

Proclamation – *Integrity and Other Legislation Amendment Act 2022*

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Olympic and Paralympic Games provide this human rights certificate with respect to the Proclamation – *Integrity and Other Legislation Amendment Act 2022* (IOLA Act 2022) made under section 2 of the IOLA Act 2022.

In my opinion, the Proclamation, as tabled in the Legislative Assembly, 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 Subordinate Legislation

Section 2 of the IOLA Act 2022 requires certain provisions to commence on a day to be fixed by proclamation.

This Proclamation fixes 1 March 2023 as the date of commencement of certain sections that amend the following Acts:

- the *Auditor-General Act 2009*, to:
 - make the Auditor-General an officer of the Parliament,
 - require an oath of office to be taken when appointed to the role or to be given by the existing Auditor-General within 28 days of commencement of the provision,
 - place an employment restriction on a person who has been the Auditor-General, prohibiting employment in the public sector for two years after leaving the role, and
 - enable the Auditor-General to undertake performance audits of Government Owned Corporations without needing a request from the Legislative Assembly, parliamentary committee, the Treasurer, or appropriate Minister;
- the *Integrity Act 2009*, to:
 - ensure the Queensland Integrity Commissioner is not subject to any direction concerning the way the commissioner performs their functions under the Act and priority given to ethics or integrity issues,
 - create the new Office of the Queensland Integrity Commissioner and the new role of Queensland Deputy Integrity Commissioner, and
 - create the new offence of unregistered lobbying;
- the *Ombudsman Act 2001* to reduce the strategic review period for the Ombudsman from seven years to five, in line with other integrity bodies’ strategic review timeframes; and
- the *Public Sector Act 2022* to make consequential amendments relating to the creation of the new integrity office.

Human Rights Issues

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

The IOLA Act 2022 engages and limits human rights. The Statement of Compatibility that accompanied the Integrity and Other Legislation Amendment Bill 2022 detailed how the provisions are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom under section 13 of the *Human Rights Act 2019* (HR Act).

In my opinion, the human rights under the HR Act that are relevant to the Proclamation, and outlined in the previous Statement of Compatibility, are:

- taking part in public life (section 23); and
- freedom of expression (section 21).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Taking part in public life

The Proclamation of section 10 of the IOLA Act 2022 inserts a new section 19A into the *Auditor-General Act 2009*. New section 19A applies to a person who stops holding office as the Auditor-General, providing that the person must not hold an office in or be employed by a public sector entity for two years after the person stops holding the office.

(a) the nature of the right

Section 23 of the HR Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The right protected by section 23 of the HR Act includes a right for every eligible person to have access on general terms of equality, to the public service and to public office.

Participation in the conduct of public affairs is a broad concept and covers all aspects of public administration. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office.

The right in section 23(2), to have access, on general terms of equality, to the public service and to public office, is limited to ‘every eligible person’.

This internal limitation provides for the prescribing of matters such as eligibility for a role in the public service, is relevant to section 10 of the IOLA Act 2022 as discussed below.

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

The main objects of the *Auditor-General Act 2009* include conferring on the Auditor-General and the Audit Office the functions and powers necessary to carry out independent audits of the Queensland public sector and related entities.

Given this key function, it is essential to safeguard the potential for any real or perceived lack of independence of the Auditor-General and Audit Office.

Section 10 of the IOLA Act 2022 introduces new section 19A which restricts a former Auditor-General from holding an office or being employed a public sector entity for two years after their term. This limitation addresses the real or perceived lack of independence of the Auditor-General, by removing any doubts about the work undertaken during the final part of their term.

It is intended that including this provision will reinforce the independence of the Auditor-General and support increased community confidence in the integrity and impartiality of the role.

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

The limitation seeks to achieve the main objects of the Act by strengthening provisions relating to the independence of the Auditor-General and any Deputy Auditor-General in carrying out independent audits of the Queensland public sector and related entities.

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

There is no less restrictive and reasonably available way of achieving the purpose of the amendments. The approach adopted in the Bill is consistent with a requirement in section 324CI and 324CJ of the *Commonwealth Corporations Act 2001*, which provides that a private sector auditor cannot become an officer of a former audit client for a two year period.

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

As outlined above, the Proclamation of section 10 of the IOLA Act 2022 will address the real or perceived lack of independence for the Auditor-General by ensuring the Auditor-General cannot be employed or hold office in a public sector entity subject to an audit for two years after their term. On balance the amendments are required to ensure the Auditor-General's independence, as a key integrity agency for Queensland Government.

(f) any other relevant factors

Nil.

Freedom of expression

The Proclamation of section 51 of the IOLA Act 2022 inserts a new section 71A into the *Integrity Act 2009*. New section 71A provides that an unregistered lobbyist must not carry out lobbying activities, and activities so associated with such carrying out, and the maximum penalty is 200 penalty units.

(a) the nature of the right

Section 21 of the HR Act provides that every person has a right to hold an opinion without interference and the right to freedom of expression. This includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether orally, in writing, in print, by way of art or in another medium chosen by the person.

The right to freedom of expression may be affected by section 51 of the IOLA Act 2022 (new section 71A) which provides a new offence for unregistered lobbyists in relation to certain lobbying activities.

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

The purpose of the *Integrity Act 2009* includes encouraging confidence in public institutions by regulating contact between lobbyists and State or local government representatives and contact between lobbyists and key representatives for the Opposition, so that lobbying is conducted in accordance with public expectations of transparency and integrity.

Lobbying itself is not a prohibited activity. However, the Integrity Act establishes a statutory basis for the Register of Lobbyists to ensure that contact between lobbyists and government and opposition representatives is carried out in accordance with public expectations of transparency and integrity.

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

Section 71 of the *Integrity Act 2009* provides that an entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client. However, there are no sanctions associated with this prohibition.

Recent reviews of Queensland’s integrity framework have identified that sanctions for unregistered lobbying are required if the regulation of lobbying is to be effective under the Integrity Act.

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

The approach adopted in the IOLA Act 2022 is a reasonable way of achieving the purpose of the Act.

Section 51 inserts a new section 71A into the Integrity Act providing that a lobbyist (as defined in the Act) that is not a registered lobbyist must not carry out a lobbying activity for a third party client.

The offence is a simple offence with a penalty of 200 penalty units.

This characterisation is consistent with the prohibition of a success fee under the *Integrity Act 2009*, which carries a maximum penalty of 200 penalty units. This prohibition goes to the heart of the requirement that lobbying be engaged in ethically and not with the promise of reward for “success”.

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

Creating an offence for unregistered lobbying is intended to encourage “ethical” lobbying and will underline the fact that lobbying can and does have a significant impact on the business of government.

The public should be able to easily access information about who is lobbying government, and this information should be up to date and accurate.

(f) any other relevant factors

Nil.

Conclusion

I consider that the Proclamation is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

HONOURABLE ANNASTACIA PALASZCZUK MP
PREMIER AND MINISTER FOR THE OLYMPIC AND PARALYMPIC GAMES

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