Preface to the Second Edition

The *Australian Capital Territory (Self-Government) Act 1988* (Cth) is the effective constitution of the ACT. With its commencement in 1989, for the first time the people of the ACT came to have a truly democratic voice in the governance of the Territory. The Self-Government Act makes provision for the ACT as a body politic under the Crown and for a Legislative Assembly with the power to make laws for the 'peace, order and good government of the Territory'. It also provides for an ACT Executive responsible for governing the Territory and for the jurisdiction and powers of the Supreme Court.

It is an important but sometimes overlooked provision of the Self-Government Act, contained in section 21, that the Assembly has the power to make standing rules and orders for the conduct of its business. How a parliament chooses to exercise that power can have profound impacts on the way in which it performs its legislative, accountability and representative functions. The long and chronicled history of parliaments is, in part, a story about how carefully considered rules, practices and procedures have shaped the institution.

Running alongside the epochal moments of parliamentary history such as the Grand Remonstrance of 1641, the Glorious Revolution of 1689, and the Great Reform Act of 1832, the rules for transacting parliamentary business have quietly evolved. The rules were not always written down or even formally adopted but instead came to be accepted by convention and tacit agreement. It is an iterative process, with general rules being discerned from particular practice and those general rules then being brought to bear to evaluate and decide individual matters as they arise.

The term 'standing order' first made its appearance in the practice of the House of Commons in 1678. Before that time, the Commons relied largely on ad hoc resolutions of the House to codify many of its rules. It was not until 1747 that the standing orders of that House were published in a compendious form. Through section 50 of the Commonwealth Constitution, both the Australian Senate and the Australian House of Representatives inherited from the United Kingdom the power to make rules and orders about the conduct of their business and proceedings. By the time of Federation, the colonial parliaments had already adopted and adapted many of the UK Parliament's principles of parliamentary practice and procedure and both Houses of the Commonwealth Parliament drew heavily on these in adopting their provisional standing orders and later iterations.

On one level, the practices and procedures prevailing in a legislature at a given point in time represent a cumulative political settlement—whether achieved over decades, as in the case of the Legislative Assembly, or centuries, as in the case of the UK Parliament.

In legislative chambers where one-party majorities have consistently held sway, there can be a risk that parliamentary rules are devised and applied in such a way as to limit the voices of non-government members in debates or to prevent scrutiny of government action. However, at their best, parliaments come to rely on clearly articulated rules that embody a spirit of fairness—that is, the rules are known and agreed to in advance, they

are consistently applied, they are applied without partiality, and they do not arbitrarily favour any particular group or individual. In much the same way that the rule of law is one of the means by which we guard against the arbitrary exercise of power in our system of government, a parliament's internal rules may impose orderliness and even-handedness as to how members come to consider and pass legislation, represent their constituents, and scrutinise the government of the day.

The Legislative Assembly for the ACT, while a relatively young institution, has come a long way since its establishment in 1989 and has matured and evolved to meet the needs of the unique community that it serves. While the Assembly maintains a vestigial link to the House of Representatives through s 24 of the Self-Government Act and standing order 275, it has also forged its own path.

Through its Hare-Clark electoral system, entrenched in law, the Assembly has tended to produce nongovernment majorities. As a consequence, the politics of the Assembly's parliamentary practice have entailed a degree of negotiation and compromise, with procedural power diffused to an extent that is not always observed in legislative chambers where one-party or coalition majorities are the norm. A spirit of fair play is discernible in the Assembly's rules and Members of the Legislative Assembly have generally been able to expect that the rules will not unreasonably stifle them in performing their parliamentary duties. In this respect, the Assembly has much in common with the Australian Senate and state upper Houses and has embraced many of the precepts to have emerged from their practice.

With the release of the *Companion to the Standing Orders for the Legislative Assembly for the Australian Capital Territory* in 2009, there was for the first time an accounting of the Assembly's journey from its modest and reluctant beginnings in 1989 to a more confident and assertive legislature with a substantial body of practice and procedure to guide it.

The first edition of the Companion was edited by Mark McRae OAM, the Clerk of the Assembly from 1990 until 2003. Mark's encyclopaedic knowledge of not only the Assembly's practices and procedures but those of parliaments the world around, and of times long gone, gave the first edition considerable analytical and historical heft. As the canonical statement on Assembly practice and procedure, it has guided members, their staff, parliamentary staff, and others with an interest in the Assembly's practice over the last three Assemblies.

This Second Edition of the Companion builds on these foundations, capturing significant developments over the last decade. It has been our approach to reflect significant procedural and legislative changes that affect the operation of the Assembly. Where more recent developments have rendered commentary in the first edition of largely historical interest, we have also compressed and refined that material. Since 2009, while the underlying institutional features of the Assembly have essentially remained the same, there have, nonetheless, been a number of consequential changes, including:

- the amendment of the Self-Government Act to remove the Governor-General's power to disallow ACT enactments;
- the expansion of the Assembly from 17 to 25 members;
- provision to increase the number of ministers that may be appointed;
- the establishment and appointment of a Legislative Assembly Commissioner for Standards;
- the establishment of 'Officers of the Assembly'—the Auditor-General, members of the Electoral Commission, the ACT Integrity Commissioner, and the Ombudsman (also the Inspector of the ACT Integrity Commission);
- the adoption of procedures for ministers and public officials to make claims of public interest immunity before Assembly committees;
- the adoption of a procedure by which all bills stand referred to general-purpose standing committees for inquiry and report;
- the adoption of procedures for dealing with claims of parliamentary privilege that potentially arise during the exercise of the ACT Integrity Commission's powers and functions;
- the adoption of a resolution concerning the independence of the Assembly from religious faith;
- the establishment of a code of conduct for lobbying and guidelines for lobbyists;
- the development and trialling of a number of different question time procedures;
- the abolition of the matters of public importance procedure; and
- trialling the practice of referring annual budget estimates to standing committees, rather than the establishment of an annual select committee for that purpose.

As this publication was going to print, the House of Representatives passed the Restoring Territory Rights Bill 2022 (99 votes to 37). The explanatory memorandum to the bill states that it seeks to:

> … remove constraints that the Commonwealth Government placed on the legislative powers of the Australian Capital Territory and Northern Territory in 1997.
>
> The bill restores the democratic rights of citizens in the Territories by removing a constraint on the legislative authority of their elected representatives which does not exist anywhere else in Australia.

If passed by the Senate and enacted, the law will repeal ss 23(1A) and (1B) of the ACT Self-Government Act, and equivalent provisions of the NT Self-Government Act, that prevent the territories from enacting laws in relation to euthanasia.

With this restriction removed, the ACT would have similar powers to legislate in this area as the states.

The Second Edition is the culmination of the combined effort of many people over a number of years. We would like to record our thanks to Mark McRae, Max Kiermaier and Celeste Italiano, whose contributions as assistant editors have been enormous.

Thanks also goes to:

- Julia Agostino, David Monk, Savvas Pertsinidis, Hamish Finlay, and Janice Rafferty, whose contributions as members of the Second Edition's editorial committee added nuance, depth and accuracy to the finished work;
- Peter Garrisson AM SC, Mary Toohey, Damian Cantwell, Margaret Cotton, Rohan Spence, Derek Kettle, Julia Noble, and Hannah Bowcock, whose comments on individual sections were invaluable;
- Meryl Hampson, Joanne Cullen, Fiona Matz, Miona Ikeda, and Sophie Milne for their work in proofreading the various drafts; and
- Jayden Evett for designing and typesetting the final document.

We trust that readers will find this Second Edition a useful and practical reference work that guides their understanding of the Assembly's standing orders, continuing resolutions, and the thinking and practice behind them, for a number of years to come.

David Skinner and Tom Duncan
Editors, Second Edition

August 2022