

2012

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

Legislative Assembly (Office of the Legislative Assembly) Bill 2012

Explanatory Statement

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Speaker

Legislative Assembly for the Australian Capital Territory

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Purpose of the bill

Introduction

This explanatory statement relates to the Legislative Assembly (Office of the Legislative Assembly) Bill 2012. 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 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 task being for the courts.

Overview

The purpose of the Legislative Assembly (Office of the Legislative Assembly) Bill 2012 is to more clearly codify the roles, functions and independence of the office responsible for providing advice and support to the legislative branch of government in the Australian Capital Territory.

It seeks to give greater effect to the separation of powers doctrine by clarifying the administrative and legislative framework that applies to the support agency of the legislature and to enshrine in law its independence from executive government.

The separation of powers doctrine has a long history in the democratic form of government. It recognises the importance of clearly defining and circumscribing the roles and powers of the legislative, executive and judicial branches. At the heart of the doctrine is the principle that no one branch of government dominates or encroaches upon another and that there are clear checks and balances which disperse and limit the exercise of power.

The effective constitution of the Australian Capital Territory – *the Australian Capital Territory (Self-Government) Act 1988* (Cwlth) – recognises and gives effect to the doctrine by establishing a democratic polity within the ACT. Through parts IV, V and VA of the Self-Government Act, the three separate branches of government – each with their own specific functions and powers – are established.

The existing legislative framework governing the operation of the legislative branch has operated well since the inception of self-government in the ACT, except that the provisions for clearly codifying the roles, functions and institutional independence of the support agency of the legislature, the Legislative Assembly secretariat, have not been comprehensively enunciated. This has, at times, created uncertainty about how the agency interacts with executive government and where the proper boundaries should be drawn between the agency and ministers, their offices and the wider ACT public service.

The bill removes provisions in the *Public Sector Management Act 1994* relating to the clerk and the secretariat and creates a new Office of the Legislative Assembly that replaces the Legislative Assembly secretariat and identifies specific functions that the office is required to perform. The bill also states in clear language that the office and its staff are not subject to direction from the executive arm of government.

The bill introduces new arrangements for appointing, suspending and ending the appointment of the clerk.

The bill places limits on the executive's involvement in the affairs of the office in a number of areas, including procurement, annual reporting and the role of the Commissioner for Public Administration.

The bill also provides that a separate appropriation bill for the Office of the Legislative Assembly must be presented annually to fund its operations.

Rights issues

The bill provides a more robust process for suspending the clerk and ending the clerk's appointment than that which exists under the current legislative framework.

The bill affords the clerk enhanced procedural fairness protections in relation to the processes that apply for suspending or ending his or her appointment while at the same time preserving the prerogative of the legislature to make a determination in these matters.

It recognises that the Speaker has the power to suspend the clerk in certain circumstances but that the administration and procedure committee also has a role to play in reviewing the suspension every 30 days. The bill also provides mechanisms that allow the clerk to make a submission to the committee to meet the 'hearing rule' principle of procedural fairness. The

Speaker may end the suspension of a clerk at any time and the administration and procedure committee may make a recommendation to the Assembly to end a suspension where its members believe it is appropriate to do so.

A clerk may only have his or her appointment ended where the Assembly moves a motion requiring the speaker to end the appointment.

No explicit appeals rights are articulated in the bill so far as the ending of the clerk's appointment is concerned. Where the legislature expresses a clear view that a clerk's appointment should end based on the grounds outlined in clause 16 (1), effectively expressing a lack of confidence in the ability of the clerk to perform the role effectively, it is conceivable that tensions could arise between the legitimate authority of the Assembly to conduct its business free of external interference and the right of an office holder to seek redress where they have reasonable grounds to do so.

The bill does not anticipate how this tension would be resolved. This is not to say that appeal rights of one kind or another do not exist but that the appropriate avenue for appeal or review – whether in common law or statutory protections – would be a matter for an individual clerk to determine in the event that his or her appointment was ended.

The clerk's appointment can only be suspended or ended by the speaker on the grounds listed in clauses 13 (1) and 16 (1) respectively and in accordance with the broader provisions of the bill which establish the process for suspension or termination of the appointment. The discretions available in these matters are not explicitly conditioned on the speaker (the holder of the power) acting on 'reasonable grounds'. However, this is taken to be axiomatic – it is the intention that the speaker would act only on reasonable grounds. It is also the case that the procedures that have been established require that the administration and procedure committee and the Assembly as a whole perform what amounts to an oversight role in relation to the exercise of the Speaker's powers, erecting a formidable bulwark against any speaker acting unreasonably.

Outline of provisions

Part 1 – Preliminary

Clause 1 Name of Act – states the title of the Act as the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*.

Clause 2 Commencement – provides that the Act will commence on 1 July 2012.

Clause 3 Dictionary – provides that the dictionary at the end of the Act is part of the substantive provisions of the Act.

Clause 4 Notes – provides that a note included in the Act is explanatory and is not part of the substantive provisions of the Act.

Part 2 – Office of the Legislative Assembly

Clause 5 Establishment of Office of the Legislative Assembly – creates a new office, the Office of the Legislative Assembly, which is made up of the clerk and staff of the office.

It differs from provisions in the *Public Sector Management Act 1994* in force prior to commencement (sections 46, 53A and 54 of division 3.8), in which the Office of the Clerk is established, supported by staff, and together – these staff and the clerk – they constitute the Legislative Assembly secretariat.

Part 1.7 of schedule 1 contains an amendment (clause 1.42) to omit division 3.8 of the *Public Sector Management Act 1994*, one effect of which will be to abolish the Legislative Assembly secretariat. Part 5 of the bill contains a transitional arrangement (clause 50), which will see any reference in a document to the Legislative Assembly secretariat read as a reference to the Office of the Legislative Assembly.

The combined effect of these provisions is that the Office of the Legislative Assembly will replace the Legislative Assembly secretariat as the primary source of advice and support to the legislative branch of government in the Australian Capital Territory.

Clause 6 Functions of office – existing legislation does not codify the functions of the support agency of the legislature or of the clerk. To remedy the absence of a legislative

mandate to undertake specific roles and functions in support of the legislature, this clause sets out the particular functions to be performed by the office.

By legislating in this area, the bill establishes the remit of the office, the primary function of which is to ‘provide impartial advice and support to the Legislative Assembly and committees and members of the Assembly’.

The functions listed in clause 6.1 are not exhaustive.

Clause 7 Staff of office – provides that staff of the office are ACT public servants employed under the *Public Sector Management Act 1994*.

There is a compelling rationale for maintaining the office’s link to the wider ACT public service. Ensuring that there is mobility between the office and the rest of the service will allow a reasonable prospect for career progression for employees of the office. Being part of the ACT public service also has the effect of enlarging the potential recruitment pool available to the office and provides opportunities for the interchange of knowledge and experience between the legislative and executive branches of government.

There are also efficiencies associated with the office’s staff being employed under the *Public Sector Management Act 1994* which arise by virtue of the fact that the office will not be required to establish its own employment framework or to introduce a separate public sector governance structure that would be necessitated in the event that a stand-alone service were created to support the legislature.

Clause 8 Independence of office – while relevant provisions of the *Public Sector Management Act 1994* currently provide that the clerk is not subject to the direction of the executive, a similarly explicit statement of independence is not made in relation to staff.

The clause provides that the office – both the clerk and staff – are independent of executive government in the territory.

The provision recognises the unique nature of the Office of the Legislative Assembly and of the functions it must perform. It is intended to protect the integrity of those functions and the staff performing them from any interference by the executive.

It is not intended that this provision would absolve staff of the office from adherence to their obligations under territory law or to ACT public service policies, principles of good public administration or particular procedures adopted by the ACT public service which have been approved by the clerk as having application to staff of the office.

Part 3 – Clerk of the Legislative Assembly

Clause 9 Appointment of Clerk of the Legislative Assembly – provides for the process of appointing the clerk. This clause replaces the appointment provisions contained in the existing section 46 (2) of the *Public Sector Management Act 1994*. While it is the Speaker who, as the presiding officer of the Legislative Assembly, makes the appointment, to ensure that the appointment has the support of the broader membership of the Assembly, a number of other additional requirements to consult and to receive advice are included.

The clause also introduces a general merit test and includes the specific criterion that extensive knowledge of, and experience in, parliamentary law, practice and procedure is a prerequisite for a person appointed to the position. The intention of this aspect of the clause is to recognise that a specialised set of skills and experience – quite distinct from general public sector or legal sector capabilities – are required to perform effectively in the role of clerk.

In the interests of ensuring that decisions about the clerk’s remuneration are decided at arm’s length from the executive or the legislative branches of government, the clerk’s remuneration remains within the purview of the ACT Remuneration Tribunal pursuant to section 10 of the *Remuneration Tribunal Act 1995*. Terms of appointment not provided for by a determination of the Remuneration Tribunal or in the bill are provided for in management standards made in accordance with the relevant provisions of the *Public Sector Management Act 1994*.

Clause 10 Functions of clerk – provides for general management responsibilities in relation to the clerk without limiting legal functions provided for in other legislation.

Clause 11 Disclosure of interests by clerk – replaces section 48 of the *Public Sector Management Act 1994*. The intention is that any potential for conflicts of interest on the part of the clerk are managed transparently and that the clerk is accountable to the Speaker with respect to declaring his or her personal and financial interests.

Clause 12 Delegation of clerk's functions – provides that it is only staff members of the Office of the Legislative Assembly to whom the clerk may delegate his or her functions.

Clause 13 Suspension of clerk–general – provides for a process of suspending the clerk in certain circumstances. The intention is that the clerk can be suspended only on the grounds of misbehaviour or physical or mental incapacity as determined by the Speaker.

To ensure transparency in the basis of a decision to suspend the clerk, the clause provides that the Speaker is required to give the Clerk written notice of a suspension and a statement of reasons forming the basis of the suspension.

The clause provides that, in considering a decision to end the clerk's appointment, the Speaker may seek the advice of third parties (including but not limited to the Auditor-General and the Commissioner for Public Administration). The intention of this provision is to make it clear that the Speaker can receive additional guidance on technical, legal and other matters in making a decision as to whether a particular set of circumstances warrant the suspension of the clerk; for instance, taking advice about the operation of procedural fairness in a given set of circumstances or seeking guidance in relation to particular aspects of public sector administration.

Clause 14 Suspension of clerk – administration and procedure committee notice and meetings – provides that, following the suspension of the clerk, the Speaker must provide the written notice and the statement of reasons for the suspension (i.e. a copy of the notice and statement of reasons prescribed in subclause 13(3)) to each member of the administration and procedure committee no later than the next business day. It is intended that the statement of reasons would provide members of the committee with sufficient information with which to properly evaluate the matters at hand in deliberating on motions of the types set out in clause 14(4).

The administration and procedure committee is then required to meet within three business days after the notice and the statement of reasons have been provided and at least every 30 thereafter while the clerk is suspended.

This clause provides that the clerk is entitled to make an oral or written submission to the committee about his or her suspension. It is intended that this provision would give effect to

the 'hearing rule' principle embodied in procedural fairness, allowing the clerk to state his or her case about any matters that may have given rise to the suspension.

At any time the committee is able to pass a resolution recommending to the Speaker that he or she end the suspension or to the Assembly to end the clerk's appointment.

Clause 15 Suspension of clerk – ending suspension – provides that where the Speaker fails to provide the administration and procedure committee with a notice and statement of reasons pursuant to clause 14 (1), the suspension ends. Where the committee fails to meet within the timeframes prescribed under 14 (2), the suspension ends.

The clause provides that the committee must review the suspension at its regular meetings provided for in subclause 14 (2)(b) and may at any time resolve to: (a) recommend that the Speaker end the suspension; or (b) make a statement to the Assembly recommending that the Clerk's appointment be ended.

Where the committee resolves that the Speaker end the suspension of the clerk pursuant to subclause 15 (3)(a) and the Speaker does not do so within one business day after the day of the recommendation, it is open to the committee to take the matter before the Assembly by way of a resolution of the committee that a statement be made in the Assembly recommending that the suspension be ended. The intention of this provision is to confer on the Assembly the power to determine the matter where a dispute between the majority of the administration and procedure committee and the Speaker arises in relation to the suspension of the clerk.

Where the committee makes a statement to the Assembly recommending that the suspension be ended, pursuant to subclause 15 (3)(a), and the Assembly does not deal with the statement within three sitting days, the suspension is ended.

Where the committee makes a statement to the Assembly that the clerk's appointment be ended, pursuant to subclause 14(4)(b), the Assembly may resolve to require that the Speaker end the clerk's appointment. If the assembly does not pass a resolution to require that the Speaker ends the clerk's appointment within three sitting days, the suspension of the clerk ends at the end of the 3rd sitting day.

The clauses are framed as they are to ensure that the Assembly deals promptly with any recommendations put to it by the administration and procedure committee concerning the suspension of the clerk or the ending of his or her appointment. It is also the intention that before recommendations of this nature are put to the Assembly by the committee, pursuant to subclause 14 (4), it will have given due and careful consideration to the relevant matters which would form the basis of its recommendation.

Clause 16 - Ending of clerk's appointment – the purpose of this clause is to clearly codify the circumstances in which the appointment of the clerk may be terminated by the Speaker, limiting the matters that give rise to the ending of the appointment to those which would reasonably be seen as impacting on the effective and proper performance of the role of clerk or where a voluntary decision on the part of the clerk has been made.

The clause provides that the clerk's appointment may be ended only when a resolution to this effect has been passed by the Assembly in relation to misbehaviour or physical or mental incapacity which substantially affects the exercise of the clerk's functions; where the clerk is absent without the leave of the Speaker for the prescribed period; or pursuant to clause 18, which sets out provisions in relation to retirement. That only the Assembly can cause the appointment of the clerk to be ended is provided for on the basis that the clerk performs his or her functions on behalf of all members of the Assembly and the Assembly as a whole rather than on behalf of the speaker.

It is intended that the Speaker, the administration and procedure committee and the Assembly as a whole would have regard to the principles of natural justice and procedural fairness in deliberating on a course of action taken pursuant to clauses 13, 14, 15 and 16.

Clause 17 Retirement of clerk – provides a mechanism for the Speaker to retire the clerk voluntarily where his or her physical or mental incapacity affects the exercise of his or her functions. Clause 17 (2) provides for a number of additional requirements in relation to retirement on the ground of invalidity, which has a specific meaning in the section and with respect to the *Superannuation Act 1976* (Cwth), the *Superannuation Act 1990* (Cwth) and the *Superannuation Act 2005* (Cwth).

Clause 18 Resignation of clerk – provides a mechanism for the resignation of the clerk. It requires the Speaker to provide a copy of the notice of resignation to all members of the Assembly.

This requirement differs from the existing provision – section 49 of the *Public Sector Management Act 1994* – which requires only that the Speaker must forward to the executive a copy of any notice of resignation.

The clause recognises that the clerk performs his or her roles on behalf of all members of the Assembly and that the notice should be provided to each of them, not merely executive members.

Clause 19 Acting appointment as clerk – provides that the Speaker can appoint certain members of the Office the Legislative Assembly to act in the role of clerk. If no-one within the office is deemed suitable, a suitable person who is not a member of the office can be appointed to act in the role. A suitable person for these purposes is provided for in subclause 19 (2).

Part 4 Miscellaneous

Clause 20 Regulation-making power – provides that, while the executive may make regulations for this Act, it must consult with the Speaker of the Assembly before doing so.

This clause recognises that, pursuant to section 37 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), the power to make regulations rests with the executive. Given that the legislative branch has a patent interest in the character of any regulations made in relation to the office, it is appropriate that the interests of the legislature are given expression and are duly considered by the legislature *before* any regulations are introduced which might have a bearing on the operation of the Assembly or the Office of the Legislative Assembly.

The Speaker is taken to represent and protect this interest.

Clause 21 Legislation amended – schedule 1 – provides that consequential and other amendments set out in schedule 1 amend the relevant legislation.

Part 5 Transitional

It should be noted that the bill does not include a provision for the executive to prescribe transitional matters necessary and convenient to be prescribed because of the enactment of this legislation.

Clause 50 – Change of name–references to old name – provides that, following commencement, any references in any documents to the ‘Legislative Assembly secretariat’ are to be read as references to the Office of the Legislative Assembly. The provision recognises that, in establishing the new office, there will be a range of ancillary documentation, which may include references to the old agency. It is intended that, where this is the case, the new name and identity of the organisation are properly reflected.

Clause 51 - Clerk of the Legislative Assembly – provides that the person who occupies the position of Clerk of the Assembly prior to the enactment of the bill is taken to be the person appointed as Clerk of the Assembly under the new act.

Clause 52 - Staff of the Legislative Assembly – provides that the staff of the Legislative Assembly secretariat prior to commencement are, following commencement, taken to be staff of the Office of the Legislative Assembly.

Clause 53 - Expiry – pt 5 – provides that the transitional arrangements provided for in part 5 expire two years after the day of commencement.

Schedule 1

Consequential and other amendments

Part 1.1 Annual Reports (Government Agencies) Act 2004

[Amendment 1.1] **Section 6 (2), new note** – notes that an annual report direction issued by a minister does not apply to the office pursuant to new section 9 (1A) of the *Annual Reports (Government Agencies) Act 2004* given effect by amendment 1.3.

[Amendment 1.2] **New section 6 (2A)** – provides that the annual report produced by the Office of the Legislative Assembly shall account for the management of the office during the financial year, recognising that, while it is not appropriate for the office to be subject to reporting directions of the executive, it is in the interests of open, accountable government for the office to report on its use of taxpayer funding.

[Amendment 1.3] **New section 9 (1A)** – provides that an annual report direction issued by a minister does not apply to the Office of the Legislative Assembly. This is provided for on the basis that, because of the separation of powers doctrine, it is incongruous for the support office of a legislature to be subject to particular reporting requirements as set by part of the executive (a minister).

[Amendment 1.4] **Section 11 (2)** – provides that existing provisions concerning a responsible minister's direction with respect to a public authority's annual report do not apply to the Office of the Legislative Assembly, mirroring the exemption in relation to the Auditor-General.

[Amendment 1.5] **Section 12 (1)** – provides that existing provisions that permit the Chief Minister to declare that a minister is the responsible minister for a public authority do not apply to the Office of the Legislative Assembly, mirroring the exemption in relation to the Auditor-General.

[Amendment 1.6] **Section 15** – provides for requirements in relation to the presentation of an annual report by the Office of the Legislative Assembly by applying the same requirements that already apply with respect to the Auditor-General.

The requirement to produce an annual report on the operations of the Office of the Assembly within the framework provided in this amended section is consistent with open, accountable government.

[Amendment 1.7] Dictionary, note 2 – lists examples of terms used in the Act that are defined in the Legislation Act, dictionary, part 1 (where terms commonly used in legislation are defined) and used in this Act. This amendment inserts a new defined term in the list of terms defined in the Legislation Act, dictionary, part 1 as a consequence of the insertion of a definition of the **Office of the Legislative Assembly** in the Legislation Act, dictionary, part 1 by amendment 1.32.

[Amendment 1.8] Dictionary, definition of *public authority*, new paragraph (e) – provides that, for the purposes of the Act, the Office of the Legislative Assembly, amongst other listed organisations, is a public authority.

Part 1.2 Auditor-General Act 1996

[Amendment 1.9] Section 20 - Office of the Legislative Assembly – provides that this section applies to the Office of the Legislative Assembly rather than the Legislative Assembly secretariat.

[Amendment 1.10] Dictionary, note 2 – lists examples of terms used in the Act that are defined in the Legislation Act, dictionary, part 1 (where terms commonly used in legislation are defined) and used in this Act. This amendment inserts a new defined term in the list of terms defined in the Legislation Act, dictionary, part 1 as a consequence of the insertion of a definition of the **Office of the Legislative Assembly** in the Legislation Act, dictionary, part 1 by amendment 1.32.

Part 1.3 Financial Management Act 1996

[Amendment 1.11] Section 4 - Application of pts 2 to 5 to Office of the Legislative Assembly – provides that relevant parts of the Act apply to the Office of the Legislative Assembly, the Clerk of the Legislative Assembly and the Speaker of the Legislative Assembly.

The office will continue to be subject to much of the financial management as applies to directorates.

[Amendment 1.12] New section 8 (3) – provides that there must be a separate appropriation for the Office of the Legislative Assembly. This provision recognises that the legislature must be responsible for the passage of legislation to fund the office’s operations in a separate, transparent appropriation which can be considered, on its merits, separately from an omnibus appropriation for the broader operations of executive government.

[Amendment 1.13] Section 12 (2) – replace the term Legislative Assembly secretariat with Office of the Legislative Assembly.

[Amendment 1.14] Section 13 (1) – provides that the relevant provisions of section 13 of the *Financial Management Act 1996* apply where the Treasurer presents a bill for a supplementary appropriation for the Office of the Legislative Assembly. The amendment makes it clear that supplementary budget papers must be presented for any supplementary appropriation for the Office of the Legislative Assembly relating to the year.

[Amendment 1.15] Section 13A (1) – makes it clear that the reference to 'the first Appropriation Act' in the section also captures the first Appropriation Act for a financial year in relation to the Office of the Legislative Assembly in addition to the first Appropriation Act enacted with respect to any other directorate, territory authority or territory-owned corporation, recognising the new class of appropriation provided for in amendment 1.12.

[Amendment 1.16] Section 18 (5), definition of *relevant Appropriation Bill* – provides for the inclusion of a definition of ‘relevant Appropriation Bill’ that includes an appropriation bill for the Office of the Legislative Assembly, thereby recognising the new class of appropriation provided for in amendment 1.12 for the purposes of the Act.

[Amendment 1.17] Section 20 – replaces reference to 'Legislative Assembly secretariat' with 'Office of the Legislative Assembly'.

The amendment also introduces a requirement that, where the appropriation is less than the recommended appropriation, the Treasurer must present to the Legislative Assembly a statement of reasons for departing from the recommended appropriation.

The intention of this provision is to preserve the financial prerogative of the Crown to introduce appropriation bills and provides for an additional level of transparency in the process of making a determination as to the quantum of the Assembly budget, but require that

the Treasurer explain any downward variance between an amount requested by the Speaker pursuant to section 20 of the *Financial Management Act 1996* and that actually provided for in the appropriation bill for the office.

This remedies the current situation whereby the executive can seek to appropriate an amount less than that sought by the legislative branch without explanation as to the basis of its decision.

[Amendment 1.18] New section 30A (2A) – provides that the Office of the Legislative Assembly is not required to prepare statements of performance.

This is the corollary of provisions contained earlier in the *Financial Management Act 1996* (s12 (2)) which exempt the Assembly from including in its proposed budget a statement that, inter alia, sets out outputs, classes of outputs and performance criteria (s12 (1)(b)).

[Amendment 1.19] Section 30E (5) – replaces reference to 'Legislative Assembly secretariat' with 'Office of the Legislative Assembly'.

[Amendment 1.20] Dictionary, note 2 – lists examples of terms used in the Act that are defined in the Legislation Act, dictionary, part 1 (where terms commonly used in legislation are defined) and used in this Act. This amendment inserts a new defined term in the list of terms defined in the Legislation Act, dictionary, part 1 as a consequence of the insertion of a definition of the **Office of the Legislative Assembly** in the Legislation Act, dictionary, part 1 by amendment 1.32.

[Amendment 1.21] Dictionary, definition of *Legislative Assembly secretariat* – removes the reference to the obsolete organisation.

Part 1.4 Government Procurement Act 2001

[Amendment 1.22] Section 3 (1), definition of *Territory entity*, paragraph (a) – provides that, for the purposes of the relevant provisions of the *Government Procurement Act 2001*, the Office of the Legislative Assembly is a territory entity. It establishes that, by and large, the *Government Procurement Act 2001*, with certain exceptions, applies to the Office of the Legislative Assembly as it does to other territory entities.

It recognises that use of taxpayer funding must be done in accordance with a legislative framework that preserves principles of accountability, transparency and value for money.

[Amendment 1.23] New section 8 (1A) – provides that the ACT Government Procurement Board cannot be directed by the relevant minister as to the exercise of its functions in relation to the Office of the Legislative Assembly. The intention of this provision is to recognise that it is not the proper role of the executive to scrutinise, or cause to be scrutinised, the procurement activities of the legislature and to ensure that the minister’s traditional prerogatives with respect to the board cannot be exercised insofar as they concern the Office of the Legislative Assembly.

(Amendment 1.24) Section 9 – provides that the ACT Government Procurement Board has a requirement to provide the Speaker of the Legislative Assembly with reports that he or she requires, which are taken to mean reports prepared in relation to matters associated with the procurement activities of the Office of the Legislative Assembly. To preserve the separation of powers, the amendment also provides that the board may not be asked by the minister for any reports it has made in relation to the Office of the Legislative Assembly.

[Amendment 1.25] New section 10 (2) – prohibits the minister from asking the Government Procurement Board for information on the operations of the Office of the Legislative Assembly. The intent of the provision is to appropriately codify the separation of powers in this sphere of oversight.

[Amendment 1.26] New section 22B (3) – provides that a procurement proposal of the Office of the Legislative Assembly may not be declared by the minister as a procurement matter that must be reviewed by the board. The intent of the provision is to appropriately codify the separation of powers in this sphere of oversight.

[Amendment 1.27] New section 22C (2) – authorises the Speaker of the Legislative Assembly to refer to the Government Procurement Board a proposal or activity undertaken by the Office of the Legislative Assembly for review and advice. The amendment provides a mechanism for external review of procurement activities or of a proposal of the office without permitting the executive to be the source of the decision as to whether or not a proposal or activity should be subject to such a review.

[Amendment 1.28] Dictionary, note 2 – lists examples of terms used in the Act that are defined in the Legislation Act, dictionary, part 1 (where terms commonly used in legislation are defined) and used in this Act. This amendment inserts a new defined term in the list of terms defined in the Legislation Act, dictionary, part 1 as a consequence of the insertion of a definition of the **Office of the Legislative Assembly** in the Legislation Act, dictionary, part 1 by amendment 1.32.

[Amendment 1.29] Dictionary, definition of *responsible chief executive officer*, new paragraph (d) – provides that it is the Clerk of the Legislative Assembly who is taken to be the responsible chief executive officer for the purposes of the Act.

Part 1.5 Government Procurement Regulation 2007

[Amendment 1.30] New section 13 (3) – provides that for the purposes of the section the Office of the Legislative Assembly is not a territory entity. The intent of the amendment is to prevent the minister from giving directions about the management of the procurement activities of the Office of the Legislative Assembly.

Part 1.6 Legislation Act 2001

[Amendment 1.31] Dictionary, part 1, definition of *clerk*, note – updates the reference to the legislation under which the ‘Clerk of the Legislative Assembly’ is appointed.

[Amendment 1.32] Dictionary, part 1, new definition of *Office of the Legislative Assembly* – provides for a definition of ‘Office of the Legislative Assembly’ across all ACT legislation.

Part 1.7 Legislative Assembly (Broadcasting) Act 2001

[Amendment 1.33] Sections 7 (2) (d) (v) and 9 (1) – replaces the term ‘Legislative Assembly secretariat’ with ‘Office of the Legislative Assembly’ to reflect the name of the new office.

[Amendment 1.34] Dictionary, note 2 – lists examples of terms used in the Act that are defined in the Legislation Act, dictionary, part 1 (where terms commonly used in legislation are defined) and used in this Act. This amendment inserts a new defined term in the list of terms defined in the Legislation Act, dictionary, part 1 as a consequence of the insertion of a

definition of the **Office of the Legislative Assembly** in the Legislation Act, dictionary, part 1 by amendment 1.32.

[**Amendment 1.35**] **Dictionary, definition of *Legislative Assembly secretariat*** – omits the definition of ‘Legislative Assembly Secretariat’, recognising its obsolescence following the commencement of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*.

Part 1.8 Public Sector Management Act 1994

[**Amendment 1.36**] **Section 2, note 1** – removes the reference to ‘clerk’ as an example of a signpost definition.

[**Amendment 1.37**] **Section 21 (2)** – is consequential on the omission of s21 (3) by the next amendment.

[**Amendment 1.38**] **Section 21 (3)** – provides for the omission of the provision that allows the Commissioner for Public Administration to review the Legislative Assembly secretariat with the approval of the Speaker. No equivalent provision under the Legislative Assembly (Office of the Legislative Assembly) Bill 2012 would allow a review of the Office of the Legislative Assembly by the commissioner as provided for in section 21 of the *Public Sector Management Act 1994*. The Office of the Legislative Assembly is included as an autonomous instrumentality by virtue of amendment 1.46. One consequence of the office’s status as an autonomous instrumentality is that section 21 of the *Public Sector Management Act 1994* does not apply.

As a creature of executive government, and in keeping with the separation of powers doctrine, the Commissioner for Public Administration should not enjoy the prerogative to undertake a review of the ‘functions’ or ‘possible variations of functions’ undertaken by the agency responsible for providing support and advice to the legislative branch of government.

[**Amendment 1.39**] **New section 22AA** – provides for a process for the Commissioner for Public Administration to investigate the Office of the Legislative Assembly pursuant to section 22 of the Act. The requirements imposed by the new section are that the commissioner must have received the Speaker’s written approval before an inquiry or investigation can take place. Once that approval is given, the commissioner is not subject to

the direction of the executive or the Speaker and may conduct his or her investigation as necessary and within the parameters established in the Act.

The commissioner is required to give a report to the Speaker in respect of the inspection, inquiry or investigation.

In the interests of procedural fairness and as a matter of administrative efficiency, the amendment also provides for a six-month time frame within which the report of the commissioner on the matters investigated must be presented to the Speaker. The commissioner is able to seek an extension of time as long as the total time taken between the commencement of the investigation and the provision of the report does not exceed 12 months.

[Amendment 1.40] Section 25 (2) (b), example 1 – updates the reference to the clerk as an example of the statutory officers for the purposes of section 25 (3).

[Amendment 1.41] Section 43 (2) – provides for the inclusion of the Office of the Legislative Assembly for the purposes of applying sections 40, 41, and 42 of the *Public Sector Management Act 1994* in relation to equal employment, access and equity, and industrial democracy programs. The intent of the provision is to ensure that the Office of the Legislative Assembly exists within an appropriate whole-of-government public sector management framework where good-practice workplace environment programs and policies apply.

[Amendment 1.42] Division 3.8 – removes relevant provisions related to the clerk and the Legislative Assembly secretariat which will no longer have effect.

[Amendment 1.43] Section 143 (1) – This amendment is consequential on the insertion of new section 143(1A) by the next amendment.

[Amendment 1.44] New section 143 (1A) – provides that where the clerk is satisfied on reasonable grounds that section 143 (1) of the *Public Sector Management Act 1994* applies to a staff member of the Office of the Legislative Assembly and informs the Head of Service about the matter, the normal redeployment and retirement provisions outlined in the section will apply. The intention of the provision is that the mechanisms that apply to ACT public servants in these matters also apply to staff of the Office of the Legislative Assembly.

[Amendment 1.45] Dictionary, note 2 – lists examples of terms used in the Act that are defined in the Legislation Act, dictionary, part 1 (where terms commonly used in legislation are defined) and used in this Act. This amendment inserts a new defined term in the list of terms defined in the Legislation Act, dictionary, part 1 as a consequence of the insertion of a definition of the **Office of the Legislative Assembly** in the Legislation Act, dictionary, part 1 by amendment 1.32.

[Amendment 1.46] Dictionary, definition of *autonomous instrumentality*, new paragraph (c) – provides that the Office of the Legislative Assembly is an autonomous instrumentality. The *Public Sector Management Act 1994* recognises the special status of autonomous instrumentalities with respect to the relationship between the relevant instrumentality and the executive. As far as the office is concerned, its status as an autonomous instrumentality gives rise to the application of the following provisions:

- the Commissioner for Public Administration does not have the power to review the functions of the office (by virtue of s21 (1));
- the clerk, rather than the Commissioner for Public Administration, is responsible for the records of staff of the office (s23);
- the clerk may delegate all or any of his or her powers under the *Public Sector Management Act 1994*;
- the clerk is taken to be the head of service in relation to section 54A with respect to the ‘creation and abolition of offices’ as far as the Office of the Legislative Assembly is concerned;
- the clerk is taken to be the head of service in relation to section 57 with respect to the classification of offices and officers as far as the Office of the Legislative Assembly is concerned;
- the clerk is taken to be the head of service in relation to part 5 of the *Public Sector Management Act 1994* concerning ‘employment in the service’ as far as the Office of the Legislative Assembly is concerned (s64), except in relation to sections 73 and 74.

[Amendment 1.47] Dictionary, definition of *chief executive officer*, new paragraph (b) (iii) – provides that the clerk is the person responsible for managing the affairs of the autonomous instrumentality, the Office of the Legislative Assembly.

[Amendment 1.48] Dictionary, definitions of *clerk*, *Legislative Assembly secretariat* and *secretariat* – removes the relevant definitions that arise from the omission of division 3.8 in the Act.

Part 1.9 Territory Records Act 2002

[Amendment 1.49] Section 7 (e) – provides for a reference to the new Office of the Legislative Assembly.

[Amendment 1.50] Section 8 (e) – provides for a reference to the new Office of the Legislative Assembly.

[Amendment 1.51] Dictionary, note 2 – provides for the inclusion of references to the new Office of the Legislative Assembly.

Dictionary

The dictionary defines the terms 'administration and procedure committee', 'clerk', 'office' and 'Office of the Legislative Assembly'.