

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

OFFICERS OF THE ASSEMBLY LEGISLATION AMENDMENT BILL 2014

EXPLANATORY STATEMENT

Circulated by
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Introduction

This explanatory statement relates to the Officers of the Assembly Legislation Amendment Bill 2014 as presented by Mr Shane Rattenbury MLA in 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 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.

Overview

The Bill makes minor changes to address inconsistencies arising from the *Officers of the Assembly Legislation Amendment Act 2013*. The changes proposed in the Bill primarily relate to the process for the recommended budget for the Auditor-General and the harmonisation of this process to ensure that it is the same across each of the three Officers of the Assembly.

As the amendments in the Bill relate to changes made by the *Officers of the Assembly Legislation Amendment Act 2013*, which has not yet commenced, the changes to the *Auditor-General Act 1996* and the *Financial Management Act 1996* in the Bill must be read in light of the changes made in the *Officers of the Assembly Legislation Amendment Act 2013*.

Human Rights

The Bill relates only to administrative processes for the Officers of the Assembly and does not engage any human rights.

Delegation of Legislative Power

The Bill does not delegate legislative power.

Administrative powers created by the Bill

The Bill clarifies the responsibilities of the Speaker and committees of the Assembly for the formal presentation to the Treasurer of recommended appropriations for the Officers of the Assembly and makes other minor related administrative changes to ensure the efficacy of the new arrangements for Officers of the Assembly. The Bill does not create any other new administrative powers.

Notes on Clauses

Part 1 Preliminary

Clauses 1-3

These clauses form Part 1 of the Bill. They are formal clauses setting out the name of the Act and its commencement date, and the Acts that it amends.

Commencement of the Bill will be immediately after the commencement of the *Officers of the Assembly Legislation Amendment Act 2013*. This means that to ascertain the effect of the Bill the reader must consider the proposed amendments as if the changes to both the *Auditor-*

General Act 1996 and the *Financial Management Act 1996* from the *Officers of the Assembly Legislation Amendment Act 2013* had come into effect. The Bill will commence 1 July 2014 when the republications, incorporating both amendments from the *Officers of the Assembly Legislation Amendment Act 2013* and the Bill, will be notified on the legislation register.

Clause 4

This clause omits part 4 of the Act because there was an inconsistency with the arrangements and processes set out in this part and the amendments made by the *Officers of the Assembly Legislation Amendment Act 2013*. Current section 22 provides that, before the beginning of each financial year, the presiding member of the public accounts committee may advise the Treasurer of the appropriation the committee considers should be made for the operations of the auditor-general for the year, and give the Treasurer a draft budget for those operations. However, under amendments made by the *Officers of the Assembly Legislation Amendment Act 2013*, the auditor-general becomes an officer of the Assembly and provisions are included in the *Financial Management Act 1996* requiring the Speaker, after consultation with the officers of the Assembly and the relevant Legislative Assembly committee, to advise the Treasurer about proposed appropriations for the officers and provide the Treasurer with draft budgets for their operations.

Together with the amendments in clauses 8-10 the process for the budget of the auditor-general will be harmonised with the Officers of the Assembly, clarifying that it is the Speaker who will advise the Treasurer of the proposed appropriations.

Clause 5

This amendment is consequential on the changes in clause 4 that will remove part 4 of the Act. It makes no substantive changes to the meaning of ‘independent financial audit’.

Clause 6

This clause makes consequential changes to the notes in section 31 to reflect the removal of part 4 of the Act and changes to the *Financial Management Act 1996* in clause 9 of the Bill. The clause omits the note referring to section 30C as this will no longer apply given the amendment made to section 30A(3) of the FMA by the *Officers of the Assembly Legislation Amendment Act 2013* which makes it clear the Officers are not required to prepare statements of performance.

Clause 7

This clause is consequential to the removal of part 4 of the Act and makes no substantive changes.

Clause 8

This clause changes the current arrangement in the *Officers of the Assembly Legislation Amendment Act 2013* so that the Officers of the Assembly are responsible directly to the Assembly for fulfilling the requirements of parts 2-5 of the *Financial Management Act 1996* and not to the Speaker. The change is made because of concerns expressed by the auditor-general that the current formulation could be seen to limit the independence of the audit office by making it responsible to a particular person. Currently the auditor-general is not subject to part 4 of the *Financial Management Act 1996*.

The change proposed in the clause is consistent with the recognition in the *Officers of the Assembly Legislation Amendment Act 2013* that the Officers fulfil a function of the Assembly

on its behalf. It will maintain consistency across the Officers of the Assembly ensuring that they have the same level of accountability to the Assembly for their conduct while obviating the concern that the current arrangement may give rise to a perceived reduction in independence.

Clause 9

This clause clarifies the application of division 3.2 of the Act to the auditor-general. This clarification was previously set out in the part 4 of the *Auditor-General Act 1996* that is being omitted by clause 4 of the Bill.

Clause 10

This clause inserts into the Act a process for the recommendation of additional appropriations that may be necessary for each of the Officers of the Assembly during a financial year to fulfil their functions. The clause is modelled on the current section 22A of the *Auditor-General Act 1996*, which is being removed by clause 4 of the Bill, and adapted to make it applicable to all of the Officers of the Assembly.

In adapting the new section to each of the Officers of the Assembly under the new framework – where it is the Speaker in consultation with the chair of the relevant Assembly committee who conveys the need for additional funding – the existing standards are applied. The scope, however, is broadened to cover the functions of each of the Officers of the Assembly.

The new section 20AD effectively creates a mechanism to alert the Treasurer that there is a shortfall in the level of funding that has been appropriated to the Officer. Upon receipt of that advice the Treasurer must then apply the section 18(2) criteria to determine whether or not to provide the additional funding under the power given by section 18 of the Act.