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Dear Mr Rattenbury

	A.C. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	10
DATE AUTH'D FOR PUBLICATION	14 Aug 09

20 JUL 2009  
1005/07

**Inquiry into the appropriate mechanisms to coordinate and evaluate the implementation of the Latimer House Principles in the governance of the ACT**

The ACT Greens welcome this inquiry into appropriate mechanisms to coordinate and evaluate the implementation of the Latimer House Principles in the governance of the ACT.

The ACT Greens believe:

1. the ACT Government should be a leader and innovator in good governance;
2. a healthy democracy requires frank, transparent and accountable practices in executive government;
3. parliamentary rules, conventions and structures must keep pace with changing community expectations;
4. judicial independence is vital to maintaining the separation of powers;
5. a culture of honest and dedicated service to the community is as important to good governance as official rules and procedures. (ACT Greens *Governance Policy* 2008  
<http://act.greens.org.au/archives/186>)

At the outset we acknowledge that the Commonwealth (Latimer House) Principles on the Three Branches of Government – the Latimer House Principles – would support the separation of powers between the Government as the executive, the Assembly as the elected parliament and the judiciary; and assists in finding the appropriate balance between these branches of government.

The ACT Greens-Labor Parliamentary Agreement contains a broad commitment to Parliamentary Reform [para 4] and Government accountability through the Latimer House principles, subsequently the Legislative Assembly on 11 December 2008 endorsed the Latimer Principles.

The ALP-Greens Parliamentary Agreement [clause 1.2] commits to pursue measures which will ensure:

- (a) Parliamentary procedures which enforce the accountability of the Executive to Parliament and ensure effective law making;
- (b) Greater collaboration between the Executive and parliament in the development of legislation, policy and service delivery to people of the ACT;
- (c) Higher standards of accountability, transparency and responsibility in the conduct of all public business;
- (d) Effective and responsible use of the forum of the Legislative Assembly;

- (e) Strong oversight institutions – as the emerging fourth branch of government;
- (f) Meaningful engagement with civil society;
- (g) Eligibility to Public Office determined only on merit and integrity;
- (h) Independence of the Judiciary; and
- (i) Independence of parliamentarians.

While the ACT Greens recognise that the ACT already has strong democratic institutions and arrangements in place which effectively deliver many components of the Latimer House principles, we also recognise the need for a clear framework for ongoing monitoring and review of our governance arrangements within the ACT using these principles.

Meaningful endorsement of the Latimer House principles requires ongoing commitment to their promotion, development and implementation, including evaluation processes. This inquiry provides us with the first formal opportunity to review our performance against these principles designed to facilitate the highest standards of governance and democracy.

### **Benchmarking ACT Parliamentary Democracy**

As part of this inquiry we recommend that a gap analysis be undertaken of various measures, benchmarks and best practice examples that have been developed or proposed as indicators of implementation of the Latimer House principles. In particular we refer to three documents:

- Commonwealth Parliamentary Association *Benchmarks for Democratic Legislatures* December 2006;
- Latimer House Guidelines 1998; and
- Latimer House Principles Edinburgh Plan of Action 7 July 2008.

The Benchmarks for Democratic Legislatures identified 87 benchmarks to assist in assessing a jurisdiction's parliamentary democracy. Mr Wayne Berry, who was the Speaker of the sixth Assembly, a Minister in the fifth Assembly and briefly Leader of the Opposition during the fourth Assembly, undertook a review of the ACT performance against these benchmarks in 2008. He gave the ACT an A minus, noting in particular that seven benchmarks were not being fully addressed by the ACT. As he said in his address to the 39th Presiding Officers and Clerks Conference in Adelaide in July 2008 "Whilst I consider that the Assembly's performance is, in the main, of a high standard (80 out of 87 benchmarks being met) – an A minus if you will – this does not mean that we can rest on our laurels".

The Edinburgh Plan of Action identifies a range of measures to assist jurisdictions with implementing the Latimer House Principles. The ACT Greens note that although the Assembly endorsed the Latimer House Principles and that the action plan was tabled, the Assembly did not agree to all of the measures in the action plan. Therefore we see a key role for this inquiry is in undertaking a simple gap analysis of these key documents, and others as appropriate, in order to determine which measures and benchmarks are most important and relevant to the ACT.

For instance, some measures listed in the Action Plan and guidelines not covered by the benchmarks include:

- all Parliamentarians, judicial officers and public servants being provided with awareness training of the constitutional principles and their role;
- all candidates for election should be made aware of the Latimer House Principles;
- governments should establish mechanisms to monitor and evaluate the effectiveness of implementation of Latimer House principles; and
- meetings between representatives of the three branches of government should be organized on a regular basis ... in order to promote better understanding of each other's roles.

We believe a gap analysis will provide an ongoing basis for assessment of the ACT in applying best practice of the Latimer House Principles and would be a very useful outcome from this Committee process.

### **Independence of the ACT Assembly Budget**

A key factor raised by Mr Berry was the need for the Assembly to have independent control of its Budget. The Latimer House Principles Guidelines state that in relation to budgets for a legislature: "An all-party committee of members of parliament should review and administer parliament's budget which should not be subject to amendment by the executive".

Mr Berry, as the previous Speaker, proposed a number of options available to the ACT to address this issue, and the matter was canvassed in various places including at the Public Accounts Committee which recommended in its Report on Annual and Financial Reports 2006-2007 (recommendation 2): "that the Government and the Legislative Assembly Secretariat finalise their discussions on creating an appropriate framework within which to apply the Latimer House principles to the ACT and report to the Legislative Assembly before the last sitting day of the Sixth Assembly."

However to date this issue remains unresolved. We recommend that this inquiry re-visit this issue as a matter of priority and make a recommendation on a preferred option.

### **Freedom of Information**

The Edinburgh Plan of Action for the Latimer House Principles notes: "Transparency and accountability is dependent upon freedom of information. Governments should abide by the Commonwealth principles on freedom of information and should introduce appropriate enabling legislation where this has not already been done. Governments should also provide adequate resources and systems to make information accessible".

Although the ACT does have reasonably good basic Freedom of Information legislation we suggest that improvements could be made. We recommend a review of Freedom of Information arrangements in the ACT be undertaken against best practice Freedom-of-Information principles. Some specific issues that should be considered in looking at best practice Freedom of Information are:

- the merits of an Information Commissioner to apply a test as to when it is in the public interest or not to release a document to the public;
- review of guidelines for the classification of cabinet-in-confidence documents;
- require reasons behind Cabinet decisions to be provided; and
- increase parliamentary powers to obtain documents from the executive government.

### **Consideration of legislation**

The Latimer House Principles state: "there should be adequate parliamentary provision of proposed legislation... and where appropriate opportunity should be given for public input into the legislative process" [clause 2(h – i and ii)]

As noted in Mr Berry's analysis, the ACT has a relatively good track record of allowing Parliamentary consideration of legislation, noting that since 2000 no legislation has been subject to a closure motion and since 1996 only three bills have been declared 'urgent'. However, as he points out, the Standing provisions do allow for the Assembly to decide that legislation is urgent as well as having the capacity to apply a gag on debate.

The Assembly does need scope to pass urgent legislation. However, we recommend that the inquiry consider criteria that could be added to the standing orders to ensure such provisions are not able to be used to fast-track 'non-urgent legislation' that is of significant policy import.

We also suggest that additional criteria be considered by the inquiry in regard to protocols and guidelines for the referral of 'significant' legislation to an appropriate committee. In this regard a key aspect would be a definition of significant legislation. In this context we are seeking to ensure a consistent approach to the consideration of 'significant' legislation by the Assembly and we believe that this would not create a legislative gridlock.

We also believe that there could be further steps taken to enhance "public input into the legislative process" perhaps through increased use of public consultation during the pre-drafting stage of legislation, and through all major pieces of legislation being referred to the appropriate Assembly committee allowing for an inquiry process. The possible disadvantage of slower consideration of legislation would be outweighed by the advantages of public engagement to enable interested individuals to voice their concerns, questions, support or opposition to proposed measures. This might also require additional resources for the Assembly secretariat to support additional inquiries.

### **Oversight bodies**

The Latimer House principles acknowledge the role of oversight bodies to encourage public sector accountability stating bodies such as Ombudsmen, human rights commissions, auditors-general can "play a key role in enhancing public awareness of good governance and rule of law issues" [clause 2 (i)]. The ACT has a strong record on creating such oversight bodies with a number of oversight bodies including:

- Commissioner for Sustainability and the Environment;
- Human Rights and Discrimination Commissioner;
- Health Services Commissioner;
- Disability and Community Services Commissioner;
- Commissioner for Children and Young People;
- Electoral Commissioner;
- Auditor-General;
- ACT Ombudsman;
- Privacy Commissioner;
- Commissioner for Public Administration; and
- OHS Commissioner / Work Safety Commissioner.

The independence of these oversight bodies from direction by Government is a key factor in ensuring public trust of the impartiality of the advice or scrutiny provided. Again while acknowledging that the ACT is a leader with regard to these bodies we suggest that there are additional measures that should be implemented that would enhance the independence of these oversight bodies. Additionally, as the ACT has a unicameral system of government without the usual checks and balances of a second house of parliament, it is especially important that there are safeguards built into processes regarding the ACT's oversight bodies.

Key issues to be considered in maintaining the independence of public sector accountability bodies are:

1. legislative basis;
2. mechanisms for appointment of Commissioners and other position holders;
3. clear definition of functions with appropriate powers to undertake those functions;
4. adequate funding;
5. reporting arrangements (to Ministers or to Parliament); and
6. follow-up on implementation of recommendations.

While recognising the differing role of the various Commissioners means they have quite different functions, we recommend that a summary of the various oversight bodies be compiled with an analysis of the various arrangements in place against the above six points. We also recommend that the inquiry

consider the development of core criteria and principles to guide the operations of the ACT's oversight bodies.

### **Public education and civil engagement**

The Latimer House Principles [Clause X] note the important role of civil society in our democratic processes. We recommend in this regard two areas for consideration by the inquiry. Firstly, we recommend that a public education program on the Latimer House Principles program be developed. We also recommend that the Inquiry explore innovative ways of engaging civil society in democratic processes such as through deliberative policy forums or citizens juries to inform Executive and parliamentary consideration of key policy issues.

### **Regular reporting and review of implementation of the principles**

We recommend that regular review of the ACT's application of the Latimer House principles be undertaken on a regular basis using a consistent reporting against a set template. As above we suggest an appropriate set of reporting benchmarks can be compiled from existing documents. We suggest that the report could be compiled as a responsibility of the existing Standing Committee on Administration and Procedure and be tabled by the Speaker in the Assembly annually.


### **Recommendations**

We make the following recommendations to the Committee that it support and recommend:

1. a gap analysis be undertaken of existing benchmarks, measures and best practice models in implementation of Latimer House principles to assess ACT performance on applying the Latimer House principles.
2. increased use of public consultation during the pre-drafting stage of legislation, and through all major pieces of legislation being referred to the appropriate Assembly committee allowing for an inquiry process.
3. consideration of mechanisms to ensure the independence of the ACT Budget from Executive control;
4. a review of Freedom of Information in the ACT by undertaken against best practice freedom of Information principles;
5. additional criteria and guidelines be developed to guide processes for consideration of 'significant' legislation, including referral of legislation to an appropriate committee for consideration (beyond that routinely undertaken by the Scrutiny Committee).
6. a public education program on the Latimer House Principles program be developed.
7. consideration be given to the role of deliberative policy forums, or other innovative ways of engaging the community in policy making.
8. a regular reporting mechanism be established against appropriate benchmarks and measures of the ACT performance on applying the Latimer House principles.

We would be pleased to discuss these matters in greater detail during the progress of the Committee's inquiry deliberations.

Yours sincerely



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20 July 2009