

2010

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE SEVENTH ASSEMBLY
STANDING COMMITTEE ON ADMINISTRATION AND
PROCEDURE REPORT ON THE LATIMER HOUSE
PRINCIPLES INQUIRY**

**Presented by
Mr Jon Stanhope MLA
Chief Minister**

Government Response

Introduction

The Standing Committee on Administration and Procedure (the Committee) conducted an inquiry into Appropriate Mechanisms to Coordinate and Evaluate the Implementation of the Latimer House Principles in the Governance of the ACT. The Committee reported the findings of its inquiry to the Assembly in August 2009.

The Committee made four recommendations, and detailed responses to those recommendations are set out below.

The Government is pleased the Legislative Assembly has formally adopted the Latimer House Principles, and remains committed to the highest standards of governance in the ACT. In a jurisdiction like the ACT, with a long democratic history, and mature institutions, it is important to recognise the extent to which those principles articulate aspects of our system of government that are uncontroversial and long accepted.

It is nevertheless necessary to understand the extent to which those principles articulate both freedoms for the three arms of government, as well as checks and balances. In a mature democracy, the fundamental importance of the separation of powers that underpins the Latimer House Principles is not often the subject of explicit discussion, but the Assembly's adoption of those principles invites a restatement of the implications of that separation for the institutions that comprise the ACT Government.

Fundamentally, the separation of powers doctrine exists to protect individual liberty, and constrain the capacity of any arm of government to arbitrarily impose restrictions on individual liberty, or otherwise abuse its powers. That said, that doctrine also recognises the rights and freedoms of the three arms to exercise their functions.

Probably the leading modern work on separation of powers is by Professor Vile, published in England in 1967: "Constitutionalism and the Separation of Powers" where the following definition is given:

A 'pure doctrine' of the separation of powers might be formulated in the following way: It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the legislature, the executive and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. *Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches.* Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch. In this way each of the branches will be a check to the others and no single group of people will be able to control the machinery of the State. ¹ *[emphasis added]*

¹ Cited in Carney, G *Separation of Powers in the Westminster System*, Paper presented to the Australasian Study of Parliament Group Queensland Chapter, Queensland Legislative Assembly, 1993.

The Government recognises and values the proper roles played by the Legislative Assembly in holding the Government to account, and by the judiciary as vital constituent elements of the ACT's system of government. It similarly recognises and values the proper role of the ACT Executive, and will continue to assert the rights and privileges of the Executive as it goes about the business of governing the ACT.

Response to Committee Recommendations

Recommendation 1

The Committee recommends that following consultation with the Standing Committee on Administration and Procedure, the Speaker appoint a suitably qualified person to conduct an assessment of the performance of the three arms of government in the ACT against the Latimer House Principles.

Government Response

Noted. While ultimately a matter for the Speaker, the Government considers any such assessment should reflect the relative maturity and stability of the Australian Capital Territory's system of government. In a mature democracy with robust accountability mechanisms already in place, the scale and scope of reporting activity should reflect the degree of maturity in our governance arrangements, and the fact that the principles are, in the ACT context while fundamentally important, uncontroversial and generally accepted.

Recommendation 2

The Committee recommends that the independent assessment be undertaken mid-term of each Assembly, and the resultant report tabled in the Assembly by the Speaker.

Government Response

Noted.

Recommendation 3

The Committee recommends that continuing resolution 8A be amended as follows:

Insert new paragraph 2A:

(2A) In the second year after a general election, following consultation with the Standing Committee on Administration and Procedure, the Speaker shall appoint a suitably qualified person to conduct and assessment of the implementation of the Latimer House Principles in the governance of the ACT, with the resultant report:

- (a) *to be tabled in the Legislative Assembly by the Speaker; and*
- (b) *to be referred to the Standing Committee on Administration and Procedure for inquiry and report.*

Government Response

Noted.

Recommendation 4

The Committee recommends that potential governance shortcomings identified in submissions and listed in section 3.12 of this report could be considered as part of the independent assessment.

Government Response

Not agreed. The Government considers it is important for each of the arms of Government to explicitly recognise and respect the inherent powers, checks and balances that comprise our system of government. In this regard, the Government would stress the importance of the statement set out in the Latimer House Principles themselves that each branch of government is the guarantor in *their respective spheres* of fundamental principles of democratic society based on the rule of law. This statement highlights the inherent checks and balances, but also freedoms, of the respective branches in discharging their functions.

One of the obligations created by the Latimer House Principles is therefore for each branch of government to respect the proper roles, responsibilities and accountabilities of the others. Just as it would be inappropriate for the Executive to interfere in the operation of the Courts, there are proper limitations on the Assembly's powers over the Executive.

Response to issues identified in paragraph 3.12 of the Report

Potential shortcoming as identified by the Committee	ACT Government Response
Development of a more robust process to ensure that government implements the agreed recommendations of Assembly inquiries, to maintain the public confidence in committee inquiries as effective means to keep governments accountable and transparent.	The Government is committed to implementing agreed recommendations from Legislative Assembly Committees. The Government acknowledges the importance of the Committee framework in maintaining accountable and transparent governance in the ACT. The Parliament is already able to hold the Government to account for its performance in this regard.
The <i>Public Sector Management Act 1994</i> and <i>Financial Management Act 1996</i> could be interpreted as permitting some executive or departmental control of the Electoral Commission and the Commissioner, thus potentially threatening the independence of the Commission. These concerns may be applicable to other statutory office holders.	The Government believes that current funding processes for the Electoral Commission and other statutory officer holders are satisfactory and do not threaten the independence of their activities. The Government notes that while certain statutory office holders, including the Electoral Commissioner, properly enjoy significant independence from government in their discharging certain functions (e.g the conduct of elections, or the conduct of audits), those offices are not, and cannot be, entirely independent from the Government. The funding of the Electoral Commissioner is a matter in which all citizens rightly have an interest, and the independence of that office in the conduct of elections is unquestioned. It is nevertheless the case that funding for the Electoral Commission is but one priority for the Government that must be weighed in the normal budget cycle of the Government. The current funding arrangements for the Electoral Commission are consistent with the <i>Financial Management Act 1996</i>, and ensure the Commission is appropriately funded through the Budget processes. These processes are in line with all Government agencies and do not compromise or interfere with the independence of the Commission's activities.

Potential shortcoming as identified by the Committee	ACT Government Response
Mechanisms to safeguard the independence of oversight bodies, such as clearly defined functions, adequate resourcing and reporting arrangements and follow-up on implementation of recommendations.	The Government notes that guidelines for Auditor-General reports and annual reports already exist to ensure the integrity of these documents. Moreover, as outlined in the Government submission to the Standing Committee inquiry into the implementation of the Latimer House Principles, the Government believes that the current mechanisms for ensuring transparency and accountability in governance in the ACT are robust and there is no evidence to suggest that further mechanisms are required to safeguard the independence of oversight bodies.
Independence of funding for parliament.	The Government notes that, under the <i>Self Government Act 1989 (Cwlth)</i>, only Ministers can introduce appropriations to the Assembly. Parliament's being funded through standard budgetary processes is common practice in other Australian jurisdictions.
Review of Freedom of Information laws, especially given the current review at the Commonwealth level.	The Government is already conducting a review of Freedom of Information laws.
Recent judicial appointment protocol reforms should be extended to quasi-judicial appointments, such as tribunals and other statutory offices.	The <i>Magistrates Court Act 1930</i> and <i>Supreme Court Act 1933</i> were recently amended by the <i>Courts (Appointments) Amendment Act 2009</i> to include requirements for appointment processes. These amendments provide a statutory framework to underpin the judicial appointment protocol developed by the Attorney-General in 2007. A determination for the selection process and criteria for Special Magistrates was made in December 2009. Similar determinations for the appointment of Magistrates, Judges and the Master of the Supreme Court are expected to be finalised by the Government shortly.

Potential shortcoming as identified by the Committee	ACT Government Response
Guidelines for ethical conduct in all branches of government.	Various guidelines exist to cover all branches of government to assist in facilitating best practice, transparency and accountability within the ACT Government: • <i>Crimes (Offences Against this Government) Act 1989;</i> • <i>Australian Capital Territory (Self-Government) Act 1988;</i> • <i>ACT Electoral Act 1992;</i> • <i>Public Sector Management Act 1994;</i> • <i>Financial Management Act 1996;</i> • <i>Territory-Owned Corporations Act 1990;</i> • <i>Auditor-General Act 1996;</i> • Code of Practice for Official Hospitality, Gifts and Protocol; • ACT Public Service Code of Conduct; • Ministerial Code of Conduct; and • ACT Legislative Assembly Standing Orders – The Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory;
Adequacy of funding for the court system.	Questions involving the governance and budgeting for the courts will be considered in the study of the structure of ACT courts in the future. As part of the Government's response to the ACT Auditor-General's performance audit of court administration in the Magistrates Court, the Department of Justice and Community Safety has been progressing towards the engagement of a consultant to review the efficiency and effectiveness of a range of court-based practices and procedures (especially in light of the February 2009 commencement of the new ACAT), prior to committing to a comprehensive base costing review. This information will also help to guide a recently commenced study considering the possibility of establishment of a single Court for the ACT, to be issued in 2010.

Potential shortcoming as identified by the Committee	ACT Government Response
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.	It is current requirements of both the <i>Legislation Handbook</i> and the <i>Cabinet Handbook</i> for consideration to be given to wide consultation at the earliest stage in the development of a legislation proposal. This includes for consulting where relevant with the public, individual and other bodies outside the ACT Government. In regard to referring major pieces of legislation to an appropriate Assembly committee, this is best considered on a case by case basis. Where relevant and applicable, the Government will seek referral of such legislation. Notwithstanding this, it still remains open to the Assembly to resolve that a legislation item be referred to an Assembly committee if not moved by the Government. The 7th Assembly Parliamentary Agreement, among other things, requires that all major pieces of reform legislation be made available for community comment and consideration. This also gives the Assembly a ready opportunity to decide whether any major legislation not being referred by the Government for committee inquiry should undergo an inquiry process. The ACT Government is currently constructing avenues to facilitate community engagement.
Consideration of the role of deliberative policy forums, or other innovative ways of engaging the community in policy making.	The ACT Government has adopted use of interactive website 'Bang the Table'. The website supports providing an avenue to the community at large to participate in the Territory's democratic processes. As part of the Government's Citizen Centred policy we are looking at options for encouraging Canberrans to be involved in decision making. Involvement of citizens is routine for most governments. The ACT Government aims to determine the level of citizen engagement, the scope of that involvement, and the methods used to consult and engage citizens. A broader model of Citizen Centred Governance emerged very quickly from the initial focus to build in the desired community perspective, and engagement, into government systems and processes. This model covers three main elements of government activity: • priority and direction setting; • service frameworks and delivery; and • accountability.

Potential shortcoming as identified by the Committee	ACT Government Response
	This paper encompasses the entirety of government and the community's engagement with government – not just as a recipient of services, or consultation on specific issues, but as an active participant in: • wider discussions about the future of our city; • the shaping of services provided; and • the receipt and use of government information.

