28-day period, to allow for urgent integrity advice to be sought;
- updating of the definition of ‘government entity’ in Schedule 2 of the *Integrity Act 2009* to ensure consistency with the *Public Sector Act 2022*;
- removal of four remaining references to ‘senior officer’ in the *Integrity Act 2009*, to ensure consistency with the other amendments to be made by the Bill;
- correction of a legacy reference to the *Energy Ombudsman Act 2006*;
- clarification of integrity commissioner advice requests by chiefs of staff and for ministerial advisors (related to post-separation obligations);
- prohibition of a registered lobbyist from performing a substantial role in the election campaign of a political party at any time during a term of government;
- disqualification of a registered lobbyist from being able to register for the remainder of a term and for the following term if the party for which they played a substantial role in the election campaign wins and forms government; and
- extension of time for parliamentary committees to consider key appointments.

An additional amendment to be moved during consideration in detail of the Bill amends the *Evidence Act 1977* (Evidence Act) to ensure the sexual assault counselling privilege (SACP) framework operates as intended. The framework seeks to ensure that victims or alleged victims of sexual assault are not deterred from seeking therapy through fear of having their confidential counselling communications disclosed during legal proceedings.

The SACP framework limits the disclosure and use of protected counselling communication during criminal proceedings (committal, bail, trial and sentencing proceedings), proceedings relating to a domestic violence order under the *Domestic and Family Violence Protection Act 2012* (DFVPA proceedings), and civil proceedings arising from the same act or omission as a criminal proceeding or DFVPA proceeding.

SACP is absolute in a committal and bail proceedings and is qualified in criminal trials, sentencing hearings, and DFVP Act proceedings. In proceedings where the privilege is qualified, a party may apply to the court for leave to produce to a court, adduce evidence of, or otherwise use a protected counselling communication, or otherwise disclose, inspect, or copy protected counselling communication.

The SACP framework provides that the court may consider a document or evidence to decide whether it is a protected counselling communication, but does not expressly provide that the court may consider a document or evidence for the purpose of deciding whether to grant leave.

The amendments to be moved during consideration in detail of the Bill expressly provide that, for the purpose of deciding an application for leave, the court may order that protected counselling communication be produced to it and that the court may inspect the protected counselling communication. The amendments also clarify that if protected counselling communication is produced to the court in accordance with such an order, the court must not make the communication available, or disclose its contents, to the parties to the proceeding before deciding the application for leave.

Human Rights Issues

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

Amendment to *Auditor-General Act 2009*

Tabling of report from independent audit of Queensland Audit Office

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

Clause 18 of the Bill amends section 72 of the *Auditor-General Act 2009* to require the chair of the parliamentary committee to table the audit report in the Legislative Assembly within 3 sitting days after the committee receives the report.

The Financial and Performance Management Standard 2019 (FPMS) (under the *Financial Accountability Act 2009*) provides that financial statements should not be made public until the Annual Report for the relevant entity is tabled. The FPMS can be overridden by an Act.

To ensure the tabling requirement is not contrary to the FPMS, clause 18(3) which amends section 72 of the *Auditor-General Act 2009* is further amended to omit sub-section 72(4) (Conduct of independent audit) so that the (independent) audit report will be included in the annual report of the audit office, as required under current section 72(3).

The 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 the *Integrity Act 2009*

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

Amendment to the Long Title

The replacement Long Title does not include mention of the other functions of the Integrity Commissioner, including approval of a training course, issuing directives or approval of a code of conduct for registered lobbyists.

To provide clear and unambiguous authority for the Integrity Commissioner in relation to these functions, clause 28 of the Bill is amended to include in the Long Title, mention of a code of conduct, a training course, and directives. As the amendment only serves to re-iterate, as part of the Long Title, the functions of the Integrity Commissioner which already existed or that are enabled through the *Integrity and Other Legislation Amendment Bill 2023* (and previously addressed by the associated Statement of Compatibility), no human rights are engaged through this amendment.

Premier nomination of ‘designated person’ in urgent circumstances

Ministers and Assistant Ministers no longer have a general nomination power to nominate persons or classes of persons as ‘designated’. This power was replaced by a prescribing regulation (section 12(1)(e)) through amendments made to the *Integrity Act 2009* by the *Integrity and Other Legislation Amendment Act 2022*.

Clause 30 of the Bill which will amend section 12 of the *Integrity Act 2009* provides for time critical and urgent circumstances where the Premier can nominate a senior position-holder who is not an existing ‘designated person’ as a designated person, for a limited period. This person may then ask for the integrity commissioner’s advice on an ethics or integrity issue involving the person. The limited designation will lapse at 28 business days from the date of nomination.

Given the amendment enables the nominated designated person to seek the advice of the Integrity Commissioner under the *Integrity Act 2009*, it does not limit any human rights and rather, enables the ability to request advice, promoting freedom of expression in section 21 of the *Human Rights Act 2019*. This includes a right to seek and receive information of all kinds.

The 28-day time limitation on the nomination may place a fetter on the ability to request advice, as this 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 a person or a person within a class of persons nominated by the Premier, 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 the 28-day limitation is to allow urgent advice to be sought and provided and provides a timely avenue for advice to be sought by, for example, a critical appointee to a body needed during an emergency (for example, a natural disaster or terror attack). The limitation also serves to implement Recommendation 2 of the Yearbury Report in that it brings transparency to the nomination of a designated person and avoids the ‘unmonitored incremental creep’ in numbers of those who can access integrity commissioner advice beyond.

(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 28-day limitation 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 tailored to ensure it is the least restrictive way of seeking timely advice by the Premier-nominated designated person/s, in exceptional circumstances.

(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 a Premier-nominated designated person to seek and receive the Integrity Commissioner's advice on an ethics or integrity issue involving the person is minor and outweighed by the urgency and criticality of the advice request. The ability for a regulation to be made to subsequently prescribe the person or the person within a class of persons for a longer period through a section 12(g) *Integrity Act 2009* regulation is also available, if desirable.

Accordingly, although clause 30 limits freedom of expression, that limit is nonetheless reasonable and justified.

(f) any other relevant factors

Not applicable.

Integrity commissioner advice requests for ministerial advisors

Chief of Staff

In light of the amendment made to section 12 of the *Integrity Act 2009* by the *Integrity and Other Legislation Amendment Act 2022* referred to above, the current provisions do not provide for a Chief of Staff to request advice about a ministerial advisor (and for the relevant Minister/Assistant Minister to be notified that this has occurred).

Clause 33A of the Bill inserts new section 20CA to provide that a Chief of Staff may ask for the integrity commissioner's advice on an ethics or integrity issue involving a ministerial advisor who gives advice to the Minister or Assistant Minister (as relevant) and requires that the Chief of Staff must give notice of the request to the Minister or Assistant Minister in whose office the Chief of Staff is employed.

Given the amendment enables the Chief of Staff to seek the advice of the Queensland Integrity Commissioner under the *Integrity Act 2009*, it does not limit any human rights and rather, enables the ability to request advice, promoting freedom of expression in section 21 of the *Human Rights Act 2019*. This includes a right to seek and receive information of all kinds.

This amendment also 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 (at 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.

Ministerial advisors

There is a need to enable ministerial advisors to be able to seek post-employment advice prior to them actually being post-employed. Obtaining post-separation advice through the Minister while still employed might cause unintended consequences.

Clause 33B of the Bill amends section 20D(1) of the *Integrity Act 2009* to insert subsection (1A) which provides that a ministerial advisor who may become a former ministerial advisor may ask for the integrity commissioner's advice on an ethics or integrity issue involving the ministerial advisor that may arise from a post-separation obligation.

Given the amendment enables ministerial advisors to seek the advice of the Queensland Integrity Commissioner under the *Integrity Act 2009* on an ethics or integrity issue involving the person that arises from a post-separation obligation while employed as a ministerial advisor or within 2 years of being employed as a ministerial advisor, it does not limit any human rights and rather, enables the ability to request advice, promoting freedom of expression in section 21 of the *Human Rights Act 2019*. This includes a right to seek and receive information of all kinds. By extending the ability of the ministerial advisor to seek this advice whilst still employed (and not being required to notify the Minister of this), it promotes rather than limits the freedom of expression.

Dual hatting – Prohibition and disqualification of registered lobbyist

The Coaldrake Report recommended an 'explicit prohibition of lobbyists "dual hatting" as political campaigners' (Recommendation 3). The current provisions of the Bill may, in some respects, be considered too narrow to give full effect to Professor Coaldrake's recommendation and, in other respects, go further than Professor Coaldrake contemplated.

The concern that the provisions may be too narrow arises because the provisions do not currently capture a scenario in which an individual who is a registered lobbyist undertakes significant policy or strategic work for a political party in the months leading up to an election, and de-registers immediately before an election is called.

The concern about the breadth of the provisions as presently drafted relates to the fact that the disqualification period applies, regardless of whether the political party served by the individual forms government. Professor Coaldrake's recommendation is intended to prevent

individuals having actual or perceived influence within a government because the individuals have been instrumental in helping the political party win government.

To address these concerns, it is proposed to amend clause 36 of the Bill to provide for the disqualification of an individual from being a registered lobbyist, if the individual has performed a substantial role in a political party's election campaign at any time prior to a general election (this could be a first or second general election). The period of time related to disqualification is referred to by the amendments as the '*inter-election period*'.

If the political party the individual performed a substantial role for wins the election and remains in government, the individual is disqualified from registration for the period of the term of government. If the political party and individual performed a substantial role for does not win the election, the individual is able to re-register after the election has occurred.

Clause 36 of the Bill replaces chapter 4 of the *Integrity Act 2009*. The replacement chapter 4 prohibits unregistered persons from carrying out lobbying activities for a third party client (new section 46). It also provides that:

- A registered lobbyist (registrant) must not perform a substantial role in the election campaign of a political party (Clauses 36 and 46F, amended section 58 and new section 71AA);
- If an individual who is a registered lobbyist intends to perform a substantial role in the election campaign of a political party in the election, the individual must, immediately after forming the intention give the integrity commissioner a notice stating the intention (Clause 36 amended section 66A and new section 66B); and
- An individual who performs a substantial role in an election campaign for a political party is disqualified under new subsection (2) from being a registered lobbyist if:

(1) the individual –

(A) is a registered lobbyist during the period (the *inter-election period*) that starts on the day on which a general election is held (the *first general election*) and ends at the end of the day on which the next general election after the first general election is held (the *second general election*); and during the inter-election period, the individual is required to give a notice under section 66A;

OR

(B) was a registered lobbyist at any time during the *inter-election period*;

AND

(2) the election campaign in which the individual (in either (A) or (B) above) played a substantial role is for the subsequent general election (i.e. the 'second general election').

The period of the disqualification will differ for an individual depending on whether or not the political party for which the individual performed a substantial role 'wins'. The purpose achieved by the amendment is to prevent individuals having actual or perceived influence within a government because the individual/s have been instrumental in helping the political party win government (and can have continued influence during the relevant term the political party is in power).

If the registered lobbyist gives the integrity commissioner a notice under section 66A that they intend 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 (section 66N(3)).

If the individual performs a substantial role in the election campaign, relating to the second general election, of the political party that wins the second general election, the individual is disqualified for the period that – (a) starts when the individual starts performing the substantial role in the election campaign; and (b) ends at the end of the day on which the next general election after the second general election is held.

The effect of this provision is to disqualify a person from being a registered lobbyist if they perform a substantial role in an election campaign for a political party for a second general election and that political party then wins the second general election, the individual is disqualified from when they started performing the substantial role and ends on the end of the day the next general election is held. That is, the individual is disqualified for the period the political party is in power after winning the second general election.

If an individual performs a substantial role in the election campaign of a political party for the second general election, and that political party does not win the second general election, the individual is disqualified for the period that (a) starts when the individual starts performing the substantial role in the election campaign; and (b) ends at the end of the day on which the second general election is held.

The effect of this provision is to disqualify a person from being a registered lobbyist if they perform a substantial role in an election campaign for a political party for a second general election and that party does not win the second general election, the individual is only disqualified from when they started performing the substantial role and ends on the end of the day the second general election is held. That is, because the political party the individual played a substantial role for did not win, their influence has been limited from the time they started playing the substantial role until the end of the day of the second general election (the political party did not win). The individual can then seek to re-register as a lobbyist.

The term 'general election' as defined in the *Electoral Act 1992*, schedule 1 is relied upon in the Chapter and 'election' and 'substantial role' are defined in Clause 36, new section 41 and Clause 46H (Amendment of Sch 2 (Dictionary)). 'Election' means an election of a member or members of the Legislative Assembly. 'Substantial role' means a paid or unpaid role at a senior level that involves employment or engagement by a political party and incorporates significant involvement in the party's election strategy or policy development.

The proposed amendments engage the following human rights in 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 activities;
- 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;

- the right not to be arbitrarily deprived of property in section 24(2); and
- the right not to have one's privacy unlawfully or arbitrarily interfered with in section 25(a).

Political belief or activity is a protected attribute under the *Anti-Discrimination Act 1991*. Preventing individuals who were previously registered lobbyists from engaging in lobbying activities because they have provided services to a political party in connection with its election campaign constitutes discrimination of the kind contemplated in section 15(3) and (4) of the *Human Rights Act 2019*.

Preventing these individuals from engaging in lobbying activities also limits their right to freely express their own political views, to participate in the conduct of public affairs and to freely associate with other members of the relevant political party. Further, it may have a broader effect to the extent it inhibits other individuals from exercising those human rights because of concern that it may limit their employment opportunities.

The limitation on the right not to be arbitrarily deprived of property arises in the following way. 'Property' is given a broad meaning in human rights jurisprudence and may include the goodwill and reputation an individual generates within their chosen profession. If an individual is unable to practise as a registered lobbyist for a period because of their involvement in the election campaign of a political party, this may erode or destroy their accumulated goodwill and reputation.

The right in section 24(2) of the *Human Rights Act 2019* is the right not to be *arbitrarily* deprived of property. However, *arbitrary* in this context means capricious, unjust or unreasonable because it is disproportionate to the legitimate end sought to be achieved. Therefore, although non-arbitrariness and proportionality are different standards, if a limitation is proportionate, it will not be arbitrary.

The proposed amendments may limit an individual's right to privacy because that right extends to protect individuals' ability to practise their chosen profession. Like property rights, the right to privacy in section 25(a) of the *Human Rights Act 2019* protects against *arbitrary* interference and has a further 'internal limitation', namely that the interference must be *unlawful*.

(a) the nature of the right

The human rights engaged by the proposed amendments are foundational elements of a free and democratic society based on human dignity, equality and freedom.

(b) The nature of the purpose of the limitation, including whether the limitation is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the proposed amendments is to prevent individuals from having, and being perceived as having, greater access to, and influence over, members of a government that the individuals helped to elect, than other citizens. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

If enacted, the Bill will require all persons who carry on lobbying activities to be registered. Therefore, if an individual is unable to be registered because of their involvement in the election campaign of a political party, the individual will be unable to perform lobbying activities. The limitation will therefore be effective to achieve the purpose of preventing these individuals having, and being perceived as having, undue access to and influence with members of the government.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The following alternatives to de-registration for the remainder of the term of government and, if the political party wins the election, the following term, were considered:

- disclosure of the individual's role in the political campaign and managing conflicts of interests as they arise or are perceived to arise;
- imposing a shorter period of disqualification;
- limiting the disqualification to particular classes of lobbyists, rather than all lobbyists.

However, none of these options satisfactorily addresses the issue of lobbyists having, and being perceived by the public to have, undue influence within a government. The High Court has held in *McCloy v New South Wales* (2015) 257 CLR 176 at 211 [61] that disclosure requirements are less effective in combatting the perception of undue influence than actually restrictions on lobbying activities.

A shorter period of disqualification that permits an individual being registered as a lobbyist during the term of the government the individual has helped to elect is also unlikely to satisfactorily address concerns about influence and favours. In this respect, however, the proposed amendments are less restrictive than the Bill as presently drafted, because if enacted, lobbyists will only be disqualified from registering if the political party they have assisted wins government. Lobbyists who assist an unsuccessful political party will not be prevented from registering.

As for confining the class of lobbyists who are subject to disqualification, the Bill already limits disqualification to individuals who perform a substantial role in a political party's election campaign. The role must be a senior one and the individual must be significantly involved in policy development or election strategy. Again, the proposed amendments impose a lesser restriction than the Bill as presently drafted, because only lobbyists who assist the successful political party in an election will be disqualified for the term of government after the election.

(e) the balance between the importance of the purpose and the importance of preserving the human right(s), taking into account the nature and extent of the limitation

The rights limited by the proposed amendments are significant. However, individuals having, or being perceived to have, undue influence in an elected government has a corrosive effect on

public confidence in the integrity and transparency of the government. Individuals who are disqualified from registering as lobbyists will still be able to express their political views and contribute to public life in their personal capacity. Moreover, the restriction on their ability to practise as a registered lobbyist will be temporary and will also apply only if there is a real risk of them being perceived to have influence (i.e., because the political party they assisted has won government).

The limitations on the rights in sections 15, 21, 22 and 23 of the *Human Rights Act 2019* are therefore reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

(f) Any other relevant factor(s)

The interference with the privacy and property rights in sections 24 and 25 of the *Human Rights Act 2019* is lawful and proportionate and accordingly, those rights are not limited.

Lobbying – Third Party Client

‘Third party client’ is defined in new section 41, Clause 36 of the Bill and 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.

The definition of ‘third party client’ in clause 36 new section 41 is amended to align with the criteria in new section 46(1) and including the words ‘commission’, ‘payment’, ‘whether pecuniary or otherwise’ into the definition.

New section 46(1) is amended to remove the duplicative description to state ‘An unregistered person must not carry out a lobbying activity for a third party client.’

As the amendment only serves to align criteria and descriptions already provided for by the Bill and previously addressed by the associated Statement of Compatibility, no human rights are engaged through this amendment.

Amendments to the Integrity Act 2009, Ombudsman Act 2001, Auditor-General Act 2009 and Right to Information Act 2009

Committee approval of appointments

The Bill introduces a new requirement in each of the Acts for key appointments for the relevant integrity bodies with parliamentary committee approval being required for the recruitment and appointment process, and the remuneration and conditions for the successful appointees.

The Bill will provide that the parliamentary committees will have 20 business days to make a decision to approve or not approve the selection process and appointment and 20 business days to make a decision to approve or not approve the remuneration and conditions of office. The parliamentary committee must provide their respective decisions to the relevant Minister. Should the respective decisions not be communicated to the Minister within that 20-business day period, the committee is taken to have approved the recruitment process, and nominee for appointment and the terms and conditions of the appointment.

There could be legitimate reasons why a quorum cannot be formed and the required decisions made within 20 business days.

The amendments will provide in the clauses relating to the process for selection and appointments and the remuneration, allowances and terms and conditions for the appointment that the Minister and Chair of the committee may negotiate a further period of time for consideration of not more than 20 business days and the negotiation must occur prior to the end of the first 20-business day period (the *original period*).

To progress the changes, the following clauses are amended to insert another paragraph into subsection (1A):

- Clauses 4 and 5, amendment of *Auditor-General Act 2009*, sections 9 and 11;
- Clauses 37 and 38, amendment of the *Integrity Act 2009*, sections 74 and 76;
- Clauses 50 and 51, amendment of the *Ombudsman Act 2001*, sections 59 and 62; and
- Clauses 64 and 65, amendment of *Right to Information Act 2009*, sections 135 and 137.

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). The amendments help to facilitate parliamentary committee oversight.

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 clauses 20, 45, 58 and 71 of the Bill will insert new transitional provisions, which will provide that the amendments will not affect existing appointments.

Amendments to the *Evidence Act 1977*

I have considered each of the rights protected by part 2 of the *Human Rights Act 2019*. In my opinion, the human right relevant to the amendments to be moved during consideration in detail of the Bill is the right to privacy and reputation (section 25 of the *Human Rights Act 2019*).

(a) the nature of the right

Section 25 of the *Human Rights Act 2019* provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The scope of this right is broad and encompasses the fundamental principle of autonomy over an individual's own actions. The right to privacy protects individuals against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity.

The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law (UN Human Rights Committee, Views: Communication No 488/1992, 50th sess, UN Doc CCPR/C/50/D/488/1992 (5 November 1992) [8.3] (*Toonen v Australia*), while the concept of arbitrariness extends to interferences that may be lawful but that are capricious, unpredictable, unreasonable, and disproportionate (*WBM v Chief Commission of Police* (2012) 43 VR 446, 472 [114]).

The amendments to be moved during consideration in detail of the Bill will limit the right to privacy of victims or alleged victims of sexual assault if the court orders the production of protected counselling communication to it and considers the communication. However, such production and consideration would not be unlawful and would not be arbitrary as the provision only confirms the authority of the court to obtain and consider the protected counselling communication, no further disclosure of the communication is permitted.

(b) the nature of the purpose of the limitation to be imposed by the provisions, including whether they are consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to privacy, by allowing a court to obtain and consider protected counselling communication, is to ensure that the SACP framework operates as intended by confirming the power of the court to obtain and consider protected counselling communication for the purpose of deciding an application for leave under the SACP framework, ensuring the court's capacity to consider applications in a procedurally fair manner.

(c) the relationship between the limitation to be imposed by the provisions, and their purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy will achieve its purpose of ensuring that the SACP framework operates as intended by expressly providing that the court may order that protected counselling communication be produced to it and that the court may consider the communication for the purpose of deciding an application for leave.

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

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

(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

In my opinion, having regard to the extent of the limitations on the right to privacy the importance of achieving the purpose of the limitation outweighs the harm caused to the right.

The limitation on the right to privacy will be authorised by law and is appropriate to ensure that the SACP framework operates as intended. The amendments to be moved during consideration in detail of the Bill are reasonably adapted to ameliorate the impacts on human rights by expressly authorising the court to order the production of the protected counselling

communication only to it and permitting consideration of the communication only by the court. The privacy of the victim or alleged victim of sexual assault is further safeguarded by amendments clarifying that if protected counselling communication is produced to the court, the court must not make the communication available, or disclose its contents, to the parties to the proceeding before deciding the application for leave under the SACP framework.

(a) any other relevant factors

Nil.

Conclusion

In my opinion, the amendments to be moved during in consideration in detail are compatible with human rights under the *Human Rights Act 2019* because they do not limit human rights.

THE HON YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE AND
MINISTER FOR THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

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