

5. The Speaker and other officers

Speaker

- 5.1. The office of Speaker is among the oldest and most important in the Westminster system of parliamentary government. *House of Representatives Practice* states that:
- ... of all the Westminster parliamentary traditions the Speakership has proved to be the most durable. The office is an ancient one with its beginnings going back to the origins of the British Parliament. The first Speaker to be so designated was Sir Thomas Hungerford, appointed in 1377, who became the first in a continuing line of identifiable Speakers. In early times Speakers were variously described as ‘Parlour’ (mouth), ‘Prolocutor’ (chairman) and ‘Procurator’ (agent). Essentially each acted as mouthpiece or spokesman and hence ‘Speaker’ on behalf of the House in communicating its resolutions to the sovereign.¹
- 5.2. Under the Australian Capital Territory (Self Government) (Cwlth) ACT Table of Precedence,² the Speaker ranks fifth behind the Governor-General, the Chief Minister, the Prime Minister and State premiers (according to the population of their respective states) and then the Chief Minister of the Northern Territory). The election of the Speaker is the first item of business that the Assembly must conduct, following a general election (see under the heading ‘Election’ below).
- 5.3. The Speaker speaks for and represents the Assembly in dealings with outside bodies and persons. In the chamber, the Speaker presides over the Assembly’s proceedings, interprets and rules on the application of the standing orders, and is responsible for maintaining order. The Speaker is in many ways a custodian of the institution of parliament and plays an important role in defending, strengthening and promoting its legislative, representative, and accountability related functions. The Speaker also has a number of significant administrative responsibilities.
- 5.4. The Speaker’s powers, functions and duties are derived from provisions of the Self-Government Act, ACT statutes and subordinate laws. They are also derived from parliamentary law embodied in the standing orders, continuing resolutions, the practices and conventions of the Assembly, and the Westminster-derived tradition more generally.
- 5.5. *House of Representatives Practice* observes that the Speaker is less a master of the parliamentary chamber than a servant, reflecting only the will of the plenum and

1 *House of Representatives Practice*, p 165.

2 www.legislation.act.gov.au/ni/1996-162/default.asp, accessed on 7 April 2021.

acting only as the chamber might direct.³ As the principal officer of the Assembly and standard-bearer of the institution of parliament, the Speaker upholds the highest standards of integrity, independence and ethical conduct. The Speaker defends the Assembly from undue interference, particularly from the executive.⁴ The Speaker has a role in ensuring that public resources provided to members, by virtue of their status as MLAs, are used only for legitimate parliamentary purposes and not for personal, party-political or campaign related purposes.⁵

5.6. It is critically important for the Speaker to be—and be seen to be—independent of the day-to-day politics conducted within and outside the Assembly chamber. A successful Speaker is able to advance the institutional interests of the parliament and the functions that it performs, placing them above the specific interests of the government, opposition or crossbench of the day.⁶

5.7. *House of Representatives Practice* states that:

One of the hallmarks of good Speakership is the requirement for a high degree of impartiality in the execution of the duties of the office ... This important characteristic of office has been developed over the last two centuries to a point where in the House of Commons the Speaker abandons all party loyalties and is required to be impartial on all party issues both inside and outside the House ...

The Speaker must show impartiality in the Chamber above all else. A Speaker should give a completely objective interpretation of standing orders and precedents, and should give the same reprimand for the same offence whether the Member is of the Government or the Opposition.⁷

Title

5.8. Under the Self-Government Act, the title of the Presiding Officer is decided by the Assembly.⁸ In one of its first decisions at its first meeting on 11 May 1989, the Assembly resolved that the title of the Presiding Officer be ‘Speaker’.⁹ At the commencement of the Second Assembly, it again resolved that the title of the

3 *House of Representatives Practice*, p 174.

4 This distinction between executive government and the legislature is an important one that has long been recognised in the Westminster-derived system. It is given statutory expression in the Self-Government Act, which establishes a separation of powers between the judiciary, legislature and executive. In 2008, the Assembly also passed a continuing resolution adopting and endorsing the Commonwealth (Latimer House) Principles on the Three Branches of Government (continuing resolution 8A).

5 The Legislative Assembly Commissioner for Standards investigates and reports on complaints that are made in relation to the alleged breaches of the members’ code of conduct and requirements in relation to the declarations of members’ interests. See below under the heading ‘Legislative Assembly Commissioner for Standards’.

6 See under the heading ‘Voting and participation in debate’ below.

7 *House of Representatives Practice*, pp 167-168.

8 Self-Government Act, s 11(2).

9 MoP, No 1, 11 May 1989, p 3; Assembly Debates, 11 May 1989, p 5.

Presiding Officer be ‘Speaker’ and that the resolution continue in force unless and until amended or repealed by that Assembly or by a subsequent Assembly.¹⁰

- 5.9. Presiding Officers of other Australian parliamentary chambers use the title ‘Honourable’. No Speaker of the Legislative Assembly has sought to use the title.¹¹ As part of its 2018 review of standing orders, the Standing Committee on Administration and Procedure received a submission from the Office of the Legislative Assembly in which it was noted that there had been a number of queries by members about the use of the honorific.¹²
- 5.10. In response to the Office’s submission, the committee recommended that the government investigate these matters further. In its response to the recommendation, the government advised that, while it believed that the use of the title ‘The Honourable’ may be permissible, it did not believe such use was appropriate (see Chapter 4: Membership of the Assembly, under the heading ‘Titles’).

Election

- 5.11. At the first meeting after a general election the Assembly must, having completed the notification of the election of members and the members having taken an oath or affirmation, proceed to elect one of its members to be the Speaker. No other business may be conducted before a Speaker is elected. Likewise, if there is a vacancy in the office of Speaker (unless due to a dissolution of the Assembly), the Assembly must elect one of its members to be the Speaker before it proceeds with

10 MoP, No 1, 27 March 1992, p 5; Assembly Debates, 27 March 1992, p 15. ‘Title of Presiding Officer’, resolution agreed by the Assembly, 27 March 1992.

11 See Chapter 4: Membership of the Assembly, under the heading ‘Titles’ for discussion of this matter.

12 The Office submitted that:

In some jurisdictions the title is conferred by statute and in others it arises from convention. In the Australian parliamentary context, the term is typically reserved for: 1. members of the Executive Council, responsible for advising the Crown through the Governor-General, state governors and, in the case of the Northern Territory, the Administrator; and 2. presiding officers of upper and lower Houses. It has been thought that because the ACT does not have a vice-regal function within its system of government and therefore no Executive Council to advise it, the honorific was not applicable.

However, on the basis that ... the s 37(d) of the *Australian Capital Territory (Self Government) Act 1988* (Cth) vests in the Executive all the ‘prerogatives of the Crown’, there is an argument that ministers forming the ACT Executive are not merely able to advise the Crown’s representative but, in fact, to exercise the functions of the Crown and on this basis the title ‘the Honourable’ could reasonably be applied. The Office has been advised that there is no legal impediment to adopting the title ... [for] members of the ACT Executive and the Presiding Officer as a matter of convention and were the Assembly of a mind to do so, a parliamentary basis for the title could be achieved through the inclusion of a provision in the standing orders.

- any other business.¹³ Should a vacancy occur when the Assembly is not meeting, the election must take place at the next meeting of the Assembly. These provisions do not apply if the vacancy occurs due to a dissolution of the Assembly.
- 5.12. The Self-Government Act provides that neither the Presiding Officer nor the Deputy Presiding Officer is eligible to be a minister (Self-Government Act, s 42), which ensures that there is always a member responsible for the conduct of the proceedings of the Assembly who is independent of the executive (Self-Government Act, ss 11(1) and 11(3)).
- 5.13. It is not obligatory that all members are present for the election of Speaker of the Assembly, the Self-Government Act providing that ‘the members present’ shall elect one of their number to the position. Members who are candidates for the position must be present¹⁴ and it is necessary that a quorum be formed, as is the case at any meeting of the Assembly. The details of the process for the election of Speaker are set out in standing order 2.
- 5.14. The election of the Speaker is conducted by the Clerk of the Assembly, who, for the purposes of the election, chairs the Assembly. A member proposes to the Assembly a member who is present for its Speaker. When proposed, the member nominated must inform the Assembly whether the nomination is accepted. The proposer then moves: ‘That [the member] take the Chair of the Assembly as Speaker’.¹⁵ On one occasion, a member declined to accept the nomination.¹⁶
- 5.15. The Clerk then asks if there is any further proposal; if there is not, the Clerk states that the time for proposals has expired and no other name may be put forward. Where there is only one proposal for the office of Speaker, there can be no debate and the Assembly is not invited to proceed to a ballot on the matter. The Clerk declares the member proposed to have been elected and the member takes the chair as Speaker.¹⁷ At the commencement of each of the Second, Fifth, Sixth and Tenth Assemblies, there was only one candidate for the position of Speaker.
- 5.16. Where more than one member is proposed as Speaker, debate may then ensue.¹⁸ It must be relevant to the election and a member may not speak for more than five minutes.¹⁹ There is no limitation on the length of the debate. There is no provision

13 Self-Government Act, s 11(3). If the vacancy happens at a meeting, the election must proceed before the Assembly proceeds with any other business. If the vacancy occurs at any other time, at the next meeting the members present must elect one of their number to be Speaker before proceeding to any other business.

14 They must be present when proposed and must inform the Assembly whether the nomination is accepted (standing order 2(a)) and, when elected, must follow the set procedures in taking the chair (standing order 2(m)).

15 Standing order 2(a).

16 MoP, No 1, 19 March 1998, p 2; Assembly Debates, 19 March 1998, pp 3-4.

17 Standing order 2(b).

18 Standing order 2(c).

19 Standing order 2(d) and standing orders 2(e) and 69(a).

in the standing orders for a right of reply by the movers of the respective motions, or for the closure to be moved (no question having been proposed from the chair). In fact, should a member seek to exercise the right of reply or move a closure motion, the validity of this action would be problematic, there having been more than one motion moved.²⁰

- 5.17. When there are two or more candidates proposed, standing orders provide for a decision to be reached by ballot. Before the ballot takes place, the bells are rung as for an ordinary vote. If it is apparent that all members who can be present are in the chamber, this requirement may be dispensed with.²¹ The Clerk distributes ballot papers and each member is required to return a ballot paper in writing, giving the name of the candidate to which a vote is directed.²² The votes are counted by the Clerk and Deputy Clerk.
- 5.18. Where there are only two candidates, the candidate with the greater number of votes is chosen, provided that they have a majority of the votes of the members present and voting. In the event of a tie, a fresh ballot must take place.²³ If the matter remains unresolved, the sitting is suspended for 30 minutes. When the Assembly reassembles, the votes shall be taken again unless this is unnecessary due to a candidate withdrawing from the election.²⁴
- 5.19. At any time after the result of the first ballot is declared, but before the commencement of the second or subsequent ballots, a candidate may withdraw from the election, which then proceeds as if the candidate had not been proposed.²⁵
- 5.20. If more than two candidates are proposed, the ballot proceeds in the same way. If no candidate has the required majority, the name of the candidate with the smallest number of votes is excluded and a fresh ballot takes place. This process is repeated until one candidate has the required majority and is elected.²⁶ At the first meeting of the First Assembly, three candidates were proposed and two ballots took place.²⁷

20 Elections of the Speaker in the Assembly have been straightforward. In the event of acrimonious debate, it is conceivable that the Clerk is called upon to make a ruling or call the chamber to order. In such circumstances, a potential difficulty arises, given the Clerk is not vested with the authority to maintain order. *House of Representatives Practice*, states that 'the Clerk would probably have to appeal to the House to act to preserve order and its own dignity', p 172.

21 Standing orders 2(f), 158 and 159.

22 Standing order 2 is quite explicit: 'each Member shall deliver to the Clerk a ballot-paper ... containing the name of the candidate for whom that Member votes'. A ballot paper that did not conform would not be a vote and therefore the member would not be included among 'members present and voting'. To persist in submitting a ballot paper that did not conform could be considered disorderly, although given the secret nature of the ballot it would be difficult to enforce.

23 The only occasion when the votes have been equal in an election ballot has been a ballot for the position of Leader of the Opposition on 21 June 1991; see MoP, No 113, 21 June 1991, p 473.

24 Standing order 2(g).

25 Standing order 2(i).

26 Standing order 2(h).

27 MoP, No 1, 11 May 1989, p 2. Standing orders were not adopted by the Assembly until after the election of the Presiding Officer and Chief Minister.

- 5.21. Standing orders 2(j) and (k) provide for exceptional circumstances where tied votes make it impossible to exclude a candidate for the office. A special ballot to exclude one candidate may be held and, as with a tie between two candidates, provision is made for a suspension of the sitting to allow any impasse to be resolved by negotiation.²⁸ At any stage, should a withdrawal leave only one candidate remaining, that candidate is declared elected as Speaker and takes the chair.²⁹
- 5.22. In the Seventh Assembly, a member of the crossbench was elected as Speaker³⁰ and in the Eighth Assembly an opposition member was elected as Speaker.³¹

Role and duties

- 5.23. The Self-Government Act provides that it is the Speaker of the previous Assembly who convenes the first meeting of the Assembly after the result of a general election is declared³² and that, subject to the conflict of interest provisions contained in the Act³³ and to the standing rules and orders, the Speaker presides at all meetings of the Assembly at which they are present.
- 5.24. The Speaker is authorised by the Assembly to receive written notice of resignation of members as set out in s 13 of the Self-Government Act and also written notice of resignation of a Chief Minister.³⁴ The Speaker must convene a meeting of the Assembly when requested to do so by an absolute majority of members, in accordance with the relevant order passed each year to set the sitting pattern.³⁵

28 Standing order 2(j).

29 Standing orders 2(l) and 2(m). Acknowledgements have been made by Speakers following their election; Speakers, traditionally, have feigned unwillingness to accept, and unworthiness to fill the office and are, with varying degrees of theatricality, 'dragged' to the chair by other members. They need not go quite as far as Speaker Compton of the House of Commons on being presented to King George I:

'It must be very surprizing to Your Majesty, that, from amongst so many honourable, learned, and worthy Persons ... any Thing could induce Your Commons to present me for Your Majesty's Approbation, who have none of those Endowments necessary for the Execution of this important Charge: I have neither Memory to retain, Judgement to collect, nor Skill to guide, their Debates; nor can I boast of any Thing that could entitle me to the Favour of the Commons, but an unshaken Fidelity to the Protestant Succession.'

From: 'House of Lords Journal Vol 20: 21 March 1715', *Journal of the House of Lords: Vol 20: 1714-1717*, pp 23-30.

30 MoP, No 1, 5 November 2020, pp 2-3.

31 MoP, No 1, 6 November 2012, pp 5-6. With the exception of the First, Seventh and Eighth Assemblies, the Speaker has been from the governing party.

32 Self-Government Act, s 17. The Speaker must do so by notice published in the Territory Gazette. A Speaker's term ends immediately before the election of a new Speaker after a general election.

33 Self-Government Act, s 18(4). The conflict-of-interest provisions are contained in s 15(1) of the Act.

34 Self-Government Act, s 45.

35 See Chapter 8: Sittings the Assembly, under the heading 'Days and hours of meeting'.

- 5.25. The Self-Government Act also makes provision for the payment of remuneration and allowances to the person holding the office of Speaker³⁶ and provides that the validity of actions of the Speaker and Deputy Speaker or of a person purporting to act in those offices is not to be questioned on the ground that the appointment or election of the person was defective.³⁷ The Speaker continues to be paid their allowance after polling day, even though the Speaker may not have stood for re-election as a member.³⁸
- 5.26. Territory enactments give the Speaker a wide range of functions and duties. The Speaker, subject to any direction by the Assembly, is responsible for the control and management of the Assembly precincts and may take any action considered necessary for those purposes.³⁹ Pursuant to the provisions of s 6 of the Broadcasting Act, the Assembly has delegated to the Speaker the power to withdraw the right of a person to broadcast, or record for broadcast, public proceedings of the Assembly.⁴⁰
- 5.27. The Speaker must ask Parliamentary Counsel to notify the making of a law when it has been passed by the Assembly⁴¹ or the disallowance of or amendment to a subordinate law or disallowable instrument.⁴² A range of legislative reporting and consultation requirements is imposed on the executive requiring the executive to lodge documents with the Speaker (should the Assembly not be meeting).⁴³ Where legislation requires the executive to advise, report to or consult a committee of the Assembly, the Speaker nominates the appropriate committee.⁴⁴ The Auditor-General is required to lodge their reports with the Speaker for presentation to the Assembly. If the Assembly is not sitting, the Speaker must arrange for copies of such reports to be given to each member (and must present them on the next sitting day) and may give directions for their printing and circulation and in relation to their publication.⁴⁵

36 Self-Government Act, s 73. At s 37, the Act also provides that the executive has the responsibility of governing the Territory with respect to, among other things, remuneration, allowances and other entitlements in respect of services of the Speaker and Deputy Speaker.

37 Self-Government Act, s 70.

38 See advice to the Clerk of the Assembly from the Attorney-General's Department, dated 17 November 1991.

39 Precincts Act, s 7.

40 MoP, No 10, 7 March 2002, pp 93-95.

41 Legislation Act, s 28(1). In the absence of a head of state—a governor or administrator—this process replaces assent procedures in other jurisdictions.

42 Legislation Act, ss 65A(1) and 69(1). The ACT is the only Australian jurisdiction where this arrangement is in place.

43 For example, *Annual Reports (Government Agencies) Act 2004*, ss 13(4) and 15(4).

44 For example, see *Government Procurement Act 2001*, s 39(6).

45 Auditor-General Act, s 17(5). Similar arrangements apply in relation to the provision of reports by the Integrity Commission and the Inspector of Correctional Services.

- 5.28. The standing orders invest the Speaker with a wide range of duties and powers. The Speaker maintains order and rules on questions of order. Members must address the Speaker during debate and the Speaker must intervene and make a ruling when words that may be considered offensive or disorderly are used. The standing orders give the Speaker other discretions. For example, the Speaker nominates Assistant Speakers,⁴⁶ calls on members to speak and determines whether a motion is an abuse of the orders or forms of the Assembly or is obstructing business.
- 5.29. The Speaker also determines whether a matter of privilege merits precedence, gives authority for clerical or typographical amendments to bills and decides whether to put the question on the closure of debate. It is the practice, once the Assembly has determined its sitting pattern, to delegate to the Speaker the power to call the Assembly together if requested to do so by an absolute majority of members.⁴⁷ Pursuant to standing order 223, when a change to committee membership is required and the Assembly is not due to meet for two weeks, the relevant whip or crossbench member may write to the Speaker suggesting any appointment or discharge of a member of a committee. The Speaker is able to approve the change if they consider it necessary to the functioning of the committee.

Absence of Speaker

- 5.30. The Self-Government Act provides that the Assembly may make provision for the election of a Deputy Presiding Officer (Deputy Speaker) and may confer on the deputy such powers as are specified in the rules and orders, including the powers of the Speaker.⁴⁸ Whenever the Assembly is informed by the Clerk of the absence of the Speaker, the Deputy Speaker, as Acting Speaker, performs the duties of the Speaker during the absence.⁴⁹ On occasion, the Assembly is advised about an impending absence.⁵⁰ In 2008, the Assembly amended standing order 6 to clarify when the Deputy Speaker is Acting Speaker during periods when the Assembly is not sitting.⁵¹

46 Prior to 2008 they were called Temporary Deputy Speakers.

47 MoP, No 4, 13 December 2001, pp 36-37.

48 Self-Government Act, s 21(2). Standing orders 4 and 5 provide for the office of Deputy Speaker, who must be elected in the same manner as the Speaker.

49 Standing orders 6 and 6A. The Clerk has informed the Assembly that the Speaker was temporarily absent and the Deputy Speaker has taken the chair as Acting Speaker. See MoP, No 83, 28 March 2000, p 785 and MoP, No 127, 12 February 2008, p 1329.

50 MoP, No 13, 25 June 1998, p 108; MoP, No 34, 10 December 1998, p 286; MoP, No 55, 2 July 1999, p 486; MoP, No 73, 9 and 10 December 1999, p 707; MoP, No 101, 7 September 2000, p 993; MoP, 125, 3 May 2001, p 1371; MoP, No 31, 29 August 2002, p 307.

51 MoP, No 132, 6 March 2008, pp 1388-1389.

- 5.31. The Speaker or Deputy Speaker may call on one of the Assistant Speakers to take the chair.⁵² When the Speaker is present in the Assembly but the Deputy Speaker or an Assistant Speaker is in the chair, the Speaker may participate in debate as an ordinary member and always has a deliberative vote.⁵³
- 5.32. In the Eighth Assembly, standing order 6A was amended to provide that, where the Speaker and Deputy Speaker are absent, members are to be informed by the Clerk, and an Assistant Speaker, appointed by the Speaker, shall perform the duties and have the powers of the Speaker.⁵⁴ The Speaker maintains a roster which includes allocated times during which the Speaker, Deputy Speaker and Assistant Speakers preside over the proceedings in the chamber. It is the practice that the Speaker presides over question time.

Term of office and vacancy in office

- 5.33. The person holding the office of Speaker vacates the office:
- immediately before a Speaker is elected at the first meeting of an Assembly following a general election;
 - when the person resigns office as Speaker;⁵⁵
 - when the person ceases to be a member of the Assembly (though not because of a general election); or
 - when an absolute majority of the members of the Assembly vote in favour of the person's removal from office.⁵⁶
- 5.34. The Self-Government Act provides that if there is a vacancy in the office of Speaker (other than as a consequence of a dissolution of the Assembly), the members must, before any further business, elect a member to be Speaker.⁵⁷ Standing orders provide that the Clerk must report a vacancy to the Assembly as soon as possible and the Assembly must immediately proceed to the election of a Speaker.⁵⁸ In 2008, the Assembly adopted a new standing order 11A, which provides for the Speaker's resignation to the Clerk in writing.⁵⁹ A person who has vacated the office of Speaker may be re-elected.⁶⁰

52 Standing order 10.

53 The Speaker of the House of Representatives has a casting vote only.

54 MoP, No 52, 10 April 2014, p 548.

55 The Assembly has authorised the Clerk, on behalf of the Assembly, to receive the written notice of resignation of the Speaker. See resolution agreed to by the Assembly on 27 March 1992.

56 Self-Government Act, s 12(1). An absolute majority of members is 13 members. See Chapter 8: Sittings of the Assembly, under the heading 'Forming a quorum'.

57 Self-Government Act, s 11(3).

58 Standing orders 2 and 11.

59 MoP, No 132, 6 March 2008, pp 1388-1389.

60 Self-Government Act, s 12(2).

Rulings of the chair

- 5.35. The Speaker has the responsibility for maintaining order in the Assembly.⁶¹ Upon any question of order being raised and being stated to the Speaker, the Speaker must make a ruling on the matter.⁶² A ruling is a decision or determination made by the Speaker on a matter relating to the business or operation of the Assembly.⁶³ Matters upon which the Speaker is called to rule may not necessarily be addressed in the standing orders.⁶⁴ Citing practice in the House of Representatives, the chair has declined to give a decision on or interpret a question of law, including on the Self-Government Act.⁶⁵ However, the Speaker has also referenced provisions of the Self-Government Act in ruling an amendment out of order.⁶⁶
- 5.36. Though the Speaker has taken the view that it is not the duty of the chair to give a decision on or interpret the law or the Self-Government Act, where there are particular legislative requirements that impact on Assembly procedures, the chair has brought these to the attention of the Assembly.⁶⁷ The Speaker has on one occasion withdrawn a ruling to enable him to seek further advice on the interpretation of s 65 of the Self-Government Act (as it then provided) relating to the introduction of legislation proposing the appropriation of public money.⁶⁸
- 5.37. In making a ruling, the Speaker takes into consideration the practices, rules and orders of the Assembly. In accordance with standing order 275, where any question relating to the procedure or the conduct of the business of the Assembly is not provided for in the standing orders or practices of the Assembly, the question is decided according to the practice prevailing in the House of Representatives. This does not mean that House of Representatives' procedures can be utilised in an eclectic manner.⁶⁹ In addition to the consideration of *House of Representatives*

61 Standing order 37.

62 Standing orders 72 and 73.

63 *House of Representatives Practice*, p 192.

64 The Office of the Legislative Assembly maintains a list of the Speaker's rulings.

65 MoP, No 82, 25 October 1990, p 338; Assembly Debates, 25 October 1990, pp 4194, 4200. See *House of Representatives Practice*, pp 196-197.

66 Assembly Debates, 18 September 2018, p 3717. For additional discussion, see Standing Committee on Administration and Procedure, *Background paper—Application of section 65 of the Self-Government Act and related standing orders*, Office of the Clerk, August 2019.

67 For example, at the conclusion of consideration of the Proportional Representation (Hare-Clark) Entrenchment Bill 1994, the question—that the bill, as amended, be agreed to—was put and declared in favour of the 'Ayes'. As no vote was called for, the Speaker drew the attention of the Assembly to the requirement that the bill must be passed by a special majority of members and directed that a vote be taken. See MoP, No 134, 8 December 1994, p 825. Special majorities (two-thirds) are also required in relation to the approval of the appointment of the ACT Integrity Commissioner, pursuant to s 25(3)(a)(b) of the Integrity Commission Act, and the approval of the appointment of the Campaign Advertising Reviewer, pursuant to s 12(4) of the *Government Agencies (Campaign Advertising) Act 2009*.

68 See Assembly Debates, 13 September 1990, pp 3206-3227. For an extended discussion of the provisions of legislation appropriating public money, see Chapter 12: Legislation, under 'Money bills'.

69 See comments by Acting Speaker Stefaniak, Assembly Debates, 8 August 1990, pp 2566-2567.

Practice, it is not uncommon for the Speaker to rely on Senate practice and procedure in determining a matter.⁷⁰

- 5.38. A member may at any time raise a point of order, which shall, until disposed of, suspend the consideration and decision of every question.⁷¹ Upon a question of order being raised, the member speaking is obliged to resume their seat and the substance of the question of order is put to the Speaker by the member raising it. The Speaker then rules on the matter.⁷²
- 5.39. Not all rulings are made in the chamber in the course of debate. Speakers often rule on the admissibility of notices of motion, notices of questions and matters of public importance outside the chamber. The Speaker sometimes has the opportunity to consider matters before giving a ruling in the chamber. Examples of this are when the Speaker examines proposed amendments to bills and motions that have been circulated to members or when a member has given the Speaker notice of a matter. The Speaker may also decide to defer ruling on a matter and return to the chamber with a ruling later in the proceedings.⁷³
- 5.40. Unlike the Australian Senate, the Assembly does not treat a ruling as a binding precedent,⁷⁴ the situation being more akin to that in the House of Representatives:

The question sometimes arises as to whether rulings are 'binding' and, in a literal sense, the answer is 'no', but the question is more complex than it may appear. There have been many rulings given over the years which are consistent with one another, consistent with the standing orders and conventions of the House, and which are supported, implicitly or explicitly, by the House. Such rulings form part of the body of practice which continues to govern the operations of the House and rulings with that status are, in effect, regarded as binding, although even then Speakers are able to give rulings which take account of new factors or considerations. In this way rulings and interpretations may be developed and adapted over time. From time to time rulings may be given which are inconsistent with previous rulings and interpretations, and which may be made in circumstances which do not allow sufficient opportunity for reflection. Even though such rulings may go unchallenged at the time, it would be incorrect to say that they are binding on future occupants of the Chair.⁷⁵

70 See, for instance, Speaker Dunne's statement on unparliamentary language; Assembly Debates, 14 May 2014, p 1530; and Speaker Berry's statement on the sub judice convention; Assembly Debates, 2 April 2003, p 1119.

71 Standing order 72.

72 Standing order 73.

73 See, for example, the ruling given by Speaker Prowse re sub judice on 14 February 1991: Assembly Debates, 14 February 1991, p 329.

74 In the Australian Senate, a President's ruling that has not been dissented from is regarded as being equivalent to a resolution of the Senate; see *Odgers'*, p 39.

75 *House of Representatives Practice*, p 192.

- 5.41. There is no provision in Assembly standing orders for a member to move a motion of dissent from a ruling of the Speaker. Early in the First Assembly the Speaker ruled that, should a member wish to move dissent from the Speaker's ruling, the member would need to place a notice of motion on the *Notice Paper*.⁷⁶ Leave of the Assembly having been received, such motions have been moved forthwith and notice has been given of motions of dissent.⁷⁷ On one occasion, notice having been foreshadowed, the Speaker expressed the preference that the member move the motion immediately to 'get the matter out of the way'.⁷⁸ Standing orders having been suspended, such a motion was moved.⁷⁹
- 5.42. The Speaker has ruled that it is up to the Assembly to decide on a matter by way of a motion of dissent moved by leave, which is now the normal practice.⁸⁰
- 5.43. A motion has been moved proposing that the Assembly, in the interests of the community, override a decision of the Speaker (the Speaker having confirmed an earlier ruling that certain documents were not to be tabled or their contents disclosed in the Assembly as they were sub judice).⁸¹
- 5.44. To date, the Assembly has agreed to a single dissent motion, all others having been negated.⁸²

Criticism of actions and conduct

- 5.45. In the House of Representatives, the Speaker's actions can be criticised only by way of a substantive motion. This may be by a motion of dissent (where comment must be limited to the specifics of the ruling in question) with wider criticism usually in the form of a censure or no confidence motion.⁸³ In the United Kingdom House of Commons, reflections on the character of the Speaker or accusations of

76 Assembly Debates, 29 June 1989, p 551. This ruling has been reiterated. See, for example, Assembly Debates, 7 June 1990, p 2336; MoP, No 28, 23 and 24 November 1995, p 205.

77 In March 2003, a member sought leave to move a motion to remove such a motion from the *Notice Paper*: MoP, No 53, 13 March 2003, p 637; Assembly Debates, 13 March 2003, pp 1054-1056. In this instance, the notice of motion had been on the *Notice Paper* for three weeks without any action having ensued. See MoP, No 53, 13 March 2003, p 637; Assembly Debates, 13 March 2003, pp 1054-1056.

78 Assembly Debates, 8 May 2003, pp 1801-1802. Leave was granted to the member to move the motion.

79 MoP, No 28, 23 and 24 November 1995, p 205; Assembly Debates, 23 November 1995, pp 2505-2507. The motion was negated.

80 MoP, No 66, 25 September 1996, p 463; Assembly Debates, 25 September 1996, pp 3344-3345. The motion was negated.

81 MoP, No 94, 14 February 1991, p 404; Assembly Debates, 14 February 1991, pp 324-325. Leave was granted to the member to move the motion. Debate on the matter was adjourned and the matter was not again considered by the Assembly (the contents of the documents in question having been published elsewhere) until the order of the day for the consideration of the motion was discharged sometime later; MoP, No 113, 21 June 1991, pp 476-478.

82 MoP, No 109, 2 May 1991, p 460; Assembly Debates, 2 May 1991, pp 1901-1907. The motion revolved around the meaning of the word 'furphy' and whether it was unparliamentary or not. MoP, No 14, 25 August 1998, p 119; Assembly Debates, 25 August 1998, pp 1305-1309.

83 *House of Representatives Practice*, pp 197-201.

partiality in the conduct of the Speaker's duties have attracted the penal powers of the Commons, and the Speaker's actions cannot be criticised inadvertently in debate or through any form of proceeding except a substantive motion.⁸⁴

- 5.46. To date, there have been two no-confidence motions moved against a Speaker. On the first occasion,⁸⁵ the opposition party, in moving the motion, argued that the Speaker was biased towards the government party (of which the Speaker was a member) and influenced by the Chief Minister in discharging his office. After extensive debate, the motion was defeated by 11 votes to five. On the second occasion,⁸⁶ the opposition moved the motion primarily on the grounds that the Speaker had failed to 'uphold respect for the rule of law' following a statement that had been made by the Speaker in the media, which the opposition argued had supported illegal protest.⁸⁷ The motion was amended by the government and the crossbench to express support for the Speaker and to reaffirm 'the importance of all Members upholding and supporting the principle of the rule of law'.⁸⁸
- 5.47. The Speaker has addressed comments made outside the chamber concerning their rulings. In February 1993, the Speaker drew attention to comments made by a member in relation to the Speaker's rulings and, having considered that the statement contained an accusation of partiality in the discharge of her duties as Speaker, asked that the reflection be withdrawn. The member withdrew the reflection.⁸⁹ In August 2008, the Speaker asked a member to apologise for comments the member had made during a media interview in relation to the suspension of the Chief Minister from the chamber. The member apologised.⁹⁰
- 5.48. In the Ninth Assembly, in an adjournment debate, a member stated that the Speaker had given the member leave to make a personal explanation but then 'under pressure from your side of the chamber and without any explanation, you had me sit down'.⁹¹ The following day, the Speaker made a statement in which she informed the Assembly that 'it is not in order to criticise or reflect on the actions of the chair, and the Speaker's actions can only be criticised by way of a substantive motion'.⁹² The Speaker asked that the member withdraw the reflections on the partiality of the chair the next time that the member was in the chamber. Later

84 *May*, pp 297-298.

85 MoP, No 114, 3 December 1997, p 920; Assembly Debates, 3 December 1997, pp 4459-4483.

86 MoP, No 112, 16 August 2011, pp 1417-1418.

87 The motion was primarily focused on media comments the Speaker had made concerning an alleged raid by Greenpeace activists on a CSIRO crops facility in Canberra. The opposition alleged that the Speaker's comments condoned the alleged activity and effectively encouraged others to break the law. The motion was amended to express 'ongoing confidence in the capacity of the Speaker to perform his duties fairly and impartially' and was passed by the Assembly with government and crossbench support. See Assembly Debates, 16 August 2011, p 3195 and MoP, No 112, 16 August 2011, pp 1417-1418.

88 MoP, No 112, 16 August 2011, pp 1417-1418.

89 MoP, No 49, 18 February 1993, p 283; Assembly Debates, 18 February 1993, p 197.

90 MoP, No 155, 26 August 2008, p 1749.

91 Assembly Debates, 20 February 2019, p 548.

92 Assembly Debates, 21 February 2019, p 556.

that day, during question time, upon the member being present in the chamber, the Speaker drew the member's attention to the request that the member withdraw the remarks and again asked the member to do so. In response, the member did not unreservedly withdraw the reflection, was subsequently named, and a motion to suspend the member was passed.⁹³ On 19 March 2019, the Speaker made a statement in which she noted that the member in question had yet to withdraw the reflection on the chair's partiality and cited *House of Representatives Practice*, which stated that, upon a member having been asked to undertake a certain action by the chair, a member must do so 'in a respectful manner, unreservedly and without conditions or qualifications'.⁹⁴ The Speaker also drew attention to a social media post from the member, which the Speaker said had implied that the Speaker had not given the member a 'fair hearing', which was a reflection on the chair. The Speaker advised that the member should withdraw both reflections. Later that day, the member withdrew the reflections.⁹⁵

- 5.49. In 1993, the Speaker made a statement concerning comments made by a member in a radio broadcast calling into question her impartiality in the discharge of her duties as Speaker and criticising the management of question time. In her statement, the Speaker expressed the view that the broadcast of such comments lowered the standing of the Assembly in the public esteem and that it was proper for the member to apologise or to withdraw the comments, in so far as they reflected on the chair. She also drew attention to procedures available to alter the rules and practices of the Assembly and expressed the belief that it would be in the best interests of the Assembly if these avenues were followed and an apology offered. Standing orders were suspended and the member made a detailed statement on the issues, which included an apology for his comments relating to the Speaker.⁹⁶
- 5.50. On 30 March 2000, the Speaker made a statement concerning media comment critical of his performance and conduct and, in effect, questioning his impartiality in the performance of his duties as Speaker. The Speaker advised the Assembly that the proper way to criticise his conduct of the office was by way of a substantive motion in the Assembly. He advised that he did not propose to take the matter any further, except to remind members that such comments reflected badly on the speakership and therefore on the Assembly. He reminded members of, and asked them to note, the comments of his predecessor about the potential for public criticism of the chair to lower the standing of the Assembly in the public mind.⁹⁷

93 MoP, No 88, 21 February 2019, p 1275.

94 Assembly Debates, 19 March 2019, pp 698-699.

95 MoP, No 89, 19 March 2019, p 1296.

96 MoP, No 53, 23 March 1993, p 307; Assembly Debates, 23 March 1993, pp 682-685.

97 MoP, No 85, 10 March 2000, p 803; Assembly Debates, 30 March 2000, p 1136.

5.51. There have been other occasions when criticism of the conduct of the Speaker has been raised:

- After making a statement to the Assembly concerning the appropriateness of a notice of a motion placed upon the *Notice Paper* (calling for the clarification of comments made by a member from the floor when participating in an earlier debate), the Speaker directed that the notice be removed from the *Notice Paper*.⁹⁸
- When the Assembly discussed, as a matter of public importance, ‘The failure of the Government and the Speaker to maintain the dignity of the Assembly’.⁹⁹ As noted, the current practice is that such matters, insofar as they relate to the performance of the Speaker’s duties, must be raised by way of a substantive motion.
- The Speaker made a statement in the Assembly relating to a report in the media in which a member had made comments about a ruling of the chair. The Speaker drew to the Assembly’s attention the *Companion to the Standing Orders*, noting that any reflection on the chair should only be made by way of substantive motion.¹⁰⁰
- The Speaker made a statement in the Assembly in relation to comments by a member in the media questioning the partiality of the chair in determining that certain members had breached publications guidelines and the code of conduct for members. The member apologised to the Assembly.¹⁰¹
- The Speaker’s role in making arrangements for a religious ceremony to coincide with the commencement of the Eighth Assembly was criticised by government members and resulted in a continuing resolution providing, among other things, that the Assembly ‘shall not in any way endorse or be affiliated with any ceremony that involves adherence or affiliation with any religious faith’.¹⁰²

98 MoP, No 72, 12 September 1990, p 293; Assembly Debates, 12 September 1990, pp 3092-3094. A point of order having been taken as to whether the Speaker was making the statement as the Speaker or an MLA, the Speaker vacated the chair and made a statement, by leave, before resuming the chair and making a statement concerning the appropriateness of notices of motion.

99 MoP, No 89, 11 December 1990, p 366; Assembly Debates, 11 December 1990, pp 4933-4953.

100 MoP, No 111, 30 June 2011, p 1397.

101 MoP, No 154, 14 August 2012, p 2030.

102 ‘Independence of the Assembly from religious faith’, continuing resolution 8AA; see MoP, No 7, 14 February 2013, p 80. The resolution states that the Assembly:

- (1) has an obligation to represent the interests, views and values of all citizens of the Australian Capital Territory;
- (2) is an institution separate from adherence or affiliation to any religious faith;
- (3) recognises the right of members to profess their own personal religious faith or philosophical perspective and to organise activities which reflect or honour their religious belief or philosophical perspective separate from the institution of the legislature; and
- (4) shall not in any way endorse or be affiliated with any ceremony that involves adherence or affiliation with any religious faith.

- During the Eighth Assembly, the Speaker was criticised in a dissenting report of the Standing Committee on Administration and Procedure in relation to the manner in which a matter had been referred to the Legislative Assembly Commissioner for Standards.¹⁰³

Voting and participation in debate

- 5.52. Up until 2008, the Speaker's participation in debate was a relatively rare occurrence.¹⁰⁴ On occasion, Speakers have presented petitions.¹⁰⁵ In their capacity as members, Speakers have also presented legislation in pursuit of matters of individual concern¹⁰⁶ or related to matters of direct relevance to the Assembly itself. In the Fifth Assembly, the Speaker, speaking from the floor of the chamber, presented the Legislative Assembly (Broadcasting) Amendment Bill 2002 and the Legislative Assembly Precincts Amendment Bill 2002.¹⁰⁷
- 5.53. In the Sixth Assembly, the Speaker presented the Legislative Assembly (Members' Staff) Amendment Bill 2008, with the purpose of prohibiting the employment by MLAs of family members.¹⁰⁸
- 5.54. In the Seventh Assembly, the Speaker presented the Legislative Assembly (Office of the Legislative Assembly) Bill 2012,¹⁰⁹ which established the Office of the Legislative Assembly. In the Ninth Assembly, the Speaker presented the Legislative Assembly Legislation Amendment Bill 2017, which amended provisions in several Acts relating to the Office of the Legislative Assembly and Officers of the Assembly.¹¹⁰
- 5.55. Motions have also been moved by Speakers. During the Sixth Assembly, the Speaker successfully moved motions in relation to the establishment of a code of conduct for members¹¹¹ and the establishment of the position of Ethics and Integrity Adviser.¹¹²

103 Standing Committee on Administration and Procedure, *The Conduct of Mr Hanson MLA*, August 2016, Report 11, Appendix D.

104 See, for example, Assembly Debates, 11 December 2002, pp 4225-4228—Speaker Berry.

105 MoP, No 91, 3 March 2004, p 1151; MoP, No 51, 23 February 2010, p 587; MoP, No 58, 25 March 2010, p 653; MoP, No 90, 15 February 2011, p 117; MoP, No 106, 21 June 2011, p 1315.

106 For example, the Speaker presented the Electricity and Water (Amendment) (No 2) Bill 1989 on 23 August 1989.

107 MoP, No 39, 20 November 2002, pp 413-414.

108 MoP, No 151, 7 August 2008, p 1668.

109 MoP, No 138, 23 February 2012, p 1787.

110 MoP, No 31, 14 September 2017, p 413.

111 MoP, No 33, 25 August 2005, p 318.

112 MoP, No 138, 10 April 2008, p 1445.

- 5.56. During the Fourth Assembly, when the governing party only had six members, the Speaker was appointed a member of a standing committee and two select committees.¹¹³ In the Seventh Assembly, the Speaker was the Deputy Chair of the Select Committee on Campaign Advertising.¹¹⁴
- 5.57. Given the importance of being seen to be politically neutral, it may be considered undesirable for the Speaker to take part in debate as a matter of course. It can be difficult to maintain the perception of impartiality where a Speaker routinely involves themselves in the political cut and thrust of Assembly proceedings. However, in a small legislature, where non-participation of any single member may effectively disenfranchise a significant part of the electorate, there is a counterargument that the Speaker's duty to represent constituents does not cease upon taking up the office.
- 5.58. While, to date, all Assembly Speakers have belonged to a political party,¹¹⁵ it has been the practice of a majority of Assembly Speakers not to attend their respective party room meetings, where Assembly tactics and strategy will often be the subject of discussion. The Speaker has a deliberative vote only¹¹⁶ and, as with all members present, must vote once a call of the Assembly has commenced.¹¹⁷ The Speaker does not have a casting vote. If the votes on a question are equal, the question is resolved in the negative.¹¹⁸

Deputy Speaker

Role and duties

- 5.59. Section 21 of the Self-Government Act provides that the Assembly may provide for the election of a Deputy Presiding Officer (Deputy Speaker) and confer on that deputy such powers as are specified in the rules and orders, including the powers of the Presiding Officer under the Self-Government Act. A person holding the office of Deputy Presiding Officer is not eligible to be a minister,¹¹⁹ and the office is recognised in s 73 of the Self-Government Act for the purposes of remuneration and allowances that are set by the Remuneration Tribunal (in addition to the ordinary salary of a member).¹²⁰

113 MoP, No 4, 30 April 1998, p 38; MoP, No 10, 28 May 1998, pp 74-75; MoP, No 50, 6 May 1999, p 423.

114 MoP, No 16, 2 April 2009, p 192.

115 MoP, No 151, 7 August 2008, p 1668.

116 Self-Government Act, s 18(3).

117 Standing order 161.

118 Standing order 162.

119 Self-Government Act, s 42.

120 Remuneration Act, s 9(3).

- 5.60. A Deputy Speaker must be chosen on the first sitting day after an election or whenever the office becomes vacant. The election of Deputy Speaker is conducted by the Speaker in a similar manner to the election of Speaker.¹²¹ Whenever the Assembly is informed by the Clerk of the absence of the Speaker, the Deputy Speaker performs the duties of Speaker in an acting capacity.¹²² The Deputy Speaker is also required to take the chair whenever requested by the Speaker during a sitting of the Assembly.¹²³
- 5.61. Other specific duties are set down in standing or other orders of the Assembly. For example, in the absence of the Speaker, the Deputy Speaker could be called on to name a time for the reconvening of a committee (when adjourned by the presiding member due to grave disorder) on the receipt of a request in writing from an absolute majority of members of the committee.¹²⁴ During the absence of the Speaker from the Territory or from duty, the Deputy Speaker could also receive the written notice of resignation of a member of the Assembly.¹²⁵ In statutes and in resolutions establishing standing and select committees, it is common practice to assign certain duties to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, or in the absence of the Deputy Speaker, the Clerk of the Legislative Assembly.¹²⁶ Continuing resolution 4A, relating to claims of parliamentary privilege that arise during the exercise of the ACT Integrity Commission's powers and functions, provides that:

Where the Speaker makes a claim of parliamentary privilege in relation to the exercise of a power or function by the Commissioner, the Speaker must recuse herself or himself from the exercise of the Speaker's functions pursuant to this resolution and the Deputy Speaker will instead perform the functions.¹²⁷

- 5.62. The Deputy Speaker is also able to be called upon where a possible conflict of interest arises in relation to the performance of a particular function by the Speaker. For instance, in the Seventh Assembly, the Speaker advised the Assembly that he had referred to the Deputy Speaker for her consideration the question as to whether a matter of privilege raised by a member ought to be given precedence pursuant to standing order 276(e). The Speaker referred the matter on the grounds that he had attended the particular hearing at which the alleged breach of privilege was alleged to have occurred. On advice received from the Deputy Speaker, the Speaker stated that he was prepared to allow precedence.¹²⁸

121 Standing order 5.

122 Standing order 6.

123 Standing order 7.

124 Standing order 229A.

125 Resolution of the Assembly of 27 March 1992.

126 See, for example, ss 190 and 251 of the Electoral Act.

127 See paragraph 33 of the resolution.

128 MoP, No 51, 23 February 2010, p 5878.

Resignation and vacancy in office

- 5.63. Up until 2008, neither the Self-Government Act nor standing or any other orders of the Assembly contained any specific provisions regarding the resignation of the Deputy Speaker. This was a similar situation to that which still prevails in the House of Representatives and the Senate. Should the Deputy Speaker wish to resign from office in the House of Representatives, current practice is that they may do so by means of a personal announcement or by notifying the Speaker in writing.¹²⁹ In 2008, the Assembly amended the relevant standing order to provide that the Deputy Speaker could resign the office by writing to the Speaker.¹³⁰
- 5.64. In the Senate, resignations in writing have been directed to the President. *Odgers'* notes that there is no reason for a resignation not being made orally in the Senate, but in some past cases the Senators concerned have been appointed as ministers and it is obviously undesirable that a Deputy President should also hold ministerial office for a period until the Senate next meets.¹³¹ As the Deputy Speaker of the Legislative Assembly is not eligible to be a minister in the Territory, a person would have to vacate the office prior to accepting appointment as a minister.
- 5.65. Should a vacancy occur in the office of Deputy Speaker, the Speaker must report the vacancy to the Assembly as soon as possible and the Assembly must forthwith proceed to the election of a new replacement Deputy Speaker.¹³²

Absence of Speaker and Deputy Speaker

- 5.66. If the Assembly is informed by the Clerk of the absence of both the Speaker and Deputy Speaker, the members present may proceed to elect one of their number who shall perform the duties of Speaker during the absence, subject to any other order of the Assembly. Otherwise, the Assembly stands adjourned until the next day of sitting.¹³³
- 5.67. In 1994, the Assembly having granted leave of absence to both the Speaker and Deputy Speaker for an overlapping period, the Speaker apprised the Assembly of that fact and it ordered that one of the Temporary Deputy Speakers (or, in her absence, another of the Temporary Deputy Speakers) perform the duties of Speaker for the period of absence of both the Speaker and the Deputy Speaker.¹³⁴ The Assembly took similar action in 1996 when the concurrent absence of the

129 *House of Representatives Practice*, p 206. Earlier practice was that a motion be moved 'That the resignation be accepted, and that the House proceed forthwith to appoint a Chairman of Committees'.

130 MoP, No 132, 6 March 2008, pp 1388-1389.

131 *Odgers'*, p 150.

132 Standing order 13.

133 Standing order 9.

134 The motion was moved by leave on this occasion as well. See MoP, No 122, 22 September 1994, p 734; Assembly Debates, 22 September 1994, p 3325. This course was proposed by the Speaker from the chair.

Speaker and Deputy Speaker was anticipated. Again, the motion was moved by leave.¹³⁵

Assistant Speakers

- 5.68. At the commencement of every Assembly, the Speaker nominates no more than three members who are not ministers to act as Assistant Speaker (prior to 2008, Assistant Speakers were referred to as Temporary Deputy Speakers). The Speaker may revoke a nomination.¹³⁶ An Assistant Speaker may be called upon by the Speaker or Deputy Speaker to take the place of the occupant of the chair during Assembly proceedings.¹³⁷
- 5.69. In 1998, the Assembly adopted a recommendation of the Standing Committee on Administration and Procedure to amend the relevant standing order to increase the number of Temporary Deputy Speakers from two to three. This was further increased in 2016 to four.¹³⁸ In making the recommendation, the committee noted that having a representative from the crossbenches¹³⁹ serving in the position would enhance the perception of the impartiality of the chair. Expanding the number of Temporary Deputy Speakers also provided a greater opportunity for those MLAs appointed to the role to participate in debates.¹⁴⁰
- 5.70. Appointments have been revoked. For example, in the Sixth Assembly the Speaker revoked the appointments of certain members when they had been appointed opposition whip, on the basis that it would be difficult to perform both roles effectively.¹⁴¹
- 5.71. A member has moved a motion of no confidence in an Assistant Speaker.¹⁴² The motion concerned certain comments made by the relevant Assistant Speaker following a question time in which he informed the Assembly that, during question time, there had been 151 interjections from the opposition, 14 interjections from the government and none from the crossbench.¹⁴³ After a point of order had been raised with the Speaker later in the sitting, and the Speaker

135 MoP, No 76, 12 and 13 December 1996, p 573.

136 Standing order 8.

137 Standing order 10.

138 MoP, No 4, 30 April 1998, p 34. Standing order 8, as amended, 13 December 2016.

139 Since self-government, the positions had generally been filled from the ranks of government or opposition parties, although a crossbench member was appointed in the Fourth and Seventh Assemblies. See MoP, No 4, 30 April 1998, p 35 and MoP, No 2, 9 December 2008, p 12.

140 Standing Committee on Administration and Procedure, *Standing Order 8, Temporary Deputy Speakers*, Report, April 1998.

141 See MoP, No 39, 19 October 2005, p 417; MoP, No 65, 6 June 2006, pp 717-718; MoP, No 81, 15 November 2006, p 869.

142 MoP, No 139, 20 March 2012, p 1799.

143 Assembly Debates, 20 March 2012, p 912.

having made a statement indicating that he had spoken to the relevant Assistant Speaker but that he did not intend to take the matter further, the opposition member, by leave, moved the motion of no confidence. The motion was defeated following a division.¹⁴⁴

Leader of the Opposition

5.72. The role of the opposition and that of its leader is important to the performance of the Assembly's accountability and scrutiny functions. While not formally recognised in the records of the House of Representatives before 1920,¹⁴⁵ and not mentioned in the Commonwealth Constitution, the role of Leader of the Opposition is nonetheless deeply entrenched in the Westminster form of parliamentary government.¹⁴⁶

5.73. *May* notes that the phrase 'His Majesty's Opposition' pre-dates the passage of the 1832 Reform Act.¹⁴⁷ *House of Representatives Practice* observes that:

A primary function of the whole House, through its role of scrutiny and criticism, is to exercise an oversight of the actions of the Government. In modern times the Opposition has a critical role in this and, thus, the functions of the Opposition have become identified and linked with the role and more important functions of the House. These functions include:

- unmaking the Government—the Opposition, by definition, seeks to defeat a Government or cause a Government to resign. Theoretically, it could be said that an Opposition endeavours to achieve this by persuading government supporters to accept its viewpoint but, in reality, it looks to a general election for defeat of the Government and endeavours to achieve this by public persuasion;
- scrutiny of, criticism of, and suggestion of improvements to, legislation and financial proposals;
- examination of expenditure and public accounts;
- seeking information on and clarification of government policy (principally questions in writing and without notice);
- surveillance, appraisal and criticism of government administration;
- ventilating grievances; and
- examination of delegated legislation.¹⁴⁸

144 MoP, No 139, 20 March 2012, p 1800.

145 *House of Representatives Practice*, p 82.

146 *May*, p 47.

147 *May*, p 47.

148 *House of Representatives Practice*, p 82.

- 5.74. The office of Leader of the Opposition has statutory recognition¹⁴⁹ and attracts a special allowance.¹⁵⁰ To date, there have been 14 leaders of the opposition, five of whom have also held the position of Chief Minister.

Appointment/election

- 5.75. The Self-Government Act and the standing orders prepared for the new Legislative Assembly did not mention the position of Leader of the Opposition, though the office is common to the Commonwealth and Australian state parliaments.¹⁵¹ The standing orders governing the choice of a Leader of the Opposition were adopted on the first sitting day of the First Assembly as amendments to the standing orders prepared by officials prior to the Assembly meeting. In their original form, these standing orders provided for the Leader of the Opposition to be elected by all members of the Assembly. In practice, government members refrained from participation in a ballot for the position.¹⁵²
- 5.76. In the First Assembly, there were two non-government parties of equal size in the Assembly. Following the adoption of standing orders 5A and 5B, which formalised the office of Leader of the Opposition, a ballot was conducted and the Leader of the Liberal Party in the Assembly was declared elected as Leader of the Opposition.¹⁵³ Concern was expressed about the legality of the Assembly's action and legal advice was sought.¹⁵⁴ The advice confirmed the propriety and legality of

149 Relevant statutes require that the Speaker consult with the Leader of the Opposition in appointing the Auditor-General, the Clerk, members of the Electoral Commission, and the ACT Integrity Commissioner. See s 8(2)(b) of the Auditor-General Act, s 9(2)(b) of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*, s 12(2)(b) of the Electoral Act, and s 25(2) of the Integrity Commission Act. Similarly, in appointing the Assembly's Ethics and Integrity Adviser and the Assembly Commissioner for Standards, the Speaker must consult with the Leader of the Opposition. See continuing resolutions 5AA and 6A.

150 For the purposes of remuneration and allowances, the office of Leader of the Opposition is declared to be an office to which s 73 of the Self-Government Act applies; see Remuneration Tribunal Act, s 9(3). In June 1994, the Commonwealth Remuneration Tribunal determined an additional salary for the Deputy Leader of the Opposition.

151 In the early days of self-government, an argument had been advanced that the position of the Leader of the Opposition had not been included in the Self-Government Act by design on the basis that 'It was clearly anticipated that in a small unicameral legislature ... there would be a high proportion of Independents,' (Mr Collaery MLA, Assembly Debates, 21 June 1991, p 2259) and that the higher number of independents would not lend itself to the adoption of the Westminster convention whereby the leader of the largest non-government party is recognised as the leader of a formal opposition and considered to be the alternative Prime Minister, Premier or Chief Minister.

152 See Assembly Debates, 11 May 1989, pp 7-11. During that debate, some members protested against the precipitous adoption of the new standing orders, particularly concerning the possible involvement of the government party in the choice of Leader of the Opposition.

153 MoP, No 1, 11 May 1989, pp 3-4; Assembly Debates, 11 May 1989, pp 7-11. At the time, two non-government parties each had four representatives in the Assembly. Members of the governing party did not participate in the ballot. Assembly Debates, 11 May 1989, p 9.

154 MoP, No 2, 23 May 1989, p 7; Assembly Debates, 23 May 1989, p 19. Later that day, the Assembly discussed as a matter of public importance 'The actions of the Executive in relation to the election of the Leader of the Opposition'; Assembly Debates, 23 May 1989, pp 34-53.

the actions taken by the Assembly on 11 May. The opinion was that the decisions were correct in law and in accordance with parliamentary conventions.¹⁵⁵

- 5.77. Standing order 5A, as amended in June 1991, provides that the leader of the largest non-government party in the Assembly will be Leader of the Opposition.¹⁵⁶ Current practice is that, either at the first meeting of an Assembly following a general election,¹⁵⁷ or at the first opportunity following a change in leadership of the major opposition party,¹⁵⁸ the Speaker recognises that member as Leader of the Opposition.
- 5.78. In the event that the two largest non-government parties are of equal size, the Assembly elects a Leader of the Opposition and the election is conducted in a similar manner to the election of the Speaker and Chief Minister.¹⁵⁹ Since the adoption of the current provisions, there has not been a ballot for the position. There is no provision in the standing orders for the election to take precedence over other business. On 21 June 1991, for example, the Speaker ascertained whether it was the wish of the Assembly to proceed and there was no objection.¹⁶⁰ On that day, following the resignation of the then Leader of the Opposition, who had been replaced as leader of his party,¹⁶¹ and ballots having taken place, a member representing a minor group in the Assembly was declared elected as Leader of the Opposition.¹⁶²

155 MoP, No 17, 22 August 1989, p 65; Assembly Debates, 22 August 1989, p 1139. The advice provided by Professor J Richardson also suggested that the Assembly should consider a formal amendment to the standing orders to provide that the members of the parties in government be excluded from the election of Leader of the Opposition. The Speaker later made a statement to the Assembly and presented a correction to the advice; MoP, No 20, 26 September 1989, p 79. There was an earlier advice from the ACT Government Law Office that confirmed the validity of the standing orders.

156 Standing order 5A. The member must consent to being Leader of the Opposition.

157 MoP, No 1, 27 March 1992, p 4; MoP, No 1, 9 March 1995, p 5; MoP, No 1, 19 March 1998, p 3; MoP, No 1, 12 November 2001, p 3; MoP, No 1, 4 November 2004, p 3.

158 MoP, No 114, 6 August 1991, p 483; MoP, No 59, 11 May 1993, p 331; MoP, No 41, 26 March 1996, p 284.

159 Standing order 5B (adopted 21 June 1991).

160 See Assembly Debates, 21 June 1991, p 2255.

161 MoP, No 112, 6 June 1991, pp 469-70; MoP, No 113, 21 June 1991, p 473; MoP, No 113, 21 June 1991, pp 479-481; Assembly Debates, 21 June 1991, p 2337-76; MoP, No 114, 6 August 1991, p 483; Assembly Debates, 6 August 1991, p 2379.

162 MoP, No 113, 21 June 1991, p 473. The result of the first ballot was six votes for Mr Humphries, six votes for Mr Duby. The result of the second ballot was five votes for Mr Humphries, six votes for Mr Duby. The lists of members of the Assembly show Mr Duby's and one other member's party affiliation as 'Independents Group', with five members, including Mr Humphries, listed as members of the Liberal Party. Later that evening, in an unusual procedure, the Assembly ordered that the ballot papers for the second ballot for the election of the Leader of the Opposition earlier that day be laid on the table by the Clerk and this was done; see MoP, No 113, 21 June 1991, p 476. The motion was moved by leave.

- 5.79. The newly elected Leader of the Opposition then advised the Assembly that he considered that the:

... concept of the office of Leader of the Opposition in this Assembly is, in my view, a foolish one. There are 12 non-government members in this Assembly, and it is clear that in those 12 there are five groups. It clearly is ludicrous for any one Member on this side of the Assembly to speak on behalf of all non-government Members as Leader of the Opposition. Accordingly, I shall eschew that title ...¹⁶³

- 5.80. Later that evening, the Assembly amended standing orders 5A and 5B, adopting the current recognition provisions.¹⁶⁴ Following the Assembly's agreement to the amendment, the new leader of the Liberal Party gave his consent to his appointment as Leader of the Opposition. The actions of the Assembly on 21 June 1991, in adopting and applying amended standing orders 5A and 5B, were also called into question and further legal advice was sought. That advice, later tabled, stated that the recognition of the position in the standing orders did not contravene the provisions of the Self-Government Act and upheld the validity of the actions of the Assembly on 21 June 1991.¹⁶⁵

Chamber role

- 5.81. It is the practice of the Assembly for the Leader of the Opposition to receive the first call from the chair in question time and to receive additional speaking time in debates.

Conduct

- 5.82. On 14 February 2012, a government backbencher was granted leave to move a motion concerning various press reports that the Leader of the Opposition had been written to by the Clerk over a period of two years about his failure to ensure that his staff had complied with the relevant employment provisions under the members' staff enterprise agreement.¹⁶⁶
- 5.83. The motion, which was subsequently agreed to, expressed grave concern at the Leader of the Opposition's actions, directed him to provide a written statement to the Assembly answering 12 questions, and directed the Speaker to commission an independent workplace audit of staffing arrangements and to determine whether inappropriate payments were made to staff in the Office of the Leader of the Opposition for the period 2009-12.

163 Assembly Debates, 21 June 1991, pp 2256-2257.

164 MoP, No 113, 21 June 1991, pp 479-481; Assembly Debates, 21 June 1991, pp 2337-2376.

165 MoP, No 114, 6 August 1991, p 483; Assembly Debates, 6 August 1991, p 2379. There were two opinions from the Deputy Law Officer, Constitutional and Law Reform Branch, Attorney-General's Department, dated 3 and 24 July 1991.

166 MoP, No 133, 14 February 2012, p 1723.

5.84. On 16 February 2012, the Leader of the Opposition provided a written statement answering the questions set out in the resolution and made a statement.¹⁶⁷ On 23 February 2012, the Speaker announced that he had appointed a retired Commonwealth Ombudsman to conduct the review.¹⁶⁸ The reviewer was assisted in the review task by a local consulting firm specialising in workplace investigations. On 1 May 2012, the Speaker presented the report on the independent workplace audit. The report made several recommendations concerning members' staffing arrangements, as well as recommending that the Assembly undertake a review of the code of conduct for members and consider the appointment of an independent ethics commissioner.¹⁶⁹

Administration of the Assembly

5.85. The Speaker, within the bounds of any orders of or directions by the Assembly or any legislative provisions to the contrary, has control of the Assembly precincts and the provision of building services to all members, including ministers, and administrative support services to non-executive members. This control is provided for in the *Legislative Assembly Precincts Act 2001*. Pursuant to s 8 of the Precincts Act, the Speaker must exercise the control and management of the precincts in relation to the 'executive area'¹⁷⁰ in accordance with any limitations and conditions agreed in writing between the Speaker and the Chief Minister.

5.86. The Clerk is responsible to the Speaker for the financial management of the Office of the Legislative Assembly (see under the heading 'Financial Management' below). The Speaker is also responsible for the appointment of the Clerk of the Legislative Assembly (see under the heading 'Appointment, retirement, suspension, ending appointment of the Clerk' below).

Standing Committee on Administration and Procedure

5.87. The Standing Committee on Administration and Procedure is the committee charged with the internal governance of the Legislative Assembly¹⁷¹ and is responsible for inquiring into and reporting on a wide range of matters, including the practices and procedures of the Assembly and the standing orders. In addition to the Speaker (who is chair of the committee, pursuant to standing order 16(c)), the committee includes the Government Whip, the Opposition Whip, and a representative of the crossbench (or, if a single party, the whip of that party). The Clerk is the Secretary and the Clerk Assistant is the Assistant Secretary of the committee.

167 MoP, No 135, 16 February 2012, p 1752.

168 MoP, No 138, 23 February 2012, p 1783.

169 MoP, No 145, 1 May 2012, p 1866.

170 An area of the precincts reserved for the use of the executive, which typically includes ministers' offices and surrounds.

171 Standing order 16 governs the establishment, remit and operation of the committee.

- 5.88. The committee is responsible for advising the Speaker in relation to:
- members' entitlements, including facilities and services;
 - the operation of the transcription services (Hansard);
 - the availability to the public of Assembly documents; and
 - the operation of the Assembly Library.¹⁷²
- 5.89. The committee also arranges the order of private members' business and Assembly business, and must inquire into and report on the operation of the standing orders and continuing resolutions in the third year of an Assembly term, with a view to ensuring that they remain relevant and reflect best practice.¹⁷³
- 5.90. As chair, the Speaker drives and directs the work of the committee and determines the flow of committee business to ensure that matters before it are properly considered and resolved in a timely manner. The committee is required to consider a wide range of matters, including:
- procedural reform (including proposed changes to the standing orders or continuing resolutions);
 - consideration of reports produced by the Assembly's Commissioner for Standards (see under the heading 'Legislative Assembly Commissioner for Standards' below);
 - issues relating to the building and Assembly precincts;
 - consideration of finances and budgets for the Office of the Legislative Assembly; and
 - other matters referred to the committee by the Assembly.
- 5.91. In the Tenth Assembly, the standing order establishing the Standing Committee on Administration and Procedure was amended to recognise the role of the committee to, as required, consider, inquire and report on matters relating to citizen's right of reply, claims of parliamentary privilege, reports of the Commissioner for Standards and the Ethics and Integrity Adviser and the implementation of the Latimer House Principles.¹⁷⁴
- 5.92. The practices and procedures for the conduct of the committee's proceedings are much the same as for the Assembly's other standing committees (see Chapter 17: Committees).

172 Standing order 16.

173 Standing order 16(a)(i)

174 MoP, No 7, 30 March 2021, p 87.

The Clerk and the Office of the Legislative Assembly

5.93. The Clerk is the head of the Office of the Legislative Assembly and is responsible for a wide range of parliamentary and administrative functions in the service of the Assembly.

5.94. The office of Clerk pre-dates the office of Speaker by 14 years, with the first record of appointment of a Clerk being in 1363. Reflecting on the origins of the office of Clerk, *House of Representatives Practice* states that:

The word ‘Clerk’ simply meant a person who could read and write. Since many Members could then do neither, one of the Clerk’s main functions was to read out petitions, and later bills and other documents, to the House. In the 16th century the Clerks began to undertake a wider range of functions. The first of this new generation, John Seymour, began to record the proceedings of the House in an unofficial journal. At first mainly a record of motions and bills, it was later expanded to include such things as the election of the Speaker, records of attendance, divisions and decisions on matters of privilege.¹⁷⁵

5.95. The Clerk has certain statutory obligations to the Speaker but is independent in the exercise of the functions of the Office of the Legislative Assembly. The relationship between the Speaker and the Clerk is of a different character to the relationship between a minister and a director-general. While a director-general is responsible for implementing government policy and is directly responsible to the relevant minister for the performance of a directorate, the Clerk has a broader responsibility to the Assembly and all of its members *in addition* to their responsibility to the Speaker. For instance, the Clerk is not subject to direction from the Speaker—or anyone else—as to the form or content of advice to members. It is also the case that advice to the Speaker and to other members is provided on a confidential basis. However, members, including the Speaker, may, on occasion, choose to make public any advice that has been provided by the Clerk.¹⁷⁶

5.96. The ambit of advice provided by the Clerk is broad and includes matters of parliamentary law, public sector management, use of entitlements, matters relating to staffing and the working environment, management of the Assembly precincts, and protective security. The Clerk’s advice is developed with regard to the practice and procedure of the Assembly and its Westminster forebears, relevant statute and case law, and the principles of sound public sector governance. Where a matter is complex, contentious or likely to be relied upon to make highly consequential decisions, it is the practice that the Clerk will provide written advice.

175 *House of Representatives Practice*, p 209.

176 MoP, No 41, 26 November 2013, p 420.

5.97. Importantly, the Clerk and staff of the Office are not subject to the direction of the executive or any minister in the exercise of their functions. The Clerk has management powers broadly equivalent to both a director-general and a Head of Service in relation to parliamentary administration.¹⁷⁷

Appointment, retirement, suspension, ending appointment of the Clerk

5.98. Section 9 of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* sets out the arrangements for the appointment of the Clerk. It provides that:

- (1) The Speaker must, on behalf of the Territory, appoint a person as Clerk of the Legislative Assembly.
- (2) The appointment must be made—
 - (a) in consultation with the Chief Minister; and
 - (b) in consultation with the Leader of the Opposition; and
 - (c) in consultation with the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (d) in accordance with an open and accountable selection process ...
- (3) The Speaker must not appoint a person as clerk unless—
 - (a) the Speaker is satisfied that the person has extensive knowledge of, and experience in, relevant parliamentary law, practice and procedure; and
 - (b) the administration and procedure committee agrees to the person's appointment.

Acting Clerk

5.99. Pursuant to s 19 of the OLA Act, the Speaker may appoint the Deputy Clerk, or another member of the Office's staff, or a suitable person¹⁷⁸ to act in the position of Clerk.

¹⁷⁷ See s 152 of the Public Sector Management Act.

¹⁷⁸ 'Suitable person' means a person who has extensive knowledge of, and experience in, relevant parliamentary law, practice and procedure.

Clerk's disclosure of interests

- 5.100. Pursuant to s 11 of the OLA Act, the Clerk must give a written statement of the Clerk's personal and financial interests to the Speaker within seven days after:
- (a) the day the Clerk is appointed; and
 - (b) the first day of each financial year; and
 - (c) the day there is a change in an interest.

Statutory functions of the Office

- 5.101. With the passage of the Legislative Assembly (Office of the Legislative Assembly) Bill in 2012, the Assembly established an independent, professional parliamentary service within a standalone statutory framework.¹⁷⁹ The Office's function, pursuant to s 6 of the OLA Act, is to provide impartial advice and support to the Legislative Assembly and committees and members of the Assembly, including by:
- providing advice on parliamentary practice and procedure and the functions of the Assembly and committees;
 - reporting proceedings of the Assembly and meetings of committees;
 - maintaining an official record of proceedings of the Assembly;
 - providing library and information facilities and services for members;
 - providing staff to enable the Assembly and committees to operate efficiently;
 - providing business support functions, including administering the entitlements of members who are not part of the executive; and
 - maintaining the Assembly precincts.
- 5.102. The Office also has the function of providing public education about the functions of the Assembly and its committees.¹⁸⁰
- 5.103. In addition to their administrative duties as head of the Office of the Legislative Assembly, the Clerk has duties in relation to the Precincts Act and the Broadcasting Act, and is also responsible for the receipt of a range of reports and documents for tabling.¹⁸¹

179 Prior to 2012, the Assembly had been supported by the Legislative Assembly Secretariat. With the passage of the OLA Act, the Secretariat and its staff became staff of the Office of the Legislative Assembly.

180 OLA Act, s 6(2).

181 Usually in the absence of the Speaker and Deputy Speaker. See, for example, Auditor-General Act, s 4; *Annual Reports (Government Agencies) Act 2004*, s 13.

5.104. Under the Public Sector Management Act, the Clerk and staff of the Office of the Legislative Assembly are not defined as ACT public servants but are instead ‘public sector members’.¹⁸² At the heart of the distinction between ‘public servant’ and ‘public sector member’, so far as the Office is concerned, is the principle that the Office is not beholden or answerable to the government of the day in the exercise of its functions.¹⁸³

Parliamentary role

5.105. The Clerk is the chief adviser on all matters of parliamentary law, practice and procedure, including in relation to Assembly committees. While staff of the Office may also have occasion to provide advice to members on parliamentary and other matters, it is the Clerk’s advice that represents the authoritative and categorical view of the Office of the Legislative Assembly.¹⁸⁴

5.106. All staff of the Office of the Legislative Assembly perform their support and advisory functions under the direction of, and informed by, the Clerk.¹⁸⁵

5.107. *House of Representatives Practice* notes that the Clerk’s advice is offered to ‘the Chair, to Governments, Oppositions, individual Members of the House, the Committee of Privileges, the Procedure Committee and other committees’.¹⁸⁶ *House of Representatives Practice* observes that:

... the Clerk must have extensive knowledge and experience in the interpretation of the standing orders, in parliamentary practice and precedent, and in the requirements of the Constitution in so far as they affect the role of the House and its relationship with the Senate. He or she is also required to be informed on the law and practice of other Parliaments and in particular of that of the United Kingdom House of Commons from which much of *House of Representatives Practice* was derived.¹⁸⁷

5.108. Staff of the Office support the Clerk in acquitting the Clerk’s parliamentary functions, but they do so under the authority and direction of the Clerk.

182 Public Sector Management Act, s 150.

183 For instance, s 151 of the Public Sector Management Act provides that public sector standards (outlined in Division 2.1 of the Act) apply to public sector members only to the extent that they are consistent with the exercise of a public sector member’s functions.

184 Members are free to determine how they will proceed on the basis of advice provided by the Clerk or a member of the Office’s staff acting under the authority of the Clerk.

185 In the Tenth Assembly, the Standing Committee on Administration and Procedure passed a resolution to conduct a review of the operations of the committee support function. The preamble to that resolution stated that the committee ‘1. acknowledges and supports the statutory independence and authority of the Clerk in relation to the management of, and staffing decisions relating to, the Office of the Legislative Assembly and nothing in this resolution is taken to affect the operation of the Clerk’s powers and functions; and 2. acknowledges that the preeminent source of procedural advice and support to all Assembly committees is the Clerk of the Legislative Assembly and that committee secretaries exercise their functions by virtue of the Clerk’s statutory and parliamentary authority’.

186 *House of Representatives Practice*, p 211.

187 *House of Representatives Practice*, p 209.

- 5.109. The Clerk reads the instrument convening the first meeting of an Assembly following a general election, presents the official notification of the election of each member and, until a Speaker is elected, chairs the Assembly. After the members have been sworn in at the first meeting of an Assembly or whenever there is a vacancy in the office, the Clerk conducts the election of a Speaker.
- 5.110. The Clerk has the duty of producing the *Minutes of Proceedings* of the Assembly, retains custody of the minutes and keeps a record of all documents laid before the Assembly. The Clerk is also responsible for maintaining the members' roll and the record of attendance of members, for the production of the *Notice Paper*, and for the provision of the requisite documentation, advice and services necessary for the smooth running of the chamber. A particularly important responsibility of the Clerk is the certification of bills agreed to by the Assembly.

Financial management

- 5.111. The combined effect of s 4(1)(a) and s 31(1) of the *Financial Management Act 1996* is that the Clerk is accountable to the Speaker for the efficient and effective financial management of the Office. Pursuant to s 31(4) of the Financial Management Act, the Clerk is responsible for ensuring that:
- money spent by the Office is spent in accordance with appropriations made for the Office;
 - as far as practicable, the operations of the Office for a financial year are consistent with, and comparable to, the budget for the Office for the year;
 - the officers and employees of the Office comply with the Financial Management Act;
 - proper accounts and records are kept of the transactions and affairs of the Office, in accordance with generally accepted accounting principles;
 - adequate control is maintained over the assets of the Office and assets in the control of the Office; and
 - adequate control is maintained over the incurring of liabilities by the Office.
- 5.112. Special arrangements for the Office's budget and appropriation have been codified in the Financial Management Act. Section 8 of the Act provides that there must be a separate Appropriation Act for an appropriation for the Office of the Legislative Assembly.¹⁸⁸
- 5.113. Section 20 of the Act provides that the Speaker must, after consulting with the relevant committee (that is, the Standing Committee on Administration and Procedure), advise the Treasurer of the appropriation that the Speaker considers

188 The first standalone appropriation for the Office of the Legislative Assembly was presented on 5 June 2012; MoP, No 151, 5 June 2012, pp 1995-1996.

should be made for the Office of the Legislative Assembly and must give the Treasurer a draft budget for the Office. Where the appropriation bill for the Office of the Legislative Assembly contains an appropriation less than the recommended appropriation, the Treasurer is required to present to the Assembly a statement of reasons for departing from the recommended appropriation.¹⁸⁹

- 5.114. Together, these requirements introduce a measure of accountability around the funding decisions that are taken by the executive in relation to the legislative arm of government, while at the same time recognising the doctrine of the financial initiative of the executive, which holds that it is only the executive that may seek to appropriate funds through the framing of, or amendments to, an appropriation bill (see Chapter 12: Legislation, under the heading ‘Financial initiative of the Crown’).
- 5.115. In 2014, the Speaker and Chief Minister agreed to budget protocols for the Office of the Legislative Assembly. The protocols give recognition to the separation of powers doctrine at all stages of the development and consideration of the annual budget and appropriation bill for the Office of the Legislative Assembly. They elaborate on the requirements established in the Financial Management Act and set out additional guidance in relation to:
- the budget responsibilities of the Speaker, Clerk, Standing Committee on Administration and Procedure, Treasurer, and the Budget Cabinet Committee in the consideration of the Assembly’s budget;
 - a budget process for communicating and considering the Assembly budget proposals;
 - an acknowledgement that budget process requirements that apply to other parts of the ACT public sector will not always be suitable for the legislature; and
 - consultation arrangements for savings proposals proposed by the executive in relation to the Assembly and Officers of the Assembly.¹⁹⁰
- 5.116. In its 2016 report on provisions of the OLA Act, the Standing Committee on Administration and Procedure of the Eighth Assembly supported a greater role for the Assembly in the decisionmaking processes which apply to the Office of the Legislative Assembly. The committee recommended that ‘the Assembly support the development of new practices and procedures, which give the Assembly a greater role in determining its budget appropriations including in relation to the Office of the Legislative Assembly and Officers of the Legislative Assembly’.¹⁹¹

189 See MoP, No 59, 5 June 2018, p 843.

190 See MoP, No 59, 5 June 2018, pp 842-843.

191 Standing Committee on Administration and Procedure, *Inquiry into provisions of the Legislative Assembly (Office of the Legislative Assembly) Act 2012*, Report 10, p 1.

- 5.117. The committee was also supportive of the continuation of the budget protocols and recommended, among other things, that the government of the day does not ‘attempt to weaken existing provisions [in the protocols] to advantage the Executive’ and that the ‘Assembly resolves to support the operation of strong budget protocols, which establish an independent and separate budget development process for the Assembly consistent with the separation of powers doctrine’.¹⁹²
- 5.118. The Speaker of the Ninth Assembly and the Chief Minister revised the budget protocols in 2018 to include, as Officers of the Assembly, the Auditor-General and the Electoral Commissioner.¹⁹³ The Integrity Commissioner and the Ombudsman (and Inspector of the Integrity Commission) were included in revised protocols presented in the Assembly in 2020.¹⁹⁴

Lobbyist register

- 5.119. By virtue of continuing resolution 8AC, the Clerk is responsible for the maintenance of the ACT Register of Lobbyists. See Chapter 4: Membership of the Assembly, under the heading ‘Lobbyist register and lobbying code of conduct’, for more information on the history and operation of the register.

Deputy Clerk and Serjeant-at-Arms

- 5.120. The Clerk is assisted by the Deputy Clerk and Serjeant-at-Arms. In other parliaments, these two roles are often separate and performed by different officers. However, in the ACT, they have been combined and are performed by a single officer. In the absence of the Clerk, the Deputy Clerk performs the role of the Clerk (see heading ‘Clerk and the Office of the Legislative Assembly’ above).
- 5.121. In the chamber, the Deputy Clerk sits to the left of the Clerk and is responsible for running the chamber clock and ringing the bells for divisions, suspensions and adjournment. The Deputy Clerk performs other tasks in the chamber, including keeping a record of proceedings that mirror those of the Clerk, ensuring that copies of tabled documents and completed procedures are promptly collated, and recording all notices that are handed to the Clerk by members. The Deputy Clerk also provides procedural advice to members who approach the desk.¹⁹⁵
- 5.122. Historically, the Serjeant-at-Arms has had a role in enforcing security in the chamber. In a modern Legislative Assembly, the Serjeant’s role is mostly ceremonial, although the Serjeant-at-Arms can be called upon by the Speaker to remove a person from the chamber. To date, this has not occurred.

192 Standing Committee on Administration and Procedure, *Inquiry into provisions of the Legislative Assembly (Office of the Legislative Assembly) Act 2012*, Report 10, p 1.

193 MoP, No 71, 18 September 2018, p 991.

194 MoP, No 139, 27 August 2020, p 2148.

195 During a sitting day, other experienced officers relieve both the Clerk and Deputy Clerk in the chamber.

- 5.123. The Serjeant-at-Arms is the custodian of the mace, which, since the 17th century, has been recognised as an icon of the parliament and a symbol of the Speaker's authority.
- 5.124. The mace of the Legislative Assembly was a gift from the Australian Region of the Commonwealth Parliamentary Association. It was officially presented to the then Speaker at a meeting of presiding officers and clerks in Melbourne on 9 July 2004. Prior to this, the Assembly did not have a mace.
- 5.125. At the beginning of each sitting day, the Serjeant-at-Arms, carrying the mace on the right shoulder, precedes the Speaker into the chamber and announces: 'Members, the Speaker'. All members stand at their desks while the Serjeant-at-Arms places the mace on its brackets in front of the Clerks' table, with the larger end pointing towards the government. The mace remains in this position throughout the sitting. At the conclusion of the sitting, the Serjeant-at-Arms takes the mace from its bracket, places it on the right shoulder and precedes the Speaker out of the chamber. When the mace is not in use, it is secured in a cabinet outside the chamber. For more information on the mace, see Chapter 19: Chamber and Assembly precincts, under the heading 'Mace'.

Legislative Assembly Commissioner for Standards

- 5.126. The position of Legislative Assembly Commissioner for Standards was established by way of a continuing resolution (continuing resolution 5AA) agreed to by the Assembly on 31 October 2013. The functions of the commissioner are to investigate complaints against members and report to the Standing Committee on Administration and Procedure. Anyone may make a complaint to the commissioner, via the Clerk of the Assembly, about a member's compliance with the members' code of conduct or the rules relating to the registration or declarations of interests. The commissioner must prepare an annual report to the Speaker on the exercise of the commissioner's functions, which is tabled in the Assembly by the Speaker.¹⁹⁶
- 5.127. The Speaker is responsible for the appointment of the commissioner after each Assembly is elected or whenever the office becomes vacant. Before appointing a commissioner, the Speaker must consult with the Chief Minister, Leader of the Opposition and crossbench members.¹⁹⁷
- 5.128. The Assembly's first Commissioner for Standards¹⁹⁸ was appointed by the Speaker in the Eighth Assembly following an expression of interest process.¹⁹⁹

196 Paragraph 7(c) of the resolution. See also continuing resolution 5AA.

197 It is the practice that the Office of the Legislative Assembly provides advice and support to the Speaker throughout the appointment process.

198 The Hon Dr K J Crispin QC, former Supreme Court Judge, Director of Public Prosecutions and chair of the ACT Law Reform Commission.

199 Dr Crispin was re-appointed in the Ninth and Tenth Assemblies.

- 5.129. The commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the commissioner's appointment:
- for misbehaviour; or
 - for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions.
- 5.130. More information on the investigation and complaints process conducted by the Commissioner for Standards is outlined in Chapter 4: Membership, under the heading 'Complaints to the Legislative Assembly Commissioner for Standards'.

Ethics and Integrity Adviser

- 5.131. On 10 April 2008, the Assembly passed a continuing resolution (6A), which provided for the appointment of an Ethics and Integrity Adviser for MLAs.²⁰⁰

- 5.132. Pursuant to the resolution, the adviser has the following functions:

Advising members of the Legislative Assembly, when asked to do so by ... [a] member, on ethical issues concerning the exercise of his or her role as a member (including the use of entitlements and potential conflicts of interest).

Giving advice that is consistent with any code of conduct or other guidelines adopted by the Assembly, but does not include the provision of any legal advice.

- 5.133. Since the establishment of the position, the Ethics and Integrity Adviser has been called upon by Speakers and MLAs in relation to a wide range of matters.²⁰¹ The resolution also requires the Ethics and Integrity Adviser to report to the Assembly on an annual basis providing details of ethical matters raised and the number of members who sought advice.²⁰² The report is then made available on the Assembly's website.

Appointment

- 5.134. Continuing resolution 6A provides that:

The Speaker shall, after each Assembly is elected or whenever the office becomes vacant, appoint an Ethics and Integrity Adviser for the life of that Assembly and the period of three months after each election.

200 It is the practice that the Office of the Legislative Assembly provides advice and support to the Speaker throughout the appointment process.

201 The Speaker advised the Assembly of the appointment of the Assembly's first Ethics and Integrity Adviser, Stephen Skehill, on 25 June 2008. See MoP, No 143, 25 June 2008, p 1548.

202 MoP, No 134, 2 July 2020, p 2019.

- 5.135. Prior to appointing an Ethics and Integrity Adviser, the Speaker is required to consult with the Chief Minister, the Leader of the Opposition and crossbench members.²⁰³
- 5.136. It has been the practice that the Office supports the Speaker in seeking expressions of interest to undertake the role of Ethics and Integrity Adviser. As part of the appointment process in 2008, expressions of interest were assessed against predefined criteria by a panel comprising the Clerk, the Speaker and the Human Rights Commissioner. Much the same process was followed by subsequent Speakers in the Seventh, Eighth and Ninth Assemblies. In the Tenth Assembly, the Speaker appointed the adviser having consulted with party leaders.
- 5.137. Under the terms of the appointment, the adviser is required to ‘exercise all the care, skill and diligence that can reasonably be expected of a person having the same responsibilities under an appointment for the purpose of providing advice on matters of ethics and integrity to Members’. Pursuant to the resolution, ‘the Ethics and Integrity Adviser may resign in writing to the Speaker, or may be removed from office for proved misbehaviour or mental incapacity on a resolution agreed to by the Assembly’.²⁰⁴

Other requirements

- 5.138. Continuing resolution 6A also provides that:
- (1) The Ethics and Integrity Adviser shall be required to keep records of advice given and the factual information upon which it is based.
 - (2) The Ethics and Integrity Adviser shall be under a duty to maintain the confidentiality of information provided to him/her in exercising the function and any advice given, but may make public any advice if the person who requested the advice gives permission for it to be made public.
 - (3) The Assembly shall only call for the production of records of the Ethics and Integrity Adviser if the person to which the records relate has sought to rely on the advice given in relation to paragraph (1) or given permission for the records to be produced to the Assembly.
 - (4) The Ethics and Integrity Adviser is to meet at least annually with the Standing Committee on Administration and Procedure for a discussion on matters raised and possible proposals to address them.
 - (5) The Ethics and Integrity Adviser shall report to the Assembly on an annual basis detailing the number of ethical matters raised with him/her and the number of Members who sought advice on any issues concerning Members’ entitlements that have given rise to requests for ethics advice and suggest proposals to address these issues.

203 Paragraph 7 of the resolution

204 Paragraph 9 of the resolution.

Independent legal arbiters

- 5.139. Under standing order 213A, an independent legal arbiter must be appointed by the Speaker to consider and decide a claim of executive privilege made by the Chief Minister, following an order for the production of a document by the Assembly. The Speaker may only appoint a person as independent legal arbiter who has been a retired Supreme Court, Federal Court or High Court Judge. More information on the operation of standing order 213A is contained in Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, under the heading ‘Production orders and public interest immunity’.²⁰⁵
- 5.140. Following the passage of the Integrity Commission Bill 2018, the Assembly passed continuing resolution 4A, which, among other matters, makes provision for the appointment of an independent legal arbiter to determine claims relating to parliamentary privilege during the exercise of the Integrity Commissioner’s functions.²⁰⁶ See also Chapter 2: Parliamentary Privilege—The powers and immunities of the Assembly, under the heading ‘ACT Integrity Commission—privilege claims’.

Officers of the Assembly

- 5.141. In the Seventh Assembly, the Officers of the Assembly Legislation Amendment Bill 2013 was passed. The resulting enactment had the effect of amending relevant legislation so that the Auditor-General,²⁰⁷ the Ombudsman²⁰⁸ and members of the ACT Electoral Commission²⁰⁹ became independent Officers of the Legislative Assembly.²¹⁰ The passage of the bill followed a recommendation of the Standing Committee on Administration and Procedure in its report on officers of the parliament.²¹¹

205 It is the practice that the Office of the Legislative Assembly provides advice and support to the Speaker throughout the appointment process.

206 MoP, No 82, 29 November 2018, pp 1187-1193. Prior to that date, no appointments had been made pursuant to the resolution.

207 Auditor-General Act, s 6A.

208 While s 4A of the Ombudsman Act establishes that the Ombudsman is an independent Officer of the Legislative Assembly, this provision does not become operative until an appointment is made pursuant to s 22 of the Act; that is, where a person who is not the Commonwealth Ombudsman is appointed (see s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth)). Where a person other than the Commonwealth Ombudsman is appointed to the role of ACT Ombudsman, the powers available to the Speaker with respect to the Ombudsman are broadly those that apply with respect to the other two Officers of the Legislative Assembly.

209 Electoral Act, s 6A.

210 The term ‘Officer of the Legislative Assembly’ (see 6A of the Auditor-General Act) and ‘Officer of the Assembly’ (see Legislation Act, dictionary, Part 1) have been used interchangeably across relevant ACT statutes.

211 Standing Committee on Administration and Procedure, *Officers of the Parliament*, Report 4, March 2012, p 38.

5.142. The explanatory statement to the bill described the rationale for establishing these statutory office holders as Officers of the Assembly in the following terms:

The nature of the functions that the auditor-general, ombudsman and Electoral Commission fulfil, to help ensure the accountability of the executive and the representative character of the Assembly, are more appropriately characterised as a function of the legislature rather than the executive and as such it is appropriate to recognise the 'special relationship' that each has with the Assembly by making them officers of the Assembly. One of the essential roles of the Assembly is to ensure the accountability of the executive. The auditor-general and the ombudsman provide a very important oversight mechanism to ensure the probity of executive conduct. This role is best characterised as being fulfilled on behalf of the Assembly rather than as part of the executive itself. This does not mean that these two office holders will not continue to work constructively with government agencies rather it means that ultimately they are responsible to the parliament, that they fulfil their role [on] behalf of the parliament and that they are not part of the entity that they are responsible for scrutinising.

5.143. With the commencement of the Integrity Commission Act, both the ACT Integrity Commissioner and the Inspector of the Integrity Commission also became Officers of the Assembly.²¹²

5.144. The Speaker has significant powers and responsibilities in relation to Officers of the Assembly. Among other matters, the Speaker is responsible for:

- appointing a chairperson of the Electoral Commission;²¹³
- appointing an acting Electoral Commissioner;²¹⁴
- appointing members of the Electoral Commission and the Electoral Commissioner (that is, the Chief Executive Officer of the Electoral Commission);²¹⁵
- suspending members of the Electoral Commission;²¹⁶
- ending the appointment of a member of the Electoral Commission;²¹⁷
- retiring members of the Electoral Commission;²¹⁸
- appointing the Auditor-General;²¹⁹

212 Integrity Commission Act, ss 21 and 225.

213 Electoral Act, s 12C.

214 Electoral Ac, s 12A.

215 Electoral Act, s 12.

216 Electoral Act, s 18A.

217 Electoral Act, s 18D.

218 Electoral Act, s 18.

219 Auditor-General Act, ss 8, 9B.

- appointing an acting Auditor-General;²²⁰
- ending the appointment of the Auditor-General;²²¹
- retiring the Auditor-General;²²²
- suspending the Auditor-General;²²³
- engagement of a strategic reviewer of the Auditor-General;²²⁴
- engagement of an independent auditor of the Auditor-General;²²⁵
- appointing the Integrity Commissioner;²²⁶
- making a determination about the criteria that apply to the selection of a person for appointment as Integrity Commissioner and the process for appointing the person;²²⁷
- suspending the Integrity Commissioner;²²⁸
- ending the appointment of the Integrity Commissioner;²²⁹ and
- retiring the Integrity Commissioner.²³⁰

5.145. While the Speaker's powers to suspend, retire, or end the appointment of officers are likely to be exercised only rarely, there are other powers which must be exercised with some regularity.²³¹

5.146. Importantly, relevant statutes provide that an Officer of the Assembly has no implied functions, powers, immunities or obligations arising from their status as an Officer of the Assembly²³² and that the Assembly has no implied power arising from an officer having such a status.²³³

220 Auditor-General Act, s 9A.

221 Auditor-General Act, s 9BC.

222 Auditor-General Act, s 9A.

223 Auditor-General Act, s 9B.

224 Auditor-General Act, s 25(2).

225 Auditor-General Act, s 31.

226 Integrity Commission Act, s 25.

227 Integrity Commission Act, s 27. See also Integrity Commission (Commissioner Selection Criteria and Process) Determination 2019.

228 Integrity Commission Act, s 35.

229 Integrity Commission Act, s 38.

230 Integrity Commission Act, s 34.

231 For example, the engagement of a strategic reviewer of the Auditor-General must occur once each term of the Assembly.

232 See, for example, Auditor-General Act, s 6A(3).

233 See, for example, Auditor-General Act, s 6A(6).

5.147. While the Clerk is an independent statutory officer, neither the Clerk nor staff of the Office of the Legislative Assembly are Officers of the Assembly. Instead, the Clerk and staff of the Office are variously referred to as parliamentary officers or Assembly officials.²³⁴

Auditor-General

5.148. Pursuant to s 6A of the *Auditor-General Act 1996*, the Auditor-General is an Officer of the Legislative Assembly. Subject to the Auditor-General Act and other Territory laws, the Auditor-General has complete discretion in the exercise of the Auditor-General's functions.

5.149. The Auditor-General is not subject to direction from anyone in relation to—(a) whether or not a particular audit is to be carried out; or (b) the way in which a particular audit is to be carried out; or (c) the priority to be given to any particular matter.²³⁵

5.150. The Auditor-General has a range of functions, including:

- to promote public accountability in the public administration of the Territory;
- to audit the annual financial statements of the Territory, directorates and Territory authorities under the Financial Management Act;
- to audit the accounts and records in relation to any person, body or thing ascertained in accordance with the regulations;
- to conduct performance audits in relation to any person, body or thing ascertained in accordance with the regulations;
- any function given to the Auditor-General by or under any other law of the Territory; and
- to do anything incidental or conducive to any of the Auditor-General's functions.²³⁶

5.151. The Auditor-General also has a range of very significant powers, including the power to obtain information; the power to administer an oath or affirmation; and the power to access premises and things.²³⁷

234 Prior to the establishment of the position of 'Officer of the Assembly' by way of statute, the term had been used to refer to a parliamentary officer such as the Clerk, committee secretary or other official within the service of the parliamentary administration.

235 Auditor-General Act, s 7.

236 Auditor-General Act, s 10.

237 Auditor-General Act, ss 14 and 15.

Appointment

- 5.152. The Speaker is required, pursuant to s 8 of the Act, to appoint a person as Auditor-General.²³⁸ The appointment must be made:
- (a) in consultation with the Chief Minister;
 - (b) in consultation with the Leader of the Opposition; and
 - (c) in consultation with the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (d) in accordance with an open and accountable selection process.²³⁹
- 5.153. Following passage of the Legislative Assembly Legislation Amendment Bill 2017, the Auditor-General Act was amended to place beyond doubt that the Speaker must not appoint a person as Auditor-General unless the public accounts committee agrees to the appointment.²⁴⁰
- 5.154. The Speaker must not appoint a person as Auditor-General unless 'satisfied that the person has extensive knowledge of, and experience in—(a) governance and risk management; or (b) public administration'.²⁴¹
- 5.155. Given the significance of the appointment of an Auditor-General, and in order to ensure that only the highest quality candidates are considered, it has been the practice of the Speaker to engage, at the expense of the Audit Office, an external recruitment consultant to assist in the identification and preliminary evaluation of potential candidates and to appoint a panel of eminent persons to make a recommendation on the appointment.

Oath or affirmation of office

- 5.156. Before a person is appointed Auditor-General, the person must take an oath of office, or make an affirmation of office before the Speaker.²⁴²

238 It is the practice that the Office of the Legislative Assembly provides advice and support to the Speaker throughout the appointment process.

239 Auditor-General Act, s 8(2).

240 Auditor-General Act, s 8(3)(b).

241 Auditor-General Act, s 8(3).

242 Auditor-General Act, s 8B. For the form of the oath or affirmation, see the Oaths and Affirmations Act.

Disclosure of interests

- 5.157. The Auditor-General must give a written statement of the Auditor-General's personal and financial interests to the Speaker within seven days after:
- (a) the day the auditor-general is appointed; and
 - (b) the first day of each financial year; and
 - (c) the day there is a change in the interest.²⁴³

Suspension, retirement, ending the appointment

- 5.158. There are a number of provisions in the Auditor-General Act which give the Speaker the power to suspend, retire or end the appointment of the Auditor-General in certain conditions and having undertaken a number of prescribed processes.²⁴⁴

Acting Auditor-General

- 5.159. Before the Speaker appoints a person to act as Auditor-General, the Speaker must consult with the presiding member of the public accounts committee about the proposed appointment. However, for a period of leave of absence approved by the Speaker under s 9BD, the Auditor-General may appoint a person to act as Auditor-General after consulting with the Speaker.²⁴⁵

Strategic reviewer of the Auditor-General

- 5.160. Once each term of the Assembly the Speaker is required to engage, on behalf of the Territory, a qualified person to conduct a strategic review of the Auditor-General. A strategic review means: (a) a review of the Auditor-General's functions; and (b) a performance audit of the Auditor-General.²⁴⁶
- 5.161. The timing of the review is determined by the public accounts committee, pursuant to s 24 of the Auditor-General Act. The public accounts committee also decides the terms of reference for the review, in consultation with the Chief Minister. Pursuant to s 27 of the Auditor-General Act, the strategic reviewer has the same powers and obligations as the Auditor-General has under the Act's provisions relating to performance audits.

243 Auditor-General Act, s 8C. The Speaker may only disclose the information in the statement in certain circumstances (see s 36).

244 Auditor-General Act, ss 9A-9BD.

245 Auditor-General Act, s 8A.

246 It is the practice that the Office of the Legislative Assembly provides advice and support to the Speaker throughout the appointment process.

5.162. The terms agreed to by the public accounts committee in the Eighth Assembly expressed the objective of the strategic review process in the following terms:

The objective of the strategic review is to form an independent opinion on:

- (i) whether the ACT Audit Office is achieving its legislative objectives effectively, and doing so efficiently and in compliance with the *Auditor-General Act 1996* and the relevant professional audit and accounting standards (performance and financial audits);
- (ii) the extent to which the legislative mandate strengthens and safeguards the independence of the Auditor-General;
- (iii) the extent to which the legislative mandate supports the work of the Auditor-General in the contemporary public sector environment;
- (iv) any other aspects as determined by the Committee.

5.163. A former Auditor-General (external to the Australian Capital Territory) and an Australian Audit Office that has a mandate to perform external reviews of other Audit Offices, have been considered appropriate for appointment as a strategic reviewer. To be considered, candidates must be able to demonstrate that they have no pecuniary interest in the outcome of the review and have no established relationship with the ACT Audit Office and its employees. The reviewer is also required to demonstrate independence (actual and perceived) from the ACT Audit Office.

5.164. Upon engagement of the strategic reviewer by the Speaker, the chair of the public accounts committee formally asks, on behalf of the committee, the strategic reviewer to conduct the review according to the terms of reference, thereby satisfying s 26 of the Auditor-General Act.

5.165. The strategic reviewer has the same powers and obligations as the Auditor-General has in relation to a performance audit conducted under the following provisions of the Act:

- Division 3.6 (Power to obtain information);
- s 19 (Reporting sensitive information);
- s 35 (Directions about protected information); and
- s 36 (Offences—use or divulge protected information).

5.166. The strategic reviewer may include deliberative information (that is, information that discloses a deliberation or decision of the executive) in a report for the Legislative Assembly only if the information has previously been published.²⁴⁷

- 5.167. The strategic reviewer is required to provide the Speaker with a report on the review ‘as soon as practicable’ after the review has been completed.²⁴⁸ Prior to giving the report to the Speaker, the strategic reviewer must provide a copy of the proposed report to the Auditor-General, along with a written notice stating that the Auditor-General may give written comments about the proposed report to the strategic reviewer within 14 days of the notice having been given or a longer period stated in the notice.²⁴⁹ The strategic reviewer is required to consider the comments of the Auditor-General in preparing the final report and must also include the substance of comments that have been provided.²⁵⁰
- 5.168. The Speaker is required to present a copy of the report to the Legislative Assembly.²⁵¹

Engagement of independent auditor of the Auditor-General

- 5.169. Section 31 of the Auditor-General Act provides that the Speaker is required to engage ‘an appropriately qualified person’ under a contract to:
- (a) conduct independent financial audits of the auditor-general; and
 - (b) exercise functions as required under the Financial Management Act.
- 5.170. An independent financial audit of the Auditor-General is defined as an audit of an annual financial statement prepared by the Auditor-General under s 27 of the Financial Management Act. Under the Financial Management Act, the Auditor-General is not required to prepare a statement of performance but it has nonetheless been the Auditor-General’s practice to prepare such a statement, and this statement is traditionally audited by the independent auditor each year.
- 5.171. The independent auditor role is an important one. The independent auditor has the same powers and obligations in relation to the conduct of an independent financial audit as the Auditor-General has under relevant provisions of the Auditor-General Act (see s 33), including the power to obtain information.

Electoral Commission and Electoral Commissioner

- 5.172. By reason of s 6A of the Electoral Act, a member of the Electoral Commission is an independent Officer of the Legislative Assembly. Subject to the Electoral Act and other Territory laws, a member of the Electoral Commission has complete discretion in the exercise of their functions (s 6B). The Electoral Commission has the following functions:
- (a) to advise the Assembly on matters relating to elections;

248 Auditor-General Act, s 29.

249 Auditor-General Act, s 28.

250 Auditor-General Act, s 29(2).

251 Auditor-General Act, s 29.

- (b) to consider, and report to the Assembly on, matters relating to elections referred to it by the Assembly;
- (c) to promote public awareness of matters relating to elections and the Assembly by conducting education and information programs and by any other means it chooses;
- (d) to provide information and advice on matters relating to elections to—
 - (i) the Assembly;
 - (ii) the Executive;
 - (iii) the head of service;
 - (iv) directors-general;
 - (v) statutory office-holders;
 - (vi) territory authorities;
 - (vii) territory instrumentalities;
 - (viii) political parties;
 - (ix) MLAs;
 - (x) candidates at elections;
- (e) to conduct and promote research into matters relating to elections or other matters relating to its functions;
- (f) to publish material on matters relating to its functions;
- (g) to provide, on payment of the determined fee (if any), goods and services to persons or organisations, to the extent that it is able to do so by using information or material in its possession or expertise acquired in the exercise of its functions;
- (h) to conduct ballots for prescribed persons and organisations;
- (i) to exercise any other function given to it under this Act or another Territory law.²⁵²

5.173. The Electoral Commissioner is the Chief Executive of the Electoral Commission. The Commissioner may give written directions to officers and members of the staff of the Electoral Commission in relation to the exercise of their functions under the Electoral Act or another Territory law.²⁵³

Appointment of commissioners

5.174. As with the Clerk, Auditor-General and Integrity Commissioner, the Speaker is responsible for the appointment of members of the Electoral Commission,

252 Electoral Act, s 7.

253 Electoral Act, s 11.

- including the Electoral Commissioner.²⁵⁴
- 5.175. The Electoral Commission consists of the chairperson, the commissioner and one other member.
- 5.176. The Electoral Act provides that appointments to the commission must be made:
- (a) in consultation with the Chief Minister;
 - (b) in consultation with the Leader of the Opposition;
 - (c) in consultation with the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (d) in accordance with an open and accountable selection process.²⁵⁵
- 5.177. The Speaker must not appoint a person as Electoral Commissioner unless satisfied that the person has extensive knowledge of, and experience in, electoral systems or management; or public administration. The Speaker must not appoint a member of the commission unless that person has extensive knowledge of, and experience in electoral systems or management; or public administration or another area that is relevant to and consistent with the functions of a member of the Electoral Commission.²⁵⁶ The Speaker must not appoint a person as Electoral Commissioner unless the relevant Assembly committee agrees to the person's appointment.²⁵⁷
- 5.178. Section 12B of the Electoral Act provides that the Speaker must not appoint a person as a member of the Electoral Commission if the person has been a member of the Assembly or another parliament in the 10 years before the day of the proposed appointment. Also, the Speaker must not appoint a person who is or has, in the five years immediately before the day of the proposed appointment, been a member of a political party.²⁵⁸
- 5.179. Section 12C of the Electoral Act provides that the Speaker may appoint a person as the chairperson of the Electoral Commission only if the person has held one of a number of prescribed positions.
- 5.180. Given the significance of the appointment of an Electoral Commissioner and in order to ensure that only the highest quality candidates are considered, it has been the practice for the Speaker to engage, at the expense of the Electoral Commission, an external recruitment consultant to assist in the identification and

254 Electoral Act, s 12.

255 Electoral Act, s 12.

256 Electoral Act, s 12.

257 Electoral Act, s 12(3)(b).

258 Electoral Act, s 12B.

preliminary evaluation of potential candidates and to appoint a panel of eminent persons to make a recommendation on the appointment.

Oath of affirmation of office

5.181. Before a person is appointed as a member of the Electoral Commission, the person must take an oath of office, or make an affirmation of office before the Speaker.²⁵⁹

Disclosure of interests

5.182. A member of the Electoral Commission must give a written statement of the member's personal and financial interests to the Speaker within seven days after: (a) the day the member is appointed; (b) the first day of each financial year; and (c) the day there is a change in the interest.

Suspension, retirement, ending the appointment

5.183. There are a number of provisions in the Electoral Act which give the Speaker the power to suspend, retire or end the appointment of the electoral commissioners in certain conditions and having undertaken a number of prescribed processes.²⁶⁰

Leave

5.184. The Speaker may approve leave of absence for a member of the Electoral Commission on the terms the Speaker decides.²⁶¹

Acting appointment—commissioner

5.185. Before the Speaker appoints a person to act as commissioner, the Speaker must consult with the chair of the relevant Assembly committee about the proposed appointment.

5.186. However, for a period of leave of absence approved by the Speaker under s 18E, the commissioner may appoint a person to act as commissioner after consulting with the Speaker.²⁶²

Resignation

5.187. A member of the Electoral Commission may resign by giving a signed notice of resignation to the Speaker.²⁶³

259 Electoral Act, s 14. For the form of the oath or affirmation, see the Oaths and Affirmations Act.

260 Electoral Act, ss 18-18D.

261 Electoral Act, s 18E.

262 Electoral Act, s 12A.

263 Electoral Act, s 17.

Other functions under the Electoral Act

Special reports by Electoral Commission

- 5.188. The Electoral Commission may give to the Speaker a report on anything relating to elections, referendums or other ballots. If the Speaker receives such a report, the Speaker must present a copy of the report to the Legislative Assembly on the next sitting day after the day the Speaker receives it.²⁶⁴
- 5.189. The relevant minister is required to present a written response to the report to the Legislative Assembly within three months after the day the report was presented to the Legislative Assembly.²⁶⁵

Redistribution

- 5.190. Where an ‘augmented’²⁶⁶ Electoral Commission redistributes electorates under s 35, the commission must cause a report about the redistribution to be submitted to the Speaker.²⁶⁷
- 5.191. The Speaker is required to present a copy of the augmented commission’s report to the Legislative Assembly on the first sitting day after the day the Speaker receives the report.

Casual vacancy

- 5.192. Where a casual vacancy arises in the course of the term of the Assembly, the Speaker is required to notify the Electoral Commissioner in writing that this has occurred.
- 5.193. A casual vacancy occurs where the seat of an MLA becomes vacant other than because of: (a) the dissolution of the Assembly; (b) the expiry of the term for which MLAs were elected at an election; or (c) the failure or partial failure of an election.²⁶⁸

264 Electoral Act, s 10A. For example, during the Ninth Assembly the Electoral Commissioner provided the Speaker with a special report on the impact of the COVID-19 pandemic on the 2020 ACT Legislative Assembly election. See MoP, No 32, 4 June 2020, p 1981.

265 Electoral Act, s 10A.

266 Section 47 of the Electoral Act provides that an augmented Electoral Commission consists of: (a) members of the Electoral Commission; and (b) members of the redistribution committee. Pursuant to s 39, the redistribution committee consists of the Electoral Commissioner, the Planning and Land Authority; the Surveyor-General and a person appointed by the Electoral Commission whose qualifications or experience would enable the person to assist the committee (particularly in relation to the factors set out in s 36).

267 Electoral Act, s 53.

268 Electoral Act, s 191.

- 5.194. The most common reason for a casual vacancy has been the resignation of a member.²⁶⁹ Standing order 24A provides that a member may resign as an MLA by written notice to the Speaker or, in the absence of the Speaker from the Territory or from duty, the Deputy Speaker.²⁷⁰

Eligibility and vacancies

- 5.195. Where the Assembly passes a resolution referring to the Court of Disputed Elections a question relating to: (a) the eligibility of a person who has been declared elected to be an MLA; or (b) a vacancy in the membership of the Assembly; the Speaker is required to give the registrar a statement setting out the question referred, together with any documents in the possession of the Assembly that relate to that question.²⁷¹ To date, no such resolution has been passed.

Integrity Commissioner

- 5.196. Following two select committee inquiries in the Ninth Assembly which examined the establishment of an independent integrity commission for the ACT,²⁷² the Assembly passed the Integrity Commission Bill 2018.²⁷³
- 5.197. The resulting enactment provides that the Integrity Commission consists of a single commissioner, appointed by the Speaker in consultation with the Chief Minister, the Leader of the Opposition, the leader of a registered party (if at least two Members of the Legislative Assembly are members of the party), and the relevant Assembly committee.²⁷⁴ Under the Integrity Commission Act, the Speaker must not appoint a person unless the person is approved by a motion supported by at least a two-thirds majority of the Assembly.²⁷⁵ This provision ensures that there is broad political support for any appointment.
- 5.198. Following the passage of a motion unanimously supported by the Assembly, the Speaker appointed the ACT's first Integrity Commissioner.²⁷⁶ The Integrity Commission Act fully commenced on 1 December 2019.

269 In the Ninth Assembly, the Speaker advised the Assembly that she had received written notice from the Leader of the Opposition of the death of a member and that the Electoral Commissioner, pursuant to ss 189 and 194 of the Electoral Act, had declared a new member elected to fill the vacancy that had been created. See MoP, No 44, 13 February 2018, p 639.

270 Self-Government Act, s 13.

271 Electoral Act, s 276.

272 MoP, No 4, 15 December 2016, p 41; MoP, No 60, 6 June 2018, p 843.

273 MoP, No 82, 29 November 2018, p 1186.

274 The Standing Committee on the Integrity Commission was first established by resolution on 29 November 2018. It is the practice that the Office of the Legislative Assembly provides advice and support to the Speaker throughout the appointment process.

275 Integrity Commission Act, s 25(3)(b).

276 The Hon Dennis Cowdroy AO QC. MoP, No 99, 4 June 2019, pp 1490-1491.

- 5.199. The functions of the commission are, among other things, to:
- (a) investigate conduct that is alleged to be corrupt conduct; and
 - (b) refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action; and
 - (c) prevent corruption, including by—
 - (i) researching corrupt practices; and
 - (ii) mitigating the risks of corruption; and
 - (d) publish information about investigations conducted by the commission, including lessons learned; and
 - (e) provide education programs about the operation of the Act and the commission, including providing advice, training and education services ...²⁷⁷
- 5.200. The commission has complete discretion in the exercise of its functions and a range of powers, including coercive powers, which it may exercise in pursuing its remit.²⁷⁸
- 5.201. The Speaker receives the reports of the commission and, upon receipt, makes arrangements for presentation to the Assembly.²⁷⁹

Eligibility for appointment

- 5.202. Pursuant to s 26 of the Integrity Commission Act, the Speaker may only appoint a person as Integrity Commissioner if the person has been:
- a judge of the Supreme Court;
 - a judge of the Supreme Court of a State or another territory;
 - a judge of the Federal Court;
 - a justice of the High Court; or
 - a lawyer for at least 10 years.²⁸⁰
- 5.203. Pursuant to s 26(3) of the Integrity Commission Act, certain persons are not eligible to be the commissioner, including MLAs or other members of parliament.

²⁷⁷ Integrity Commission Act, s 23.

²⁷⁸ For instance, the commission is able to conduct examinations under oath and to seek to punish a person for failing or refusing to produce a document or for failing or refusing to answer a question during an examination (see s 166 of the Integrity Commission Act).

²⁷⁹ Integrity Commission Act, s 189.

²⁸⁰ A lawyer of 10 years standing may only be considered where there is no suitable applicant who is a judge or justice (see s 26(2) of the Act).

Selection criteria and process

5.204. The Speaker is responsible for determining both the criteria that are to apply to the selection of a person for appointment as Commissioner and the process for selecting a person. In making a determination, the Speaker must consult with the Chief Minister, the Leader of the Opposition and the leader of a registered party of which at least two MLAs are members, and the relevant Assembly committee.²⁸¹

Term of appointment

5.205. The commissioner must not be appointed for a period of greater than seven years, and a person who has been the commissioner may not be reappointed.²⁸²

Oath of affirmation of office and disclosure of interests

5.206. The Commissioner is required to make an oath or affirmation of office before the Speaker and must give a written statement of personal and financial interests to the Speaker within seven days of the commissioner's appointment, the first day of each financial year, and the day that there is a change in the interest.²⁸³

Suspension and ending appointment

5.207. The arrangements for appointing, suspending and ending the appointment of the commissioner are outlined in ss 35-38 of the Integrity Commission Act.

Inspector of the Integrity Commission

5.208. The Integrity Commission Act provides for an Inspector of the Integrity Commission, who is an independent Officer of the Legislative Assembly. The Commonwealth Ombudsman is the inspector until such time as the Speaker appoints a person who is not the Ombudsman to the position.²⁸⁴

281 Integrity Commission Act, s 27.

282 Integrity Commission Act, s 28.

283 Integrity Commission Act, ss 29 and 30.

284 Integrity Commission Act, s 229.

5.209. The functions of the inspector are:

- (a) to assess and report on the commission's compliance with this Act and any memorandums of understanding or agreements entered into under this Act; and
- (b) to receive, investigate and assess complaints about the commission and members of staff of the commission; and
- (c) to make recommendations to the commission or public bodies about practices or procedures in relation to the performance of functions under this Act; and
- (d) any other functions given to the inspector under this Act or another territory law.²⁸⁵

5.210. The inspector is not subject to direction from anyone in relation to the exercise of the inspector's functions.²⁸⁶

5.211. The inspector has extensive powers and may investigate any aspect of the commission's operations and the conduct of the commissioner and the staff of the commission.

Ombudsman

5.212. The Ombudsman is an Officer of the Assembly pursuant to s 4A of the *Ombudsman Act 1989*. However, under current arrangements, the ACT Ombudsman is administered by the office of the Commonwealth Ombudsman by reason of legislation that was passed at the commencement of self-government in the ACT.²⁸⁷ Subject to the written consent of the Chief Minister, it is open to the Speaker, on behalf of the Territory, to appoint a person who is not the Commonwealth Ombudsman as the ACT Ombudsman.²⁸⁸

5.213. Pursuant to s 4C of the Ombudsman Act, the general functions of the Ombudsman are to:

- (a) investigate complaints made under the Act;
- (b) exercise other functions given to the ombudsman under the Act;
- (c) exercise other functions given to the ombudsman under the *Freedom of Information Act 2016*;
- (d) exercise other functions given to the ombudsman under the *Public Interest Disclosure Act 2012*;

285 Integrity Commission Act, s 227.

286 The Inspector's powers are as provided in s 228 of the Integrity Commission Act.

287 *ACT Self-Government (Consequential Provisions) Act 1988*, s 28.

288 Ombudsman Act, s 22.

- (e) monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) by the chief police officer and other officers and people assisting in exercising functions under that part; and
- (f) monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register) by the chief police officer and other people authorised by the chief police officer to have access to the child sex offenders register.

5.214. The range of complaints that may, and may not, be investigated by the Ombudsman are specified in s 5 of the Ombudsman Act.