

2019

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**LEGISLATIVE ASSEMBLY (OFFICE OF THE LEGISLATIVE ASSEMBLY)
AMENDMENT BILL 2019**

EXPLANATORY STATEMENT

Presented by
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Chief Minister

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Background

This explanatory statement relates to the Legislative Assembly (Office of the Legislative Assembly) Legislation Bill 2019 (the Bill) as presented to the ACT 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 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.

Legislative Assembly (Office of the Legislative Assembly) Amendment Bill 2019

On 15 December 2016, the ACT Legislative Assembly passed a resolution which established a Select Committee to review the 2016 ACT election and the Act. The Select Committee released its report in November 2017 and made 23 recommendations. The Government tabled its response on 10 April 2018 agreeing to six recommendations, agreeing in principle to nine, noting six and not supporting two.

The Legislative Assembly (Office of the Legislative Assembly) Amendment Bill 2019 contains legislative amendments to progress recommendation 7 of the Select Committee.

Purpose of the Bill

The policy objective of the Bill is to support a transparent and representative electoral system.

The Bill makes amendments to:

- the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (the OLA Act) to provide for a communication allowance for Members of the Legislative Assembly (MLAs) to be established;
- the *Electoral Act 1992* to clarify that expenditure from such an MLA communication allowance is not subject to electoral expenditure or the annual expenditure reporting requirements under section 230 of the Electoral Act.

Human rights considerations

The preamble to the *Human Rights Act 2004* (HR Act) notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the

framework that is used to determine the acceptable limitations that may be placed on human rights.

The responsibility of governments to undertake measures to protect their citizens has been discussed in European human rights jurisprudence. This responsibility has been described as the ‘doctrine of positive obligations’ which encompasses the notion that governments not only have the responsibility to ensure that human rights be free from violation, but that governments are required to provide for the full enjoyment of rights.¹ This notion has been interpreted as requiring states to put in place legislative and administrative frameworks designed to deter conduct that infringes human rights and to undertake operational measures to protect an individual who is at risk of suffering treatment that would infringe their rights.²

Section 28 of the HR Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R v Oakes*.³ A party must show that:

[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”.⁴

Detailed human rights discussion

Rights engaged

The Bill engages the rights of privacy and reputation, freedom of expression, and taking part in public life. An analysis on the impact of the proposed amendments on these rights are discussed below.

Broadly, the Bill does not introduce any limitations on HR Act rights and engages the following rights:

- Section 16 – Freedom of expression
- Section 17 – Taking part in public life

¹ Colvin, M & Cooper, J, 2009 ‘*Human Rights in the Investigation and Prosecution of Crime*’ Oxford University Press, p 424-425.

² Ibid, p425.

³ [1986] 1 SCR 103.

⁴ *R v Oakes* [1986] 1 SCR 103.

Section 16 – Freedom of expression

The right to freedom of expression in the HR Act is a personal freedom which is considered essential for all individuals to achieve full personal development and self-fulfilment through the development and distribution of ideas and opinions. A free flow of ideas is also necessary to encourage the vigorous public debate which is central to the functioning of Australia's liberal democratic system of government.

The right to freedom of expression in the HR Act is held by all individuals and extends to information and ideas of all kinds. The right to freedom of expression also includes the right of a person to hold their own opinions without interference or sanction and to seek, receive and impart information and ideas of all kinds.

Clarification of expenditure reporting obligations

Amendments are introduced in the Bill to:

- provide for an MLA communication allowance;
- clarify that expenditure from such an MLA communication allowance is not subject to electoral expenditure or the annual expenditure reporting requirements of the Electoral Act; and
- clarify that the communication allowance is for **routine** communication with constituents. **The term 'routine communication' is defined.**

The amendments support the right to seek, receive and impart information as it provides for the creation of an MLA communication allowance separate from an MLA's base salary that stipulates its use. The Bill clarifies the communication allowance is for regular communication with constituents as opposed to campaign or political-based communication and will provide more certainty to MLAs on when funds from the communication allowance can be used. This will encourage and enable a free flow of information between the MLAs and their constituents.

MLAs will be held accountable for their official expenditure from the communication allowance to the Office of the Legislative Assembly, with details as to the quantum of the communication allowance and processes associated with the administration of the allowance to be determined by a continuing resolution of the Legislative Assembly.

Legislative Assembly (Office of the Legislative Assembly) Amendment Bill 2019

Detail

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Legislative Assembly (Office of the Legislative Assembly) Amendment Act 2019* (the Amendment Act).

Clause 2 — Commencement

This clause provides that the Amendment Act will commence on the day after the Amendment Act is notified.

Clause 3 — Legislation amended

This clause outlines the legislation that is amended by the Bill. The Bill will amend the following:

- *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (the OLA Act); and
- *Electoral Act 1992* (the Electoral Act).

Clause 4 – New section 19B

This clause inserts a new section 19B to provide for the establishment of an MLA communication allowance which can only be used for ‘routine communication’ with the member’s constituents as well for equipment used in support of such communication.

Section 4(2) provides the Clerk of the Legislative Assembly with responsibility for paying and administering an allowance set up under new section 19B. The amendment provides the Legislative Assembly with scope to assign the Clerk other functions relating to the administration of the allowance through the continuing resolution.

While the Clerk of the Legislative Assembly must pay the communication allowance, the new section specifies that further detail as to the amount and scope of the use of the communication allowance, and any associated processes to do with the administration of the allowance, will be determined by a continuing resolution of the Legislative Assembly. The section also makes clear that the continuing resolution may stipulate other purposes that the communication allowance can be used for.

Section 4(5) provides a definition of ‘routine communication’.

The new clause 19B provides that the Clerk must pay the allowance to MLAs according to the requirements of the Continuing Resolution. The amount of the allowance will be included in the Continuing Resolution. MLAs can only use the allowance for a purpose mentioned in clause 19B(1)(a) or (b).

Consultation will be undertaken with all MLAs in relation to the establishment of an MLA communications allowance and the Continuing Resolution of Legislative Assembly.

The Continuing Resolution will be prepared and circulated prior to the debate on the *Legislative Assembly (Office of the Legislative Assembly) Amendment Bill 2019* in the November 2019 sitting. Once the Continuing Resolution has been drafted, the Chief Minister will lead a cross-party consultation process.

It is proposed that the Continuing Resolution will commence from 1 January 2020.

Clause 5 – Definition of *electoral expenditure*, section 198(b) – Electoral Act 1992

This provides an amendment that excludes the MLA communication allowance from the definition of electoral expenditure. The intent is for the MLA communication allowance to be in addition to the electoral expenditure cap.

Clause 5 – Annual returns by parties and MLAs – Electoral Act 1992

Section 230 (7)

This clause substitutes section 230(7) of the Act to provide that any amount paid, or to be paid, by or on behalf of an MLA using an allowance provided to the MLA under new section 19B of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*, established by this Bill, is not required to be disclosed in the annual return given to the Commissioner under section 230 of the Act.