

Serial 86
Integrity and Accountability Legislation Amendment Bill 2019
Mr Gunner

A Bill for an Act to amend the *Audit Act 1995*, the *Electoral Act 2004*, the
Independent Commissioner Against Corruption Act 2017 and the
Ombudsman Act 2009

NORTHERN TERRITORY OF AUSTRALIA

INTEGRITY AND ACCOUNTABILITY LEGISLATION AMENDMENT
ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Audit Act 1995*, the *Electoral Act 2004*, the *Independent Commissioner Against Corruption Act 2017* and the *Ombudsman Act 2009*

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Integrity and Accountability Legislation Amendment Act 2019*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Audit Act 1995

3 Act amended

This Part amends the *Audit Act 1995*.

4 Section 3 amended (Interpretation)

- (1) Section 3(1), definition *Auditor-General*
omit

(2) Section 3(1)

insert

Acting Auditor-General means a person appointed under section 10.

Auditor-General means the person appointed under section 4 as the Auditor-General.

Australian parliament means:

- (a) the Legislative Assembly; or
- (b) the Parliament of the Commonwealth or a State; or
- (c) the parliament or legislature of another Territory.

eligible person, see section 4A(1).

5 Section 4 replaced

Section 4

repeal, insert

4 Appointment of Auditor-General

- (1) There is to be an Auditor-General.
- (2) The Administrator may appoint an eligible person to be the Auditor-General.
- (3) The appointment may be made only after receiving a recommendation of the Legislative Assembly.
- (4) The Minister must table a copy of the appointment in the Legislative Assembly within 6 sitting days after the appointment is made.

4A Eligibility for appointment

- (1) A person is an **eligible person** for appointment as the Auditor-General if:
 - (a) the person has suitable qualifications or experience relating to the Auditor-General's functions; and
 - (b) the person is committed to the purposes of this Act and its underlying principles; and

- (c) the person is not any of the following:
 - (i) a judicial officer;
 - (ii) a member of an Australian parliament;
 - (iii) a member of a local government council or of an equivalent body in a State or another Territory;
 - (iv) a member of a political party;
 - (v) a prescribed officer of a Territory controlled entity; and
 - (d) the person does not have a recent political affiliation.
- (2) For subsection (1)(d), a person has a recent political affiliation if, at any time during the previous 5 years, the person:
- (a) was a member of the Legislative Assembly or a local government council; or
 - (b) was an office holder or elected representative of a political party in the Territory or elsewhere in Australia; or
 - (c) was a member of staff of a minister; or
 - (d) made a reportable donation to a political party, or an associated entity of a political party, in the Territory or elsewhere in Australia.
- (3) For subsection (2)(d), a person made a reportable donation if it was made by the person or by a body corporate of which the person was an office holder or majority shareholder at the time the donation was made.
- (4) In this section:

reportable donation means a gift or loan that is required to be disclosed or reported under Part 10 of the *Electoral Act 2004* or under a similar law in force in the Commonwealth or in a State or another Territory.

4B Term of appointment

- (1) The appointment of a person as the Auditor-General is for a period of 5 years.
- (2) A person who is the Auditor-General may be reappointed, if still eligible, for one further period of 5 years.

4C Conditions of appointment

- (1) The Auditor-General holds office on the conditions, including conditions about remuneration, expenses and allowances, determined by the Administrator.
- (2) The Auditor-General's conditions of office:
 - (a) cannot provide any conditions (for example as to remuneration) that are contingent on the Auditor-General's performance in office; and
 - (b) cannot be varied during the Auditor-General's term in office.

6 Section 5 amended (Salary of Auditor-General)

Section 5(1)

omit

4(4)

insert

4C

7 Section 6 amended (Leave of absence of Auditor-General)

Section 6

omit

4(4)

insert

4C

8 Section 7 replaced

Section 7

repeal, insert

7 Vacancy in office

- (1) The office of Auditor-General becomes vacant if:
 - (a) the Auditor-General resigns under section 7A; or

- (b) the Auditor-General's appointment is terminated under section 7B; or
 - (c) the Auditor-General is found guilty of an offence, whether in the Territory or elsewhere, for which the maximum penalty is imprisonment for a term of at least 12 months, with or without a fine; or
 - (d) the Auditor-General is sentenced to imprisonment for an offence, whether in the Territory or elsewhere and whether or not the sentence is suspended; or
 - (e) the Auditor-General becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (f) the Auditor-General becomes a candidate for election as a member of an Australian parliament or a local government council; or
 - (g) the Auditor-General is no longer an eligible person for appointment.
- (2) A decision, an act or an omission of the Auditor-General is not invalid only because of a defect in the appointment of the Auditor-General, including not being an eligible person for appointment.

7A Resignation

The Auditor-General may resign office by written notice given to the Administrator.

7B Suspension and termination of appointment

- (1) The Administrator may suspend the Auditor-General from duty if:
- (a) the Auditor-General becomes physically or mentally incapable of satisfactorily performing official duties; or
 - (b) the Auditor-General engages in corrupt conduct as defined in section 10 of the *Independent Commissioner Against Corruption Act 2017*; or
 - (c) the Auditor-General engages in paid employment outside the duties of office without the Minister's approval; or

- (d) the Auditor-General is absent from duty, without the approval of the Minister and without reasonable excuse, for 28 consecutive days or for 42 days in any period of 12 months.
- (2) The Minister must immediately give the Auditor-General a statement of reasons for the suspension.
- (3) The Minister must table in the Legislative Assembly the statement and any written response by the Auditor-General within 6 sitting days after the suspension.
- (4) If, within 6 sitting days after the statement is tabled, a resolution of the Legislative Assembly is passed by a two-thirds majority of all of the Assembly requiring the Administrator to terminate the Auditor-General's appointment, the Administrator must terminate the Auditor-General's appointment.
- (5) The suspension of the Auditor-General is lifted if:
 - (a) the Minister does not table the statement under subsection (3); or
 - (b) the Legislative Assembly does not pass a resolution in accordance with subsection (4).
- (6) The Auditor-General is entitled to be paid remuneration and allowances during the period of suspension.

9 Sections 9 to 11 replaced

Sections 9 to 11

repeal, insert

10 Acting Auditor-General

- (1) The Administrator may appoint an eligible person for appointment as the Auditor-General to act as the Auditor-General:
 - (a) during a vacancy in the office; or
 - (b) during a period, or all periods, when the Auditor-General, or another Acting Auditor-General, is unable, or unavailable, to perform official duties.
- (2) An appointment to act as the Auditor-General during a vacancy in the office may only be for a period or periods not exceeding in aggregate 6 months in any 12 month period.

- (3) If the office of Auditor-General is vacant for a period of 18 months, no further appointment to act as the Auditor-General during the vacancy can be made.
- (4) An Acting Auditor-General holds office on the conditions, including conditions about remuneration, expenses and allowances, determined by the Administrator.

11 Oath before taking office

- (1) Before performing any functions as Auditor-General, the Auditor-General must take an oath that the Auditor-General will faithfully, impartially and truly perform the functions of the Auditor-General according to law.
- (2) Before performing any functions as Acting Auditor-General, an Acting Auditor-General must take an oath that the Acting Auditor-General will faithfully, impartially and truly perform the functions for which the Acting Auditor-General is appointed, according to law.
- (3) The oath must be administered:
 - (a) for the Auditor-General – by the Administrator; or
 - (b) for an Acting Auditor-General – by the Administrator or the Minister.

10 Part 8 inserted

After section 30

insert

Part 8 Transitional matters for Integrity and Accountability Legislation Amendment Act 2019

31 Effect on Auditor-General in office

- (1) The office holder continues to hold the office of Auditor-General on the same terms and conditions that applied to the office holder's appointment before the commencement.
- (2) After the commencement, this Act applies to the office holder for the purposes of any reappointment as Auditor-General and the term of office that the office holder held before the commencement is to be counted for section 4B(2).

(3) In this section:

commencement means the commencement of section 5 of the *Integrity and Accountability Legislation Amendment Act 2019*.

officer holder means the person who, immediately before the commencement, held office as the Auditor-General.

11 Schedule repealed

Schedule

repeal

Part 3 Amendment of Electoral Act 2004

12 Act amended

This Part amends the *Electoral Act 2004*.

13 Section 3 amended (Definitions)

Section 3

insert

Acting Commissioner, see section 326.

Australian parliament means:

- (a) the Legislative Assembly; or
- (b) the Parliament of the Commonwealth or a State; or
- (c) the parliament or legislature of another Territory.

eligible person, see section 314A(1).

14 Section 314 replaced

Section 314

repeal, insert

314 Appointment of Electoral Commissioner

- (1) There is to be an Electoral Commissioner.
- (2) The Administrator may appoint an eligible person to be the Electoral Commissioner.

- (3) The appointment may be made only after receiving a recommendation of the Legislative Assembly.
- (4) The Minister must table a copy of the appointment in the Legislative Assembly within 6 sitting days after the appointment is made.

314A Eligibility for appointment

- (1) A person is an **eligible person** for appointment as the Electoral Commissioner if:
 - (a) the person has suitable qualifications or experience relating to the Commissioner's functions; and
 - (b) the person is committed to the purposes of this Act and its underlying principles; and
 - (c) the person is not any of the following:
 - (i) a judicial officer;
 - (ii) a member of an Australian parliament;
 - (iii) a member of a local government council or of an equivalent body in a State or another Territory;
 - (iv) a member of a political party; and
 - (d) the person does not have a recent political affiliation.
- (2) For subsection (1)(d), a person has a recent political affiliation if, at any time during the previous 5 years, the person:
 - (a) was a member of the Legislative Assembly or a local government council; or
 - (b) was an office holder or elected representative of a political party in the Territory or elsewhere in Australia; or
 - (c) was a member of staff of a minister; or
 - (d) made a reportable donation to a political party, or an associated entity of a political party, in the Territory or elsewhere in Australia.
- (3) For subsection (2)(d), a person made a reportable donation if it was made by the person or by a body corporate of which the person was an office holder or majority shareholder at the time the donation was made.

- (4) In this section:

reportable donation means a gift or loan that is required to be disclosed or reported under Part 10 or under a similar law in force in the Commonwealth or in a State or another Territory.

15 Sections 320 to 327 replaced

Sections 320 to 327

repeal, insert

320 Term of appointment

- (1) The appointment of a person as the Commissioner is for a period of 5 years.
- (2) A person who is the Commissioner may be reappointed, if still eligible, for one further period of 5 years.

321 Conditions of appointment

- (1) The Commissioner holds office on the conditions, including conditions about remuneration, expenses and allowances, determined by the Administrator.
- (2) The Commissioner's conditions of office:
- (a) cannot provide any conditions (for example as to remuneration) that are contingent on the Commissioner's performance in office; and
- (b) cannot be varied during the Commissioner's term in office.

322 Vacancy in office

- (1) The office of Commissioner becomes vacant if:
- (a) the Commissioner resigns under section 323; or
- (b) the Commissioner's appointment is terminated under section 324; or
- (c) the Commissioner is found guilty of an offence, whether in the Territory or elsewhere, for which the maximum penalty is imprisonment for a term of at least 12 months, with or without a fine; or
- (d) the Commissioner is sentenced to imprisonment for an offence, whether in the Territory or elsewhere and whether or not the sentence is suspended; or

- (e) the Commissioner becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (f) the Commissioner becomes a candidate for election as a member of an Australian parliament or a local government council; or
 - (g) the Commissioner is no longer an eligible person for appointment.
- (2) A decision, an act or an omission of the Commissioner is not invalid only because of a defect in the appointment of the Commissioner, including not being an eligible person for appointment.

323 Resignation

The Commissioner may resign office by written notice given to the Administrator.

324 Suspension and termination of appointment

- (1) The Administrator may suspend the Commissioner from duty if:
- (a) the Commissioner becomes physically or mentally incapable of satisfactorily performing official duties; or
 - (b) the Commissioner engages in corrupt conduct as defined in section 10 of the *Independent Commissioner Against Corruption Act 2017*; or
 - (c) the Commissioner engages in paid employment outside the duties of office without the Minister's approval; or
 - (d) the Commissioner is absent from duty, without the approval of the Minister and without reasonable excuse, for 28 consecutive days or for 42 days in any period of 12 months.
- (2) The Minister must immediately give the Commissioner a statement of reasons for the suspension.
- (3) The Minister must table in the Legislative Assembly the statement and any written response by the Commissioner within 6 sitting days after the suspension.
- (4) If, within 6 sitting days after the statement is tabled, a resolution of the Legislative Assembly is passed by a two-thirds majority of all of the Assembly requiring the Administrator to terminate the

Commissioner's appointment, the Administrator must terminate the Commissioner's appointment.

- (5) The suspension of the Commissioner is lifted if:
- (a) the Minister does not table the statement under subsection (3); or
 - (b) the Legislative Assembly does not pass a resolution in accordance with subsection (4).
- (6) The Commissioner is entitled to be paid remuneration and allowances during the period of suspension.

325 Leave of absence

The Minister may grant the Commissioner leave of absence on the conditions decided by the Minister.

326 Acting Commissioner

- (1) The Administrator may appoint an eligible person for appointment as the Commissioner to act as the Commissioner:
- (a) during a vacancy in the office; or
 - (b) during a period, or all periods, when the Commissioner, or another Acting Commissioner, is unable, or unavailable, to perform official duties.
- (2) An appointment to act as the Commissioner during a vacancy in the office may only be for a period or periods not exceeding in aggregate 6 months in any 12 month period.
- (3) If the office of Commissioner is vacant for a period of 18 months, no further appointment to act as the Commissioner during the vacancy can be made.
- (4) An Acting Commissioner holds office on the conditions, including conditions about remuneration, expenses and allowances, determined by the Administrator.

327 Oath before taking office

- (1) Before performing any functions as Commissioner, the Commissioner must take an oath that the Commissioner will faithfully, impartially and truly perform the functions of the Commissioner according to law.

- (2) Before performing any functions as Acting Commissioner, an Acting Commissioner must take an oath that the Acting Commissioner will faithfully, impartially and truly perform the functions for which the Acting Commissioner is appointed, according to law.
- (3) The oath must be administered:
 - (a) for the Commissioner – by the Administrator; or
 - (b) for an Acting Commissioner – by the Administrator or the Minister.

16 Part 21 inserted

After section 361

insert

Part 21 Transitional matters for Integrity and Accountability Legislation Amendment Act 2019**362 Effect on Commissioner in office**

- (1) The office holder continues to hold the office of Commissioner on the same terms and conditions that applied to the office holder's appointment before the commencement.
- (2) After the commencement, this Act applies to the office holder for the purposes of any reappointment as Commissioner and the term of office that the office holder held before the commencement is to be counted for section 320(2).
- (3) In this section:

commencement means the commencement of section 15 of the *Integrity and Accountability Legislation Amendment Act 2019*.

officer holder means the person who, immediately before the commencement, held office as the Commissioner.

Part 4 Amendment of Independent Commissioner Against Corruption Act 2017**17 Act amended**

This Part amends the *Independent Commissioner Against Corruption Act 2017*.

18 Section 134 amended (Appointment of Inspector)

After section 134(1)

insert

- (1A) The appointment may be made only after receiving a recommendation of the Legislative Assembly.
- (1B) The Minister must table a copy of the appointment in the Legislative Assembly within 6 sitting days after the appointment is made.

Part 5 Amendment of Ombudsman Act 2009**19 Act amended**

This Part amends the *Ombudsman Act 2009*.

20 Section 4 amended (Definitions)

Section 4

insert

Acting Ombudsman, see section 143.

Australian parliament means:

- (a) the Legislative Assembly; or
- (b) the Parliament of the Commonwealth or a State; or
- (c) the parliament or legislature of another Territory.

eligible person, see section 133(1).

21 Sections 133 and 134 replaced

Sections 133 and 134

repeal, insert

133 Eligibility for appointment

- (1) A person is an **eligible person** for appointment as the Ombudsman if:
- (a) the person has suitable qualifications or experience relating to the Ombudsman's functions; and

- (b) the person is committed to the purposes of this Act and its underlying principles; and
 - (c) the person is not any of the following:
 - (i) a judicial officer;
 - (ii) a member of an Australian parliament;
 - (iii) a member of a local government council or of an equivalent body in a State or another Territory;
 - (iv) a member of a political party; and
 - (d) the person does not have a recent political affiliation.
- (2) For subsection (1)(d), a person has a recent political affiliation if, at any time during the previous 5 years, the person:
- (a) was a member of the Legislative Assembly or a local government council; or
 - (b) was an office holder or elected representative of a political party in the Territory or elsewhere in Australia; or
 - (c) was a member of staff of a minister; or
 - (d) made a reportable donation to a political party, or an associated entity of a political party, in the Territory or elsewhere in Australia.
- (3) For subsection (2)(d), a person made a reportable donation if it was made by the person or by a body corporate of which the person was an office holder or majority shareholder at the time the donation was made.
- (4) In this section:

reportable donation means a gift or loan that is required to be disclosed or reported under Part 10 of the *Electoral Act 2004* or under a similar law in force in the Commonwealth or in a State or another Territory.

134 Term of appointment

- (1) The appointment of a person as the Ombudsman is for a period of 5 years.
- (2) A person who is the Ombudsman may be reappointed, if still eligible, for one further period of 5 years.

22 Section 144 replaced

Section 144

repeal, insert

144 Oath before taking office

- (1) Before performing any functions as Ombudsman, the Ombudsman must take an oath that the Ombudsman will faithfully, impartially and truly perform the functions of the Ombudsman according to law.
- (2) Before performing any functions as Acting Ombudsman, an Acting Ombudsman must take an oath that the Acting Ombudsman will faithfully, impartially and truly perform the functions for which the Acting Ombudsman is appointed, according to law.
- (3) The oath must be administered:
 - (a) for the Ombudsman – by the Administrator; or
 - (b) for an Acting Ombudsman – by the Administrator or the Minister.

23 Part 12 inserted

After section 165

insert

Part 12 Transitional matters for Integrity and Accountability Legislation Amendment Act 2019**166 Effect on Ombudsman in office**

- (1) The office holder continues to hold the office of Ombudsman on the same terms and conditions that applied to the office holder's appointment before the commencement.
- (2) After the commencement, this Act applies to the office holder for the purposes of any reappointment as Ombudsman and the term of office that the office holder held before the commencement is to be counted for section 134(2).

(3) In this section:

commencement means the commencement of section 21 of the *Integrity and Accountability Legislation Amendment Act 2019*.

officer holder means the person who, immediately before the commencement, held office as the Ombudsman.

Part 6 Repeal

24 Repeal of Act

This Act is repealed on the day after it commences.