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**Government Submission to the Standing
Committee on Administration and Procedure
Inquiry into the Appropriate Mechanisms to
Coordinate and Evaluate the Implementation of
the Latimer House Principles in the Governance
of the ACT**

INTRODUCTION

On 11 December 2008 the Legislative Assembly (the Assembly) resolved the Standing Committee on Administration and Procedure (the Committee) should “inquire into appropriate mechanisms to coordinate and evaluate the implementation of the Latimer House Principles in the Governance of the ACT”.

That same day, the Assembly adopted the *Commonwealth (Latimer House) Principles on the Three Branches of Government* (the Latimer House Principles) through a Continuing Resolution. The ACT Government (the Government) welcomes the formal recognition the Assembly has given to the fundamental principles of democracy that are set out in the Latimer House Principles, and which establish a framework for the promotion of the rule of law, good governance and respect for human rights. At their heart is the statement that

“Each Commonwealth country’s Parliaments, Executives, and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity, and accountability”.¹

The Attorney-General, Mr Simon Corbell MLA, in moving the Continuing Resolution stated:

In the ACT, we can be proud of our standard of governance. We can be proud of our independent institutions and the healthy relationship intention that exists between the three branches of government. In that sense, endorsement of these principles will have a different purpose and effect to endorsement in other much more troubled parts of the world. We are not a jurisdiction that sees the compromising of these institutions in fundamental and detrimental ways. Our judiciary is independent and respected. The executive and the legislature work through a healthy tension that provides for good governance overall in the territory.²

The Government would, however, counsel caution in moving to develop reporting mechanisms assessing the ACT’s compliance with the Latimer House Principles. In a mature democracy with robust accountability mechanisms already in place, and where the Latimer House Principles already enjoy wide acceptance, care should be taken to guard against the growth of unnecessarily complex reporting mechanisms and procedures.

The Government notes the Latimer House Principles are designed to be of relevance to jurisdictions at all stages of development and degrees of maturity in their democracies. Clearly the focus and approach taken to their implementation in a fledgling democracy would be very different to their application in a mature democracy like Australia and in the ACT as it celebrates its 20th Anniversary of self-government. The scale and scope of reporting activity we adopt should similarly reflect the degree of maturity in our governance arrangements, and the fact that the principles are, in the ACT context while fundamentally important, uncontroversial and generally accepted.

¹ Latimer House Principles - Clause 1.

² Hansard – 11 December 2008 – at 316

THE SEPARATION OF POWERS

The fundamental principles embodied in the Latimer House Principles are of enduring relevance to the governance of the ACT. They are, as the Attorney-General reflected in debate on the continuing resolution:

a reminder of the standards of governance which we in this Assembly seek to maintain and against which we must continue to measure ourselves constantly. I think that is what is most valuable in this proposed resolution. We state explicitly that these are the principles against which we seek to maintain the standard of governance in the territory and against which we will judge our ability to maintain a healthy democracy and one which has regard for each of the three arms of government—the executive, the parliament and the judiciary.³

The Government was pleased to make a commitment in the *Parliamentary Agreement for the 7th Legislative Assembly for the ACT* (the Parliamentary Agreement) to endorse the Latimer House Principles, and to sponsor the Continuing Resolution last December. The Government considers this formal endorsement an important symbol of not only its commitment to the highest standards of accountability, honesty and probity in the governance of the ACT, but also of the equal commitment by the non-Executive members of the Assembly to those same standards. This endorsement sits alongside our other commitments in the Parliamentary Agreement to “improve accountability and practice in the relationship between the Executive, Parliament and Judiciary in the ACT”.⁴

It is important, however, to explicitly recognise and respect the inherent powers, checks and balances that comprise our system of government. In this regard, the Government would stress the importance of the statement set out in the Latimer House Principles that each branch of government is the guarantor *in their respective spheres* of fundamental principles of democratic society based on the rule of law. This statement highlights the inherent checks and balances, but also freedoms, of the respective branches in discharging their functions.

One of the obligations created by the Latimer House Principles is therefore for each branch of government to respect the proper roles, responsibilities and accountabilities of the others. Just as it would be inappropriate for the Executive to interfere in the operation of the Courts, there are limitations on the Assembly’s powers over the Executive.

For example, recognising the inherent tensions between branches of government, the Government agreed in the Parliamentary Agreement to institute an independent process for resolving disputes between the Executive and the Legislature in relation to orders for the production of documents. The establishment of this independent, arms-length process for settling disputes between two branches of government is a useful enhancement of the system of responsible government that exists in the ACT.

The Government recognizes and values the important role played by the Legislature in scrutinizing the actions of the Executive, and the proper role played by Members in pursuing lines of questioning with responsible Ministers in Committees, and on the floor of the Assembly. But just as it recognizes that fundamental plank of our system

³ Hansard – 11 December 2009 – at 316

⁴ *Parliamentary Agreement for the 7th Legislative Assembly for the ACT*. Appendix 1, Clause 1.

of government, it gives equal importance to the conventions of Executive Privilege and Cabinet confidentiality, safeguarding as they do the deliberations of the Cabinet.

ACCOUNTABILITY MECHANISMS

The Government remains committed to the highest standards of openness, honesty and accountability in the governance of the ACT. It recognises and values the role of the Legislative Assembly and its Committees in holding the Executive accountable for its actions. It similarly places great importance on engaging the community (which discharges the ultimate accountability mechanism each four years) in its decision making processes.

It similarly recognises and values the important role played by courts and tribunals, the Auditor-General, the Ombudsman, and the Human Rights Commission in holding the Government to account for its decisions, and for the way in which it applies its powers as it discharges its functions.

Open and accountable government is a feature of all Australian jurisdictions. In a small jurisdiction like the ACT, with a small parliament and minority government there is quite properly significant scrutiny of government decisions, and plentiful opportunities and mechanisms for ministers to be held to account for their actions by the Legislature.

All Canberrans would be concerned if any government made secret deals, took decisions in private and hid them from scrutiny. In the ACT, part of the openness of our system of government, and part of the strength of our accountability arrangements, is that decisions made are announced, often after exhaustive community consultation. It is at that stage that the merits of those decisions can and should be debated in the parliament and the broader community.

The Government recognises and values the robust accountability processes that exist in the ACT, and welcomes scrutiny of its decisions.

REPORTING OF COMPLIANCE

The Government notes that the *Edinburgh Plan of Action* (EPoA) was established by representatives of the Commonwealth Lawyers' Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association, and the Commonwealth Parliamentary Association and Law Officers in July 2008. The Government also notes the Latimer House Working Group in its submission to this inquiry seeks the assistance of the ACT in developing a model for the reporting on compliance that might be used in other jurisdictions.⁵

The Government would counsel caution in developing a reporting model to ensure the end result is not unnecessarily complex. In a mature democracy, it is arguably unnecessary to measure performance against the more detailed aspects of the Latimer House Principles or the EPoA in particular. A high level scan of the terms of reference

⁵ Latimer House Working Group – par 5, p.1. Submission No 5. 16 June 2009

proposed by the Latimer House Working Group in its Submission suggests the report card for the ACT would be a strong one.

Perhaps the greatest contribution the ACT can make to the successful implementation of the Latimer House Principles is by modelling the highest standards of behaviour, accountability, and governance in our daily business. The Government would suggest the ACT could make a greater contribution through targeted engagement with other jurisdictions at various levels across the three branches of government, rather than expending effort in producing a detailed report card.

While that detailed approach may well prove valuable in emerging democracies, the Government would question the utility of such a report for the ACT, and whether the time and financial resources of the Assembly, and the Government, might be better utilised. Even if the report card were to be produced, it is debateable whether the report would be of use to other jurisdictions, given it would necessarily reflect the particular characteristics of the ACT Government, Parliament and court system.

Given the Assembly has adopted the Latimer House Principles as a continuing resolution, there may be some merit in conducting a high level analysis of the ACT's compliance. The Government suggests this process would most likely identify how well the ACT complies, rather than uncover significant departures.

The process of reporting in this way might also contribute to an ongoing discussion and greater understanding about the proper roles of each branch of government, and where the limits of those equally important roles lie. Developing a shared understanding of the proper role of each branch of the government would assist in avoiding unnecessary debate or controversy around the relationship between the Government and the Public Service, Public Servants and Members of the Legislative Assembly, and the Assembly and the Executive.

In a small jurisdiction like the ACT, which discharges both state and municipal functions, it is inevitable that senior officials will often deal with Members of the Assembly, and it is entirely proper that they do so, subject to the approval of their Ministers, and providing they respect the conventions (and legal obligations) of an apolitical public service. It must be recognised that while there are always benefits to be gained from consultation and communication, the ACT Public Service (ACTPS) exists to support the government-of-the-day. While never compromising its apolitical role, the ACTPS must be responsive to the policies, platforms and priorities of the government.

That said, there are clear boundaries to that relationship, of which the prohibition on ACTPS officers engaging in party-political activities is perhaps the clearest. Similarly, there are times when ACTPS Officers discharge statutory decision making processes that are quite properly and explicitly beyond the scope of ministerial direction. These principles are entirely in keeping with the tenets of the Latimer House Principles.