

**2017**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**Legislative Assembly Legislation Amendment Bill 2017**

**Explanatory Statement**

---

Presented by Joy Burch MLA

Speaker

Legislative Assembly for the Australian Capital Territory

September 2017

Page 1 of 8

## Introduction

This explanatory statement relates to the Legislative Assembly Legislation Amendment Bill 2017. It has been prepared to assist the reader of the bill and to inform debate on it.

It does not form part of the bill and has not been endorsed by the Assembly.

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

## Overview

The purpose of the bill is to amend a number of provisions which have a bearing on the effective operation of the Office of the Legislative Assembly and Officers of the Legislative Assembly.

The bill seeks to:

- limit the application of s 31(2)(c) of the *Financial Management Act 1996* (the FMA) so that it does not apply to the Office of the Legislative Assembly or an Officer of the Legislative Assembly;
- place beyond doubt that an individual may only be appointed as Clerk of the Assembly, Auditor-General, a member of the Electoral Commission, or Ombudsman where the relevant Assembly committee agrees to an appointment;
- reinstate a seven-year non-renewable term of appointment for the Auditor-General;
- enable the Speaker to delegate a number of powers under the *Legislative Assembly Precincts Act 2001* (the Precincts Act) to a broader category of staff of the Office of the Legislative Assembly;
- remove a reference to the members' entrance canopy in the Precincts Act, a physical structure which no longer exists; and
- enable the Speaker to seek administrative advice and support from the Office of the Legislative Assembly and other entities in relation to the exercise of relevant powers by the Speaker pursuant to the *Auditor-General Act 1996* (the Auditor-General Act), the *Electoral Act 1992* (the Electoral Act), the *Ombudsman Act 1989* (the Ombudsman Act) and the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (the Legislative Assembly (Office of the Legislative) Act).

## Rights issues

### Clause 18

Amendments to s 9 of the Precincts Act potentially engage s 17 of the *Human Rights Act 2004* (the HR Act), which provides for the right of citizens to participate in public life.

The amendments in clause 18 have the effect of allowing the Speaker to delegate powers under s 9 of the Precincts Act in relation to the removal of persons from the Assembly precincts to a broader class of persons (that is, beyond the serjeant-at-arms or the principal attendant).

The basis for extending the power of delegation to include other officers (including the Clerk, staff of the Office that have an employment classification of senior officer grade C or above, or a member of staff of the Office who is responsible for the security of the Legislative Assembly) is to recognise that there may be occasions where persons other than the serjeant-at-arms or the principal attendant will, as a matter of reasonable necessity, be required to utilise the powers under s 9 in order to: 1. maintain the physical security of the precincts; and/or 2. ensure the smooth and unimpeded conduct of Assembly and committee proceedings.

A person given a direction under s 9 is potentially deprived of the right to full participation in public life (by way of restricting that person's ability to engage with proceedings at the Assembly venue). However, given that the Assembly's proceedings are available via webcast and through the provision of other information on the Assembly website, it would be open to a person the subject of the exercise of powers under s 9, to utilise these alternate means of participation.

### Clause 6

The amendment in clause 6 reintroduces a non-renewable term of appointment for the Auditor-General and potentially engages s 17 (c) of the HR Act in relation to the right to have access, on general terms of equality, for appointment to the public service and public office.

The amendment reintroduces provisions that were inadvertently removed upon commencement of the *Officers of the Assembly Legislation Amendment Act 2013*.

The current Auditor-General was appointed by way of a disallowable instrument made on 28 June 2011 (DI2011-155), pursuant to an earlier version of the Act (version R8), which was in effect until 30 June 2011). The two relevant provisions relating to the seven-year appointment term and the ineligibility for reappointment requirement were still in effect in version R8 (Schedule 1).

Given that clause 6 reintroduces eligibility provisions that were precisely those in place at the time of the appointment of the current Auditor-General, no loss of equality for appointment to the public service arises.

# Outline of provisions

---

## Part 1—Preliminary

**Clause 1 Name of Act**—states the title of the Act as the *Legislative Assembly Legislation Amendment Act 2017*.

**Clause 2 Commencement**—provides that the Act will commence the day after its notification day.

**Clause 3 Legislation amended**—states that the following legislation is amended by the Act:

- *Auditor-General Act 1996*
- *Electoral Act 1992*
- *Financial Management Act 1996*
- *Legislative Assembly (Office of the Legislative Assembly) Act 2012*
- *Legislative Assembly Precincts Act 2001*
- *Ombudsman Act 1989*

## Part 2—Auditor-General Act 1996

**Clause 4 Appointment Section 8 (2) (a)**—omits the provision relating to the appointment being made ‘on the advice of’ the public accounts committee.

**Clause 5 New section 8 (3)**—provides that the Speaker may only appoint a person to the position of Auditor-General where the two following conditions are met: 1. the Speaker is satisfied that the person recommended has appropriate knowledge and experience based on existing criteria within the Act; and 2. the Standing Committee on Public Accounts agrees to the appointment. The new section places beyond doubt that a person may only be appointed as Auditor-General with the consent of the Standing Committee on Public Accounts.

**Clause 6 New section 8AA**—provides that an appointment to the position of Auditor-General is for seven years and that an appointment is non-renewable. This remedies the inadvertent removal of the same provisions upon the commencement of the *Officers of the Assembly Legislation Amendment Act 2013*.

**Clause 7 New section 37B Assistance for Speaker**—these provisions enable the Speaker to seek administrative support and advice in exercising the Speaker’s statutory powers and functions that arise under the Auditor-General Act. It provides a specific statutory basis for the Office of the Legislative Assembly to support and advise the Speaker in this regard.

## **Part 3—Electoral Act 1992**

**Clause 8 Appointment Section 12 (2) (a)**—omits the provision relating to the appointment being made ‘on the advice of’ the relevant Assembly committee.

**Clause 9 New section 12 (3)**—provides that the Speaker may only appoint a person to be a member of the electoral commission where the two following conditions are met: 1. the Speaker is satisfied that the person recommended has appropriate knowledge and experience based on existing criteria within the Electoral Act; and 2. the relevant Assembly committee agrees to the appointment.

The new section places beyond doubt that a person may only be appointed as a member of the Electoral Commission with the consent of the relevant committee.

**Clause 10 New section 339 Assistance for Speaker**—these provisions enable the Speaker to seek support and advice in exercising the Speaker’s statutory powers and functions in relation to the Electoral Act. It provides a specific statutory basis for the Office of the Legislative Assembly to support and advise the Speaker in this regard.

## **Part 4—Financial Management Act 1996**

**Clause 11 Application of pts 2 to 5—Office of the Legislative Assembly and officers of the Legislative Assembly New section 4 (4)**—these provisions remove any doubt that s 31 (2) (c) of the FMA does not apply to Clerk, Auditor-General, Electoral Commissioner and the Ombudsman. That is, none of these officers are subject to a requirement that they manage their agencies in a way that ‘is not inconsistent with the policies of the government’.

The amendment recognises the appropriate separation of powers within the Territory’s governance arrangements.

The disapplication of s 31 (2) (c) alleviates potential tensions that arise between it and the statutory independence of the Clerk, the Auditor-General, the Electoral Commissioner and the Ombudsman—viz. s 8 of the Legislative Assembly (Office of the Legislative Assembly) Act; s 7 of the Auditor-General Act; s 6B of the Electoral Act; and s 4B of the Ombudsman Act each of which establish a scope of autonomy that is at odds with s 31 (2) (c).

## **Part 5—Legislative Assembly (Office of the Legislative Assembly) Act 2012**

**Clause 12 Appointment of Clerk of the Legislative Assembly Section 9 (2) (a)**—omits the provision relating to the appointment being made ‘on the advice of’ the administration and procedure committee.

**Clause 13 New section 9 (3)**—provides that the Speaker may only appoint a person as Clerk where:  
1. the Speaker is satisfied that the person has the necessary knowledge and experience; and 2. the administration and procedure committee agrees to the appointment.

The new section places beyond doubt that a person may only be appointed as Clerk with the consent of the administration and procedure committee.

**Clause 14 New section 19A Assistance for the Speaker**—provides that, in exercising powers under the Act, the Speaker may seek administrative support and advice from an entity that is able to provide objective advice and support.

## **Part 6—Legislative Assembly Precincts Act 2001**

**Clause 15 Assembly precincts Section 5 (2) (c)**—omits reference to ‘that part of section 19, division of City, Canberra Central District under the members’ entrance canopy’. The area referred to as the ‘members’ entrance canopy’ no longer exists as a physical structure.

**Clause 16 Section 5 (3), definition of members’ entrance canopy**—omits definition of ‘members’ entrance canopy’ on the basis that it no longer exists as a physical structure.

**Clause 17 Licences New section 7A (3A)**—provides that the Speaker may delegate the Speaker’s functions to a member of the staff of the Office of the Legislative Assembly, who has an employment classification of senior officer grade C or above, in relation to the issuing of licences pursuant to s 7A.

**Clause 18 Removal of people Section 9 (5)**—provides that the Speaker is able to delegate the Speaker’s powers in relation to the removal of people from the Assembly precincts to: the Clerk; a member of the staff of the Office of the Legislative Assembly who has an employment classification of senior officer grade C or above, or an equivalent classification; or a member of staff of the Office of the Legislative Assembly who is responsible for the security of the Legislative Assembly.

## **Part 7 Ombudsman Act 1989**

**Clause 19 Appointment Section 22 (4) (a)**—omits the provision relating to the appointment being made on the advice of the relevant Assembly committee.

**Clause 20 New section 22 (5)**—provides that the Speaker may only appoint a person as Ombudsman, where: 1. the Speaker is satisfied that the person has the necessary knowledge and experience; and 2. the relevant Assembly committee agrees to the appointment.

The new section places beyond doubt that a person may only be appointed ombudsman with the consent of the relevant committee. The provision will only be activated where a person other than

the Commonwealth Ombudsman is to be appointed, pursuant to s 22(1), following the written consent of the Chief Minister, pursuant to s 22 (2).

**Clause 21 New section 37A Assistance for the Speaker**—these provisions enable the Speaker to seek support and advice in exercising the Speaker’s statutory powers and functions in relation to the Ombudsman Act. It provides a specific statutory basis for the Office of the Legislative Assembly to support and advise the Speaker in this regard.