

Legislative Assembly of the Australian Capital Territory

RESTRUCTURING THE COMMITTEE SYSTEM

Report of the Standing Committee on Administration and Procedures

March 1990

Resolution of appointment

On 23 May 1989 the ACT Legislative Assembly agreed to a temporary standing order which established the Standing Committee on Administration and Procedures with the following terms of reference:

16A (a) A Standing Committee on Administration and Procedures shall be appointed at the commencement of each Assembly to inquire into and report on, as appropriate:

the Assembly's annual estimates of expenditure;

Members' entitlements including facilities and services;

operation of the Assembly's library;

operation of the transcription service (Hansard);

availability to the public of Assembly documents;

the standing orders of the Assembly;

the practices and procedures of the Assembly; and

matters relating to the privileges of the Assembly which may be referred to it by the Assembly;

(b) The Committee shall arrange the order of Private Members Business.

Membership

Mr Speaker (Chairman)
Mr N A Jensen, MLA
Mrs R M Nolan, MLA
Mr B Wood, MLA

Secretary to Inquiry: Ms K A Malmberg

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1 INTRODUCTION

Background

1.1 The ACT Legislative Assembly sat for the first time on 11 May 1989 and the then Chief Minister, Ms R Follett, MLA, foreshadowed the establishment of a committee system that would cover major issues such as planning, economic development, housing, health, education and public accounts.

1.2 The Assembly established six standing committees, including a domestic committee, which were intended to cover the widest possible range of subject matter. A number of select committees have also been established to inquire into various issues.

Review of committee structure

1.3 On 22 August 1989 the then Chief Minister, Ms Follett, wrote to the Speaker, Mr D J Prowse, MLA, regarding the Assembly's committee system and made a number of proposals concerning the general structure of the committees, including issues connected with estimates committees and legislation committees (Appendix A).

1.4 Ms Follett's letter followed concerns expressed by Members regarding aspects of the committee system which appeared to stem from the fact that no overall examination of the role of the Assembly's committees had been undertaken.

1.5 On 9 October 1989 Mr Speaker wrote to all party leaders outlining a proposal for a revised structure for the Assembly's committee system. Five general purpose standing committees (in addition to the Administration and Procedures Committee) were proposed (Appendix B).

1.6 On 8 February 1990 the Leader of the Opposition, Ms Follett, responded with the Labor Party's comments. The Labor Party was in general agreement on the structure although the paper raised several other issues (Appendix C).

1.7 On 1 March 1990 the Chief Minister, Mr T T Kaine, MLA, responded with the Government's comments. Four general purpose standing committees were proposed (Appendix D).

1.8 On 12 March 1990 Mr Speaker referred his original proposal plus the responses from the Chief Minister and the Leader of the Opposition to the Standing Committee on Administration and Procedures for examination and report, with recommendations, to the Assembly.

2 CURRENT AND PROPOSED SYSTEMS

Current structure

2.1 There are currently six standing committees with the following areas of responsibility:

- . Administration and Procedures – domestic Assembly committee
- . Conservation, Heritage and Environment – conservation, heritage and environment issues
- . Planning, Development and Infrastructure – planning and development proposals, public works proposals
- . Public Accounts – financial affairs of the Territory, Auditor-General's reports, the public account
- . Scrutiny of Bills and Subordinate Legislation – all Bills and subordinate legislation placed before the Assembly
- . Social Policy – community and health services, housing, welfare, education and social justice

2.2 All general purpose standing committees have the power to initiate their own references.

2.3 In addition, a number of select committees have been established. The Committee notes that the select committees have, at times, covered subject matters that fell within the standing committees' terms of reference.

2.4 An Estimates Committee was also formed for examination of the estimates of expenditure contained in the 1989-90 Appropriation Bill. All Assembly Members, except for Mr Speaker and members of the Executive, were members of that committee.

2.5 The Committee agrees that there is a need to review the committee system based on some 10 months operation and welcomes the proposals made.

2.6 Tables 1 and 2 outline the proposals.

Proposal by Mr Speaker

2.7 Three major changes to the existing structure were proposed in Mr Speaker's letter of 9 October:

- . create a Legal Affairs Committee which would subsume the Scrutiny of Bills and Subordinate Legislation Committee and have wider terms of reference;

- . combine the Planning, Development and Infrastructure and the Conservation, Heritage and Environment Committees into a single committee, the Planning, Environment and Infrastructure Committee; and
- . split the Social Policy Committee into two committees, the Social Policy Committee and the Education and Community Affairs Committee to recognise the very large area of inquiry the existing Committee includes.

2.8 The five general purpose standing committees were proposed to allow committees to deal with the complete range of matters coming before the Assembly. It was proposed that each standing committee would be empowered to inquire into and report on any matters referred to it by the Assembly, including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper.

2.9 Flexible membership of committees, when issues relating to estimates or legislation were under examination, was also proposed.

Opposition response

2.10 The Labor Party's response was in general agreement with the structure proposed by Mr Speaker, with only several minor differences. The Opposition also agreed that estimates and legislation be considered by the appropriate standing committee, with provision to allow for overlapping responsibilities of committees and participation of all Members in examination of any aspect of the Appropriation Bills.

2.11 The Labor Party raised a number of other issues concerning committees:

- . the conduct of all meetings to be in public unless there is a clearly stated reason agreed to by a majority of committee members
- . no member to be excluded from any committee meeting
- . Ministers in general should not participate on committees or chair committees
- . Executive Deputies should not chair or serve on committees which cover areas of their particular "portfolio" responsibilities.

Government response

2.12 The Government proposed four general purpose and one domestic standing committees:

- . Administration and Procedures

- . Community Services Policy , which combines the proposed Social Policy and Education and Community Affairs Committees
- . Legal Affairs
- . Planning, Development and Environment
- . Public Accounts

2.13 The Government is of the view that four standing committees, with appropriate resources, can effectively cover the range of Government activities. The Chief Minister stated that the Education and Community Affairs Committee proposed by Mr Speaker does not appear to have subject responsibilities justifying its independent existence. The fact that the existing Social Policy Committee has not undertaken inquiries related to education was also given as a reason not to support the establishment of a separate committee.

2.14 The Government supports legislation being examined by the relevant standing committee where such examination has been determined by the Assembly to be appropriate, but does not agree with estimates being examined in the same manner. The Government believes that a single estimates committee is preferable due to the spread of Ministerial responsibilities across general purpose standing committees.

Select committees

2.15 In the proposal by Mr Speaker it was suggested that the appointment of select committees should be kept to a minimum, instead, referring matters to the appropriate standing committee for inquiry.

2.16 The Committee strongly endorses this view.

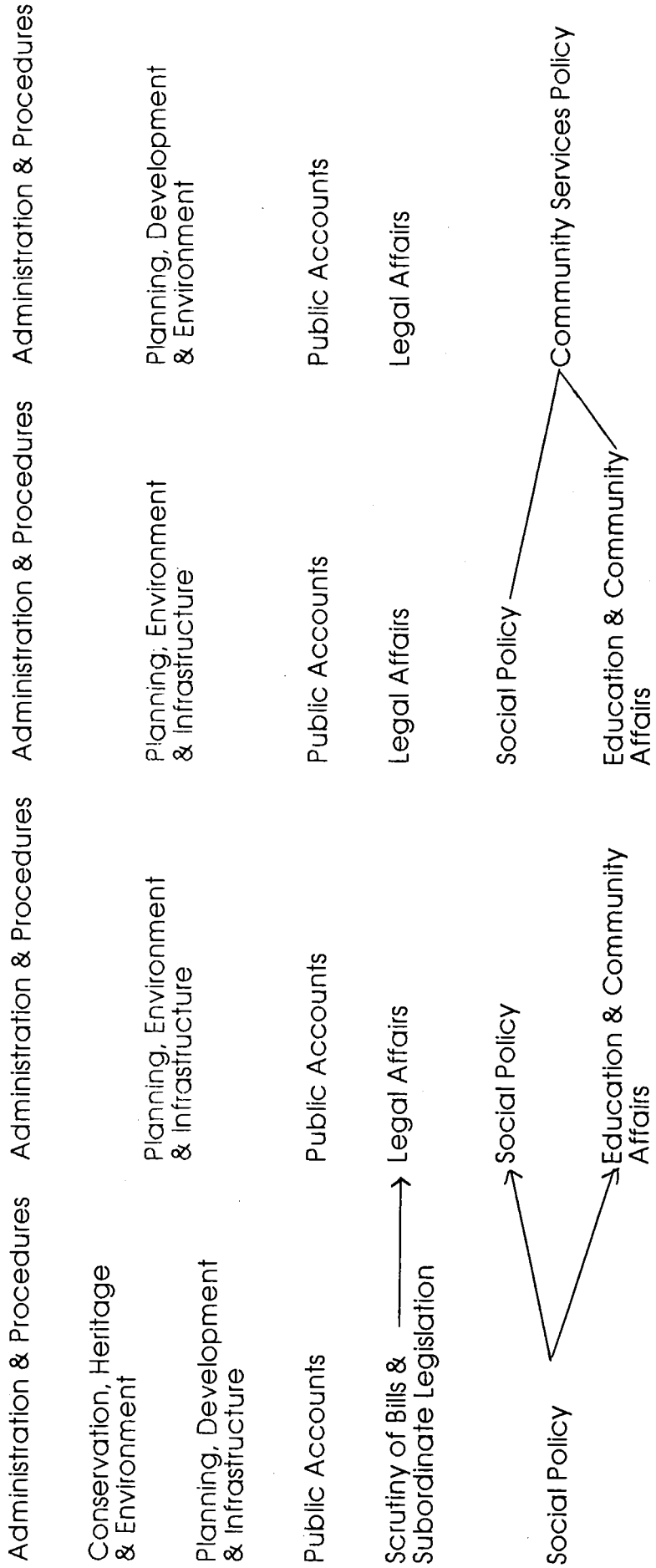
STRUCTURE OF EXISTING AND PROPOSED COMMITTEE SYSTEMS

CURRENT

**SPEAKER
(PROPOSAL)**

**OPPOSITION
(PROPOSAL)**

**GOVERNMENT
(PROPOSAL)**



PROPOSED AREAS OF COMMITTEE RESPONSIBILITY

SPEAKER	OPPOSITION	GOVERNMENT
<p><u>Legal Affairs Committee</u></p> <ul style="list-style-type: none"> • delegated legislation and bills scrutiny • legislation and licensing • regular review, ie existing ordinances and Federal Acts (major task) • administrative law • civil liberties and human rights (or Social Policy Committee) • censorship • company law • police/law and order • Commonwealth/Territory affairs (or other committees as related to responsibilities). 	<p><u>Legal Affairs</u></p> <p>as proposed</p>	<p><u>Legal Affairs</u></p> <p>as proposed</p> <p>plus</p> <ul style="list-style-type: none"> • law reform • consumer affairs
<p><u>Planning, Environment and Infrastructure Committee</u></p> <ul style="list-style-type: none"> • planning issues • environmental law issues • transport • economic development • energy and resources • public property (or Public Accounts Committee) • capital works • conservation • industrial matters as they relate to economic development 	<p><u>Planning, Environment and Infrastructure</u></p> <p>as proposed</p> <p>plus</p> <ul style="list-style-type: none"> • tourism • ACT promotion 	<p><u>Planning, Development and Environment</u></p> <p>as proposed</p> <p>plus</p> <ul style="list-style-type: none"> • commercial, industrial & residential development • infrastructure • land management • heritage • science & technology • tourism & ACT promotion (including festivals?)

GOVERNMENT

OPPOSITION

SPEAKER

<u>Public Accounts Committee</u>	<u>Public Accounts</u>	<u>Public Accounts</u>
<ul style="list-style-type: none"> . audit . financial administration & management . public service . administrative orders . finance/taxation issues etc (including motor vehicles registration etc and rates) . statutory authorities and bodies (management/financial aspects) . regulation review . public debt 	<ul style="list-style-type: none"> as proposed 	<ul style="list-style-type: none"> as proposed plus public property

<u>Education and Community Affairs Committee</u>	<u>Education and Community Affairs</u>	<u>Education and Community Affairs</u>
<ul style="list-style-type: none"> . education – private, public and vocational . heritage . the Arts . tourism (or Planning, Environment and Infrastructure Committee) . recreation . sport . consumer affairs . libraries . festivals . science and technology . ACT promotion (or Planning, Environment and Infrastructure Committee) 	<ul style="list-style-type: none"> as proposed less tourism ACT promotion 	<ul style="list-style-type: none"> not proposed

SPEAKER

Social Policy Committee

- . health and hospitals
- . welfare
- . housing, social security, ageing
- . youth affairs
- . women's affairs
- . multicultural affairs
- . industrial relations
- . child care
- . occupational health and safety

OPPOSITION

Social Policy

as proposed

GOVERNMENT

Community Services Policy

as proposed

plus

- . nursing homes
- . employment
- . disabilities
- . the family
- . Aboriginal people
- . education – private, public & vocational
- . the Arts
- . sport & recreation

3 CONCLUSIONS AND RECOMMENDED STRUCTURE

Committee system

3.1 In its review of the committee system, the Committee has taken into account resources, workloads of the proposed committees and workloads of Members, all of which impact on the success of the Assembly committee system.

Number and size of committees

3.2 The Committee has been mindful of the size of the Assembly and the number of Members available to serve on committees. The Committee is particularly aware of time devoted to committee work, both in formal committee meetings and privately.

3.3 The Committee has attempted to maintain a balance between the number and workload of committees, and therefore Members. At the same time it wishes to ensure that all areas of possible inquiry are included within each committee's sphere of reference and that the workload between committees is logically and evenly balanced.

3.4 Having considered the options and their expected workloads, the Committee believes that the existing committee structure, with one exception (the lack of a legal affairs committee), serves the Assembly well, covers all areas of possible inquiry and best meets the Assembly's future requirements.

3.5 The Committee examined the question of establishing a separate Legal Affairs Committee as proposed by Mr Speaker and agreed to by the Government and the Opposition. The Committee believes that there is a need for a committee to examine legal issues and that benefits will be gained from establishing a Legal Affairs Committee in addition to retaining a separate Scrutiny of Bills and Delegated Legislation Committee.

3.6 In the Committee's view, the major benefit arises from the nature of the inquiries undertaken by the Scrutiny of Bills and Delegated Legislation Committee. That committee acts in a bipartisan manner and to include its role within a committee which may travel down more controversial paths could possibly be seen to compromise its impartiality.

Committee membership

3.7 Having considered the size of the existing committees, the Committee believes that the number of members on each committee should remain at the current levels with one exception. The Committee considers that membership of

the Conservation, Heritage and Environment Committee should be increased to four.

3.8 The Committee believes that the membership of the proposed Legal Affairs Committee should be three.

Resources

3.9 In coming to the view of retaining the existing committee system plus the establishment of a Legal Affairs Committee, the Committee does not propose any increase in resources to service the committee system at this stage.

3.10 Currently the establishment of the Committee Office of the Assembly Secretariat is one Senior Committee Secretary, three Committee Secretaries, three Research Officers and two Administrative Support staff to service four standing committees and the select committees. The Administration and Procedures Committee and the Scrutiny of Bills and Delegated Legislation Committee are serviced by other Secretariat staff.

3.11 The Committee believes that the establishment of another standing committee requires the establishment of a fourth Committee Secretary position. However, in order that total resources devoted to the committee system are not increased, the Committee proposes that the creation of an additional Committee Secretary position be offset by the abolition of one Research Officer position and one Administrative Support position.

Other issues

3.12 Throughout this review the Committee has been concerned principally with the structure of the committee system. A number of other issues were raised, the majority of which would require a change to standing orders if they were to be adopted. (Appendix C)

3.13 These matters will be considered in the forthcoming review of the standing orders. However, the Committee wishes to note at this stage that the majority of its Members have concerns in relation to proposals that the conduct of all meetings be in public unless otherwise ordered and that no Assembly members be excluded from committee meetings.

3.14 The other issues raised included the Australian Labor Party's misgivings regarding the role of Executive Deputies on Assembly committees. This report has confined itself to the structure of the Assembly's committee system. Whether Executive Deputies serve on committees or serve as Presiding Members of committees are matters for the Assembly itself and the respective committee members to decide.

Recommendations

3.15 The Committee recommends that:

- . the existing structure of Standing Committees be retained;
- . the membership of the Standing Committee on Conservation, Heritage and Environment be increased from three to four;
- . a Standing Committee on Legal Affairs be established with the power to initiate its own inquiries and with a membership of three;
- . the responsibilities of the Standing Committees be as listed in Table 3 to this report; and
- . a fourth Committee Secretary position be created and the new position be funded by the abolition of a Research Officer position and an Administrative Support position within the Committee Office.

D J Prowse, MLA
Chairman
21 March 1990

RECOMMENDED COMMITTEE STRUCTURE AND AREAS OF RESPONSIBILITY

Conservation, Heritage and Environment Committee

- . environment
- . conservation
- . heritage
- . energy and resources

Legal Affairs Committee

- . administrative law
- . civil liberties and human rights
- . censorship
- . company law
- . law and order
- . criminal law
- . law reform
- . consumer affairs

Planning, Development and Infrastructure Committee

- . planning issues
- . land management issues
- . transport
- . economic, commercial, industrial and residential development
- . infrastructure and capital works
- . tourism and ACT promotion
- . science and technology

Public Accounts Committee

- . audit
- . financial administration and management
- . public administration
- . finance/taxation issues etc (including motor vehicles registration etc and rates)
- . statutory authorities and bodies (management/financial aspects)
- . regulation review
- . public debt
- . public property

Social Policy Committee

- . health and hospitals/nursing homes
- . welfare
- . employment
- . housing
- . social security
- . ageing, people with disabilities, the family, Aboriginal people
- . youth affairs
- . status of women
- . multicultural affairs
- . industrial relations
- . occupational health and safety
- . education – private, public and vocational
- . the Arts
- . sport and recreation

Scrutiny of Bills and Delegated Legislation

- . scrutiny of bills and subordinate legislation (including examination of Commonwealth law in its application to the ACT)

Administration and Procedures

- . the Assembly's annual estimates of expenditure
- . Members' entitlements including facilities and services
- . operation of the Assembly's library
- . operation of the transcription service (Hansard)
- . availability to the public of Assembly documents
- . the standing orders of the Assembly
- . the practices and procedures of the Assembly
- . matters relating to the privileges of the Assembly which may be referred to it by the Assembly
- . the order of Private Members Business



Australian Capital Territory
CHIEF MINISTER

22 AUG 1989

1 Constitution Ave
Canberra ACT 2601

Mr David Prowse MLA
Speaker
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

David
Dear Mr Speaker

Over the past few months, Members in the Assembly have expressed concerns regarding various aspects of the Assembly committee system.

A number of these concerns appear to have their foundation in the fact that no overall examination of the role of Assembly committees has been attempted.

I attach a discussion paper which seeks to present a coherent philosophy outlining a strong and relevant committee system. The paper does not explore the resource implications of the proposals, although these will obviously need to be considered.

I would appreciate your comments on the proposals contained in the paper which I have also provided to party leaders.

The Government has also decided that the principles underlying the Commonwealth "Government Guidelines for Official Witnesses Before Parliamentary Committees" form the basis for defining the relationship between ACT Government Service Officers, including statutory office holders and officers of statutory authorities, and Assembly Committees. I attach a copy of the Commonwealth Guidelines for your information.

In this regard you might like to consider consulting with Members regarding the establishment of guidelines in relation to Committee procedures and protocol generally.

Yours sincerely

Rosemary Follett

Rosemary Follett

DISCUSSION PAPER - ROLE OF ASSEMBLY COMMITTEES

The purpose of this paper is to provide a basis for discussion regarding the overall structure of the Legislative Assembly's committee system. The Government looks forward to receiving the views of Members on the proposals.

Introductory

A fundamental aim of the structure of parliamentary government is to ensure openness and accountability. Parliamentary committees provide a principal mechanism for achieving this aim through their continuing surveillance of government activity.

Committees also play a central role in the development of policy through their examination of broad issues on which the Government does not have a clear view or where there is a range of conflicting community views which require expression.

Proposed Committee Structure

It is proposed that there be four types of committees:

- general purpose standing committees;
- an estimates committee;
- select legislation committees; and
- other select committees.

(i) General purpose standing committees

Four general purpose standing committees have been established:

- Conservation, Heritage and Environment;
- Planning, Development and Infrastructure;
- Public Accounts; and
- Social Policy.

The intention should be to enable the general purpose standing committees to examine the full range of public policy on a continuing basis. With the exception of constitutional and legal affairs, the existing standing committees broadly cover the areas of government activity.

A Legal Policy and Review committee is proposed to fill the present gap. Apart from its general oversight of legal matters, the committee should be given responsibility for keeping a comprehensive check upon regulations made by the Executive and other instruments disallowable by the Assembly and examining all matters relating to rights and liberties in legislation. These functions are exercised in the Commonwealth by the Senate Standing Committees on Regulations and Ordinances and Scrutiny of Bills.

To the extent that the coverage of subject matters will be incomplete, public policy analysis by standing committees can be supplemented by the appointment of select committees.

(ii) Estimates committee

To enable the Assembly to examine the expenditure of money by the Executive, it is proposed to form an estimates committee to meet for a short intensive period (perhaps 2 or 3 days) once a year to examine the expenditure proposals contained in the Government's annual appropriation bill. The committee would provide a forum for Members to question Ministers and officials on matters connected with the funds being sought by agencies from the Assembly. The committee's report would be considered by the Assembly when it examines the appropriation bill at the detail stage.

The following proposed features of the estimates committee should be noted:

- the committee would be chaired by the Leader of the Opposition and also comprise the leaders of the other parties in the Assembly. Other Assembly Members could participate in the examination of matters falling within their specific areas of 'shadow' responsibility;
- the committee would be able to extend its questioning to the general operation, administration and policies of agencies;
- committee staff could be drawn from the staff of the existing standing committees.

Note: The Public Accounts Committee should not be involved in the examination of proposed Government expenditure outlined in the appropriation bill. Its role is to examine the actual expenditure by the Government of the funds agreed to by the Assembly.

(iii) Select legislation committees

The reference of bills to adhoc legislation committees should be accepted as part of the normal legislative routine and accommodated within the legislative timetable. This would enable the detail of legislation to be considered in a less partisan fashion. It could also, where appropriate, involve direct contributions of expert witnesses during the consideration process.

It is proposed that the Government could offer to refer a bill to an ad hoc committee where parties have suggested specific amendments or have expressed general concerns on matters of principle. The committee would not formally report to the Assembly in relation to its deliberations and conclusions. Rather the detail stage would simply resume with the Assembly having had the benefit of a reasoned and detailed examination of the bill. Depending upon the complexity of the issues involved, the Assembly's consideration of a bill could be resumed within 24 hours.

The Minister responsible for a bill referred to a select legislation committee could take his or her place as a committee member. This would enable the Minister (and advisers and the draftsman) to respond directly to the proposals or concerns of the non-Government parties.

(iv) other select committees

Four non legislation select committees have been established to date:

- Establishment of a Casino;
- Amalgamation of Tertiary Institutions;
- Self-Government; and
- Tenancy of Commercial Premises

It is proposed to continue to support the formation of adhoc committees to undertake specific limited inquiries. Care should be taken, however, to ensure that these select committees are not established to examine matters which could appropriately be handled by the standing committees.

August 1989

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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GPO Box 1020
Telephone: 75 8570
Fax: 75 8108

Ms R Follett MLA
Chief Minister
ACT Legislative Assembly
CANBERRA ACT 2600

Dear Chief Minister

I refer to your letter of 22 August 1989 concerning the Assembly committee system and to the attached discussion paper on the role of Assembly committees.

I agree with you that it is necessary to undertake an overall examination of the role of Assembly committees and the way in which those committees should be structured. In general I support the philosophy set out in your discussion paper but I have some reservations about the proposal for estimates committees and legislation committees. I feel that these functions could be carried out by the general purpose standing committees.

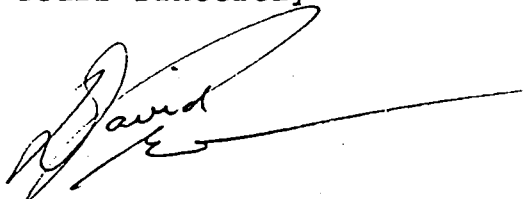
My detailed response to your discussion paper is set out in the attachment to this letter. I am providing a copy of this attachment to each of the party leaders and I hope that it will be possible for all groups in the Assembly to reach some consensus so that we can adopt an effective committee system which meets the current needs of the Assembly and its Members.

You indicated in your letter that the Government has decided that the principles underlying the Commonwealth "Government Guidelines for Official Witnesses before Parliamentary Committees" should form the basis for defining the relationship between ACT Government service officers and Assembly committees.

This is an important issue and one which will require careful consideration by the Assembly. I think that in general the guidelines are appropriate but I have some reservations, principally with those sections which deal with claims of public interest immunity, previously known as Crown privilege. This matter can be dealt with separately from a rationalisation of the committee system and I will write to you separately about the guidelines at a later time.

I believe it is important that the Assembly takes early steps to adopt a rational and effective committee system which reflects the most satisfactory arrangements for the present time. Once adopted, the arrangements should be kept under review and modified if necessary in the light of a reasonable trial period.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Prowse", with a long horizontal flourish extending to the right.

David Prowse
Speaker

9 October 1989

Role of Assembly Committees - Response by Speaker to discussion
paper circulated by Chief Minister

Background

On 22 August 1989 the Chief Minister circulated a discussion paper on the role of Assembly committees. The paper outlined proposals developed by the Government to establish an overall structure for committees of the Assembly.

Clearly there is a need to examine the role of committees and to establish the most satisfactory arrangements for the Assembly and its Members. I support the philosophy in the discussion paper but would prefer a broadening of the role of general purpose standing committees to allow annual estimates of expenditure and complex legislation to be considered by those committees, thus avoiding the need to establish estimates and legislation committees.

The basic point to make is that, being a new institution, the Assembly is going through a development process. There will be a continuing need to review arrangements and procedures and to be flexible in adapting ideas from other parliaments. Obviously, the small membership of this Assembly precludes establishment of a large number of committees. This contrasts with the House of Representatives and the Senate where committees are sometimes seen as important in providing activity for private members.

General purpose standing committees

I believe that in an assembly of this size it would be preferable to establish five general purpose standing committees and to provide that these committees deal with the complete range of matters coming before the Assembly in whatever form. Under this arrangement each standing committee would be empowered to inquire into and report on any matters referred to it by the Assembly, including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper. Similar systems exist or are developing in other Parliaments. I feel that such arrangements would offer a stable and efficient approach to committee activity.

Power to initiate inquiries

In addition to references from the Assembly, the committees should also have power to initiate their own inquiries. Where such action is taken, a committee should be required to inform the Assembly, at the first opportunity, of its decision to undertake a particular inquiry. This would retain final control with the Assembly and ensure that all Members are informed of each committee's activity.

In cases where a Minister wishes a committee to undertake a

particular inquiry, the reference could be achieved by a formal motion in the Assembly or by the Minister writing direct to the committee which could determine the matter under its power to initiate inquiries.

Subject responsibilities

These five general purpose standing committees should have subject responsibilities similar to those which currently exist but with several significant adjustments. The existing Social Policy Committee covers a broad and demanding subject area and perhaps this could be adjusted by removing the education component. The area of legal and constitutional affairs is not covered by any current committees and this omission must be rectified.

A suggested functional allocation to each of the five committees is set out below:

Education and Community Affairs Committee

- . education - private, public and vocational
- . heritage
- . the Arts
- . tourism (or Planning, Environment and Infrastructure Committee)
- . recreation
- . sport
- . consumer affairs
- . libraries
- . festivals
- . science and technology
- . ACT promotion (or Planning, Environment and Infrastructure Committee)

Legal Affairs Committee

- . delegated legislation and bills scrutiny
- . legislation and licensing
- . regular review, ie existing ordinances and Federal Acts (major task)
- . administrative law
- . civil liberties and human rights (or Social Policy Committee)
- . censorship
- . company law
- . police/law and order
- . Commonwealth/Territory affairs (or other committees as related to responsibilities).

Public Accounts Committee

- . audit
- . financial administration
- . management
- . public service
- . administrative orders

- . finance/taxation issues etc (including motor vehicles registration etc and rates)
- . statutory authorities and bodies (management/financial aspects)
- . regulation review
- . public debt

Planning, Environment and Infrastructure Committee

- . planning issues
- . environmental law issues
- . transport
- . economic development
- . energy and resources
- . public property (or Public Accounts Committee)
- . capital works
- . conservation
- . industrial matters as they relate to economic development

Social Policy Committee

- . health and hospitals
- . welfare
- . housing, social security, ageing
- . youth affairs
- . women's affairs
- . multicultural affairs
- . industrial relations
- . child care
- . occupational health and safety.

Under the proposals described above, each committee would develop expertise and knowledge within its subject area. An added benefit is that Members and staff would be able to examine relevant estimates of expenditure and complex legislation in a more effective way than would be the case with estimates committees (established following the presentation of the budget and with only a short life) or select committees on legislation.

Administration and Procedures Committee

In addition to the above five committees, there would of course remain the Administration and Procedures Committee to deal with the functions allocated to it under the current temporary orders. These functions are to arrange the order of private Members' business and to inquire into and report on, as appropriate:

- . the Assembly's annual estimates of expenditure;
- . Members' entitlements including facilities and services;
- . operation of the Assembly's library;
- . operation of the transcription service (Hansard);
- . availability to the public of Assembly documents;
- . the standing orders of the Assembly;
- . the practice and procedures of the Assembly;
- . matters relating to the privileges of the Assembly which may be referred to it by the Assembly.

Overlap of functions

If situations arise where there appears to be an overlap in committees' functions, such issues could be resolved either through the Administration and Procedures Committee making a decision or by a meeting of committee chairmen with the Speaker.

Reporting times

There have been several instances already of committees being asked to undertake inquiries and complete reports within very short time frames. It is my view that reporting dates or times should only be specified if absolutely necessary. A need might arise where the inquiry is related to the Government's budget processes, particular legislation, or pending Government or civil action.

In general, short reporting time frames should be avoided to reduce the likelihood of inquiries being inadequate or community interests being overlooked.

Estimates and legislation committees' functions

I believe that the general purpose standing committees should also perform the functions of estimates committees and legislation committees. The arguments in favour of this course of action are as follows:

Estimates. Each standing committee will rapidly develop a sound level of expertise within its subject range. Familiarity with the issues will allow the committees to operate effectively when dealing with annual estimates of expenditure. The standing committees would be the forums in which Members would question Ministers and officials on matters connected with the proposed expenditures. Questioning would extend to the general operation, administration and policies of agencies. The committees' reports would be considered by the Assembly when it examines the Appropriation bill at the detail stage.

Legislation. Similarly, the relevant standing committee could be used as the forum for considering the detail of a bill in a less partisan fashion than may occur in the Chamber, with direct contributions from expert witnesses where this is appropriate. Detailed consideration of a bill in this manner, following the agreement in principle stage, could become part of the normal legislative routine and be accommodated within the legislative timetable. Most legislation would continue to be dealt with by the Assembly in the usual way with the procedure for reference to a standing committee being reserved for those bills where complex amendments have been foreshadowed or where concerns have been expressed about matters of detail. I agree with the suggestion in the discussion paper, that the committee would not formally report its deliberations and conclusions to the Assembly. Rather, the detail stage would be resumed with the Assembly, through the members of the standing committee, having had the benefit of a reasoned and detailed examination of the bill.

I believe that in a small assembly such arrangements are to be preferred to the establishment of estimates committees each year during the budget sittings and the appointment of legislation committees on an ad hoc basis.

Flexible membership

To provide some flexibility, the standing committees when dealing with estimates or legislation, should be able to add other members who have a particular interest or skill in the matters being considered.

Select committees

Given the size of the Assembly and the arrangements I have suggested, the appointment of select committees should be kept to a minimum. As an alternative to appointing a select committee, the Assembly could refer a particular issue to an appropriate standing committee. For the purposes of that inquiry the membership of the standing committee could be increased by the addition of one or two members who have a particular interest or knowledge of the issue.

The use of select committees should be reserved for inquiries which do not fall within the functional responsibility of a standing committee or where political or other significant considerations suggest such a course.

Staff and resources

Adequate staff and resources are essential for effective committee work. This matter will need careful assessment after the principal decisions have been made.

The legal affairs committee must be provided with independent professional legal advice on a retainer basis particularly in its role of scrutinizing bills and delegated legislation.

Benefits

The benefits of the proposals I have outlined are the establishment of a genuine system based on five general purpose standing committees with clearly defined functional areas of responsibility and with the power to examine and report on all matters coming before the Assembly including subject inquiries, estimates, legislation and papers. By adopting this proposal and avoiding the establishment of estimates committees and legislation committees the Assembly and its Members will have a practical arrangement which will encourage the development of subject expertise and knowledge whilst avoiding an unnecessarily large number of committees which would stretch the resources of Members and staff.

9 October 1989

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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0 8 FEB 1990

7 February 1990

Mr David Prowse
Speaker
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Speaker

I refer to your letter of 9 October 1989 concerning the restructure of the Legislative Assembly Standing Committees. I apologise for the delay in replying.

My Party has considered the proposal which you put forward and in response to it we have prepared the attached discussion paper. The paper canvasses most of the areas which you raised on 9 October and in the vast majority of cases, we are in agreement.

We do, however, raise a number of other issues.

It is the Labor Party's view that Committee meetings should be as open as possible, both to public and Assembly scrutiny. We suggest that any Assembly Member, whether on the Committee or not, should be able to attend any Committee. It is also proposed that all Committee meetings should be public except where there is a clearly stated reason agreed to by a majority of Committee members.

With respect to actual Committee membership, we propose an inclusive approach. As you will see, if our proposals were adopted the effect would be that no Assembly Member could be excluded from Committee participation.

The final issue the paper canvasses is that of Executive participation on Committees. It is accepted that all Executive Members are also Assembly Members and, therefore, cannot and should not be excluded from Committees. However, in order to maintain the perception and actuality of the independence of the Legislature from the Executive, we propose two rules:

- (1) Ministers in general should not participate on Committees and should definitely not chair any Committee; and
- (2) Executive Deputies should not chair or serve on Committees which cover areas of their particular "portfolio" responsibilities.

I am sure that you will agree that this is a sensible approach and one that will guard the Assembly's independence.

I have copied this letter and the discussion paper to all other Members.

Yours sincerely



Rosemary Follett

A.C.T. LEGISLATIVE ASSEMBLY COMMITTEES

A Discussion Paper Prepared by:

Australian Labor Party Legislative Assembly Caucus

FEBRUARY 1990

1. THE ROLE AND FUNCTIONS OF COMMITTEES

An effective and efficient Committee system is essential to the smooth operation of the Legislative Assembly. Committees provide an opportunity for a more detailed, less partisan and less formal consideration of issues than is likely to occur in the Assembly Chamber itself.

Through their examination of matters referred to them, along with those they initiate themselves, Committees are able to stimulate and participate in community debate on and awareness of important issues.

A major role of Assembly Committees is to provide the opportunity for members of the Assembly to participate in policy formulation and development. Debate on policy issues within the Assembly tends to concentrate on proposals brought to the Assembly, in a largely finalised, form by the Executive. Members debate the appropriateness of the policy, but tend not to be involved in its development. This is particularly the case for non-executive members. The establishment of Parliamentary Committees fills this gap.

The less formal nature of Assembly Committees and the resultant greater flexibility in their operation allows them to fill an important gap in the proceedings of the Assembly. It allows members to hear and to question expert witnesses in a privileged forum. A broad range of community views on important issues can therefore be canvassed.

For Assembly Committees to fulfil this role appropriately it is crucial that they operate in an open and democratic manner and that they remain Committees of the Assembly. That is they should be independent of Executive Government. The separation of roles between the Assembly and the Executive which is fundamental to our Westminster system must be maintained.

2. STANDING COMMITTEES

In any restructure of Standing Committees the aim should be to ensure that their Terms of Reference are broad enough to cover the complete range of issues that are likely to confront the Assembly. This should reduce the need to establish Select Committees to deal with specific issues and therefore result in a more efficient use of the limited resources.

In meeting this objective, however, it is also important that there not be significant overlap of responsibilities between Committees.

The proposal put forward by the Speaker on 9 October 1989 for restructure of Standing Committees seems to be broadly appropriate. It seems more appropriate, however, that tourism and ACT Promotion be with the Planning, Environment and Infrastructure Committee rather than Education and Community Affairs (see Attachment A).

The Speaker proposed that the relevant Standing Committee be used to consider the detail of Bills introduced in the Assembly rather than the establishment of ad hoc Select Committees. This is a sensible approach. We could expect all legislation to be better understood and for debate in the Assembly to be more informed if all bills were referred to the appropriate Committee prior to their being debated in detail. This would be achieved if it became routine for all bills to be referred to a Committee, under Standing Order 174, after the bill was agreed to in principle.

As the Speaker suggests, given the Assembly size and structure it is rational for the relevant Standing Committee to take on the function of an Estimates Committee. That is to deal with the examination of the Appropriation Bill as it relates to their area of responsibility. This allows the expertise built up by Committee members to be put to best use in ensuring that the Budget is sound.

There are, however, two important issues which result from such an approach.

Firstly, where there are areas of overlap between Committees, all relevant Committees should be able to question Ministers and their Officials.

Secondly, this approach should not result in the exclusion of any individual or group within the Assembly from participation in the Estimates process. Any member of the Assembly should be able to participate fully in the proceedings of any Committee when it is examining the Appropriations Bill. This means that their contribution should be included in the Committee report.

The Administration and Procedures should continue to function as it does now.

3. SELECT COMMITTEES

The establishment of Select Committees needs to be severely limited. Such Committees should only be established under exceptional circumstances where the issue is clearly outside the jurisdiction of any particular Standing Committee. In general, inquiries should be carried out by the appropriate Standing Committee so that resources can be most efficiently allocated.

4. COMMITTEE HEARINGS

The Legislative Assembly is the Government of the people of the A.C.T. and it should be accessible and accountable to those people. Therefore, as a general rule, the deliberations of Assembly Committees should be as open as possible to public scrutiny.

All Committee meetings should be held in public, unless it is the clear view of the majority of Committee members that a meeting be held "in camera". Such decisions, including their rationale, should be openly placed on the public record of the Committee's deliberations.

It is inappropriate, even in the case of "in camera" hearings, for Assembly Members, who are not members of the Committee, to be excluded from hearings or deliberations of a Committee. With an Assembly the size of the A.C.T.'s, and with its diverse composition, Committees should not operate on an exclusive or secretive manner. All members of the Assembly have been elected by the people and none should be excluded from any Assembly procedure.

For such open processes to be put in place it will require substantial redrafting of Chapter XX of the Assembly Standing Orders. In particular Standing Orders 234, 235, 236, 241. Such changes were originally flagged by the Labor Party in May 1989. They will be spelt out in our detailed submission to the Administration and Procedures Committee on the Standing Orders.

5. COMMITTEE MEMBERSHIP

The fundamental consideration for the membership of Committees is set out in Standing Orders 220 & 221. Most importantly 221 states:

"Membership of Committees shall be composed of representatives of all groups and parties in the Assembly as nearly as practicable proportional to their representation in the Assembly".

Quite clearly, though, this has to be balanced by the number of Assembly Members available for Committee service and the workload imposed by placing individuals on too many Committees.

(a) An Inclusive Approach

It is important that these standing orders are interpreted as broadly as possible to allow full and open participation by all members of the Assembly. For example, to interpret Standing Order 221 as applying individually to all Committees may, given the likely small membership of Committees, lead to the exclusion of very small groups or independents.

It would be better to interpret the Standing Order as apply to the Committee system as a whole. Thus if there were six Committees of four members each, this would create a pool of 24 positions. In this case a "group" with five per cent of the Assembly should expect at least one position. The other possible interpretation of 221 would exclude such a group from all Committees.

The size of Committees could be made flexible to ensure that adequate representation.

The current Standing Order 234 only permits Assembly Members who are not members of a Committee to "be present when a Committee is examining witnesses." As indicated earlier, this raises a fundamental problem with the operation of Committees. Prior to 11 May 1989 I wrote to all Party leaders suggesting that this Standing order be amended to read:

"members of the Assembly may be present at any time during a Committees deliberation but shall not have voting rights".

Given the size and current composition of the Legislative Assembly this is a preferable approach.

There is no reason why any member of the Assembly should be excluded from a Committee.

The principle should be that Committee membership is inclusive, not exclusive.

(b) Executive Participation

The Westminster system of parliamentary democracy does not clearly separate the Executive and Legislature. That is Members of the Executive are also Members of the Parliament or, in the A.C.T.'s case, the Legislative Assembly. They are therefore entitled to all the rights and privileges of other Assembly members, including Committee membership.

However, the convention is that Ministers do not participate on Committees. In fact, it is usual in the Commonwealth Parliament for ministerial participation on Committees, if any, to be on an ex officio basis.

There is a consensus that Ministers should in no circumstance chair Committees.

The reasons for this are quite clear, for our parliamentary system to work there must be a clear distinction between the operations of the Legislature and the Executive. The primacy of the Parliament must be maintained. The Parliament must remain a separate forum for review and consideration of Executive decisions. Executive members holding positions in the Legislature brings this division into question, and may lead to conflicts of interest.

In addition, Committees have been traditionally established as a forum for private members to consider policy issues. Too large a participation by Executive members with their greater access to detailed information may allow them to dominate Committees to the detriment of private members.

In summary, while Ministers should be free to attend all Committee deliberations, like every other Member, it is preferable that the convention that they not be members of Committees be upheld.

(c) Executive Deputies' Participation

The participation of Executive Deputies in Committees may raise similar difficulties to that of Ministers. Here it depends on how Executive Deputies are perceived. In looking at these positions, there is little precedent to go on, although similarities exist elsewhere.

In New Zealand, it is possible for Parliamentary Under Secretaries to be appointed to assist Ministers. Such Under Secretaries are able to perform functions delegated by the Minister.

In this situation, while the Under Secretaries are allowed to serve on Committees, as any other member of Parliament, they are not allowed to chair Committees. This is because they are seen as part of the Executive.

In the Western Australian Parliament there is the provision for the appointment of private members as Honorary Ministers. While such Honorary Ministers are allowed to serve on Committees, it is generally believed that they, along with full Ministers, should not.

The situation in New Zealand and West Australia are relevant to the A.C.T. The Alliance Government's Executive Deputies do parallel the New Zealand Parliamentary Under Secretaries and Western Australian Honorary Ministers in their role and functions. We must, therefore, be concerned about maintaining the separation between the Parliament and the Executive.

Executive Deputies must be seen as being either part of the Executive or closely associated with the Executive. Their name alone implies this. The media habit of calling them "Minister for" reinforces it, as does the plan to relocate them on to the 5th Floor with the Executive and away from the Legislative Assembly's "precincts". Additionally, the decision of the Executive to provide Executive Deputies with executive funded staffing tends to confirm the perception.

While every attempt must be made to preserve the separation of powers between the Legislature and the Executive, it is obviously not possible for Executive Deputies to be prevented from serving on Committees. This would result in no members of the Government being able to serve on Committees.

Given precedents elsewhere, it would be preferable that Executive Deputies not chair Committees. This would at least reduce the perception of the Executive exercising undue influence on the Parliament. It is accepted, however, that this solution would be unacceptable to the Government and is therefore unlikely.

At the very least, Executive Deputies should be prevented from chairing or serving on a Committee which covers areas of their "portfolio" responsibility.

This outcome may prevent public perception or actuality of Committees being, in effect, Executive Committees. It also reduces the likelihood that the Executive Deputy would be able to dominate a Committee because of their access to greater knowledge.

This final option is a sensible approach which will preserve the integrity of the Assembly and its Committee.

6. CONCLUSION

The A.C.T. Legislative Assembly is still in its formative years. We are still trying to come up with appropriate procedures for this new form of Government.

Our roots, however, are set deeply in hundreds of years of parliamentary democracy. We must draw on the experience and its many conventions and precedents.

We cannot deny our history.

A new Government also provides the opportunity to improve on our past. It is our duty to do so.

Whatever we do now we must remember that we are setting precedents which will affect the operation of the Assembly and the future.

Let us judge all proposals on their ability to deliver open accessible democracy for the A.C.T.

Education and Community Affairs

- . education - private, public and vocational
- . heritage
- . the Arts
- . recreation
- . sport
- . consumer affairs
- . libraries
- . festivals
- . science and technology

Legal Affairs Committee

- . delegated legislation and bills scrutiny
- . legislation and licensing
- . regular review, i.e. existing Commonwealth Ordinances and Acts
- . administrative law
- . civil liberties and human rights
- . censorship
- . company law
- . police/law and order
- . Commonwealth/Territory affairs (or other committees as related to responsibilities)

Public Accounts Committee

- . audit
- . financial administration
- . management
- . public service
- . administrative orders
- . finance/taxation issues etc. (including motor vehicles registration etc. and rates)
- . statutory authorities and bodies (management/financial aspects)
- . regulation review
- . public debt

Planning, Environment and Infrastructure Committee

- . planning issues
- . environmental law issues
- . transport
- . economic development
- . energy and resources
- . public property
- . capital works
- . conservation

- . industrial matters as they relate to economic development
- . tourism
- . A.C.T. promotion

Social Policy Committee

- . health and hospitals
- . welfare
- . housing, social security, ageing
- . youth affairs
- . women's affairs
- . multicultural affairs
- . industrial relations
- . child care
- . occupational health and safety



Australian Capital Territory CHIEF MINISTER

APPENDIX D

1 Constitution Ave
Canberra ACT 2601

Mr D Prowse MLA
Speaker
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

01 MAR 1990

Dear Mr Speaker

I refer to your letter of 9 October 1989 to the former Chief Minister where you provided detailed comments, in the form of a paper attached to your letter, on a discussion paper developed by the former Government dealing with the role of Assembly Committees.

I am writing to provide you with the Government's response to the suggestions made in your paper.

In your paper you indicate a preference for broadening the role of general purpose Standing Committees to allow these Committees to consider the annual estimates of expenditure and complex legislation, rather than establishing separate estimates and legislation Committees.

Where the examination of legislation by an Assembly Committee has been determined by the Assembly to be appropriate, your argument that such a function would be best performed by the general purpose Standing Committees which have developed expertise within their subject range is persuasive. The Government supports this suggestion.

The proposition that each Standing Committee consider the estimates relevant to particular matters falling within their individual charters does, however, raise serious practical problems. The principal difficulty arises from the fact that the allocation of subject matters to Committees does not correspond with the distribution of portfolio responsibilities to Ministers and therefore does not correspond with the program structure proposed for the Appropriation Bill. This would mean that each Minister and his or her public service advisers would need to attend hearings conducted by a number of Committees, a clearly undesirable drain on time and resources.

The Government believes it would be more appropriate, as was the case last year, for a single estimates Committee to be formed.

In relation to the structure of the Standing Committees, the Government supports the formation of a new Legal Affairs Committee and the rationalisation of the present Conservation, Heritage and Environment Committee and Planning, Development and Infrastructure Committee.

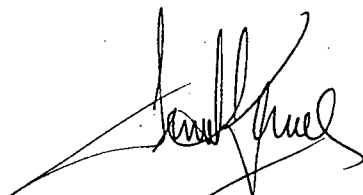
It is the Government's view, however, that four Standing Committees, with appropriate resources, can effectively cover the range of Government activities. In this regard the new Education and Community Affairs Committee proposed by you does not appear to have subject responsibilities justifying its independent existence. Matters such as heritage, tourism, libraries, festivals and science and technology could be accommodated by the other four Committees. The Government also believes that, as issues associated with education do not appear to have unduly occupied the Social Policy Committee, education matters could continue to be dealt with by that Committee's successor.

A suggested allocation of subject matters to four Standing Committees is provided for your consideration in the attachment to this letter.

To ensure that this very important issue is pursued in as least partisan fashion as possible, there would appear to be considerable merit in you assuming the leading role in the negotiations associated with the restructuring, perhaps through your position as Chairman of the Administration and Procedures Committee.

I would be pleased to discuss with you any aspect of the Government's response.

Yours sincerely



Trevor T Kaine

Legal Affairs Committee

- . scrutiny of bills and subordinate legislation (including examination of Commonwealth law in its application to the ACT)
- . administrative law
- . civil liberties and human rights
- . censorship
- . company law
- . law and order
- . criminal law
- . law reform
- . consumer affairs

Public Accounts Committee

- . audit
- . financial administration and management
- . public administration
- . finance/taxation issues etc (including motor vehicles registration etc and rates)
- . statutory authorities and bodies (management/financial aspects)
- . regulation review
- . public debt
- . public property

Planning, Development and Environment Committee

- . planning issues
- . land management issues
- . environmental, conservation and heritage issues
- . transport
- . economic, commercial, industrial and residential development
- . energy and resources
- . infrastructure and capital works
- . tourism and ACT promotion
- . science and technology

Community Services Policy Committee

- . health and hospitals/nursing homes
- . welfare
- . employment
- . housing
- . social security
- . ageing, people with disabilities, the family, Aboriginal people
- . youth affairs
- . status of women
- . multicultural affairs
- . industrial relations
- . occupational health and safety
- . education - private, public and vocational
- . the Arts
- . sport and recreation