



Mr Tom Duncan,
Committee Secretary,
Standing Committee on Administration and Procedure,
ACT Legislative Assembly,
GPO Box 1020,
Canberra, ACT 2601.

6th March 2012

Re: Review of the Australian Capital Territory (Self-Government) Act 1988 (Cwth)

Dear Mr Duncan,

Please find attached the submission to the Standing Committee on Administration and Procedure of the ACT Legislative Assembly on the Review of the Australian Capital Territory (Self-Government) Act 1988 (Cwth):

If you or the committee have any queries please do not hesitate to contact me.

Best wishes,

A handwritten signature in cursive script, appearing to read 'M Reynolds', is written in dark ink.

Adjunct Professor Mike Reynolds AM
Public Policy Institute

Australian Catholic University Limited, ABN 15 050 192 660
Canberra Campus (Signadou), 127 Phillip Avenue, Watson, ACT 2602 Australia
PO Box 256 Dickson, ACT 2602 Australia

CRICOS registered provider: 00004G, 00112C, 00873F, 00885B

Telephone: 07 4775 3587

Fax: 02 6209 1105

Email: mike.reynolds@acu.edu.au

Website: www.acu.edu.au/ppi

**SUBMISSION TO THE STANDING COMMITTEE ON ADMINISTRATION AND
PROCEDURE,
ACT LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**REVIEW OF THE *AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT)
ACT 1988 (CWLTH)***

Prepared by Professor Mike Reynolds AM
Public Policy Institute
Australian Catholic University

1. Introduction

There have been a number of reviews and studies of the performance and structure of the ACT Government and its three constituent branches under the Westminster System, the Legislative Assembly, the Judiciary and the Executive since the *Australian Capital Territory (Self -Government Act) 1988 (Cwlth)* was proclaimed. The Speaker of the Legislative Assembly, Mr Shane Rattenbury MLA, as Chair of the Standing Committee on Administration and Procedure, announced the Committee's intention to conduct a review of this Act and associated legislation on 8th December 2011 with a view to recommending whether the Act should be modified.

Within the context of such a review, the Committee had discussed and noted recent reviews and evidence that identified issues relating to the Self- Government Act. These reviews included an independent review of the three branches of government in the ACT against the Latimer House Principles by Professor John Halligan (Halligan 2011) and the reviews of the ACT Public Service and the National Capital Authority by Dr Alan Hawke (Hawke 2011) which were both completed in 2011. The Committee was also aware of evidence given by Commonwealth public servants from the Territories Division of the Department of Regional Australia to a Senate Legal and Constitutional Affairs Committee on 21st March 2011 wherein it was stated that a review of the *Self-Government Act* could be conducted by the

ACT Government and that the Commonwealth would welcome and consider any results of such a review.

This submission will consider the findings of these reviews and other related material and submit to the Committee how the procedures of the ACT Legislative Assembly could be improved in regard to transparency, openness and accountability which will lead to an enhanced performance of the Assembly and its individual elected members. In that regard there will be a particular emphasis on the relationship between the Assembly and the Executive and what opportunities exist to further develop the democratic governance of the Australian Capital Territory (ACT) some 22 years after it was granted self government.

2.Key Issues

2.1 Performance of the ACT Legislative Assembly

The Commonwealth Parliamentary Association (CPA) developed a set of best practice standards in 2006 which allowed member nations to assess their performance against 87 benchmarks covering themes such as the independence, effectiveness and accountability of a Parliament, parliamentary procedures, public accountability and the representative aspects of Parliament. Former Speaker of the ACT Legislative Assembly, Mr Wayne Berry, used these CPA benchmarks to review the Assembly's performance in 2008 and found that while he considered the performance to be high, there were seven benchmarks where the Assembly's standards were below the international benchmarks set by the CPA.

In his 2011 assessment, Halligan found that the ACT Legislative Assembly performed highly when measured against Latimer House Principles, with identifiable shortfalls against the principles having considerable potential for improvement. The ACT Assembly must be commended for not only adopting the Latimer House Principles which articulate best practice standards for the relationship between the three branches of government, but for importantly allowing independent assessment of how the Assembly, Executive and Judiciary perform against the principles. This resolve was contained in the Parliamentary Agreement for the 7th Legislative Assembly for the ACT between the Australian Labor Party (ALP) and the ACT Greens and demonstrates the ability of minority government (s) in association with the party(s) guaranteeing support to hold the Parliament to a much greater degree of accountability, transparency and openness.

The unique nature of the ACT as the nation's capital, the territory's much lower population base compared to the states, its unicameral system of governance and its dual system of governance incorporating jurisdiction for traditional local and state government roles, functions and responsibilities needs to be taken into account in any measurement of the

Assembly's performance. It must also be acknowledged that there is an ongoing priority for the ACT to achieve full self government and have full independence from the Commonwealth and that major progress has been achieved with the removal of a Commonwealth Minister's power to reject the Act Legislative Assembly's legislation.

These factors present challenges but also opportunities for the ACT. On the one hand there are the benefits of a more intimate system of governance but on the other hand there are the rigours within our federal system of governance where the ACT Government sits as a partner of the Commonwealth and the states around the COAG table. As many reviewers attest it is all about balance and a recognition of the special features of the ACT and its Assembly.

2.2 Size of the Legislative Assembly

Ongoing reviews of the size of the Assembly over the last two decade have consistently recommended an increase in the number of members from its existing 17 member base, which it has had since self government, to a membership which would allow the Assembly and the Executive to fully acquit their roles in the proper governance of the ACT. There is no doubt that the present membership of 17 inhibits necessary reforms taking place because of the limited capacity of the Assembly to implement such reforms.

All of the reviews presently being considered by the Committee recognise the need for greater scrutiny of the Executive, the need to reform the committee system to engage members in the policy role, and the need to have an Executive with an increased cabinet membership necessary to implement the government's vision and policies .There is broad agreement on the need to have a membership which can sustain the workload at both a parliamentary and representative level.

It is submitted that there is an overwhelming case to expand the number of members in the Legislative Assembly with the *Self-Government Act 1988* allowing the Commonwealth to expand the Assembly's membership by regulation, with the proviso that the Assembly must first carry a resolution fixing a different number of members for the Assembly. A political will for such a change does exist within the political parties making up the Assembly's membership but differences in the quantum are readily apparent due to the partisan interests of each party and how they believe that they will fare electorally under the Hare-Clark system of proportional representation.

However the benefits of changing the maximum number of members and bringing about more adequate constituent representation, greater parliamentary capacity especially on committees and a better functioning Executive have been acknowledged across the political spectrum. In 2002, the Assembly Standing Committee on Legal Affairs noted three options,

increasing the size of the Assembly to 21, 23 and 25 members. The Committee submitted that a minimum of 23 members would bring about enhanced representation for constituents, a greater capacity for members to contribute in the Assembly and an improved Executive. Committee members were however concerned about the financial implications and the need for greater proportionality of representation and opted for 21 members, with three electorates of seven members.

In their recent reviews Halligan and Hawke maintained that there is a very sound case for increasing the size of the Assembly, with Halligan seeing 25 members needed to significantly enhance governance capacity. Hawke noted that while the Northern Territory Assembly has 25 members to deal with Territory matters, the ACT is significantly under-represented in dealing with both state and local government matters with 17 members.

Given the current parliamentary agreement between the ALP and the Greens a negotiated position could possibly be reached to allow the Assembly to pass the requisite resolution, in a similar way in which the Executives in the states can regulate the number of electorates in their jurisdiction. However that process would be and should be seen to be fraught and lacking in integrity, especially at a time when the Assembly is committed to implementing progressive reform.

It is submitted that an independent process be established to determine the number of members who would sit in an enhanced Assembly and what would be the most equitable dispersion of those members across the whole of the ACT, incorporating the number of electorates and number of members in each of those electorates. That independent process should ideally be led by the ACT Electoral Commissioner.

2.3 The Need for an Enhanced Executive

Section 41 of the *Self-Government Act* severely limits the Executive to a Chief Minister and up to four Ministers and whereby that number of Ministers can be increased by enactment of the Assembly, it would have a resultant extremely negative impact on the remaining members of the Assembly in their participation in the Assembly's work at a time when there is a major overload and lack of capacity. Without an increase in the number of Assembly members, this section is rendered as absolutely impractical.

The sheer breadth and volume of ministerial responsibilities for Executive members leads to an extremely heavy and intolerable workload for each Minister, especially given the dual responsibilities covered by the Cabinet. The case for an increase in the Executive is a very solid one and compared to jurisdictions both within Australia and internationally, there seems little evidence that the Executive should not be increased.

On the proviso that there would be an increase in the membership of the Assembly as envisaged in 2.2, Hawke advocates that the size of the Executive be increased to seven Ministers, including the Chief Minister. On the basis of an increased Assembly of 25, these initiatives would quite adequately build the capacity of both the Assembly and the Executive. It would also allow the necessary reforms that are envisaged in the reviews, currently being considered by the Committee, to be implemented.

Under the Westminster traditions the Executive has the right to determine the size of the Ministry as is currently the case in other Australian jurisdictions and across the Westminster world. The constraints contained in the *Self-Government Act* by the Commonwealth have been seen by Halligan as stunting the system of governance in the ACT leading to a lack of agreement on strategic issues and the reduction of the status of the ACT.

2.4 A New Committee System for the Assembly.

The basic tenet of a Westminster parliament is to scrutinise the work of the Executive and to keep them accountable to the parliament as a whole. This is extraordinarily difficult to achieve in a small assembly such as the ACT, given the number of members to be drawn from for the Executive, parliamentary statutory positions and for membership of committees. The very fact that a standing committee has to rely on three Assembly members shows the impracticality of maintaining 17 members and highlights the urgent need for increasing the Assembly's membership and modernising the *Self-Government Act*.

Given these inherent difficulties, the ACT Assembly has done well in its two decades of operation in the establishment of traditional review and oversight committees, and with its implementation of Latimer House Principles it is now able to independently review such practices and procedures. The Assembly has been much more progressive than its state counterparts who have adopted a partisan winner take all in the compilation of committee membership and the appointment of committee chairs. As former Speaker Berry has stated there have been 12 chairs of the Public Accounts Committee since self government, with ten of these chairs being members of the Opposition.

On the basis of an enlarged Assembly of 25 members, the Assembly will be able to introduce a progressive reform of its committee structure which would enhance the capacity of the Assembly to properly scrutinise the activities of the Executive through a more active committee process.

In 2011, the Queensland Legislative Assembly implemented extensive reforms to the parliament's committee processes after the tabling in 2010 of an all party Parliamentary

Committee report which examined committee reform (CSRC 2010). This report has been quite rightly pilloried for its absolute disregard of the Speaker's role in a Westminster democracy and for its actions in emasculating the Speaker's role to a now narrowly defined one as the Chair of the Parliament. There has also been a refusal by the Parliament to allow the Speaker to be Chair of the Committee of the Legislative Assembly, the Parliament's new House Committee, again usurping the role of the Speaker in many of his/her areas of traditional responsibility.

Given this critique, it is perhaps surprising that the Legislative Assembly of Queensland has now adopted a new parliamentary committee process which is robust and reformative in involving members of the Opposition and making the Executive more accountable to the Parliament. The Clerk of the Queensland Parliament, Neil Laurie, articulated these major reforms at the Clerk's Conference in July last year (Laurie 2011). There was little synergy between the work of the House and the work of the previous committees and the new committees are more active and aligned to the work of the Parliament. The Legislative Assembly has now created seven portfolio committees which cover the span of government activities.

There have been key changes to the legislative process such as a halving of the time for ministerial statements, an increase from half an hour a week to one and a half hours a week for private members' statements and Wednesday morning has now been set aside for committee sessions rather than the normal parliamentary session. The committee work will lead to the more detailed scrutiny of legislation from both a policy and implementation perspective and ultimately greater accountability of the Executive and a far greater degree of openness and transparency in the process, so essential in the only unicameral state parliament in the nation.

Hawke in his review work advocated more open government in the ACT, the development of mechanisms to involve non government members in policy development and a greater degree of community participation in the Assembly's decision making process. The Queensland changes to their committee system incorporate these major elements of parliamentary reform and should be investigated by the Committee for adoption in the ACT Legislative Assembly.

It is strange to consider that the House of Commons at Westminster, the mother of our Westminster system of democracy, has spawned parliaments across the Commonwealth of Nations, including Australian jurisdictions, which have, unlike the House of Commons, dealt with the structure of its parliament and particularly its committee system in a highly partisan manner. It is imperative that Australian parliaments reverse that trend and move towards progressive reforms to their assemblies.

2.5 Integrity Reform in the ACT

There is no doubt that critical legislative review has not proceeded at an Executive or Assembly level in the ACT because both arms of Government have been so severely constrained and overloaded. In the key policy area of integrity reform there has been a political will expressed through the ALP/Greens accord but not enough capacity in the Executive or Assembly to keep up with the progressive reforms in the states.

The former Commonwealth Ombudsman, Mr Alan Usher, submitted to the recent Hawke ACT Public Sector Review that there had been much achieved in the early years of the Assembly in the field of accountability, including adoption and reform of legislation relating to key areas such as the Auditor General, public interest disclosure, the release of executive documents and parliamentary scrutiny of statutory appointments.

Usher further states that the ACT has not kept up with the pace of broader integrity reforms in other jurisdictions over the past decade, including major reform areas that relate to freedom of information, anti corruption and parliamentary integrity. He advocates a new era of accountability and oversight reforms for the ACT which would draw on recent integrity reviews that have taken place in Queensland, Tasmania, Victoria and South Australia, and foreshadows the establishment of a stand- alone ACT Integrity Commission.

Prasser acknowledges in the January 2012 edition of the international journal 'Policy Studies' that a driver for change in a particular jurisdiction is the emulation of integrity reforms in other jurisdictions. Tasmania's new Integrity Commission incorporates not only responses to local issues but also the need to catch up with integrity reforms in other jurisdictions.

There is a demonstrated need for further integrity reform to be implemented which relate to the three branches of government in the ACT. As a small jurisdiction it makes eminent sense that these reforms should be based on local issues that need further attention and that at the same time institutional catch up takes place with measures that are relevant to the features of governance in the ACT.

References

Committee System Review Committee (CSRC), 2010, *Review of the Queensland Parliamentary Committee System*, Brisbane: Legislative Assembly

Halligan, J., 2011, *An Assessment of the Performance of the Three Branches of Government in the ACT Against Latimer House Principles*, Canberra: ANZSOG Institute for Governance, University of Canberra.

Hawke, A., 2011, Canberra A Capital Place *Report of the Independent Review (the Review) of the National Capital Authority (NCA)*, Canberra.

Laurie, N., 2011, *Parliament (Reform and Modernisation) Bill 2011: a new committee system for Queensland*, 2011 Presiding Officers and Clerks Conference, held at Queensland Parliament House from 11 to 14 July 2011.

Prasser, S., 2012, "Australian integrity agencies in critical perspective", *Policy Studies*, Vol. 33, No. 1, January, pp21-25.