

**Government Response to the
Standing Committee on Administration and
Procedure Report on
Protocols for visits by Members to
Government Schools**

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Introduction

On Thursday 6 June 2019 the Standing Committee on Administration and Procedure reported on its inquiry examining ‘whether the protocols in place around the permissions for Members to visit or attend school events constitute an impediment to the Members performing their function as MLAs and in complying with the *Code of Conduct for all Members of the Legislative Assembly for the ACT*’ with two recommendations. The ACT Government agrees-in-principle with one recommendation and agrees to one recommendation.

The Committee report confirms that the Education Directorate (ED) protocols do not constitute an impediment to the Members performing their function as MLAs or complying with the Code of Conduct.

The ED protocols reflect a reasonable, responsible approach to managing public property consistent with the responsibility of the ACT Government and relevant Minister. The protocols ensure that schools can focus on their primary purpose of providing high quality education and ensure that public servants are supported to remain apolitical.

Regardless, the Minister for Education and Early Childhood Development has asked the Education Directorate to review the ED protocols in response to feedback expressed in the Committee report.

The government will continue to make government schools available to Members during business hours where relevant to a Member’s parliamentary functions. Members are already and will continue to be able to attend public events at government schools.

Function of Members of the Legislative Assembly and Code of Conduct

The Committee report does not examine or make recommendations about how the protocols for school visits allegedly constitute an impediment to Members performing their functions and complying with the Code of Conduct. The government makes the following observations to assist Members to understand how the protocols account for these issues.

Foundational among the principles of the ACT system of government are those of the separation of powers and responsible government, which support the representative democracy imparted by the *Australian Capital Territory (Self-Government) Act 1988*.

In the system of representative government present in the ACT Members are elected to represent the people of an electorate in the workings of government. The Westminster tradition involves a separation of the powers of government into three branches: legislative, executive and judicial.¹

Members are part of the legislative branch. Their principle functions are as parliamentarians:

- making laws
- reviewing and scrutinising the Executive government

¹ *Australian Capital Territory (Self-Government) Act 1988* (Cth).

- overseeing government finances
- investigating and debating matters of public importance.²

The key activities of Members in fulfilling this function include:

- seeking information from the government
- participating in debate in the Assembly
- participating in the work of Assembly committees
- making public announcements and statements in news and social media.³

The Code of Conduct and Latimer House Principles endorsed by continuing resolutions of the Assembly recognise the separation of powers and call on Members to uphold the separation of powers.

Of course, the parliamentary functions and activities of Members are informed by electoral engagement and interaction with people in their relevant electorate and wider community. Consistent with the Code of Conduct, 'Members should be reasonably accessible to the people of the electorate they have been elected to serve'.

From among Members a Chief Minister is elected,⁴ who appoints from among Members ministers responsible for a portfolio of enactments and matters.⁵ Responsible government makes ministers collectively and individually responsible for government policy and administration, immediately to the parliament but ultimately to electors.⁶ Collective responsibility occurs through the ACT Executive, which is made up of the Chief Minister and ministers.⁷

Individual ministers are responsible within their portfolio assignments for the actions of Government agencies and public servants who perform their functions for and on behalf of the Executive. These arrangements are a manifestation of the separation of powers as it exists in the ACT.

Responsibility for management and control of Government schools

The Executive, through individual ministers and supported by directorates in the ACT Public Service, are responsible for the management and control of public resources. Officers and employees in the public service are responsible and accountable through more senior officers to ministers.

The *Financial Management Act 1996*, section 31, sets out responsibility for public resources including property or assets like government premises:

² See, eg, 'The Legislative Assembly for the Australian Capital Territory' *Explore your Assembly* (web page) <<https://www.parliament.act.gov.au/Explore-your-Assembly>>.

³ See, eg, 'Electoral Responsibilities' *Responsibilities of Members of the Legislative Assembly for the ACT* (web page) <<https://www.parliament.act.gov.au/Explore-your-Assembly/resources/fact-sheets/responsibilities-of-members>>.

⁴ *Australian Capital Territory (Self-Government) Act 1988* (Cth) s 40.

⁵ *Australian Capital Territory (Self-Government) Act 1988* (Cth) s 41; *Public Sector Management Act 1994* s 14.

⁶ See, eg, *Egan v Willis* (1998) 195 CLR 424.

⁷ *Australian Capital Territory (Self-Government) Act 1988* (Cth) s 39.

- (1) The responsible director-general of a directorate is accountable to the responsible Minister of the directorate for the efficient and effective financial management of the public resources for which the directorate is responsible.
- (2) The responsible director-general of a directorate must manage the directorate in a way that—
 - (a) promotes the achievement of the purpose of the directorate; and
 - (b) promotes the financial sustainability of the directorate; and
 - (c) is not inconsistent with the policies of the government.
- ...
- (4) Without limiting subsections (1), (2) and (3), the responsible director-general of a directorate is responsible, under the responsible Minister, for ensuring—
 - (e) that adequate control is maintained over the assets of the directorate and assets in the control of the directorate; and
- ...
- (6) In this section:
 - ...
 - public property** means property, other than public money, that is owned or held by the Territory or held by a person on behalf of the Territory.
 - public resources** means public money or public property.

Alongside the Financial Management Act, the *Education Act 2004*, section 21(1) states that ‘the director-general is responsible to the minister for the operation of government schools’.

Principals of government schools are part of the ACT Public Service established by the *Public Sector Management Act 1994*, which is apolitical and ‘assists the Executive to meet the needs of the community and serves the community on behalf of the Executive’.⁸ Principals are employed within a hierarchy of accountability and responsibility through the Director-General of the Education Directorate,⁹ and are subject to lawful and reasonable direction within that hierarchy.¹⁰

Alongside the responsibilities given to a principal through the ACT Public Service employment framework, responsibilities of principals of government schools are detailed in the Education Act, section 21(4), including ‘providing support to the school board in the carrying out of its functions’.¹¹ The functions of a school board of a government school include establishing ‘policies for the efficient and effective use of school assets...’.¹² A school board must comply with direction given by the director-general in fulfilling its functions.¹³

It is within this framework that the office of the Director-General, Education Directorate, has issued the *Protocols for MLA/MP/Senator and other dignitary visits to Canberra Public Schools*, consistent with lawful authority to do so.

⁸ *Public Sector Management Act 1994* s 5(b).

⁹ *Public Sector Management Act 1994* s 19.

¹⁰ *Public Sector Management Act 1994* s 9(1)(c)(ii).

¹¹ *Education Act 2004* s 21(4)(c).

¹² *Education Act 2004* s 39(1)(f).

¹³ *Education Act 2004* s 39(2)-(3).

Government approach to government school visits by Members

The primary purpose of government schools

Government schools exist to 'offer a broad and balanced secular education to all students from preschool to year 12 by providing access to a broad curriculum' 'based on the principles of equity, universality and non-discrimination'.¹⁴ Effective operation of government schools require that they be free to focus on this objective.

Government school facilities are public property but are not publicly accessible places during school operational or 'business' hours. Outside of these hours, government school facilities may be accessible for general public events and are made available for use by the wider community as part of the government's commitment to supporting community life.

Engagement of Members with government school students and staff

School students are not electors. Civics education is important to all school students, and the government school system is committed to 'preparing students to be independent and effective local and global citizens'.¹⁵ This is achieved through curriculum requirements decided by the Director-General, Education Directorate.¹⁶

Government schools have adopted the *Australian Curriculum*, which includes learning areas addressing civics. Government school teachers are well-equipped to localise education to the ACT context. While this may include engagement with the Assembly and Members, teachers are required to take care to do so in a manner that does not conflict with the overriding right of a parent or guardian to ensure moral education of a child in conformity the convictions of a parent or guardian.¹⁷ Given this, student engagement with the Assembly and Members for educational purposes typically occurs with parent or guardian consent, and government schools are expected to present a balanced view of the political representation in the Assembly.

While school staff may be electors, in the context of their employment responsibilities as a public servant engagement with elected representatives is ordinarily inappropriate. Isolating individual public servants from non-Executive Members except through established channels occurs because of the hierarchy of accountability and responsibility in the ACT Public Service. An individual 'public servant must not, without lawful authority, make a comment that reasonably appears to be an official comment'.¹⁸ The *Protocols for the ACT Public Service when interacting with non-Executive Members* administered by the Workplace, Capability and Governance Division in the Chief Minister, Treasury and Economic Development Directorate, provides guidance to public servants for interactions with non-Executive members of the ACT Legislative Assembly.

¹⁴ *Education Act 2004* s 18(a) and (c).

¹⁵ *Education Act 2004* s 18(d)(vi).

¹⁶ *Education Act 2004* s 30.

¹⁷ *Human Rights Act 2004* s 27A(3)(b).

¹⁸ *Public Sector Management Act 1994* s 9(2)(d)(ii).

Under the Code of Conduct Members 'should uphold the separation of powers' and recognise the unique position of impartiality and the obligations of Public Service officials'. When dealing with witnesses before Assembly committees Members must observe that:

An officer of a department of the Territory or the Commonwealth or a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.¹⁹

Impartiality of the public service and its officers importantly extends to ensuring that public servants serve the government of the day by implementing its policies and responding to its agenda.

This should not and does not absent the Executive from accountability to the parliament nor unduly impede parliamentarians from accessing information necessary to fulfil their functions. There are many mechanisms through which ministers are subject to scrutiny and responsible to parliament and information is available to parliamentarians such as questions without notice and questions on notice, Assembly committees and freedom of information. There are similarly many agencies that oversee government administration and service delivery such as the ACT Auditor-General, ACT Ombudsman and Human Rights Commission.

Members do not have a general need to visit government schools to engage with students or staff.

Conclusion

The Government, though the Minister for Education and Early Childhood Development assisted by the Director-General, Education Directorate, will continue to make government schools available for Members to visit where relevant to their parliamentary functions.

The Chief Minister is generally responsible for leading the Executive and the Minister for Education and Early Childhood Development is accountable to the Chief Minister and may visit government schools in that capacity. For other ministers, government school visits may occur where a program or initiative is being delivered within government schools relevant to a minister's portfolios. Non-Executive Members of the government may from time to time accompany or represent Ministers at events that occur in government schools. This is a legitimate part of responsibility of government Members in promoting government policy, programs or financial investment.

Where relevant, shadow ministers could visit government schools on request to and with agreement according to protocols that require agreement from the government. Where relevant, Members could visit schools on request as part of the conduct of an Assembly committee inquiry, with visits facilitated through appropriate channels in the government according to government protocols.

¹⁹ Standing Orders 264A(l).

Members may also visit government schools as part of education programs facilitated by the Office of the Legislative Assembly, where these programs have been agreed with the Director-General, Education Directorate.

The desirability for Members generally to be familiar issues relating to education is not limitless but rather confined to where relevant a Member's official functions, such as shadow ministerial or committee responsibilities. There are appropriate channels through which parliamentarians may access information about any portfolio, including from those directly involved in delivery of a government service. It is entirely reasonable that Members be expected to observe with lawful protocols limiting their access to government schools and providing the relevant minister and director-general with a decision-making role about requests for visits.

Response to Recommendations

Recommendation 1

The Committee recommends that the *Protocols for MLA/MP/Senator and other dignitary visits to Canberra Public Schools* be amended to bring it more into line with the Justice and Community Safety Directorate procedures for *Events, Arrangements and Engagement with Non-Government MLAs*. These protocols are to apply to all non-Executive Members.

Government response: Agreed-in-principle

The Education Directorate (ED) and Justice and Community Safety Directorate (JACS) protocols are similar.

Despite the characterisation of the JACS protocols provided in the Committee report, the government notes that in these protocols advice from the relevant minister's office must still be sought in deciding on a request for a visit. This requirement is consistent with the Financial Management Act, which makes Directors-General accountable to the responsible minister for the management of public property.

Requests for a visit in both the JACS and ED protocols are directed to contact points in the relevant directorate. In the case of JACS, the contact point is the JACS media unit. For ED it is the Directorate Liaison Officer. For administrative convenience the ED protocols also require that requests are directed to the Minister's office manager via a public facing enquiries email address in parallel with contact via the Directorate Liaison Officer.

In selecting a contact point, both protocols have regard to the need for this role to rest with officers who are appropriate to interact with non-Executive Members and other politicians.

Both protocols provide direction to visitors limiting media participation, visual representation of public property, engagement with public servants and management of visits around business operations. The ED protocols more specifically detail these matters given the particular needs of school management, and includes additional limitations related to engagement with students and use of students in photography and video because of the need for parent/guardian permission in these circumstances.

However, given perception of some Members articulated in the Committee's report, the Minister has asked the Director-General to review these protocols to streamline them where possible and provide more prescriptive decision-making criteria.

Recommendation 2

The Committee recommends that ACT Government schools be free to invite any Member of the Legislative Assembly to public events held at that school.

Government response: Agreed

ACT Government schools are already free to invite any Members to public events, for example fetes, citizenship ceremonies, fundraisers and open days, held at that school. Events like graduations and sports days are not open to the general public and therefore access to these events by Members will depend on the circumstances of the event.

The existing *Protocols for MLA/MP/Senator and other dignitary visits to Canberra Public Schools* only applies to government school meetings/visits, school activities or media/promotional events.