

2010

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

TERRITORY-OWNED CORPORATIONS AMENDMENT BILL 2010

EXPLANATORY STATEMENT

**Circulated by authority of
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Treasurer**

Territory-owned Corporations Amendment Bill 2010

Overview

This explanatory statement relates to the Territory-Owned Corporations Amendment Bill 2010 as introduced to the Legislative Assembly.

The purpose of the *Territory-owned Corporations Act 1990* (the Act) is to provide for the corporate governance of Territory-owned corporations including ensuring specific accountability and reporting requirements are met.

The Territory-owned Corporations Amendment Bill 2010 proposes to amend the Act by requiring Territory-owned Corporations to include in their annual reports, the level and types of remuneration paid to each director as well as up to each of the five highest paid senior managers (executives) of the corporation or group for the financial year. It is intended that Territory-owned Corporations will comply with relevant accounting standards in the disclosure of remuneration details in their 2009-10 annual reports and subsequent annual reports.

The Bill aims to provide improved disclosure of executive remuneration relating to Territory owned Corporations that is generally comparable to the level of disclosure that applies in the public sector and to publicly listed companies.

Human Rights Considerations

The Government acknowledges that legislation that requires the disclosure of remuneration details engages the right to privacy.

The right to privacy contained in section 12 of the *Human Rights Act 2004* (HR Act) is based upon Article 17 of the International Covenant on Civil and Political Rights. Section 12 states that “Everyone has the right not to have his or her privacy ... interfered with unlawfully or arbitrarily”.

However, the right to privacy is not an absolute right. Section 28 of the HR Act states that “human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society”.

Indeed, there are many instances where the needs of a democratic society may affect the right to privacy. The proposed amendments require the disclosure of remuneration details of people in the interests of public accountability and transparency as Territory-owned Corporations are wholly owned by the Government and the shares are held in trust by the Voting Shareholders on behalf of the Territory. Such detailed disclosure already takes place with respect to publicly listed companies. It is considered that any privacy rights in these circumstances have been outweighed by the public interest factor. The impingement upon those rights is considered proportionate to the relative importance of that public interest and is limited to the minimum extent required to satisfy that need.

Financial Implications

The Bill has no financial implications.

Notes on clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause provides for the proposed Act to commence on the day after its notification.

Clause 3 Legislation amended

This clause is a formal provision to identify that the legislation to be amended by the proposed Act is the *Territory-owned Corporations Act 1990* (the principal Act).

Clause 4 Audit committee, new section 18A(4)

This clause inserts a new section 18A(4) into the principal Act to define the term 'senior manager'. The definition is to provide clarity and applies to section 18A of the principal Act.

Clause 5 Annual report, new section 22(2)(g)

This clause inserts paragraph 22(2)(g) in the principal Act, which requires the following information that must be provided in the annual report of a Territory-owned Corporation or group:

- a) the details of the amount and kind of remuneration paid to each director for the financial year; and
- b) the details of the amount and kind of remuneration paid to each of the 5 senior managers who receive the highest remuneration for the financial year.

If the number of senior managers in a corporation is less than five, then each of those senior managers' remuneration would be disclosed.

The clause applies to the different types of remuneration including, but not restricted to, salary, fees, allowances, and superannuation contributions.

Clause 6 New section 22(2A)

This clause confirms that the disclosure of remuneration details in annual reports must comply with the prevailing accounting standards.

Clause 7 New sections 22(4A) and (4B)

Subsection 4A ensures that the new reporting requirements will apply to the 2009-10 annual reports for each Territory-owned Corporation.

Subsection 4B provides for subsection 4A to expire on 31 December 2010, when the new reporting arrangements will continue to apply to subsequent reporting periods.

Clause 8 Section 22(5), new definition of *senior manager*

This clause inserts a definition, in section 22(5) of the principal Act, for the term 'senior manager'. The definition is to provide clarity and applies to section 22 of the principal Act.