

2015

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

ELECTORAL AMENDMENT BILL 2015

EXPLANATORY STATEMENT

**Presented by
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INTRODUCTION

This Explanatory Statement relates to the Electoral Amendment Bill 2015 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The *Electoral Act 1992* (the Act) establishes the Australian Capital Territory Electoral Commission and provides for the electoral system for the Territory. The Act also regulates the public disclosure of political receipts and expenditure.

OVERVIEW OF THE AMENDMENT BILL

The purpose of this Bill is to rectify an anomaly that has arisen following the inclusion of a new Communication Allowance (CA) in the salary of Members of the Legislative Assembly (MLAs) by the Remuneration Tribunal in Determination No 7 of 2014. The Remuneration Tribunal undertook a review of the entitlements of MLAs in early 2014. One of the items included in the Tribunal's review was the allowances paid to MLAs to assist them in performing their functions as MLAs. As a consequence of the review, the Remuneration Tribunal included the new CA to replace a number of separate allowances, including the Discretionary Office Allowance (DOA) previously administered by the Office of the Legislative Assembly. These arrangements took effect from 1 July 2014.

The purpose of this amendment is to treat the CA in the same way as the previous DOA so that expenditure undertaken by MLAs using their CA that could potentially fall within the definition of electoral expenditure:

- is excluded from the cap on electoral expenditure; and
- is excluded from items required to be reported by MLAs under their annual disclosure returns.

HUMAN RIGHTS IMPLICATIONS

The Bill has been assessed against the *Human Rights Act 2004* and no issues identified.

CLAUSE NOTES

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Electoral Amendment Act 2015*. If passed by the Legislative Assembly in 2015, the name of the Act will become the *Electoral Amendment Act 2015 (No 2)* as the Legislative Assembly has already passed an *Electoral Amendment Act 2015* (introduced as the *Electoral Amendment Bill 2014*).

Clause 2 Commencement

Clause 2 provides that the Act will commence on the day after the notification day, which is the day after the Act is notified on the ACT Legislation Register.

Clause 3 Legislation amended

This clause provides that the *Electoral Act 1992* is amended.

Clause 4 Definitions for pt 14 Section 198, definition of *electoral expenditure*, paragraph (b)

Clause 4 amends the definition of *electoral expenditure*, consistently with the amendments made by clause 5, so that it is clear that electoral expenditure does not include expenditure by an MLA using the CA.

Clause 5 Annual returns by parties and MLAs Section 230 (7)

Section 230 of the Act requires MLAs to give the Electoral Commissioner an annual return of amounts received and paid during the financial year. The amounts paid include amounts paid by or on behalf of an MLA that relate ‘solely or substantially to his or her position as MLA on electoral expenditure’ (s 230 (6)). Excluded from this disclosure requirement is any amount paid by or on behalf of the MLA using funds ‘provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA’ (s 230 (7)).

Because the CA is paid directly to MLAs in fortnightly instalments as part of their salary, it may not fall within the description of being ‘provided by the Legislative Assembly’.

Clause 5 amends s 230 (7) (by substituting a new s 230 (7)) so that amounts paid out of the CA to an MLA are not required to be disclosed in annual returns. The effect of this amendment is that the next annual return due after these amendments commence will clearly exclude all payments made using the CA throughout the financial year, including payments made before the commencement of these amendments.