



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

**Inquiry into the Integrity and
Accountability Legislation
Amendment Bill 2019**

June 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Integrity and Accountability Legislation Amendment Bill 2019.

Prior to its election in 2015, the Government made a commitment to restore integrity to the Government process. Subsequent to the election, the Government developed the Northern Territory Integrity Framework in order to implement a range of reforms designed to increase transparency and accountability. This Bill is part of that reform process and aims to create clarity and legislative consistency with respect to the appointment of relevant statutory officers under this Framework.

The Bill amends the *Audit Act 1995*, the *Electoral Act 2004*, the *Independent Commissioner Against Corruption Act 2017* and the *Ombudsman Act 2009* in relation to the following statutory officer roles in the Northern Territory: Auditor-General; Electoral Commissioner; the Independent Commissioner Against Corruption; the Independent Commissioner Against Corruption Inspector; and the Ombudsman. The key focus of the Bill is to introduce consistency and clarity in relation to the appointments of these statutory officers with regard to eligibility criteria, uniformity of terms of appointment, process of appointment, conditions of office, and procedures for suspension and termination.

As highlighted in Chapter 3, the only issue raised with regard to the Bill relates to the potential disruption that might arise if an election were to be held close to the expiration of an Electoral Commissioner's term of appointment. The Committee has investigated mechanisms for managing this eventuality and is satisfied that these are satisfactory and that no additional risks will be created by limiting the appointment of an Electoral Commissioner to two five-year terms.

The Committee welcomes the Bill as an important step forward in advancing the aims of the Northern Territory Integrity Framework through its close alignment of the legislation with the more detailed and contemporary *Independent Commissioner Against Corruption Act 2017*.

On behalf of the Committee, I thank the Electoral Commissioner for his comments on the Bill. I would also like to thank the Department of the Legislative Assembly for the support provided to the Committee, and my fellow Committee members for their bipartisan commitment to the legislative review process. I also acknowledge the work of the Department of the Chief Minister in providing written responses to the Committee's questions.



Mr Tony Sievers MLA

Chair

Committee Members

	Tony Sievers MLA Member for Brennan	
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	Lawrence Costa MLA Member for Arafura	
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On 22 March 2019, Member for Daly, Mr Gary Higgins MLA, was discharged from the Committee and replaced by the Member for Spillett, Mrs Lia Finocchiaro MLA.		

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Acknowledgments

The Committee acknowledges the Electoral Commission of the Northern Territory for providing a written submission to this inquiry and the Department of the Chief Minister for its advice.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Integrity and Accountability Legislation Amendment Bill 2019.

1 Introduction

Introduction of the Bill

- 1.1 The Integrity and Accountability Legislation Amendment Bill (the Bill) was introduced into the Legislative Assembly by the Chief Minister, the Hon Michael Gunner MLA, on 20 March 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 20 June 2019.¹

Conduct of the Inquiry

- 1.2 On 22 March 2019 the Committee called for submissions by 17 April 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix A, the Committee received one submission to its inquiry. The Committee also wrote to the Chief Minister seeking clarification of issues raised in the submission.

Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Integrity and Accountability Legislation Amendment Bill 2019.

Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

¹ The Hon Michael Gunner MLA, Chief Minister, Parliamentary Record, *Debates Day 5 – 20 March 2019*, <http://hdl.handle.net/10070/306552>.

2 Overview of the Bill

Background to the Bill

- 2.1 Prior to its election in 2015, the Government made a commitment to restore integrity to the Government process, with suggested reforms for achieving this set out in a pre-election discussion paper entitled *Restoring Integrity to Government*.² Subsequent to the election, the Government developed the Northern Territory Integrity Framework in order to implement a range of reforms aimed at increasing transparency and accountability. This Bill is part of that reform process.

Purpose of the Bill

- 2.2 The Bill amends the *Audit Act 1995*, the *Electoral Act 2004*, the *Independent Commissioner Against Corruption Act 2017* and the *Ombudsman Act 2009* in relation to the following statutory officer roles in the Northern Territory: Auditor-General; Electoral Commissioner; the Independent Commissioner Against Corruption; the Independent Commissioner Against Corruption Inspector; and the Ombudsman.
- 2.3 Statutory officers are appointed to a position established by legislation and are granted various powers and functions under the law. These appointments are impartial and independent and ‘provide fundamental democratic checks and balances on Government’.³ As the Chief Minister noted when presenting the Bill, their ‘work is integral to preserving integrity in Government’.⁴
- 2.4 The purpose of the 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’.⁵
- 2.5 Key features of the Bill include:
- The introduction of eligibility criteria for a person considered an eligible person for appointment as a relevant statutory officer.
 - Creation of uniformity in the term of appointment for relevant statutory officers, by specifying a term of five years with an option to renew for a further five years if the incumbent remains an eligible person for appointment.
 - The outlining of the process of appointment for relevant statutory officers where an eligible person is appointed by the Administrator on the recommendation of

² Territory Labor, *Restoring Integrity to Government*, Trust and Integrity Reform Discussion Paper, https://parliament.nt.gov.au/_data/assets/pdf_file/0007/379015/Restoring-Integrity-To-Government.pdf.

³ Hon. Michael Gunner MLA, Chief Minister, Parliamentary Record, *Debates Day 5, 20 March 2019*, p. 5, <http://hdl.handle.net/10070/306552>.

⁴ Hon. Michael Gunner MLA, Chief Minister, Parliamentary Record, *Debates Day 5, 20 March 2019*, p. 5, <http://hdl.handle.net/10070/306552>.

⁵ Explanatory Statement, Integrity and Accountability Legislation Amendment Bill 2019, p. 1, <https://parliament.nt.gov.au/committees/EPSC/86-2019>.

the Legislative Assembly, and requiring a copy of the appointment to be tabled in the Assembly within six sitting days.

- Confirmation 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.
- Establishment of a procedure for the suspension and termination of a relevant statutory officer.
- Requiring each statutory officer to take an oath to faithfully, impartially and truly perform the functions of the position, and determining who can administer the oath.
- Outlining 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 that.⁶

⁶ Explanatory Statement, Integrity and Accountability Legislation Amendment Bill 2019, pp. 1-2, <https://parliament.nt.gov.au/committees/EPSC/86-2019>.

3 Examination of the Bill

Introduction

- 3.1 The Committee received only one submission to its inquiry and this focused solely on amendments to the *Electoral Act 2004*.

Clause 15 – Proposed section 320 – Term of appointment

- 3.2 Proposed section 320 amends the *Electoral Act 2004* to provide for an appointment term for the Electoral Commissioner of five years, with potential for reappointment of a further five years if still eligible. Currently, the term of appointment is for a period not exceeding five years with no limit on the number of times the Commissioner can be reappointed.
- 3.3 Mr Loganathan, the Northern Territory Electoral Commissioner, commented on the importance of considering the practical implications of introducing provisions that limit the tenure of the Electoral Commissioner to two five year terms. He suggested that it would be more suitable to align the terms of appointment with the electoral cycles of either the Legislative Assembly or Local Government. If passed, the current NT Electoral Commissioner's term would end on 15 April 2024, with this resulting in the incoming Electoral Commissioner commencing in the role only four months out from the 2024 Territory election. He further noted that 'an extraordinary Legislative Assembly election would probably end such an alignment'.⁷
- 3.4 The Committee sought clarification from the Chief Minister's Department (the Department) regarding the effect this amendment might have on the efficiency with which elections are conducted when tenure is not aligned with electoral cycles and was advised that:
- In any major organisation it is not always possible to align tenure with key events or potential commitments of the organisation, and business continuity arrangements are made to support the transition of incoming/outgoing leadership. In light of the existing timing considerations of the electoral cycle, it was not considered that limiting the Electoral Commissioner's term to a maximum of 10 years would create any new risks to current Northern Territory Electoral Commission procedures or processes, and that existing business continuity arrangements embedded within the organisation would support that transition.⁸
- 3.5 The NT Electoral Commissioner also drew attention to a general trend for comparable legislation in other Australian jurisdictions to provide for an unlimited number of terms for the position of Electoral Commissioner.⁹ As shown in Appendix B, only Queensland and New South Wales place limits on the number of terms that can be served, with Queensland limiting the appointment to a single term of seven years and New South Wales limiting it to two 10-year terms.

⁷ Submission 1 – Northern Territory Electoral Commissioner, p. 1.

⁸ Department of the Chief Minister, *Responses to Written Questions*, p. 1, <https://parliament.nt.gov.au/committees/EPSC/86-2019>.

⁹ Submission 1 – Northern Territory Electoral Commissioner, p. 1.

- 3.6 The Committee sought clarification from the Department regarding the rationale for limiting the Electoral Commissioner's tenure to two five-year terms and was advised that:

The object of the Integrity and Accountability Legislation Amendment Bill 2019 (the Bill) is to create a consistent legislative approach for statutory officers with an integrity focus in the Northern Territory. The Bill's amendments align the tenure for relevant statutory officers to that of the Independent Commissioner Against Corruption, which is five years, with an option for re-appointment for one further term of five years. These terms are provided in the Independent Commissioner Against Corruption Act 2017 (ICAC Act).

The ICAC Act is the most contemporary and comprehensive piece of legislation relating to statutory officers in the Northern Territory. The Act represents the high watermark for accountability legislation in the Northern Territory, having undergone an extensive consultation process (including the public release of an Exposure Draft Bill). Aligning the tenure of all relevant statutory officers with the Independent Commissioner Against Corruption creates a more open, accountable and transparent process around the appointment of statutory officers, who are key to upholding integrity in the Northern Territory.¹⁰

Committee's Comments

- 3.7 The Committee is satisfied with the Department's advice with regard to both the mechanisms for managing any misalignment between tenure and electoral cycles, and the rationale for limiting tenure to two five-year terms.

Clauses 5 (s4B), 15 (s320), and 21 (s134) – Terms of appointment

- 3.8 Clauses 5, 15 and 21 amend the terms of appointment for the Auditor-General, the Electoral Commissioner and the Ombudsman to allow each of these statutory officer positions to be appointed for a five-year term, with renewal for a further five years if eligible.
- 3.9 The Committee's review of comparable legislation in other Australian jurisdictions governing terms of appointment for these positions found that tenure and re-appointment provisions vary considerably. The review indicates that no other jurisdiction imposes the same conditions for each of these positions. For example, most jurisdictions do not provide for re-appointment of the Auditor-General but do provide for re-appointment of the other positions.
- 3.10 The Committee sought clarification from the Department regarding the rationale for providing the same tenure and re-appointment conditions for each of the statutory officer positions and was advised that:

Though there are variations in the legislated roles and responsibilities of the relevant statutory officers, these officers all play a vital integrity role in providing democratic checks and balances to Government. Whilst there are other statutory officer positions in the Northern Territory, such as the NT Children's Commissioner, the relevant statutory officers have the shared purpose and function of upholding integrity in our Northern Territory democracy.

¹⁰ Department of the Chief Minister, *Responses to Written Questions*, p. 1, <https://parliament.nt.gov.au/committees/EPSC/86-2019>.

Committee's Comments

3.11 The Committee is satisfied with the Department's advice.

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

3.12 Clause 6 purports to amend section 5(1) of the *Audit Act 1995* but the Committee notes that the Act only contains a section 5, there is no section 5(1).

3.13 The Committee confirmed with the Department that the reference to section 5(1) should be to section 5 and notes that the error can be corrected through a Clerk's amendment.

Appendix A: Submissions Received

Submissions Received

1. Northern Territory Electoral Commission

Note: A Copy of the submission is available at:
<https://parliament.nt.gov.au/committees/EPSC/86-2019>.

Appendix B: Comparison of tenure provisions for statutory officer positions in other Australian jurisdictions

St/Terr	Electoral Commissioner	Auditor-General	Ombudsman	ICAC	ICAC Inspector
ACT	5-year term. May be reappointed if eligible (see <i>Legislation Act</i> , s208 and dict, pt 1 def appoint).* <i>Electoral Act 1992</i> , s13.	7-year term No reappointment <i>Auditor-General Act 1996</i> : Part 2, Division 2.2, Section 8AA	7-year term May be reappointed if eligible (see <i>Legislation Act</i> s208 and dict, pt 1 def appoint).* <i>Ombudsman Act 1989</i> , S23	7-year term. Not eligible for reappointment if they have been Commissioner for 7 years. Appointment term must not end within 12 months before or after end of CEO's appointment. <i>Integrity Commission Act 2018</i> , s28	7-year term. Not if they have been Inspector for up to 7 years. <i>Integrity Commission Act 2018</i> , s233
NSW	10-year term Eligible for reappointment for another 10 years. <i>Electoral Act 2017</i> , Schedule 2	8-year term No reappointment <i>Public Finance and Audit Act 1983</i> No 152: Part 3, Division 1, Section 28	7-year term Eligible for reappointment <i>Ombudsman Act 1974</i> , s6(2)	5-year term Eligible for reappointment but may not hold office for terms totalling more than 5 years. <i>Independent Commission Against Corruption Act 1988</i> No 35: Schedule 1	5-year term Eligible for reappointment but may not hold office for terms totalling more than 5 years. <i>Independent Commission Against Corruption Act 1988</i> No 35, Schedule 1A
QLD	7-year term. No reappointment <i>Electoral Act 1992</i> , s22	7-year term No reappointment <i>Auditor-General Act 2009</i> : Part 2, Division 2, Section 10	5-year term (2)However, a person must not be reappointed if the total of the person's terms of appointment would be more than 10 years <i>Ombudsman Act 2001</i> , s61 (1) and (2)	5-year term. Can be reappointed but total time in office must not exceed 10 years and no single term must exceed 5 years <i>Crime and Corruption Act 2001</i> , s231	N/A

St/Terr	Electoral Commissioner	Auditor-General	Ombudsman	ICAC	ICAC Inspector
SA	Unlimited term up until age 65. <i>Electoral Act 1985, s7</i>	The Conditions of office of the Auditor-General will, subject to this Act, be determined by the Governor – having spoken with office of Auditor-General in SA there appears to be no fixed term. <i>Public Finance and Audit Act S24(3)</i>	(2) The terms and conditions of appointment and employment (including salary and allowances) of the Ombudsman shall be as determined from time to time by the Governor. <i>Ombudsman Act 1972 s6(2)</i>	7-year term Eligible for re-appointment but cannot hold office for terms that exceed 10 years in total. <i>Independent Commissioner Against Corruption Act 2012, s8</i>	N/A
Tas.	7-year term Eligible for reappointment <i>Electoral Act 2004, s17</i>	10-year term Not eligible for reappointment.** <i>Audit Act 2008: Schedule 1 (1) and (2)</i>	5-year term Can be reappointed for a further 5 years <i>Ombudsman Act 1978, s.5(2)</i>	5-year term. Eligible for reappointment but total of all periods of appointment must not exceed 10 years. <i>Integrity Commission Act 2009, s15A</i>	N/A
Vic.	10-year term Eligible for reappointment for one or more 10-year periods. <i>Electoral Act 2002, s12</i>	7-year term Eligible for reappointment <i>Constitution Act 1975, s94C</i>	10-year term Not eligible for reappointment <i>Ombudsman Act 1973, s3(4)</i>	5-year term No reappointment <i>Independent Broad-based Anti-corruption Commission Act 2011, s24</i>	N/A
WA	9-year term. Eligible for reappointment <i>Electoral Act 1907, s5B</i>	10-year term No reappointment	5-year term No mention of reappointment <i>Parliamentary Commissioner Act 1971, s5(3)</i>	5-year term Can be reappointed for a further 5 years. <i>Corruption, Crime and Misconduct Act 2003, Schedule 2</i>	5-year term Can be reappointed for a further 5-year term. <i>Corruption, Crime and Misconduct Act 2003: Schedule 3</i>

Bibliography

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<https://parliament.nt.gov.au/committees/EPSC/86-2019>

Electoral Act 1907 (WA)

Electoral Act 1985 (SA)

Electoral Act 1992 (ACT)

Electoral Act 1992 (QLD)

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Electoral Act 2017 (NSW)

Explanatory Statement, *Integrity and Accountability Legislation Amendment Bill 2019* (Serial 86), <https://parliament.nt.gov.au/committees/EPSC/86-2019>.

Independent Broad-based Anti-corruption Commission Act 2011 (Vic)

Independent Commission Against Corruption Act 1988 (NSW)

Independent Commissioner Against Corruption Act 2012 (SA)

Independent Commissioner Against Corruption Act 2017 (NT)

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Integrity Commission Act 2018 (ACT)

Ombudsman Act 1972 (SA)

Ombudsman Act 1973 (Vic)

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