

2019

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

CHIEF MINISTER

**INTEGRITY AND ACCOUNTABILITY LEGISLATION AMENDMENT
BILL**

SERIAL NO. X

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Audit Act 1995*, the *Electoral Act 2004*, the *Independent Commissioner Against Corruption Act 2017* (the ICAC Act) and the *Ombudsman Act 2009*.

The purpose of this Bill is to create clarity and legislative consistency around the appointment of relevant statutory officers under the Northern Territory Integrity Framework, by introducing amendments that align the legislation with the more detailed and contemporary ICAC Act. The relevant statutory officers are the Auditor-General, Electoral Commissioner, Independent Commissioner Against Corruption, Independent Commissioner Against Corruption Inspector and Ombudsman.

The Bill delivers on the Government's commitment to restoring trust and integrity to Government.

The Bill contains the following features:

- Introduces eligibility criteria for a person to be considered an eligible person for appointment as a relevant statutory officer. Eligible appointees must:
 - not be a judicial officer, member of Australian Parliament, a member of a local government council, a member of a political party and must not have recent political affiliations; and
 - have suitable qualifications or experience in proportion to the powers and functions of the position;
- Creates uniformity in the term of appointment for relevant statutory officers to be five years with an option to renew once for a further five years, if the incumbent remains an eligible person for appointment;
- Outlines the process of appointment for relevant statutory officers where an eligible person is appointed by the Administrator on the recommendation of the Legislative Assembly, and requiring a copy of the appointment to be tabled in the Assembly within six sitting days;

- Confirms that the conditions of office for each of the relevant statutory officers:
 - are determined by the Administrator;
 - cannot be contingent on the performance of the statutory officer whilst in office; and
 - cannot be altered during the statutory officer's time in office;
- Provides for the suspension and termination of a statutory officer in the case of physical or mental incapability, corrupt conduct, for engaging in paid employment outside the duties of the office, or for being absent from duty without approval. It also details the method for suspending and terminating the relevant statutory officers;
- Establishes a procedure for the termination of appointment if the relevant statutory officer is found guilty of an offence with a penalty of at least 12 months imprisonment, is sentenced to imprisonment, becomes bankrupt, is no longer eligible for appointment or becomes a candidate for election as a member of an Australian parliament or local government council;
- Requires each relevant statutory officer to take an oath to faithfully, impartially and truly perform the functions of the position, and determines who can administer the oath;
- Outlines transitional arrangements for current statutory officers, deeming them, at the end of their current term, only eligible for one term of reappointment for a period of five years, and not eligible for further reappointment after.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Integrity and Accountability Legislation Amendment Act 2019*.

Clause 2. Commencement

This clause sets out how the amendment Act will be commenced. In this case this it will be the day after the Administrator assents to the Bill.

Amendment of the *Audit Act 1995*

Clause 3. Act Amended

This clause provides that the Act seeks to amend the *Audit Act 1995*.

Clause 4. Section 3 amended (Interpretation)

This clause amends definitions in the Act.

Adds the definition of ***Acting Auditor-General*** as a person appointed under new section 9 as the Acting Auditor-General.

Replaces the definition of ***Auditor-General*** as a person appointed under new section 4A as the Auditor-General.

Adds the definition of ***Australian parliament*** to include the Northern Territory Legislative Assembly, the Parliament of the Commonwealth or a State, or the parliament or legislature of another Territory. This relates to the criteria for eligibility for appointment under new section 4A of the Act, whereby a person cannot be considered eligible for appointment as Auditor-General if they are a member of an Australian parliament.

Notes that the definition for an ***eligible person*** is found in new section 4A(1) of the Act.

Clause 5. Section 4 replaced

This clause repeals section 4 of the Act and adds new sections 4, 4A, 4B and 4C.

Section 4 provides for the appointment of the Auditor-General by the Administrator. A person is appointed as Auditor-General following a recommendation of the Legislative Assembly. The relevant Minister under the Administrative Arrangements Order must table a copy of the Auditor-General's appointment in the Legislative Assembly within ~~6-six sitting~~Sitting days after the appointment is made.

Section 4A sets out the criteria for eligibility to be the Auditor-General. A potential appointee is required to have suitable qualifications or experience to fulfil the functions of the Auditor-General and must be committed to the purposes of the Act and its underlying principles. By making ineligible persons who are judicial officers, a member of an Australian parliament, a member of a local government council or of an equivalent body in a State or another Territory, a member of a political party, a prescribed officer of a Territory controlled entity, or persons with a 'recent political affiliation', the section excludes persons who are likely to have ongoing involvement that might compromise their ability to be and be seen to be independent and impartial. The section defines 'recent political affiliation' to mean a person who has, within the last five years, been a member of the Legislative Assembly or a local government council, an office holder or elected representative of a political party anywhere in Australia, a member of staff of a minister, or a person who has made a reportable donation to a political party or associated entity of a political party anywhere in Australia.

Section 4B provides that the Auditor-General can be appointed for a fixed term of ~~5-five~~years, and optionally for one further fixed term of ~~5-five~~years.

Section 4C provides that the conditions of the Auditor-General's appointment are to be determined by the Administrator at the commencement of the appointment and then not varied during the appointment. The Auditor-General cannot be given 'performance pay'. Subsection (2) safeguards the Auditor-General's independence.

Clause 6. Section 5 amended (Salary of Auditor-General)

This clause amends section 5 of the Act to refer to new section 4C.

Clause 7. Section 6 amended (Leave of absence of Auditor-General)

This clause amends section 6 of the Act to refer to new section 4C.

Clause 8. Section 7 replaced

This clause repeals section 7 and replaces with new sections 7, 7A and 7B.

Section 7 provides the circumstances in which the office of the Auditor-General becomes vacant. This occurs if there is a resignation under new section 7A or if there is a termination under new section 7B. The Auditor-General's position also becomes vacant if the Auditor-General is convicted of certain offences, the imposition of a term of imprisonment, or bankruptcy. The appointment also terminates if the Auditor-General stands for election as a political representative, or if the Auditor-General ceases to satisfy the eligibility criteria under new section 4A of the Act. Subsection (2) protects the validity of decisions and by the Auditor-General even if the Auditor-General was ineligible for appointment at the time – this is essential to preserve the integrity of work which would otherwise be valid.

Section 7A provides the mechanism by which the Auditor-General can resign, namely by providing written notice to the Administrator.

Section 7B provides that the Auditor-General may be suspended from duty by the Administrator in certain circumstances. These include physical or mental incapacity, engaging in corruption, engaging in outside employment without approval, or absence from duty without approval. Suspending the Auditor-General is a temporary measure and requires the Minister to give a statement of reasons for the suspension to the Auditor-General and table the statement in the Legislative Assembly within ~~6~~six Sitting days. In order to terminate the appointment of the Auditor-General, a two-thirds majority of the Legislative Assembly must agree to the termination. This procedure is consistent with the current procedure for terminating the appointment of the ICAC and the Ombudsman.

Clause 9. Sections 9 to 11 replaced

This clause repeals section 9 to 11 and replaces with new sections 9 and 11.

Section 9 enables the appointment of an Acting Auditor-General during a vacancy in the office of the Auditor-General (under new section 7 of the Act) or during a period when the Auditor-General or another Acting Auditor-General are unable or unavailable to perform the functions of the Auditor-General under the Act. To avoid the appointment of a series of Acting Auditor-Generals rather than the standing Auditor-General role, subsection (2) provides that an Acting Auditor-General can only be appointed for a maximum period of ~~6~~six months aggregate in any 12 month period. Subsection (3) provides that if there is a vacancy in office for a period of 18 months, no further Acting Auditor-Generals may be appointed to ensure that the standing role of Auditor-General is filled as a priority. Subsection (4) provides that the conditions of the Acting Auditor-General's appointment are to be determined by the Administrator.

Section 11 provides that the Auditor-General or Acting Auditor-General must take an oath to perform their role faithfully, impartially, truly and in accordance with law. It is common for independent statutory officers to take an oath of this nature. The Administrator must administer the oath of the Auditor-General. In the case of the Acting Auditor-General, the Administrator or Minister can administer the oath.

Clause 10. Part 8 inserted

This clause inserts section 31 regarding transitional arrangements for the Auditor-General currently holding office. It provides that if the office holder is reappointed as Auditor-General under the Act, their previous term of office would be counted as a term served. Therefore, after expiration of term in 2019, the current Auditor-General would only be able to be appointed for one further five year term (reappointment), and not eligible for reappointment thereafter.

Clause 11. Schedule repealed

This clause provides for the repeal of the Schedule to the Act, which provides the declaration given by the Auditor-General upon appointment to office. This requirement to take an oath of office is now included under new section 11 of the Act.

Amendment of the *Electoral Act 2004*

Clause 12. Act amended

This clause provides that the Act seeks to amend the *Electoral Act 2004*.

Clause 13. Section 3 amended (Definitions)

This clause amends definitions in the Act.

Notes that the definition for ***Acting Commissioner*** is found in new section 326 of the Act.

Adds the definition of **Australian parliament** to include the Northern Territory Legislative Assembly, the Parliament of the Commonwealth or a State, or the parliament or legislature of another Territory. This relates to the criteria for eligibility for appointment under new section 314A of the Act, whereby a person cannot be considered eligible for appointment as Electoral Commissioner if they are a member of an Australian parliament.

Notes that the definition for an **eligible person** is found in new section 314A(1) of the Act.

Clause 14. Section 314 replaced

This clause repeals section 314 and replaces with sections 314 and 314A.

Section 314 provides for the appointment of the Electoral Commissioner by the Administrator. A person is appointed as Electoral Commissioner following a recommendation of the Legislative Assembly. The relevant Minister under the Administrative Arrangements Order must table a copy of the Electoral Commissioner's appointment in the Legislative Assembly within ~~6 six sitting~~ Sitting days after the appointment is made.

Section 314A sets out the criteria for eligibility to be the Electoral Commissioner. A potential appointee is required to have suitable qualifications or experience to fulfil the functions of the Electoral Commissioner and must be committed to the purposes of the Act and its underlying principles. By making ineligible persons who are judicial officers, a member of an Australian ~~parliament~~ Parliament, a member of a local government council or of an equivalent body in a State or another Territory, a member of a political party, ~~a prescribed officer of a Territory controlled entity~~, or persons with a 'recent political affiliation', the section excludes persons who are likely to have ongoing involvement that might compromise their ability to be and be seen to be independent and impartial. The section defines 'recent political affiliation' to mean a person who has, within the last five years, been a member of the Legislative Assembly or a local government council, an office holder or elected representative of a political party anywhere in Australia, a member of staff of a ~~minister~~ Minister, or a person who has made a reportable donation to a political party or associated entity of a political party anywhere in Australia.

Clause 15. Sections 320 to 327 replaced

This clause repeals sections 320 to 327 and replaces with new sections 320 to 327.

Section 320 provides that the Electoral Commissioner can be appointed for a fixed term of ~~5~~ five years, and optionally for one further fixed term of ~~5 five~~ years.

Section 321 provides that the conditions of the Electoral Commissioner's appointment are to be determined by the Administrator at the commencement of the appointment and then not varied during the appointment. The Electoral Commissioner cannot be given 'performance pay'. Subsection (2) safeguards the Electoral Commissioner's independence.

Section 322 provides the circumstances in which the office of the Electoral Commissioner becomes vacant. This occurs if there is a resignation under new section ~~324~~ 323 or if there is a termination under new section ~~325~~ 324. The Electoral Commissioner's position also becomes vacant if the Electoral Commissioner is convicted of certain offences, the imposition of a term of imprisonment, or bankruptcy. The appointment also terminates if the Electoral Commissioner stands for election as a political representative, or if the Electoral Commissioner ceases to satisfy the eligibility criteria under new section 314A of the Act. Subsection (2) protects the validity of decisions and by the Electoral Commissioner even if the Electoral Commissioner was ineligible for appointment at the time – this is essential to preserve the integrity of work which would otherwise be valid.

Section 323 provides the mechanism by which the Electoral Commissioner can resign, namely by providing written notice to the Administrator.

Section 324 provides that the Electoral Commissioner may be suspended from duty by the Administrator in certain circumstances. These include physical or mental incapacity, engaging in corruption, engaging in outside employment without approval, or absence from duty without approval. Suspending the Electoral Commissioner is a temporary measure and requires the Minister to give a statement of reasons for the suspension to the Electoral Commissioner and table the statement in the Legislative Assembly within ~~6~~six Sitting days. In order to terminate the appointment of the Electoral Commissioner, a two-thirds majority of the Legislative Assembly must agree to the termination. This procedure is consistent with the current procedure for terminating the appointment of the ICAC and the Ombudsman.

Section 325 provides that the Minister may grant a leave of absence to the Electoral Commissioner on conditions that the Minister decides.

Section 326 enables the appointment of an Acting Electoral Commissioner during a vacancy in the office of the Electoral Commissioner (under new section 322 of the Act) or during a period when the Electoral Commissioner or another Acting Electoral Commissioner are unable or unavailable to perform the functions of the Electoral Commissioner under the Act. To avoid the appointment of a series of Acting Electoral Commissioners rather than the standing Electoral Commissioner role, subsection (2) provides that an Acting Electoral Commissioner can only be appointed for a maximum period of 6 months aggregate in any 12 month period. Subsection (3) provides that if there is a vacancy in office for a period of 18 months, no further Acting Electoral Commissioners may be appointed to ensure that the standing role of Electoral Commissioner is filled as a priority. Subsection (4) provides that the conditions of the Acting Electoral Commissioner's appointment are to be determined by the Administrator.

Section 327 provides that the Electoral Commissioner or Acting Electoral Commissioner must take an oath to perform their role faithfully, impartially, truly and in accordance with law. It is common for independent statutory officers to take an oath of this nature. The Administrator must administer the oath of the Electoral Commissioner. In the case of the Acting Electoral Commissioner, the Administrator or Minister can administer the oath.

Clause 16. Part 21 inserted

This clause inserts section 362 regarding transitional arrangements for the Electoral Commissioner currently holding office. It provides that if the office holder is reappointed as Electoral Commissioner under the Act, their previous term of office would be counted as a term served. Therefore, the current Electoral Commissioner would only be able to be appointed for one further five year term (reappointment), and not eligible for reappointment thereafter.

Amendment of the *Independent Commissioner Against Corruption Act 2017*

Clause 17. Act amended

This clause provides that the Act seeks to amend the *Independent Commissioner Against Corruption Act 2017*.

Clause 18. Section 134 amended (Appointment of Inspector)

This clause amends section 134 to require that the ICAC Inspector can only be appointed by the Administrator once the Legislative Assembly has recommended an eligible person for the appointment. It also mandates that the relevant Minister under the Administrative Arrangements Order must table a copy of the ICAC Inspector's appointment in the Legislative Assembly within ~~6-six~~ 5 Sitting days after the appointment is made.

Amendment of the *Ombudsman Act 2009*

Clause 19. Act amended

This clause provides that the Act seeks to amend the *Ombudsman Act 2009*.

Clause 20. Section 4 amended (Definitions)

This clause amends definitions in the Act.

Notes that the definition for an **Acting Ombudsman** is found in new section 143 of the Act.

Adds the definition of **Australian parliament** to include the Northern Territory Legislative Assembly, the Parliament of the Commonwealth or a State, or the parliament or legislature of another Territory. This relates to the criteria for eligibility for appointment under new section 133 of the Act, whereby a person cannot be considered eligible for appointment as Ombudsman if they are a member of an Australian parliament.

Notes that the definition for an **eligible person** is found in new section 133(1) of the Act.

Clause 21. Sections 133 and 134 replaced

This clause repeals and replaces sections 133 and 134.

Section 133 sets out the criteria for eligibility to be the Ombudsman. A potential appointee is required to have suitable qualifications or experience to fulfil the functions of the Ombudsman and must be committed to the purposes of the Act and its underlying principles. By making ineligible persons who are judicial officers, a member of an Australian ~~parliament~~ Parliament, a member of a local government council or of an equivalent body in a State or another Territory, a member of a political party, ~~a prescribed officer of a Territory controlled entity~~, or persons with a 'recent political affiliation', the section excludes persons who are likely to have ongoing involvement that might compromise their ability to be and be seen to be independent and impartial. The section defines 'recent political affiliation' to mean a person who has, within the last five years, been a member of the Legislative Assembly or a local government council, an office holder or elected representative of a political party anywhere in Australia, a member of staff of a ~~minister~~ Minister, or a person who has made a reportable donation to a political party or associated entity of a political party anywhere in Australia.

Section 134 provides that the Ombudsman can be appointed for a fixed term of ~~5-five~~ 5 years, and optionally for one further fixed term of ~~5-five~~ 5 years.

Clause 22. Section 144 replaced

This clause repeals and replaces section 144 to provide that the Ombudsman or Acting Ombudsman must take an oath to perform their role faithfully, impartially, truly and in accordance with law. It is common for independent statutory officers to take an oath of this nature. The Administrator must administer the oath of the Ombudsman. In the case of the Acting Ombudsman, the Administrator or Minister can administer the oath.

Clause 23. Part 12 inserted

This clause inserts section 166 regarding transitional arrangements for the Ombudsman currently holding office. It provides that if the office holder is reappointed as Ombudsman under the Act, their previous term of office would be counted as a term served. Therefore, after expiration of their seven year term in 2019, the current Ombudsman would only be able to be appointed for one further term of five years (reappointment), and not eligible for reappointment thereafter. The potential for a maximum 12 year term is an anomaly that only applies to the current office holder and results from the term of appointment of seven years allowed under the current Act. Future appointees will be subject to five year terms with an option for reappointment for a further five years if still eligible.

Clause 24. Repeal of Act

This clause provides that this amending Act is repealed on the day after it commences.