

# Integrity Amendment Regulation 2024

Explanatory notes for SL 2024 No. 243

made under the

*Integrity Act 2009*

## General Outline

### Short title

*Integrity Amendment Regulation 2024*

### Authorising law

Sections 12(1)(g), 40E(1)(b) and 91 of the *Integrity Act 2009*

### Policy objectives and the reasons for them

The objectives of the *Integrity Amendment Regulation 2024* are to:

- ensure specified senior executive equivalents in the Queensland Police Service employed under the *Police Administration Act 1990* have the same right as their senior executive peers employed under the *Public Sector Act 2022* to seek integrity and ethics advice from the Integrity Commissioner; and
- close a gap in the broader integrity legislative framework to ensure that heads of statutory offices are obligated to provide declarations of interests and changes to those interests and to disclose any conflicts of interest under the *Integrity Act 2009*, to align with their chief executive counterparts under the *Public Sector Act 2022* and other statutory office holders in the *Integrity Act 2009*.

#### Prescribing ‘designated persons’ to receive integrity advice

From its establishment in 1999, one of the foundational objectives of the Integrity Commissioner is to assist senior elected Government officials and senior public officials to avoid conflicts of interest and thus ensure standards of integrity and probity in government and public administration. This is achieved by providing a confidential source of consistent and expert advice on conflicts of interest issues and encouraging senior public officials to seek advice proactively from the independent Integrity Commissioner.

Thus, under the *Integrity Act 2009*, one of the functions of the Integrity Commissioner is advisory in nature and provides a framework for the Integrity Commissioner to give written advice to certain ‘designated persons’ about ethics, integrity or interest issues.

A ‘designated person’ is defined in section 12 of the *Integrity Act 2009* and includes a senior executive (s12(1)(d)), which is defined by reference to the *Public Sector Act 2022* as a person employed under section 188 of that Act as a senior executive. It does not capture a senior executive equivalent employed under another Act. Section 12(1)(g) provides the ability to prescribe a person or person within a class of persons by regulation.

Prior to December 2023, the number of designated persons able to access the Integrity Commissioner’s advice was estimated to capture more than 10,000 people. However, amendments to the *Integrity Act 2009*, which took effect on 13 December 2023, changed the definition of ‘designated person’ in section 12 of the Act to narrow its scope, while retaining an option to prescribe by regulation, a person or a person within a class of persons as a designated person (s12(1)(g)). These changes included the removal of the ability for Ministers to unilaterally nominate a person or class of persons as designated persons.

As a result of the above amendments, the Integrity Commissioner carefully considered the list of Ministerial-nominated persons and found there were potentially hundreds of, predominately historical, nominations on the list for which there was very little or no risk arising from those persons no longer being designated persons. However, the Integrity Commissioner also identified that, for some, their exclusion from being a designated person was merely a consequence of their role being established by an Act other than the *Public Sector Act 2022* and in some cases, this caused a lack of parity within organisations. Therefore, some senior executives are not captured because they are employed under another Act; however, their senior executive peers employed under the *Public Sector Act 2022* are captured.

From this assessment, the Integrity Commissioner identified a small group of existing priority classes of designated persons that should continue to be able to request integrity advice from the Integrity Commissioner. Subsequently, the *Integrity (Designated Persons) Amendment Regulation 2023*, which took effect on 13 December 2023, prescribed some of those persons under section 12(1)(g) of the *Integrity Act 2009*.

It is now intended to prescribe a further class of persons recommended by the Integrity Commissioner, being senior executive equivalents in the Queensland Police Service employed under the *Police Service Administration Act 1990*.

Prior to amendments to the definition of ‘designated person’, senior executives employed under the *Police Service Administration Act 1990* were nominated by the relevant Minister as being able to request and receive integrity and ethics advice from the Integrity Commissioner. As these officers are not captured as a ‘senior executive’ in section 12(1)(d) of the *Integrity Act 2009*, they are no longer able to seek ethics and integrity advice from the Integrity Commissioner. This creates a disparity with their senior executive counterparts employed under the *Public Sector Act 2022*, who are captured.

### Declarations of interests

To assist with identifying and managing conflicts of interest, chief executives of government departments and statutory agencies are required to declare their interests upon appointment and disclose any changes to those interests during their appointments and to disclose conflicts of interest. These obligations are required under the *Public Sector Act 2022* and the *Integrity Act 2009*, with each Act applying to different cohorts.

Under the repealed *Public Service Act 2008*, chief executives of departments and other public service offices were required to provide declarations of interests to their relevant Minister. The *Public Sector Act 2022* continues to apply this obligation, but only to the chief executives of departments. It does not apply to 34 other chief executives of public service entities prescribed in Schedule 1 of the *Public Sector Act 2022* ('heads of Schedule 1 entities').

Instead, 17 of these 34 heads of Schedule 1 entities are obligated under section 40E of the *Integrity Act 2009* to provide declarations of interest to their Minister. The remaining 17 heads of Schedule 1 entities are not otherwise obliged under legislation to provide declarations. Heads of schedule 1 entities have obligations about their declaration of interests under the Premier-approved 2010 policy, *Declaration of Interests policy – Senior Executive Service and Equivalent Employees including Statutory Office Holders*. However, this policy does not have the force of a more binding instrument such as a directive under the *Public Sector Act 2022*. This creates an integrity risk and a misalignment with their counterparts.

To address this risk and misalignment, amendments to the *Integrity Regulation 2024* will prescribe most of the remaining 17 heads of Schedule 1 entities for the purposes of sections 40E and 40F of the *Integrity Act 2009*. This will bring those officers into line with their counterparts in the *Public Sector Act 2022* (chief executives of departments). Only three heads of Schedule 1 entities will not be prescribed because they have alternative legislative mechanisms that already apply similar requirements (Integrity Commissioner and Information Commissioner) or because they don't meet the definition of a 'statutory office' under the *Integrity Act 2009* to enable them to be prescribed (chief executive of Coexistence Queensland). In this latter case, the 2010 policy above applies.

## Achievement of policy objectives

The *Integrity Amendment Regulation 2024* prescribes the following:

- Senior executive equivalents in the Queensland Police Service employed under the *Police Service Administration Act 1990* as 'designated persons', under section 12(1)(g) of the *Integrity Act 2009*.
- Additional statutory office holders not captured in Schedule 1 of the *Integrity Act 2009*, under section 40E(1)(b) of the *Integrity Act 2009*. Any statutory office holder prescribed for the purposes of section 40E(1)(b) will also be a statutory office holder for the purposes of section 40F of the *Integrity Act 2009*.

As a result of the amendments, senior executive equivalents in the Queensland Police Service employed under the *Police Service Administration Act 1990* will have the same rights as their senior executive peers employed under the *Public Sector Act 2022* to request integrity and ethics advice from the Integrity Commissioner.

Statutory office holders prescribed under section 40E(1)(b) of the *Integrity Act 2009* will, on their appointment, be required to give their relevant Minister a statement about their interests and, if a change occurs to those interests, a revised statement must be given to their Minister (s40E). Further, these statutory office holders must disclose to their Minister as soon as practicable after relevant facts come to the statutory office holder's knowledge, the nature of any interest that conflicts or may conflict with the discharge of the statutory office holder's responsibilities (s40F).

This amendment aligns these statutory office holders to other statutory office holders prescribed in Schedule 1 of the *Integrity Act 2009* and chief executives of government departments under the *Public Sector Act 2022*.

## **Consistency with policy objectives of authorising law**

The amendments are consistent with the policy objectives of the *Integrity Act 2009*.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified. The amendments align with the policy objectives of the *Public Sector Act 2022*.

## **Alternative ways of achieving policy objectives**

There are no alternative ways to achieve the policy objectives.

## **Benefits and costs of implementation**

The *Integrity Amendment Regulation 2024* designates classes of public sector and other officers who are eligible to seek integrity advice from the Integrity Commissioner. The senior executive equivalents being prescribed under section 12(1)(g) of the *Integrity Act 2009* were previously captured as designated persons prior to the amendments to the definition of that ‘designated person’ in 2023. This is anticipated to be a relatively small group of officers. Noting the 2023 amendment has already significantly reduced the number of designated persons who may seek integrity advice and has therefore reduced the potential workload of the Integrity Commissioner, it is anticipated the amendments will have minimal impact on the resources of the Office of the Queensland Integrity Commissioner.

The amendment to prescribe statutory office holders under section 40E(1)(b) of the *Integrity Act 2009* will be cost neutral. Those statutory office holders were previously obligated under legislation, and continue to have an obligation under a policy, to provide declarations of interests (and changes to those interests), as well as any conflicts of interest. These declarations are provided to the relevant Minister and there is no impact on the resources of the Office of the Queensland Integrity Commissioner.

## **Consistency with fundamental legislative principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

Consultation was undertaken with the Integrity Commissioner, who supports the making of the *Integrity Amendment Regulation 2024*. The Office of Best Practice Regulation was consulted during preparation of an Impact Analysis Statement required under *The Queensland Government Better Regulation Policy*.