

6.1 The responsibility for governing the Australian Capital Territory rests with the executive, established by the Self-Government Act as the executive arm of the body politic. The initial allocation of responsibilities to the executive in the Australian Capital Territory reflected the approach adopted in the *Northern Territory (Self-Government) Act 1978*.¹ The executive's areas of responsibility are set out in schedule 4 of the Act and cover a wide range of 'state-type' and local functions, which distinguishes the ACT from the Northern Territory.² Schedule 4 lists over 60 matters which the executive has power to govern the Territory.

6.2 The Act also gives general authority to the ACT executive for the:

- execution and maintenance of enactments and subordinate laws;
- exercising of such other powers as are vested in the executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a state or another territory; and
- exercising of prerogatives of the Crown so far as they relate to these responsibilities.³

6.3 Section 74 of the Self-Government Act allows the Governor-General to add further responsibilities by regulation. This occurred in 1989 when law and order, legal practitioners, the magistrates court, the coroner's court and courts other than the magistrates court and the coroner's court were added to schedule 4.⁴

6.4 The structure of government is not dissimilar to other Australian jurisdictions and those elsewhere that are derived from the system of government in the United Kingdom, with an executive government chosen from, and responsible to, a democratically elected legislature. What is unusual in the Australian context is that, unlike the Commonwealth, the states and the Northern Territory, there is no office equivalent to the Governor-General, state Governors or Administrator of the Northern Territory.

6.5 In the Northern Territory, for example, the Administrator is charged with the duty of administering the Territory, but in doing so is advised by an Executive Council consisting of persons for the time being holding ministerial office who are appointed by the Administrator.⁵ The ACT has no comparable office.

6.6 In the ACT the Chief Minister is elected by the Assembly from among its Members and the Chief Minister appoints up to five Ministers,⁶ who must also be Members of the Assembly.⁷ The Chief Minister and the Ministers he or she appoints constitute the ACT executive. Ministers, once appointed, retain their office until they resign, vacate their office as a

1 Australian Capital Territory (Self-Government) Bill 1988, Explanatory Memorandum, p. 3.

2 See comments by the Minister for the Arts and Territories in introducing the Self-Government Bill, H.R. Deb. (19.10.1988) 1922.

3 Self-Government Act, sections 37, 38 and 38A.

4 Statutory Rules 1989, No. 86 (Cwlth).

5 Northern Territory (Self-Government) Act 1978, Part IV. The Governor-General has the power to dissolve the ACT Assembly in extraordinary circumstances (see paragraphs 1.42 to 1.44) and also has the power to disallow and recommend amendments to enactments (see paragraphs 1.19 to 1.36).

6 Self-Government Act, section 39. Subsection 39(2) provides that '... the exercise of the powers of the Executive is not affected merely because of a vacancy or vacancies in the membership of the Executive'.

7 Self-Government Act, subsections 41(1) and (2A). The Speaker and Deputy Speaker are ineligible for appointment.

Member, are dismissed by the Chief Minister, or until immediately before a new Chief Minister is elected.

6.7 The Assembly must meet within seven days after the result of a general election is declared. At its first meeting the Members present must, after electing a Speaker and before any other business, elect a Chief Minister. Similarly, the Assembly must elect a Member to be Chief Minister whenever the office falls vacant for whatever reason, apart from a dissolution of the Assembly. Procedures are in place to ensure that a Chief Minister is elected at the earliest opportunity.⁸

6.8 Should the Assembly be unable to elect a Chief Minister when required to do so (in the event of a vacancy in the office or following a no confidence resolution), there are constitutional mechanisms in place to ensure that the responsibilities of the executive continue to be exercised:

- in the event of the Assembly passing a resolution of no confidence in the Chief Minister, the Chief Minister does not vacate his or her office until immediately before another Chief Minister is elected;
- should the Assembly not elect a Chief Minister within a period of 30 days after passing a resolution of no confidence in a Chief Minister (and the Assembly has not been dissolved in that period), there is provision for a general election to be held on a day specified by the Commonwealth Minister;⁹
- should the Chief Minister vacate his or her office by resignation or by ceasing to be a Member of the Assembly (other than because of a general election),¹⁰ the Deputy Chief Minister acts as Chief Minister;¹¹ and
- in the event of vacancies in all ministerial offices (including that of Chief Minister) where there is a necessity to exercise the powers of the executive for the purpose of maintaining the provision and control of essential services, the Commonwealth Minister may exercise those powers until a Chief Minister is elected.¹²

EXECUTIVE IN THE ASSEMBLY

6.9 The Australian Capital Territory as a body politic consists of the executive exercising the executive power and the Legislative Assembly exercising the legislative power. The Assembly has the powers to make the laws for the peace, order and good government of the Territory and that power extends to the power to make laws with respect to the exercise of powers by the executive. In addition, the receipt, spending and control of the public money of the Territory must be regulated as provided by enactment and no public money may be issued or spent except as authorised by enactment.¹³

6.10 Membership of the executive is usually drawn from the political party or coalition of parties and Members that support the Chief Minister. It is not necessary that the governing party or parties comprise a majority of the Members of the Assembly; in fact, for most of the period since self-government the Territory has been governed by minority governments.

⁸ Self-Government Act, section 40; standing order 12. Section 45 of the Self-Government Act provides that the Chief Minister resigns office by written notice to the Speaker. See paragraph 6.52.

⁹ Self-Government Act, section 48.

¹⁰ See paragraph 6.51.

¹¹ Self-Government Act, subsections 44(2) and 44(3). And see footnote 10.

¹² Self-Government Act, section 47. Inability to agree on the election of a Chief Minister might also trigger section 16 of the Self-Government Act, which allows the Governor-General to dissolve the Assembly and appoint a commissioner to govern the ACT where the Assembly is considered to be incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.

¹³ Self-Government Act, sections 22, 57 and 58.

6.11 It is critical that the executive retains the confidence of the Assembly. However, defeat on particular measures is not treated as a loss of the confidence of the Assembly. The prevalence of minority governments in the first five Assemblies has meant that failure to pass significant pieces of legislation is not uncommon.

6.12 On one occasion the motion that the annual appropriation bill (the budget) be agreed to was defeated. The bill provided funds for a highly controversial supervised heroin injecting facility. The Assembly adjourned to the next scheduled sitting day and the government restructured both the appropriation bill and the injection room proposal. At its next meeting the Assembly rescinded the vote on the appropriation bill, agreed to government amendments and passed the amended bill.¹⁴ Generally the passage of a motion of no confidence is necessary to unseat a Chief Minister.¹⁵

CABINET

6.13 By convention, the executive determines its policies and makes its decisions through a cabinet system of decision making, with cabinet decisions seen as binding on all Ministers as government policy. This convention of collective responsibility is supported by the convention of cabinet confidentiality, whereby strict confidentiality is attached to cabinet documents and cabinet discussions. As stated in the current *Cabinet Handbook*:

Cabinet is the forum in which Ministers are able to discuss proposals and express their views with complete freedom while working towards a collective position. The openness and frankness of discussions in the Cabinet Room are protected by the strict observance of this confidentiality.¹⁶

6.14 The current code of conduct for the executive¹⁷ not only addresses ministerial obligations to the Assembly but also addresses collective responsibility:

All Ministers who make up the executive of the Government acknowledge that the collective decisions of Cabinet are binding on them individually. If a Minister is unable to publicly support a Cabinet decision, the proper course is to resign from Cabinet. This convention is based on the proceedings of Cabinet ordinarily being private and with the decisions of Cabinet being collective in nature.

6.15 The Assembly has seen fit to enact provisions reinforcing Ministers' individual responsibility for the administration of departments and other administrative units mainly through amendments to the *Public Sector Management Act 1994*. On another occasion, the Assembly recognised an arrangement whereby the convention of collective responsibility was waived.

6.16 In December 1995 the Assembly considered significant amendments to the Public Sector Management Act which introduced new employment arrangements for chief executives and executives (senior public servants). During detail stage consideration of the bill a provision was inserted to ensure that nothing in a contract between the Territory and a person

¹⁴ See Assembly Debates. (29.6.2000) 2209-30, 2265-367 and (10.7.2000) 2427-41. Because of the way Territory finances are structured, the defeat of the appropriation bill did not precipitate any immediate financial crisis for the government. This does not diminish the seriousness of such a setback to a government and the precarious position it would be in should it be unable to obtain the Assembly's agreement to an appropriation proposal within a reasonable time. There is no legal requirement or convention that guarantees a government supply. For a full discussion of this matter, see paragraphs 11.185 to 11.195.

¹⁵ See Assembly Debates (5.12.1989) 2987-3046.

¹⁶ *Directions on Cabinet Procedure: ACT Government Cabinet Handbook*, January 2007, p. 2.

¹⁷ *Code of Conduct for Ministers*, Australian Capital Territory Government, February 2004. Presented in the Assembly on 12 February 2004; see MoP 2001-04/1122.

engaged to perform the duties of an office of chief executive could be taken to derogate from the responsibility of a Minister administering an administrative unit for the policies developed or applied by the administrative unit and the financial and other performance of the administrative unit. The issue had been canvassed in a report on the bill by the Standing Committee on Public Accounts.¹⁸

6.17 By arrangement, the convention of collective responsibility (or cabinet solidarity) was not followed during the Fourth Assembly. This resulted in moves from the floor of the Assembly (ultimately successful) to enact legislation to ensure that the convention operated in regard to the making of subordinate legislation.

6.18 In April 1998 Chief Minister Carnell appointed an independent Member, Mr Moore, as a Minister pursuant to certain conditions that had been recommended in a report entitled *Review of Governance of the Australian Capital Territory*.¹⁹ The review investigated the basis upon which a non-government Member could become a Minister. This included identifying areas in which the new Minister would not necessarily be bound by cabinet solidarity.²⁰

6.19 The Chief Minister presented letters that had been exchanged between Mr Moore and herself with regard to his appointment as a Minister. The letters indicated Mr Moore's acceptance to become part of the government and his agreement to the three conditions set out in the review. These conditions were that:

- the crossbench Member be willing to give prior notice of the sorts of issues on which he reserved the right to dissent in public and in the Assembly;
- as a Minister, he should be willing, where it falls within his brief, to act in the implementation of a decision from which he dissents; and
- as a Minister he should be prepared to renounce the use of the threat to resign in cabinet negotiations.

6.20 Additionally, Mr Moore saw it as appropriate for him to step aside from cabinet when it was considering issues that he had identified beforehand as issues where he might have a different approach (having first attempted to see if there was a compromise that could be reached). A 'list of issues which may require standing aside from Cabinet discussion and debate on individual issues while retaining normal Assembly debating and voting rights' was attached.²¹

6.21 The Chief Minister offered Mr Moore a ministerial position based upon the framework outlined in the review's report, while accepting that there were a number of issues on which Mr Moore would continue to dissent from in relation to stated government policy. On all other matters, particularly with regard to the budget and his portfolio responsibilities, Mr Moore would be a full member of cabinet and be bound by collective cabinet responsibility and confidentiality.

6.22 This arrangement led to a proposed amendment to the [then] Subordinate Laws Act to ensure collective and individual responsibility by the executive for the making and signing of regulations. The amendment proposed that the approval of the whole executive be required for any subordinate law proposed by a Minister and that the Minister responsible for administering the subordinate law be one of the Ministers signing the subordinate law. The requirement applying at that time was that any two Ministers who were Members of the

18 MoP 1995-97/228-9, 237; Assembly Debates (12.12.1995) 2865-6.

19 The Pettit Review.

20 MoP 1998-2001/7; Assembly Debates (28.4.1998) 19-21.

21 The list of topics was general in nature.

executive could sign a regulation into effect. The Member sponsoring the bill viewed the then existing provision (whereby any two Ministers who were members of the executive could sign a regulation into effect) as being used to breach the clear intention that any two Ministers signing regulations were clearly interpreting the will of the executive.

6.23 In addition, it was argued that the Westminster convention of collective and personal ministerial responsibility was being undermined by the practice.²² Although the bill lapsed at the expiration of the Fourth Assembly, the substantive provisions were inserted in the Legislation Act in May 2002.²³

6.24 Arising out of this arrangement, standing orders 77 and 78 were amended by temporary order to make provision for a new category of business—'Executive Members' business'.²⁴

Standing and other orders of the Assembly pertaining to the executive

6.25 The standing rules and orders of the Assembly allocate to the executive and Ministers certain prerogatives as well as imposing upon them essentially the same duties and responsibilities as those imposed upon other Members, though Ministers are rarely called upon to sit upon Assembly committees.²⁵

6.26 Only Ministers may propose any enactment, vote or resolution for the appropriation of the public money of the Territory, and non-executive Members are precluded from moving an amendment to such a proposal if it would increase the amount of public money to be appropriated.²⁶ In November 1995 the Assembly, by resolution, further limited the ability of non-executive Members to move amendments to appropriation bills other than those to reduce items of proposed expenditure²⁷ (see paragraphs 11.178 to 11.190).

6.27 Standing orders also provide that only a Minister may require that the question on the (automatic) adjournment be put forthwith without debate,²⁸ move a motion without notice to fix the next meeting of the Assembly,²⁹ move a motion pursuant to standing order 214³⁰ and (together with the Speaker) present papers.³¹

6.28 The Assembly grants precedence to executive business over private Members' business and Assembly business, except for sitting Wednesdays and a period of 45 minutes on

22 See Assembly Debates (25.8.1999) 2362-3. The background to this matter was that the Attorney-General had stated that (a) he intended, with the assistance of the Minister for Urban Services, to introduce regulations concerning abortion pursuant to an Act administered by the Minister for Health, Mr Moore and (b) that he (the Attorney) had no intention of seeking the approval of the executive in order to make the regulations. Mr Moore had publicly stated that he would not make any such regulations and that if they were made he would vote against them. The Leader of the Opposition argued that the Attorney-General was promoting a fiction—that any two Ministers were, for the purposes of exercising the regulation making power, the executive.

23 On the motion of a non-executive Member and with the support of the executive; see MoP 2001-04/151, 156-7. The provisions are now included in sections 41 and 253 of the Legislation Act.

24 MoP 1998-2001/186-7, and see Chapter 8: Conduct of the business of the Assembly.

25 During the course of the Fifth Assembly the Deputy Chief Minister, Mr Quinlan, was appointed to a Select Committee on Privileges to inquire into the possible unauthorised dissemination of committee material and other matters (MoP 2001-04/802-3). On other occasions, Ministers have remained as members of select and standing committees for short periods following their appointment as Ministers.

26 Self-Government Act, section 65; standing orders 200, 201 and 201A.

27 MoP 1995-97/201-02.

28 Standing order 34.

29 Standing order 36.

30 Standing order 214: 'On any paper being presented to the Assembly ... a Minister may move without notice ...' either that the Assembly take note of the paper or that it be referred to a committee.

31 Standing order 211.

sitting Thursdays.³² Ministers are not given any special prerogatives in the allocation of speaking times;³³ one prerogative, that of having the exclusive ability to move a motion without notice to suspend the standing and temporary orders, has been removed by the Assembly.³⁴

6.29 Although the executive is in a strong position, the reality in the Assembly has been that non-executive Members enjoy significant opportunities to sponsor legislative proposals and raise issues in the Assembly. Over the years there have been significant initiatives to enhance the Assembly's ability to test and appraise the executive's performance. Two indications of the important role performed by non-executive Members are that, since self-government, an average of fewer than six motions to close debate have been agreed to each year³⁵ and 21%³⁶ of the bills introduced have been sponsored by them.

6.30 In addition, since the adoption of its standing orders in May 1989, the Assembly has adopted a range of initiatives to enhance its scrutiny of the executive. It has done this by way of orders or by exercising its power to make laws with respect to the exercise of powers by the executive. The initiatives include:

- appointing and reappointing standing committees to scrutinise the administration of the executive together with standing committees undertaking the duties of a public accounts committee and a standing committee on the scrutiny of bills and subordinate legislation;
- appointing committees to examine the annual estimates of expenditure for, and annual reports of, executive agencies;
- strengthening the standing orders governing questions seeking information by ensuring that each non-executive Member has the opportunity to ask a question each sitting;³⁷
- adopting procedures whereby, should a Minister not answer a question on notice (or a question taken on notice) within a given time, an explanation may be sought and further action taken³⁸ and the imposition of a time limit on answers;³⁹
- enhancing the Assembly's powers with respect to subordinate legislation by, inter alia, ensuring that if a disallowance motion is not considered and negatived within a set time, the subordinate instrument is automatically disallowed;⁴⁰
- permitting the Assembly to amend a subordinate law that has been laid before it,⁴¹ and requiring regulatory impact statements to accompany subordinate legislation in circumstances where there may be appreciable costs placed on the community or part of the community;⁴²
- enacting, and later strengthening, provisions whereby a Minister must consult a standing committee of the Assembly (nominated by the Speaker) concerning appointments to statutory offices and making such instruments of appointment disallowable instruments;⁴³
- imposing upon Ministers the duty to inform and consult with other Members in regard to matters being negotiated between governments so as to protect the freedom of the

32 Standing order 77.

33 With the exception of standing order 69(c).

34 MoP 1995-97/16. The prerogative had been removed by temporary order for some time.

35 The closure, or the 'gag', is the motion 'That the question be now put'. Of the 112 agreed to up until the end of the Sixth Assembly, 55 occurred during the course of the First Assembly.

36 As at 31 December 2006.

37 Standing order 113A.

38 Standing order 118A.

39 Standing order 118(c).

40 *Subordinate Laws (Amendment) Act 1991*. These provisions are now contained in the Legislation Act.

41 *Subordinate Laws (Amendment) Act 1994*. These provisions are now contained in the Legislation Act.

42 *Subordinate Laws (Amendment) Act 2000*. These provisions are now contained in the Legislation Act.

43 *Statutory Appointments Act 1994* and *Statutory Appointments (Amendment) Act 1996*. These provisions are now contained in the Legislation Act.

Assembly to carry out its legislative deliberations without being subject to necessity and compulsion arising from the actions of the executive;⁴⁴

- enacting the *Public Access to Government Contracts Act 2000* requiring government agencies, within 21 days of a contract, to prepare and publish a public text of the contract, setting out grounds for any confidentiality of information, requiring that relevant Assembly committees be informed of confidentiality clauses on a regular basis and obliging agencies to provide certain information required by committees;⁴⁵ and
- the order of the Assembly (10 April 2002) calling upon the Chief Minister to include in any relevant instrument relating to the information to be included in annual reports made pursuant to the provisions of the *Annual Reports (Government Agencies) Act 1995* directions to include a schedule outlining action that has been achieved and in progress on the implementation of recommendations of Assembly standing and select committees that have been accepted by the government of the day.⁴⁶

6.31 In addition, the Assembly has from time to time, by order, forced the executive to present papers or make them available for Members to scrutinise, and there has been enactment of a range of legislative provisions obliging Ministers to present copies of reports and documents to the Assembly or nominated committees.⁴⁷

Respective roles of the Assembly and the executive

6.32 Over the Assembly's brief history there have been proposals for a more consensual approach to policy making and government administration. The view has been expressed that the traditional and confrontational government-versus-opposition model is inappropriate in a small polity such as the ACT in that it militates against the involvement of all shades of opinion in government.⁴⁸ Concerns were also expressed that if this model were adopted, the distinction between the roles of the executive and the Assembly may become blurred.

6.33 Examples where there have been concerns expressed that the distinction between the executive and the Assembly have become blurred in a manner detrimental to both have been:

- repeated concerns expressed regarding the role of Executive Deputies in the First Assembly;⁴⁹
- the reaction to the 1998 proposal to move towards a more cooperative approach to government in the Territory by the establishment of executive committees chaired by crossbench Members;⁵⁰ and

44 *Administration (Interstate Agreements) Act 1997*. This Act has, however, since been repealed. The executive gave the Assembly an understanding that a list of current negotiations will be tabled in the Assembly every six months, and that Ministers will table the full text of any intergovernmental agreements as soon as practicable after they have been signed. See Assembly Debates (20.10.2005) 3909-10.

45 These provisions are now included in the *Government Procurement Act 2001*.

46 The Act also imposes a range of obligations upon Ministers regarding the presentation of annual reports, instruments and directions.

47 These include statements, statements of reasons, statements of interest, reviews, directions and guidelines, reasons for suspension, notice of decisions, instruments, declarations, notices of suspension, plans and variations and certificates. See paragraph 14.14 to 14.15.

48 See, for example, *Governing Canberra—A Report to the ACT Chief Minister from the Government Reform Advisory Group*, Australian Capital Territory Government, December 1995, MoP 1995-97/259; Assembly Debates (21.2.1996) 125-31; Assembly Debates (26.3.1996) 605-13.

49 Assembly Debates (14.12.1989) 3133-4; (13.2.1990) 2-5; (20.3.1990) 538-9; (2.5.1991) 1940.

50 See *Advice concerning proposed executive committees* (Paper prepared by the Clerk of the Assembly), MoP 1998-2001/8-12; Assembly Debates (30.04.1998) 269-79.

- the resistance to an executive proposal (described by the sponsoring Minister as ‘quite revolutionary’) to involve the broader community, in particular Assembly committees, in the process of drafting budgets.⁵¹

6.34 The executive has, on occasion, expressed serious concern that the Assembly is encroaching upon its role. For example, in December 1999 the executive reluctantly agreed to appoint a board of inquiry pursuant to the Inquiries Act to inquire into services for people with disabilities in the Territory in residential care,⁵² the Assembly having first called upon and then directed the executive to appoint the board.⁵³

6.35 In 2000, during consideration of a bill proposing to insert into the Inquiries Act a provision whereby the executive was obliged to appoint a board of inquiry should the Assembly pass a resolution (pursuant to specific conditions) calling on it to do so, the issue of the respective roles and responsibilities of the executive and the legislature and the separation of powers was debated. The bill was negated and during the debate Members expressed a view that the enactment of the legislation would have diminished the responsibility of the executive and undermined the Assembly’s ability to hold it responsible and accountable.⁵⁴

6.36 How real are these concerns? Very few of the more radical proposals have been accepted. Successive Assemblies have adopted quite conservative views on the appropriate structures and relationships between the executive and legislature. Perhaps only the appointment of a Minister from the crossbenches (see paragraphs 6.17 to 6.24) who was not wholly bound by collective cabinet responsibility and who reserved the right to speak and vote against the government represented a significant break with established practice.

6.37 In reality, the Legislative Assembly has put in place a formidable collection of mechanisms to ensure that government is accountable—an active committee system and a powerful Auditor-General foremost among them—and, as outlined above at paragraph 6.30, a range of orders and procedures to require a high degree of transparency of government.

6.38 It is sometimes claimed that, where the Assembly imposes a particular policy or approach on an unwilling executive, this somehow diminishes executive responsibility for the outcomes. However, in a situation where an executive accepts significant changes to its policy proposals as the price for getting some part of its program through the Assembly, it accepts full responsibility for the modified program. If the executive believes that a policy imposed on it is unworkable and declines to accept responsibility for it, it should resign. To date, no executive in the Assembly has chosen to follow that course. It is up to the executive to decide how to react to a defeat in the Assembly or to a particular resolution or decision of the Assembly. That reaction will be determined by the issues of the day; it may decide to take action to assuage the Assembly⁵⁵ or choose to take an alternative course.

6.39 Questions have also been raised in the Assembly about the possible effect of resolutions that seek to impose a particular policy or action upon the executive, including whether certain motions were in breach of the provisions of standing order 200. In June 1997, during consideration of a motion (sponsored by a non-executive Member) calling upon the government to take certain alternative action in relation to proposed building demolitions,⁵⁶

51 MoP 1998-2001/1018-9.

52 In his statement the Chief Minister stated that the government did so with regret and in circumstances it wished were otherwise but was aware that it was a clear requirement of the Assembly; see Assembly Debates (5.12.2000) 3644-5.

53 MoP 1998-2001/1024, 1052-3.

54 Assembly Debates (14.6.2001) 1708-23.

55 See, for example, the response of the Chief Minister to a resolution expressing lack of confidence in a Minister at paragraph 6.45.

56 The motion called upon the government to demolish certain buildings on Acton Peninsula by a method other than that proposed and to take certain action in relation to the demolition materials remaining.

issues were raised as to the extra expense imposed on the Territory if the motion were agreed to and whether the government would be in contempt of the Assembly should it ignore such a resolution. The Speaker ruled the motion in order but sought advice on whether:

- motions calling upon or even directing the executive to take action that would have the effect of increasing expenditure (or transferring funds) contravene the provisions of the standing orders or the practices of the Assembly; and
- the executive would be in contempt of the Assembly if it ignored or in other ways did not comply with resolutions of the Assembly.⁵⁷

The advice, later tabled in the Assembly, addressed the questions raised in detail and concluded:

- motions such as those proposed were not contrary to the standing orders or practices of the Assembly;⁵⁸
- as the Assembly's contempt powers were limited to matters that would amount to an improper interference with the Assembly, its Members or committees, the executive's action in ignoring or rejecting such a resolution would not imply such interference and could not therefore be regarded as a contempt.⁵⁹

6.40 In practice, where parties forming government have not commanded majority support in the Assembly, executives have shown a willingness to accept defeat on issues or accept significant changes to their legislative proposals and continue to govern rather than test the confidence of the Assembly or offer their resignation. This willingness to accept significant change extends even to appropriation bills.⁶⁰ Thus, what appeared to be emerging prior to the majority government in the Sixth Assembly was a model where the largest single party was allowed to continue in office even though it did not have an outright majority in the Assembly. The price extracted by the Assembly is either the abandonment of more controversial policies or acceptance of some of the priorities of the non-government parties or groupings.

NO CONFIDENCE AND CENSURE MOTIONS

6.41 The responsibility of the executive to the Assembly is most dramatically evident when the Assembly considers a motion of no confidence in the Chief Minister in accordance with standing order 81. Successive Assemblies have shown a willingness to move motions of no confidence in and censure of the executive and individual Ministers, and a range of motions critical of Ministers in other terms has also been moved. Two governments have been replaced after losing votes of confidence; a Chief Minister resigned rather than contest a no-confidence motion; and one Minister has also resigned after passage of a motion of no confidence.

6.42 Until December 2007, eight notices of motions expressing no confidence in the Chief Minister have been lodged and announced by the Clerk. On two occasions the motions were resolved in the affirmative by an absolute majority of Members after consideration by

⁵⁷ Assembly Debates (7.5.1997) 1091-7.

⁵⁸ The advice concluded that the motion did not offend standing orders as it was not a proposed enactment, vote or resolution in the terms of standing orders 200 and 201 and, with the exception of the practice in relation to amendments to appropriation bills and the limitation on amendments that may be moved to subordinate laws, the Assembly had not imposed any further limitations on non-executive Members in relation to putting proposals to the Assembly in relation to the revenue of the Territory or expenditure of funds. See also the ruling by Speaker Berry, Assembly Debates (23.9.2003) 3510.

⁵⁹ Motion calling on government to take certain action concerning demolition of buildings on Acton Peninsula—*Standing Order 200—Possible contravention—Possible contempt of the Assembly, Advice of the Clerk of the Assembly*, 24 June 1997. MoP 1995-97/724; Assembly Debates (26.6.1997) 2196.

⁶⁰ As noted above, paragraphs 6.11 to 6.12, on one occasion a government had its appropriation bill defeated and responded by coming back to the Assembly with a modified proposal addressing the key criticisms of the non-government parties.

the Assembly, and the Assembly proceeded to elect another Member as Chief Minister. On one occasion the motion was negated, the votes for the ayes and noes being equal;⁶¹ on another, the Chief Minister tendered her resignation as Chief Minister after the notice had been lodged and announced, but before it was debated.⁶² A motion of no confidence in the Chief Minister has been amended to one of censure for her failure to ensure that certain legislative requirements were met in relation to the funding of a sports stadium redevelopment⁶³ and on a further occasion such a motion has been amended to one expressing grave concern at the Chief Minister's conduct in misleading the Assembly on a specified matter.⁶⁴

6.43 In March 1996 the Assembly censured the Chief Minister, who was also Minister for Health and Community Care, for recklessly misleading the Assembly on a matter and her inability to meet her own financial standards as demonstrated by her failure to control the health budget.⁶⁵

6.44 In August 2003 a motion was moved proposing, inter alia, to censure the government for administrative failings and misleading the Assembly in relation to bushfire education. After the question was divided, that part relating to the censure was negated.⁶⁶

6.45 The Assembly has also considered motions expressing lack of confidence in or censure of Ministers. In April 1994 the Assembly agreed to a resolution expressing lack of confidence in a Minister 'for reason of his deliberate or reckless misleading of the Assembly' concerning matters related to his portfolio responsibilities. The Chief Minister advised the Assembly of the Minister's resignation the next day, stating that although she had complete confidence in the Minister, her confidence had not been shared by the Assembly and, consistent with the traditions of Westminster government, the Minister had now offered, and she had accepted, his resignation.⁶⁷

6.46 Motions expressing lack of confidence in Ministers over various issues have been negated or amended. Examples include motions expressing lack of confidence for administrative action taken in contempt of the clear resolution and intention of the Assembly;⁶⁸ for various matters relating to the Minister's administration of his portfolio;⁶⁹ for proposed cuts to teacher positions in government schools;⁷⁰ for misleading the Assembly;⁷¹ for expressed administrative failures or failure in meeting responsibilities;⁷² for being found to be in contempt of the Assembly by a Select Committee on Privileges;⁷³ for persistently and wilfully misleading the Assembly on a number of issues;⁷⁴ and for just expressing lack of confidence in particular Ministers.⁷⁵

61 MoP 1998-2001/614.

62 The notice of motion was eventually withdrawn in accordance with standing order 128, having been called upon following the election of a new Chief Minister; see MoP 1998-2001/1014.

63 MoP 1998-2001/427, 433-5.

64 MoP 2001-04/1323, 1327-9.

65 The motion was moved by leave; see MoP 1995-97/295-6.

66 MoP 2001-04/856-8.

67 MoP 1992-94/549-551, 553; Assembly Debates (13.4.1994) 755.

68 MoP 1992-94/363-4. The motion as moved also required that 'in line with long established and numerous precedents in the Westminster parliamentary system' the Minister resign forthwith.

69 MoP 1992-94/254-5.

70 MoP 1992-94/473-4. The motion was amended to one of censure of the Minister.

71 MoP 1992-94/798. The motion was negated.

72 MoP 1995-97/481-2. The Minister was also the Chief Minister. The motion was negated. MoP 1995-97/736-7. The motion was negated. MoP 1998-2001/416-7. The motion was negated.

73 MoP 2001-04/996. The motion was amended to an expression of grave concern.

74 MoP 2001-04/1455, 1467-8. The motion was amended to one of censure.

75 MoP 2004-08/33 (negated) and 140 (negated).

6.47 Motions have also been moved expressing condemnation of a Minister for aspects of his administration of his portfolio;⁷⁶ calling upon the Attorney-General to stand aside (until a coronial inquest and other related court action was concluded);⁷⁷ urging the Chief Minister to stand a Minister aside until sexual harassment allegations against him were resolved;⁷⁸ and calling on the Chief Minister to remove certain administrative responsibilities from a Minister and to allocate them to another nominated Minister pending the presentation of a report by an Assembly committee.⁷⁹

6.48 Ministers have been censured by the Assembly for proposed cuts to teacher positions in government schools;⁸⁰ for continued defiance of the will of the majority of the Assembly by failing to act upon the unanimous recommendation of the estimates committee and for the failure of the government to live up to a specific promise;⁸¹ for failure to act in accordance with the Assembly's wishes as expressed in a resolution of the Assembly;⁸² for recklessly misleading the Assembly;⁸³ and for failure to take certain action as directed by the Assembly.⁸⁴

6.49 Motions expressing censure of Ministers have been negated,⁸⁵ withdrawn by leave⁸⁶ or amended to motions:

- admonishing the Minister for an unwarranted personal attack on another Member, misleading the Assembly and failure to discharge ministerial obligations;⁸⁷
- admonishing the Minister for answers given in question time;⁸⁸
- expressing criticism or censure of another Member⁸⁹ or the opposition;⁹⁰
- calling on the Minister to be more responsive to the Assembly and its committees and obliging him to provide monthly reports to the Assembly;⁹¹
- expressing grave concern regarding a claim made in the Assembly;⁹²
- calling on the Minister to provide a report to the Assembly on a matter and take further administrative action;⁹³ and
- drawing the attention of the Auditor-General to an issue and asking him to conduct a performance audit on the matter.⁹⁴

76 MoP 2001-04/112-3. The particular paragraph expressing condemnation was negated. MoP 2004-08/313-4. The motion was amended to one censuring the Shadow Attorney-General.

77 MoP 2004-08/62-3 (negated).

78 MoP 1995-97/51; Assembly Debates (30.05.95) 510-31 (negated).

79 MoP 1998-2001/501, 531-2.

80 MoP 1992-94/473-4. The resolution censured both the Treasurer and the Minister for Education and Training.

81 MoP 1995-97/200, 208.

82 MoP 1995-97/216.

83 MoP 1995-97/295-6 (the resolution censured the Chief Minister and Minister for Health and Community Care).

84 MoP 2001-04/925.

85 MoP 1989-91/239, 451-2; 1992-94/105-6; 1992-94/186 (this motion expressed censure of the Chief Minister and Minister for Education and Training); 1992-94/320, 329, 753; 1995-97/249-51 (this motion expressed censure of the Chief Minister and Minister for Industrial Relations); 1995-97/667, 818-9 (this motion expressed censure of the Chief Minister and the Minister for Industrial Relations); 1998-2001/109-11, 118 (this motion expressed censure of the Chief Minister and the Deputy Chief Minister); 2004-08/113-5 (this motion proposed to censure the Minister for his comprehensive mishandling of the health portfolio); 2004-08/247-8 (this motion proposed to censure the Attorney-General).

86 MoP 1998-2001/174.

87 MoP 1989-91/69-70. The motion was amended from one of censure.

88 MoP 1989-91/554.

89 MoP 1989-91/200-1; 2004-08/313-5.

90 MoP 1989-91/287-8, 416-7.

91 MoP 1989-91/575.

92 MoP 1998-2001/332.

93 MoP 1998-2001/543-5.

94 MoP 1998-2001/1324-6.

CHIEF MINISTER

Election

6.50 The Assembly must elect a Chief Minister at its first meeting after a general election. It must also do so following the announcement by the Speaker of a vacancy in the office or following the passing of a resolution of no confidence in a Chief Minister.⁹⁵ The procedures for the election of the Chief Minister are similar to those for the election of Speaker, though there are differences in the nomination process. A Member proposed as Chief Minister is not required to be present and, prior to 2008, nor was he or she required to inform the Assembly whether the nomination is accepted. In 2008⁹⁶ the Assembly amended the standing order to bring it into line with the election of the Speaker,⁹⁷ which requires that the nomination be accepted.⁹⁸

6.51 It is not necessary for all Members to be present; the election is initiated by a Member proposing a Member who is present, other than the Speaker and Deputy Speaker, and moving that he or she be elected as Chief Minister of the Territory. Should there be no further proposal, the Speaker declares that Member to have been elected as Chief Minister. Should there be two or more Members proposed, limited debate is allowed and a decision is made by ballot as in the election of the Speaker. A Member has proposed herself as Chief Minister and moved that she be elected as Chief Minister of the Territory.⁹⁹

Vacancy

6.52 The Chief Minister vacates the office:

- when he or she resigns the office;
- when the person ceases to be a Member of the Assembly, other than because of a general election—for example, by resignation, disqualification or due to a dissolution of the Assembly; or
- immediately before a Chief Minister is elected after:
 - the next general election; or
 - the passing of a resolution of no confidence in the Chief Minister.¹⁰⁰

Although the terms of office of Members cease on the polling day of a general election, the executive continues in office until immediately before the election of a Chief Minister after the declaration of the poll.¹⁰¹

6.53 The Chief Minister may resign office as Chief Minister by written notice delivered to the Speaker.¹⁰² If a vacancy occurs during a sitting of the Assembly, the election of a new Chief Minister takes place immediately. At any other time, the Speaker must convene

95 Self-Government Act, section 40; standing orders 1, 3(a) and 12. Assembly standing orders do not reflect the provisions of subsection 40(3) of the Self-Government Act in that they make no specific provision for an election to take place following a resolution of no confidence in a Chief Minister. The practice of the Assembly has been for an election to be conducted immediately.

96 MoP 2004-08/1388-9.

97 MoP 2004-08/1388-9.

98 Standing order 3. As with the election of the Speaker, at any time after the result of the first ballot is declared, but before the commencement of the second or subsequent ballot, a candidate for Chief Minister may withdraw from the election.

99 MoP 1998-2001/2-3.

100 Self-Government Act, subsection 46(1).

101 Self-Government Act, subsection 46(1A)(d).

102 Self-Government Act, subsection 45(1). Neither the Self-Government Act nor the standing orders offer any guidance as to exactly when a resignation takes effect. For practical purposes it is assumed to be from the moment of receipt of the letter of resignation by the Speaker.

a meeting of the Assembly (by notice published in the *Territory Gazette*) as soon as practicable and, at that meeting, must report the vacancy to the Assembly as soon as possible and the Members present must forthwith proceed to the election of one of their number to be the Chief Minister.¹⁰³ A person who has vacated the office of Chief Minister may be re-elected.¹⁰⁴

6.54 On the resignation of the Chief Minister on 17 October 2000 (which was a day when the Assembly was not meeting), the Speaker, in accordance with the requirements of paragraph 40(2)(b) of the Self-Government Act, convened by notice published in the *Territory Gazette* a meeting of the Assembly for Wednesday, 18 October 2000 at 10.30 am. even though that meeting time and date had already been set for the Assembly.¹⁰⁵

6.55 It should also be noted that the offices of Chief Minister and Ministers would become vacant in the event of a dissolution of the Assembly by the Governor-General pursuant to section 16 of the Self-Government Act. In that event, the executive's powers would be exercised by a Commissioner who would exercise those powers in accordance with any directions given by the Governor-General. Acting on the authority of the Governor-General, the Commissioner may spend public money of the Territory without the authority of an enactment of the Assembly. The term of office of the Commissioner would cease at the beginning of the first meeting of the Assembly held after the next general election (unless terminated earlier by the Governor-General).¹⁰⁶

Deputy Chief Minister

6.56 The Chief Minister is required to appoint one of the Ministers to be Deputy Chief Minister of the Territory. The Deputy Chief Minister acts as Chief Minister at any time when there is a vacancy in the office of Chief Minister or the Chief Minister is absent from duty or from Australia or, for any other reason, unable to exercise the powers of Chief Minister.¹⁰⁷

6.57 While the Deputy Chief Minister is acting as Chief Minister, he or she exercises all the powers of the Chief Minister other than those applying to the dismissal of a Minister. The Chief Minister is not prevented from exercising his or her powers whilst absent from Australia.¹⁰⁸

Resolution of no confidence

6.58 The resolution must affirm a motion of no confidence in the Chief Minister of which at least one week's notice has been given in accordance with the standing orders.¹⁰⁹ This motion takes precedence of all other business. The resolution must be passed by an absolute majority (nine Members).¹¹⁰ The provisions concerning notice and the majority required must accord with section 19 of the Self-Government Act.¹¹¹

¹⁰³ Self-Government Act, paragraph 40(2)(b); standing order 12.

¹⁰⁴ Self-Government Act, subsection 46(2).

¹⁰⁵ *Gazette* S62, 17 October 2000; MoP 1998-2001/1013. The Assembly had in fact already set that time and date for its next meeting, though that was subject to alteration should an absolute majority of Members so request (MoP 1998-2001/1011).

¹⁰⁶ Self-Government Act, subsections 16(2), (4), (6). Section 16 contains other provisions relating to the exercise of powers by the Governor-General and the appointment of a Commissioner. A new election for the Members of the Assembly must be held within not less than 36 days and not more than 90 days.

¹⁰⁷ Self-Government Act, section 44.

¹⁰⁸ Self-Government Act, section 44.

¹⁰⁹ The practice in the Assembly is that the time of the giving of a notice of motion is the time that it is delivered to the Clerk in accordance with standing order 101. Pursuant to section 36 of the *Acts Interpretation Act 1901* (Cwth) the seven days would be counted starting from the day following the giving of notice in the Assembly.

¹¹⁰ Self-Government Act, section 19.

¹¹¹ Standing order 81. It should be noted that, in regard to the notices lodged on 22 June and 16 November 1999 and 10 October 2000 (see Table 7.1), though at least a week's notice was given on each occasion it was not in accordance with the standing orders as no day was set down for moving the motion.

6.59 A notice of a motion of no confidence in the Chief Minister must be in accordance with the standing and other orders.¹¹² After its delivery to the Clerk, it must be reported to the Assembly at the first convenient opportunity and may not be entered on the *Notice Paper* by the Clerk until so reported.¹¹³

6.60 The delivery and reporting of a notice of a motion of no confidence has not precluded the Assembly from considering other business, either on the day that the notice of no confidence was delivered and reported or on the days intervening before the motion was considered, though the usual practice has been for the Assembly to adjourn for the intervening period.¹¹⁴

6.61 It has been the practice that, in the routine of ordinary business as set down in standing order 74, the prayer or reflection (since 1 June 1995) and the formal recognition that the Assembly was meeting on the lands of the traditional custodians had taken precedence over a motion of no confidence in the Chief Minister.¹¹⁵

6.62 The Member who had held the office of Chief Minister actually vacates his or her office not on the passing of the resolution but immediately before a new Chief Minister is elected following the passing of the resolution.¹¹⁶ Thus, the effect of the resolution is to express the Assembly's lack of confidence in the Chief Minister and trigger an election process for a replacement. This provision enables an outgoing Chief Minister and his or her Ministers to act in a caretaker mode.

6.63 This could become necessary were the Assembly, having agreed to a resolution of no confidence in the Chief Minister, is unable, within a period of 30 days, to elect a new Chief Minister. In those circumstances section 48 of the Self-Government Act would come into play, requiring a general election to be held, assuming that the Governor-General did not dissolve the Assembly pursuant to section 16 of the Act.¹¹⁷

6.64 As at December 2007 there had been eight motions of no confidence in Chief Ministers lodged but only seven motions moved pursuant to standing order 81 (see Table 6.1). One motion was withdrawn from the *Notice Paper* in accordance with standing order 128.¹¹⁸ Two of the motions were passed by the requisite majority and on each occasion the Assembly immediately proceeded to elect a new Chief Minister.

¹¹² Standing orders, Chapter 9, particularly standing order 101.

¹¹³ Standing order 103.

¹¹⁴ The Assembly met and considered business on three days between the reporting of a notice of motion of no confidence in the Chief Minister on 30 May 1990 and the notice being called upon and considered on 7 June 1990. See also *Motions of want of confidence, censure, admonishment and grave concern*, Paper presented to the 35th Presiding Officers and Clerks Conference, July 2007.

¹¹⁵ On 18 October 2000 Chief Minister Carnell pre-empted a no confidence motion, of which notice had been given, by resigning. On the next sitting day the election of a new Chief Minister took precedence over that notice, which had been listed to take precedence on the Notice Paper. The now redundant notice was called on following the election and, the Member failing to move the motion, the Speaker advised the Assembly that, pursuant to standing order 128, it would be removed from the *Notice Paper*. See MoP 1998-2001/1014.

¹¹⁶ Self-Government Act, paragraph 46(1)(c).

¹¹⁷ The words of the Explanatory Memorandum to the Australian Capital Territory (Self-Government) Bill 1988 being (at p. 14) 'Where a general election is to be held this provision enables a "caretaker" government until a new government is formed'.

¹¹⁸ MoP 1998-2001/1014—see footnote 63.

Table 6.1: Motions of No Confidence in the Chief Minister—1989-2008

| Date notice was lodged | Who lodged notice | Terms of notice | Date motion was moved | Results |
|---------------------------------|--|--|---|---|
| 23 November 1989 ¹¹⁹ | Mr Collaery—to move on Tuesday, 5 December 1989 (<i>announcement made by Clerk—standing order 103</i>) | That this Assembly no longer has confidence in the Chief Minister of the ACT and the minority Labor Government and has confidence in the ability of Mr Kaine to form a government. | 5 December 1989 ¹²⁰ (11 clear days after notice given) | Motion resolved in the affirmative by an absolute majority (Ayes 10, Noes 7) |
| 30 May 1990 ¹²¹ | Mr Stevenson—to move on the first day of sitting following Wednesday, 6 June 1990 (<i>announcement made by Clerk—standing order 103</i>) | That this Assembly has no confidence in the Chief Minister of the ACT in view of his lack of integrity, lack of credibility and extreme hypocrisy as demonstrated by his intention to have the Alliance “Government” introduce a Bill to tax X-rated videos, in absolute contradiction of his statements in this House on 21 November 1989, in total condemnation of such a tax. | 7 June 1990 ¹²² (7 clear days after notice given) | Motion negatived (Ayes 5, Noes 11) |
| 29 May 1991 ¹²³ | Ms Follett—to move on Thursday, 6 June 1991 (<i>announcement made by Clerk—standing order 103</i>) | That this Assembly has no confidence in the Chief Minister, Mr Kaine, and his minority Government. | 6 June 1991 ¹²⁴ (7 clear days after notice given) | Motion resolved in the affirmative by an absolute majority (Ayes 9, Noes 7) Ms Follett was elected Chief Minister on 6 June 1991 |

119 MoP 1989-91/155. Assembly did not sit again until 5 December 1989.

120 MoP 1989-91/157-8.

121 MoP 1989-91/242. Assembly sat on 31 May 1990, 5 and 6 June 1990.

122 MoP 1989-91/261

123 MoP 1989-91/467. Assembly did not sit again until 6 June 1991.

124 MoP 1989-91/469.

| Date notice was lodged | Who lodged notice | Terms of notice | Date motion was moved | Results |
|---------------------------------|---|---|--|---|
| 22 June 1999 ¹²⁵ | Mr Stanhope—to move in seven days hence (announcement by Clerk—standing order 103) | That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA. | 30 June 1999 ¹²⁶ (7 clear days after notice given) | Motion amended to read— That this Assembly censures the Chief Minister, Ms Carnell, MLA for her failure to ensure the requirements of the <i>Financial Management Act 1996</i> were met in relation to the funding of the redevelopment of the Bruce Stadium (Ayes 10, Noes 7) |
| 16 November 1999 ¹²⁷ | Mr Stanhope—to move in seven days hence (announcement made by Clerk—standing order 103) | That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA. | 24 November 1999 ¹²⁸ (7 clear days after notice given) | Motion negatived in accordance with standing order 162 (Ayes 8, Noes 8) ¹²⁹ |
| 10 October 2000 ¹³⁰ | Mr Stanhope—to move in seven days hence (announcement by Clerk—standing order 103) | That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA. | | The Member failing to move the motion, the notice was removed from <i>Notice Paper</i> — Speaker having announced that in accordance with section 45 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> he had received a letter from Ms Carnell MLA, Chief Minister, dated 17 October 2000, in which she tendered her resignation as Chief Minister. |

¹²⁵ MoP 1998-2001/427. Assembly did not sit again until 30 June 1999.

¹²⁶ MoP 1998-2001/433.

¹²⁷ MoP 1998-2001/607. Assembly did not sit again until 24 November 1999.

¹²⁸ MoP 1998-2001/613-4.

¹²⁹ One Member had been granted leave by the Assembly for that day.

¹³⁰ MoP 1998-2001/1011. Assembly did not sit again until 18 October 2000.

| Date notice was lodged | Who lodged notice | Terms of notice | Date motion was moved | Results |
|--------------------------------|--|---|---|---|
| 5 May 2004 ³¹ | Mr Smyth, in accordance with standing order 81 (<i>announcement by Clerk—standing order 103</i>) | That, since the Chief Minister has repeatedly misled the Legislative Assembly on the question of advice given to him and contact made with him during the period 17-18 January 2003 regarding the 2003 bushfires, this Assembly no longer has confidence in the Chief Minister, Mr Jon Stanhope, MLA. | 13 May 2004 ³² (7 clear days after notice given) | Motion amended to read— That, since the Chief Minister has misled the Legislative Assembly on the question of advice given to him and contact made with him during the period 17-18 January 2003 regarding the 2003 bushfires, this Assembly expresses its grave concern at the conduct of the Chief Minister, Mr Jon Stanhope, MLA. (Ayes 9, Noes 8) |
| 20 February 2007 ³³ | Mr Stefaniak, in accordance with standing order 81 (<i>announcement by Clerk—standing order 103</i>) | That this Assembly no longer has confidence in the Chief Minister, Mr Jon Stanhope, MLA, particularly in view of his and his Government's handling of the 2003 bushfires. | 28 February 2007 ³⁴ (7 clear days after notice given) | Motion negatived (Ayes 7, Noes 10) |

131 MoP 2001-04/1323. Assembly did not sit again until 13 May 2004.

132 MoP 2001-04/1327-9.

133 MoP 2004-08/928.

134 MoP 2004-08/935.

| Date notice was lodged | Who lodged notice | Terms of notice | Date motion was moved | Results |
|----------------------------|--|--|---|---------------------------------------|
| 17 June 2008 ³⁵ | Mr Seselja, in accordance with standing order 81 (<i>announcement by Clerk—standing order 103</i>) | <p>That this Assembly no longer has confidence in the Chief Minister due to this:</p> <ul style="list-style-type: none"> (a) repeatedly giving inconsistent testimony and record of events relating to the data centre and gas fired power plant at Tuggeranong and, therefore, misleading the Estimates Committee and consequently the Assembly; (b) mismanaging the process associated with the data centre and gas fired power plant at Tuggeranong, jeopardising an important project for the Australian Capital Territory and, as a consequence, costing the Territory around \$1 billion in investment; (c) selectively releasing materials to the media which were withheld from the Assembly and withholding the substantial part of the records, showing contempt for the people and Parliament of the Australian Capital Territory, and (d) failing to properly consider the impact on residents of the data centre and gas fired power plant, and failing to adequately notify or consult with residents, which jeopardised the entire project. | 25 June 2008 ³⁶ (7 clear days after notice given) | Motion negatived (Ayes 6, Noes 11) |

135 MoP 2004-08/1538.

136 MoP 2004-08/1543.

MINISTERS

Appointment to office and number

6.65 The Chief Minister must appoint his or her Ministers from among the Members of the Assembly. The Speaker or Deputy Speaker are not eligible to be Ministers.¹³⁷ The Self-Government Act provides that the Assembly may legislate to set the number of Ministers but until it does so the number is not to exceed five.¹³⁸ The maximum number of Ministers appointed by the Chief Minister at any one time has been four.

6.66 As the term of office of a Member duly elected commences at the end of the day on which the election of a Member is declared,¹³⁹ the Chief Minister is not precluded from appointing a Member as a Minister before the Member takes his or her seat. In the Sixth Assembly, Mr Barr filled a casual vacancy, his term commencing on 5 April 2006. He was appointed a Minister the following day but did not formally take his seat in the Assembly until 2 May 2006.¹⁴⁰

Role and duties

6.67 The Chief Minister allocates responsibilities to the members of the executive. Typically ministerial portfolios cover a range of departments and agencies. The Chief Minister may also authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister and must publish particulars of these arrangements in the *Territory Gazette*.¹⁴¹ It is usual practice for a Minister to undertake the duties of Manager of Government Business in the Assembly.¹⁴²

6.68 *The Administrative Arrangements* made pursuant to section 43 of the Self-Government Act and sections 13 and 14 of the *Public Sector Management Act 1994*¹⁴³ list the ministerial portfolios and set out details of ministerial responsibility showing:

- the areas of responsibility of each Minister;
- the Territory enactments, the subordinate laws made under those enactments and the Commonwealth laws administered by each Minister;
- the administrative units (departments and agencies) that are the responsibility of each Minister; and

¹³⁷ Self-Government Act, subsection 41(1) and section 42. The instrument of appointment is usually presented in the Assembly (MoP 2004-08/630) and is entered on the ACT Legislation Register and numbered as a Notifiable Instrument even though the instrument is not taken to be a notifiable instrument under section 10 of the *Legislation Act 2001*.

¹³⁸ Self-Government Act, subsections 41(2) and 41(2A). Originally the Self-Government Act provided that the Chief Minister could appoint three Ministers for the Territory and that the regulations might fix a different number, but only in accordance with a resolution of the Assembly. In its April 1990 report the Select Committee on Self-Government recommended that the Commonwealth be requested to transfer the power to determine the number of Ministers to the Assembly. Steps were taken to seek the Commonwealth's agreement to concur in amending the number by regulation (see MoP 1989-91/286, 289) and in February 1991 the Chief Minister advised the Assembly that the Federal government had agreed to introduce legislation to enact the provisions that currently stand (Assembly Debates (12.02.1991) 15-6). The provision was amended by the *Australian Capital Territory Self-Government Legislation Amendment Act 1992* (Cwlth, No. 10 of 1992).

¹³⁹ Self-Government Act, section 10.

¹⁴⁰ MoP 2004-08/627-8.

¹⁴¹ Self-Government Act, section 43.

¹⁴² Although the duties have not always been undertaken by a Minister; see MoP 1992-94/553. Mr Berry resigned as Minister but remained as Manager of Government Business.

¹⁴³ Sections 13 and 14 of the *Public Sector Management Act 1994* make provision for the Chief Minister from time to time to constitute administrative units and place chief executives in control thereof and to allocate ministerial responsibility for administrative units and allocate to administrative units responsibility for all or any of the enactments and matters for which the relevant Minister is responsible.

- the chief executives responsible to the Minister for the administration of these units.¹⁴⁴

The practice is that the *Administrative Arrangements* are tabled in the Assembly.

6.69 The current *Administrative Arrangements* also set down an authorisation (subject to section 41 of the *Legislation Act 2001*) for Ministers to act on the Chief Minister's behalf or on behalf of another Minister (for the purposes of subsection 43(2) of the *Self-Government Act*).¹⁴⁵

Duration of appointment (including resignation and vacation of office)

6.70 A Minister vacates his or her office:

- when he or she resigns the office;
- when he or she ceases to be a Member of the Assembly (not because of a general election);
- when he or she is dismissed from office by the Chief Minister; or
- immediately before another Chief Minister is elected after
 - the next general election; or
 - the passing of a resolution of no confidence in the Chief Minister.¹⁴⁶

6.71 A Minister may resign office as a Minister by written notice delivered to the Chief Minister.¹⁴⁷ It is considered that, in resigning as Members of the Assembly, Mr De Domenico¹⁴⁸ (on 30 January 1997) and Mrs Carnell¹⁴⁹ (on 13 December 2000), automatically vacated the ministerial offices they held at the time. On 29 May 1991 Chief Minister Kaine dismissed the Deputy Chief Minister, Mr Collaery, pursuant to the provisions of subsection 41(3) of the *Self-Government Act*.¹⁵⁰

6.72 On 17 October 2000 Mrs Carnell resigned as Chief Minister by written notice delivered to the Speaker. On the following day Mr Humphries was elected Chief Minister. In response to a request for advice as to when the Ministers appointed by Mrs Carnell when she was Chief Minister ceased to be Ministers, the Government Solicitor advised that the Ministers previously appointed by Mrs Carnell ceased to be Ministers immediately before the election of Mr Humphries as Chief Minister. In the advice the Government Solicitor stated that the fact that section 46 did not specifically cover the situation could not result in the former Ministers continuing to hold office as Ministers beyond the appointment of a new Chief Minister. Such an outcome was seen as being contrary to the structure of government provided for in the *Self-Government Act*.¹⁵¹

¹⁴⁴ For the current *Administrative Arrangements* see <<http://www.legislation.act.gov.au/ni/2008-526/current/pdf/2008-526.pdf>.

¹⁴⁵ Section 41 of the *Legislation Act 2001* (Making of certain statutory instruments by the executive) provides a restriction on the powers of Ministers to act on each others' behalf in that a subordinate law or disallowable instrument is taken to be made by the executive if it is signed by two or more Ministers who are members of the executive, one of whom must be the responsible Minister (the Minister for the time being administering the Act). See also paragraphs 7.22 to 7.23.

¹⁴⁶ *Self-Government Act*, subsection 46(1A).

¹⁴⁷ *Self-Government Act*, subsection 45(2).

¹⁴⁸ MoP 1995-97/575.

¹⁴⁹ MoP 1998-2001/1145.

¹⁵⁰ See *Assembly Debates* (29.5.1991) 2125. The actual letter of dismissal was tabled (MoP 1989-91/473) and the terms read into *Hansard*. See *Assembly Debates* (21.6.1991) 2270. The dismissal as a Minister was 'from the time of your receipt of this letter'.

¹⁵¹ Advice of Government Solicitor to the Director, Corporate Services, Chief Minister's Department, 19 October 2000. Section 46(1A) quoted in paragraph 7.69 refers to Ministers vacating office immediately before a Chief Minister is elected after a general election or the passage of a no confidence motion in the previous Chief Minister. It does not mention specifically the resignation of a Chief Minister.