

Impact Analysis Statement template

Summary IAS

Details

Lead department	Department of the Premier and Cabinet
Name of the proposal	Sunset review and remake of the <i>Integrity Regulation 2011</i>
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Integrity Act 2009</i>
Date of issue	May 2024

What is the nature, size and scope of the problem? What are the objectives of government action?

Sunset review of the Integrity Regulation 2011

The *Integrity Regulation 2011* (the Regulation) expires on 31 August 2024.

A sunset review was undertaken to assess the effectiveness of, and ongoing need for, the Regulation. The review acknowledged the scope of the regulation is narrow and enables matters to be prescribed in regulation to support the effective operation of the *Integrity Act 2009* or provide the necessary flexibility to provide clarity or respond quickly, to ensure the intent of that Act is met.

The *Queensland Government Better Regulation Policy* specifies that provisions in the regulation that have been recently reviewed or amended do not need to be reviewed again, providing details are given of when they were last reviewed or amended, and the results of the review demonstrated the continued relevance, effectiveness and efficiency of the provisions.

The sunset review drew on recent and comprehensive legislative reviews of the Integrity Act between 2021 and 2022, resulting in amendments to the Act that give rise to significant policy reform – some of which are yet to come into force – via the *Integrity and Other Legislation Amendment Act 2022*¹ and the *Integrity and Other Legislation Amendment Act 2024*².

The first review by Mr Kevin Yearbury PSM in 2021 – *Strategic Review of the Integrity Commissioner's Functions* (Yearbury Report)³ contained 27 recommendations; some of which targeted the demand and incremental creep in numbers of those who can access the Integrity Commissioner's advice.

The most recent review by Professor Peter Coaldrake AO in 2022 – *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Coaldrake Report)⁴ contained 14 summary recommendations, including to strengthen the regulation of lobbying activity and limit who may request and receive advice about integrity and ethics issues from the Integrity Commissioner.

¹ See: <https://www.legislation.qld.gov.au/view/html/asmade/act-2022-033>

² See: <https://www.legislation.qld.gov.au/view/html/asmade/act-2024-003>

³ *Strategic Review of the Integrity Commissioner's Functions* is available from: documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T1755.pdf

⁴ *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Coaldrake Report) is available from: <https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf?refresh>



Legislative framework

The purposes of the Integrity Act (s4), and functions of the Integrity Commissioner created under that Act (s7) reflect the importance of integrity and probity in government and public administration in order to maintain community confidence in public institutions. It drives the creation of a culture and systems that encourage ethical behaviour, deter misconduct and make corruption difficult.

The Integrity Act provides a number of regulation-making powers, in addition to the general regulation-making power in section 91 of the Act, to support the effective operation of the Act and provide the necessary flexibility to provide clarity or respond quickly, to ensure the intent of the Act is met.

These powers enable the following to be prescribed in regulation:

- (i) A person, or a person within a class of persons, not already identified within the meaning of 'designated person' in section 12 of the Integrity Act, that is deemed eligible to request and receive integrity advice from the Integrity Commissioner – s12(1)(g).
- (ii) A 'statutory office holder', not already identified within Schedule 1 of the Integrity Act, who is required to declare their interests to the relevant Minister upon appointment or reappointment, or if a change in interests occurs during appointment, as a statutory office holder – s40E(1)(b).
- (iii) An entity that is assisted by public funds that is not already identified within the definition of 'public sector officer' in section 41 of the Integrity Act, in order to identify a public sector officer to whom the lobbying framework applies – s41⁵.
- (iv) Particulars that must be included on the lobbying register, in addition to those particulars listed in section 66M(a) to (i) of the Integrity Act – s66M(j).
- (v) The matters to be included in a report about the performance of the Integrity Commissioner's functions for the financial year – s85K(2)⁶.
- (vi) A person responsible for an entity, in order to identify a 'chief executive' for the purposes of defining that term in the Integrity Act – Schedule 2 (Dictionary).

The powers in items (i), (ii) and (vi) above provide the ability to capture equivalent public officials or statutory office holders that might not be captured by existing definitions, potentially as a result of their classification or the Act (new, existing or amended) that creates the position or office. This ensures senior officials are quickly afforded access to, or captured by, the Integrity Commissioner's functions, in order to manage potential personal conflicts of interest.

Currently, the Regulation draws on only two of the regulation-making powers above:

- The first is to prescribe persons or a person within a class of persons to be captured as a 'designated person' under section 12 of the Integrity Act – s3.
- The second is to prescribe additional entities that are assisted by public funds in order to identify additional public sector officers to whom the lobbying framework applies under section 41 (formerly section 47⁷) of the Integrity Act – s4.

⁵ On 28 May 2024, section 36 of the *Integrity and Other Legislation Amendment Act 2024* replaced Chapter 4 of the *Integrity Act 2009*, which resulted in substantial restructuring and renumbering of the current Chapter 4 (with additional concepts). The meaning of 'public sector officer' is now defined in new section 41 (rather than repealed section 47) of the *Integrity Act 2009* and will draw on the new and broader definition of 'public sector entity' in section 8 of the *Public Sector Act*.

⁶ Note this is not an annual report under the *Financial Accountability Act 2009*. Section 85 is renumbered as section 85K when section 39 of the *Integrity and Other Legislation Amendment Act 2024* commences on 30 June 2024 – see <https://www.legislation.qld.gov.au/view/html/asmade/act-2024-003#sec.39>.

⁷ See: Footnote 5.

Designated persons (s3)

Prior to December 2023, the number of 'designated persons' able to access the Integrity Commissioner's advice captured more than 10,000 people⁸. Amendments to the Integrity Act on 13 December 2023⁹ addressed Yearbury review recommendations to narrow the scope of this definition to improve effectiveness and efficiency of the arrangements, and to ensure transparency of persons nominated by Ministers and Assistant Ministers as 'designated persons'. This included removing the large cohort of 'senior officers' within the public sector who could unilaterally seek advice from the Integrity Commissioner and prescribing nominated persons in regulation.

Following the above reduction in people captured as a 'designated person', the Integrity Commissioner considered the persons previously nominated by Ministers or Assistant Ministers and determined there were potentially hundreds of nominations on the list for which there was very little or no risk arising from their removal as designated persons. However, for some, their removal was merely a consequence of their role being established by an Act other than the *Public Sector Act 2022*; in some cases, this caused a lack of parity within organisations. From this assessment, a small group of existing classes of designated persons were identified that should continue to be able to request integrity advice. Amendments to the Regulation in December 2023 addressed this.¹⁰

As a result of the Yearbury and Coaldrake reviews, and the Integrity Commissioner's assessment, the persons or classes of persons currently prescribed in the Regulation are current and appropriate.

Public sector entities (s4)

The Integrity Act provides a framework for lobbying of government representatives and former government representatives (Chapter 4)¹¹. The meaning of 'government representative' is defined (s44) to include the Premier, a Minister and an Assistant Minister; a councillor; staff members of a Minister or Assistant Minister; and a 'public sector officer'.

A 'public sector officer' is defined (s41) to include a person who is an officer or employee of a 'public sector entity' under the Public Sector Act (s8), as well as other government and local government entities, including the parliamentary service and GOCs. A broad definition of 'public service entity' in the Public Sector Act was introduced in 2022. This has resulted in section 4 of the Regulation being redundant.

Section 4 of the Regulation prescribes Hospital and Health Services established under section 17 of the *Hospital and Health Boards Act 2011* as public sector entities. The definition of 'public sector entity' in the Public Sector Act now captures a broader range of government entities, including Hospital and Health Services. Therefore, it is no longer necessary to prescribe these entities in the Regulation, because they are now captured as a public sector entity under section 41 of the Integrity Act.

What options were considered?

The Integrity Act and Regulation have undergone substantive review, which limited the available options for consideration. Expiry of the Regulation and non-regulatory options were not feasible, and the review highlighted the need for a minor amendment to remove a redundant section. As such, the only feasible option considered was to remake the regulation with amendments. The regulation would be remade to retain the current list of designated persons in section 3 (for the purposes of who may request integrity and ethics advice from the Integrity Commissioner), but to remove section 4 which is now redundant.

⁸ See Queensland Integrity Commissioner, *Annual Report 2021-22*.

⁹ Integrity and Other Legislation Amendment Act 2022, section 34.

¹⁰ The *Integrity (Designated Persons) Amendment Regulation 2023* prescribed additional designated persons under new section 12(1)(g) of the Integrity Act.

¹¹ Chapter 4 was replaced on 28 May 2024 by s36 of the *Integrity and Other Legislation Amendment Act 2024*. This resulted in a restructuring of that chapter and renumbering of provisions.



<p>What are the impacts?</p> <p>Remaking the Regulation supports the operation of the Integrity Act by enabling persons or classes of persons currently prescribed in section 3 of the Regulation to continue to seek integrity and ethics advice from an independent body, in order to manage personal conflicts of interest. It also addresses the disparity between public officials within government entities by ensuring senior executives can also request advice from the Integrity Commissioner along with senior officers within the same entity, who are employed under the Public Sector Act and automatically deemed to be designated persons.</p> <p>Any costs incurred as a result of remaking the regulation with amendments are internal costs to government, as the costs are related to access to the Integrity Commissioner – a government-funded body – for integrity and ethics advice relating to public administration. The private sector is not impacted, as the functions of the Integrity Commissioner are, again, internally focused on the public sector only (i.e. persons in the private sector are not intended to have access to the Integrity Commissioner for advice).</p> <p>There are no restrictions on competition caused by relying on any of the regulation-making powers in the Integrity Act.</p>
<p>Who was consulted?</p> <p>The Yearbury review consulted a range of stakeholders including Queensland integrity bodies, and invited lobbyists to make submissions. In its inquiry into the Yearbury Report, the formerly named Economics and Governance Committee invited stakeholders to make submissions and held a public hearing.</p> <p>The Coaldrake review received 327 submissions and held almost 100 meetings, involving Ministers and Directors-General, both present and past, as well as office holders, public sector employees, integrity bodies, community groups, academics, ministerial advisers and representatives of the business sector.</p> <p>The two Parliamentary inquiries into the Bills that implemented recommendations from the Coaldrake and Yearbury Reports each held a public briefing, a public hearing and received a total of 20 submissions.</p> <p>The Integrity Commissioner has confirmed section 3 of the Regulation is current and appropriate, noting recent amendments to that section in December 2023, and that section 4 is now redundant.</p>
<p>What is the recommended option and why?</p> <p>The recommended option is to remake the regulation with amendments. Outcomes of the Yearbury and Coaldrake reviews confirm the continued relevance, effectiveness and efficiency of the Regulation.</p>
<p>Impact assessment</p> <p>Remaking the regulation with amendment is machinery in nature, as the amendment to remove Hospital and Health Services as prescribed entities has no impact as these entities are now captured as part of a preceding amendment to the Integrity Act.</p>

Signed

Director-General
Date: 15/4/24

Premier
Date: 17/7/24