



LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

**REPORT OF
THE SELECT COMMITTEE ON
THE REPORT OF THE REVIEW OF GOVERNANCE**

June 1999

Resolution of Appointment

- (1) A Select Committee on the Report of the Review of Governance be appointed to examine the recommendations made in the Report of the Review of the Governance of the Australian Capital Territory, chaired by Professor Philip Pettit and any other related matter, and
- (2) The Review of the Electoral Act 1992 - The 1998 ACT Legislative Assembly Election, be referred for inquiry and report as part of the Select Committee's inquiry.

Committee Membership

Paul Osborne MLA (Chair)
Jon Stanhope MLA (Deputy Chair)
Greg Cornwell MLA

Secretary: John Cummins

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Summary of Recommendations

The Committee recommends that:

Recommendation 1

2.14. the present procedures by which the Executive is established remain unchanged.

Recommendation 2

2.30. the Government, in consultation with the Assembly and the community, undertake a detailed review of the Self-Government Act.

Recommendation 3

3.6. the fixed term of the Assembly remain as three years.

Recommendation 4

3.13. the number and size of electorates continue to be determined on the application of the 'one vote, one value' principle.

Recommendation 5

3.28. the number of seats in the Fifth Assembly remain as seventeen.

Recommendation 6

3.36. the present ban on how-to-vote cards at polling places remain.

Recommendation 7

3.44. on the advice of the Electoral Commission, the Government draft legislation to amend Schedule 2 of the Electoral Act to include more rotations.

Recommendation 8

3.45. the Electoral Act be amended to reduce the maximum number of candidates included in one column on the ballot paper.

Recommendation 9

3.47. the close of the nomination period be brought forward by one day.

Recommendation 10

3.51. the Electoral Commission, as part of its information program, ensure that resources are devoted to explaining the implications of preference choices, including numbering only one box, numbering the number of boxes for which there are seats in the electorate, or giving preferences to as many candidates as electors wish.

Recommendation 11

3.61. the Electoral Act be amended to break the nexus between the Commonwealth FAD scheme and the ACT's FAD scheme.

Recommendation 12

3.66. recommendations 6 to 12 of the ACT Electoral Commission's review of the 1998 ACT Legislative Assembly election be adopted.

Recommendation 13

4.19. the Government and the Assembly adopt, on a trial basis, the revised budget processes outlined by the Committee, which include the development of a draft budget and the involvement of the standing committees in the budget process.

Recommendation 14

4.26. the resources available for the provision of drafting services to non-Executive Members be increased.

Recommendation 15

4.35. the appropriation for the Legislative Assembly be provided in a separate bill.

Recommendation 16

4.48. a charter be developed which recognises, as the prime responsibility of the Library, service to the Assembly, its Members and staff.

Recommendation 17

4.49. the senior librarian be assigned the title 'Assembly Librarian'.

Recommendation 18

4.50. library services be provided to the Assembly on a purchaser provider basis.

Recommendation 19

4.59. an Assembly research capacity be available to enable non-Executive Members to commission papers or seek expert advice.

Appointment of the Speaker

Recommendation 20

4.71. a Commissioner for Parliamentary Ethics be appointed.

Recommendation 21

4.72. a Code of Ethics for MLAs be developed.

Recommendation 22

5.8. the resolution establishing the standing committees be amended to enable each committee to examine related matters in other portfolios.

Public Accounts Committee

Recommendation 23

5.17. the functions of a public accounts committee continue to be undertaken by a committee with wider responsibilities.

Recommendation 24

5.19. the resolution appointing the standing committees be amended to provide for reports of the Auditor General to stand referred to the standing committees for any inquiry they wish to make within their terms of reference.

Recommendation 25

5.20. the Standing Orders be amended to require each committee to notify the committee with Public Accounts Committee responsibilities of its intention to examine an audit report.

Recommendation 26

5.25. the functions of a scrutiny of bills committee continue to be undertaken by a committee with wider responsibilities.

Recommendation 27

5.30. committees continue to consider bills, but only those referred by the Assembly.

Recommendation 28

5.32. the resolution appointing the standing committees be amended to provide for agency annual and financial reports to stand referred to the standing committees for any inquiry they wish to make within their terms of reference.

Recommendation 29

5.42. the standing committees retain the power to determine their own inquiries within their terms of reference.

Recommendation 30

5.43. the Standing Orders be amended to require committee chairs to inform the Assembly of any new inquiry their committees propose to undertake.

Recommendation 31

5.50. the Committee Office be maintained as a separate office able to provide the range of administrative, procedural and research support to committees.

Recommendation 32

5.51. the position of committee secretary be maintained and at a common classification across committees.

Recommendation 33

5.52. the Assembly Secretariat recognise that other support for committees can be provided by a range of means including, permanent and temporary administrative and research appointments, secondments, and consultants.

Recommendation 34

6.12. the Standing Committees and the Assembly more rigorously use existing mechanisms to scrutinise statutory appointments.

Recommendation 35

7.8. sufficient resources be allocated to the Assembly Education Office to enable it to effectively carry out its current functions and the expanded functions envisaged by the Committee.

Recommendation 36

7.16. each Member, using their existing entitlements, determine which electorate consultative arrangements suit them best.

Recommendation 37

7.22. there be no changes to the Standing Orders which would prevent standing committees determining their own public consultative procedures.

Recommendation 38

7.38. the Government, in consultation with relevant organisations, ensure gender equity across government policies, programs and appointments.

Recommendation 39

7.46. the Assembly establish a select committee to examine the most appropriate means of indigenous participation in government in the ACT, and to examine ways of progressing the reconciliation process.

1. INTRODUCTION

Review of Governance

1.1. November 1998 was the tenth anniversary of the passage through the Commonwealth Parliament of the *Australian Capital Territory (Self-Government) Bill 1988*. The Bill was assented to on 6 December 1998. This was the key to four pieces of legislation central to the establishment of self-government in the Australian Capital Territory.

1.2. The legislation provides for a legislative assembly consisting of 17 full-time members who serve a fixed three-year term. It also provides for the ACT Executive consisting of the Chief Minister (who must be a member of the Assembly chosen by the Assembly) and four other Ministers (on some interpretations, five) chosen by the Chief Minister from the members of the Assembly.

1.3. With the approaching anniversary of self-government, the Commonwealth and ACT Governments established, in November 1997, a joint working party to review ACT governance (Pettit Review). The report of the Working Party, which contains thirty recommendations, was tabled in the ACT Legislative Assembly in April 1998.¹

1.4. The terms of reference required the Working Party to base its review on the assumption that self-government in the ACT, and the Hare-Clark electoral system for the Territory elections would continue.

1.5. The Pettit Review concluded that the existing structure works well and sought to build on its strengths and repair its weaknesses, rather than to transform it. It did not seriously consider alternative forms of government, other than, at the request of the Chief Minister, the concept of executive committees.

1.6. The Pettit Review considered that the ACT has a hybrid structure of government characteristic of both the Westminster and Washington systems of government. In accordance with the Westminster system, the MLAs elect the Chief Minister, who then appoints other members of the Executive from among the MLAs. But the Review thought that it also resembled the Washington model in that the Assembly is not usually controlled by the Executive and is a relatively independent body with which the Executive must negotiate.

1.7. The Committee does not agree with the Pettit Review's findings on the hybrid nature of the ACT structure. There are fundamental differences between the ACT and Washington models, for example, the presidential power of veto. The Committee also does not accept the Review's conclusion that the lack of an executive majority in a lower house necessarily equates to the Washington model. The Committee discusses this issue later in the Report.

¹ *Review of the Governance of the Australian Capital Territory*, Report of the Working Party, Australian Capital Territory, 1998

1.8. The Pettit Review noted that the Commonwealth Government can set aside any enactment of the Legislative Assembly. The Self-Government Act also places constraints on the Assembly determining such matters as the number of seats in the ACT and the number of Ministers - matters which the Pettit Review believed should be of no concern to the Commonwealth. The Committee agrees with these observations.

The Select Committee on Governance

1.9. In April 1998 the Assembly established a Select Committee on Governance to examine the recommendations of the Pettit Review.² The terms of reference are very broad and do not restrict the Committee only to the matters contained in the Review's report. The Committee, however, decided it was neither feasible, nor necessary to conduct another 'Pettit inquiry'. It concentrated instead on reviewing the conclusions and recommendations of the Pettit Review. The Committee did however briefly examine some other models that seem to have some relevance to the manner in which government is structured in the ACT.

1.10. The Committee advertised for submissions and wrote to those who had provided submissions to the Pettit Review seeking comment on the Pettit findings. The Committee sought the views of the Clerk of the Assembly on a number of issues. In addition the Committee held five public hearings. It also visited Tasmania, the only other jurisdiction in Australia with the Hare-Clark system, and held discussions with officers and councillors of Brisbane City Council. In general, submissions and witnesses were supportive of the overall findings of the Pettit Review and were only critical of matters of detail.

1.11. The Committee assumes that the reader is familiar with the report of the Review and therefore does not propose to reproduce its discussion in this Report.

1998 Elections

1.12. In December 1998 the Assembly also referred to the Committee the report of the ACT Electoral Commission on the conduct of the last election.³

² Legislative Assembly for the ACT, *Minutes of Proceedings No. 2, 28 April 1998*

³ Legislative Assembly for the ACT, *Minutes of Proceedings No. 34, 10 December 1998*

2. SELF-GOVERNMENT

The Self-Government Model

2.1. There have been numerous studies over the decades into the form of government most appropriate to the Australian Capital Territory. The types of models proposed ranged from parliamentary forms to regional councils.⁴ All these studies concluded that the traditional Australian Parliamentary system was the most appropriate form of government in terms of 'dignity and tradition to initiate debate and make laws for the ACT'.⁵

2.2. A former Assembly committee observed that the Australian Parliamentary system has proved itself to be an effective mechanism for enabling dynamic political change within a stable institutional and structural framework.⁶ It recognises the reality of political development in the ACT with its competing political interests.

2.3. The Pettit Review also supported continuation of the ACT form of the Westminster model. The Review found that the structure works well and that it would be unnecessary and reckless to recommend a fundamental overhaul of the existing structure. The Review's proposals, therefore, did not seek to transform the existing structure, but rather to build on the strengths and to repair the weaknesses.

2.4. The Committee also agrees that the existing structure has served the people of the ACT well. Notwithstanding this view, the Committee notes the views expressed by the Pettit Review and in some submissions that it is almost inconceivable that four Ministers drawn from a small talent pool drawn from a small talent pool should be able to effectively govern the ACT. One solution offered was to increase the number of Assembly Members by four. The Committee discusses the size of the Assembly later in the Report, but considers that an additional four Members may not effectively increase the talent pool available to the Chief Minister, particularly if the additional Members were from political persuasions which differed greatly to those of the Chief Minister.

2.5. The Pettit Review did not look at other structures such as the manner in which the Chief Minister and Ministers are appointed or the participation of Committees and or their Chairs as part of the Executive. The Committee discusses these aspects in the following sections.

The Executive

2.6. The direct election of the Chief Minister and the appointment of a ministry from outside the legislature have several advantages for a small parliament. A paper presented at a recent parliamentary conference observed that cabinet government

⁴ Joint Committee on the Australian Capital Territory, *Self-government and Public Finance in the Australian Capital Territory*, Parliament of the Commonwealth of Australia, 1974

⁵ Select Committee on Self-Government, *Report*, Legislative Assembly for the Australian Capital Territory, 1990

⁶ *ibid*

could not work properly in jurisdictions with small assemblies.⁷ The paper argued that the cabinet system evolved in a house of over 600 members. In assemblies the size of the ACT's, it was not possible to appoint a ministry, a shadow ministry and yet maintain an effective back-bench to undertake the parliamentary roles of monitoring executive activities and scrutinising legislation, particularly through the committee system.

2.7. The paper offered a radical solution that saw that at the same time as the House was elected, the electorate would directly and separately elect a 'governor'. The governor would be head of state as well as head of government. This officer would conduct the executive government and would appoint a small cabinet from outside the parliament. The parliament would perform the legislative functions of passing laws and scrutinising the operations of government.⁸

2.8. The option of appointing Ministers from outside the Assembly enables the appointment of talented people with experience and knowledge that can be used to advantage, and overcomes the difficulty of a small legislature of providing both a talented ministry and back-bench. It would also bring to the highest level of government an expanded range of interests.

2.9. On the other hand, under this system, the independence of the legislature can lead to deadlock and stalemate. In the view of some commentators, the direct election of the Chief Executive vests too much power in one person. In addition, the appointment of ministers from outside the legislature raises the question of accountability to the electorate. There is no guarantee that the appointees will necessarily possess the political skills required to balance different interest groups.⁹

2.10. The Committee sought the views of a number of Members. One Member observed that in the ACT and elsewhere in Australia, there has been an increasingly presidential style of election.¹⁰ People and issues focus around the leaders. He thought that consideration should be given to directly electing the Chief Minister on a presidential or mayoral style. The Assembly's role would then be much more heavily focused on reviewing and enacting laws than it is at present. One advantage of this approach would be the ability of the Chief Minister to select the Executive from outside the Assembly.

2.11. Other Members however opposed the proposal. One Member argued that any changes were fraught with danger, 'with the business of running the Territory thrown into total chaos by potential rejections of Appropriation Bills on the floor of the Assembly'.¹¹ Another Member opposed the proposal on the grounds that it would

⁷ Harry Evans, *Constitutional safeguards, bicameralism, small jurisdictions and Tasmania*, Paper presented to Australasian Study of Parliament Group, September 1998

⁸ *ibid*

⁹ Clerk of Assembly, *Submission*

¹⁰ Gary Humphries, *Submission*

¹¹ Harold Hird, *Submission*

add another element of conflict to the parliamentary process. He thought that the proposal would undermine the system of proportional representation.¹²

2.12. The Committee has no doubt that the proposed model could solve some of the problems that were identified by the Pettit Review. As the Clerk points out, it may also address concerns of the need for council style government. The direct election of a Chief Minister to fill a Mayor type position may give the impression of a move in this direction.¹³

2.13. The Committee accepts the advice of the Clerk that any changes would need to be thoroughly examined and researched before considering their adoption. The Committee acknowledges that although the ACT's derivative of the Westminster system has its flaws, it is a tried and true system that works reasonably well in the ACT. It is necessary therefore, before any changes are made, to establish that any new system can provide at least the same, if not better, benefits.

Recommendation 1

2.14. The Committee recommends that:

the present procedures by which the Executive is established remain unchanged.

Executive Committees

2.15. The Committee considered two types of executive committees. One model has committee chairs that have the status of ministers and form the Cabinet. A variation of this model was proposed for the ACT. The chairs were to be appointed from the cross-benches and would report directly to the Executive as well as the Assembly. The chairs would not form the ministry but would participate in Cabinet discussions of their committees' recommendations.

2.16. The Chief Minister requested the Pettit Review to examine the feasibility of establishing a series of "executive committees". The Pettit Review concluded that there was no constitutional impediment to their establishment but considered that the proposal was not feasible in the context of ACT politics.

2.17. The Clerk advised that the establishment of Executive Committees would not conform to the Australian adaptation of the Westminster style of parliamentary Government.¹⁴ He considered that there was a real possibility that the scrutiny role performed by the community's representatives could be seriously compromised and there would be a lessening of the accountability of the Executive to the community. The proposals could act to the detriment the Assembly committees because of their increasing marginalisation and replacement by better-resourced hybrid bodies that were really responsible to no one but to everyone.

¹² Michael Moore, *Transcript*

¹³ Clerk of Assembly, *Submission*

¹⁴ Clerk of Assembly, *Advice to Members Concerning Proposed Executive Committees*, Legislative Assembly for the Australian Capital Territory, 1998

2.18. The chairs would not be appointed to the Executive but would be de facto members of the Executive and there would tend to be a corruption, however imperceptible, in their parliamentary and representative roles.

2.19. The Clerk believed that there would also be other serious issues of responsibility to address, with lines being blurred:

- who in the Assembly would be answerable to the Assembly for the relevant area of Executive responsibility?
- who would be scrutinised and undertake the scrutiny when Executive administration or proposals were being examined by Assembly committees?

2.20. The Committee also held discussions with councillors and staff of Brisbane City Council concerning the relevance of the structure and operation of their committee and cabinet system to a city-state like Canberra. There are six standing committees, which consider Council policies in their respective areas. The Establishment and Coordination Committee, also known as Civic Cabinet, consists of the Lord Mayor (who is directly elected) and the Chairpersons of the respective standing committees. The Civic Cabinet is the Brisbane City Council executive. The Committee considers that the Brisbane model would not translate easily to the ACT. It should be also noted that the range of matters which are the responsibility of the ACT Government, and for which the Brisbane City Council does not have responsibility in Brisbane, represent over eighty percent of the ACT budget.

2.21. The Committee has formulated revised budget procedures which provide for greater involvement of standing committees in the formulation of the budget. The Committee considers that if the revised budget consultative procedures are adopted, Executive Committees become even less appropriate to the operations of the Assembly as Members are more able to scrutinise the detail of Government programs.

2.22. The Committee considers that if there was a departure from the Westminster style of Government, rather than giving executive authority for some matters to a narrow range of committees, the power now vested in the Executive could be transferred to the Assembly and its committee system. The Committee however does not support the transfer of these powers.

ACT Autonomy

2.23. The Pettit Review noted the extensive powers of the Commonwealth to intervene in the affairs of the ACT if it so desired. The Governor-General, for instance, retains the power, acting on the advice of the Commonwealth Government, to set aside any enactment of the Legislative Assembly. The Self-Government Act also places constraints on the Assembly determining such matters as the number of seats in the ACT and the number of Ministers, matters which should be of no concern to the Commonwealth.

2.24. The Committee agrees with the Pettit Review that, unlike the Northern Territory, there is no prospect of the ACT ever becoming a State. The Committee acknowledges there will be the ongoing dilemma of the Commonwealth's obligation

to ensure that Canberra is a fitting capital that meets the expectations of the Australian people, but at the same time fulfils the genuine political and social aspirations of the people of the ACT.

2.25. The Committee supports the Pettit Review's recommendations that the Self-Government Act should be amended to:

- provide a preamble indicating that any intervention by the Commonwealth Parliament or the Governor-General in Assembly business or enactments should only be on the grounds that the legitimate interests of the Commonwealth require such action, and
- assign to the Assembly the similar powers as those enjoyed by a State parliament to alter arrangements for the normal processes of government.

2.26. The ACT Government advised the Committee that it supported these recommendations.¹⁵ The Government has commissioned the preparation of a draft preface, with the assistance of an eminent jurist. It was the intention of the Government to submit this preface to the Committee for consideration as soon as it was completed. Unfortunately, the preface was not received prior to the completion of this Report.

2.27. While supporting the inclusion of a preamble to the Self-Government Act, the Committee notes that its inclusion would be largely symbolic and would not change the existing powers of the Commonwealth to intervene in ACT affairs.

2.28. Of greater significance is the Government's intention to undertake a detailed review of the Self-Government Act, with a view to identifying those provisions that might be repatriated to the ACT. The Committee supports the amendments to the Act in so far as they relate to the Assembly taking responsibility for its own affairs.

2.29. The Committee also supports the more detailed review of the Act as suggested by the Government. The proposal however, may not, at this stage, be acceptable to the Commonwealth. It would be unfortunate if the justified amendments relating to the operation of the Assembly were rejected because they were requested as part of a larger package of reforms. The Committee therefore agrees with the Government's comment that a review will require extensive consultation and the development of a strong case to put to the Commonwealth Government.

Recommendation 2

2.30. The Committee recommends that:

the Government, in consultation with the Assembly and the community, undertake a detailed review of the Self-Government Act.

¹⁵ ACT Government, *Submission*

3. THE ELECTORAL SYSTEM

The 1998 Legislative Assembly Election

3.1. In December 1998, the ACT Electoral Commission reported on the operation of the *Electoral Act 1992* in regard to the conduct of the ACT Legislative Assembly election.¹⁶ The Assembly referred the report to the Committee for consideration.¹⁷ The Committee discusses both the Pettit Review findings and the more significant findings of the Electoral Commission in this section of the Report.

Fixed Terms

3.2. The Committee agrees with the Pettit Review's finding that fixed term elections are one of the strengths of the electoral system.

3.3. No submissions to the Pettit Review or the Committee argued against the fixed term arrangement, but some argued that the fixed term of three years should be increased to four, as applies in the majority of other Australian jurisdictions. The Pettit Review saw the major advantages of extending the term as savings on electoral costs, adequate time for new Assembly Members 'to make their mark' and increased scope for the Executive to take longer-term policy views. The Review recommended that the term be increased to four years.

3.4. The Government advised the Committee that, while it did not previously support four-year terms, it considered that the Pettit Review provided the opportunity for community views to be obtained.¹⁸ The Government now supports four-year terms on the basis that there is sufficient community support.

3.5. While the Committee supports the continuation of fixed terms, it has mixed views on whether or not the term should be increased to four years. Mr Cornwell accepts the arguments advanced in favour of four-year terms and supports their introduction. On the other hand, Mr. Osborne and Mr. Stanhope consider that the fixed term provision makes it unnecessary to increase the term to four years. Three-year terms make governments more accountable for their electoral promises, as well as breaches of these promises.

Recommendation 3

3.6. The Committee recommends that:

the fixed term of the Assembly remain as three years.

Number and Size of Electorates

3.7. The Pettit Review saw proportional representation as a strength of the system. Not only did it ensure against 'a winner take all' pattern, it guaranteed a better match between support in the electorate and representation in the Assembly.

¹⁶ ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*

¹⁷ Legislative Assembly for the ACT, *Minutes of Proceedings No. 34, 10 December 1998*

¹⁸ ACT Government, *Submission*

Proportionality was seen as particularly important in a unicameral system as it protected against single party domination and provided some of the checks and balances of an upper house. To ensure proportionality, it recommended that five seats should be the minimum number of seats in any electorate.

3.8. The Review argued that when electorates are determined, they should be kept as small and coherent as possible consistent with a five-seat minimum, and not differ much in the number of representatives. Furthermore, the Review considered it important to have an odd number of seats to overcome the problems associated with a tied vote.

3.9. Submissions to the Pettit Review and to the Committee pointed to two main weaknesses in the current division of electorates, namely:

- one electorate is geographically large and dispersed, and
- the electorates differ in the number of representatives - one with seven seats and the other two with five each.

3.10. The ALP argued that electorates should be based on the concept of community of interest.¹⁹ The electorate of Molonglo may not meet this criterion. The Party argued that electorates need not be of equal size provided one vote-one value is preserved. One Member considered that there should be a redistribution to provide for the election of three members in each of seven electorates.²⁰

3.11. The Electoral Commission advised that the trend in all states and territories and the Commonwealth has been towards stricter one vote one value rules which results in a compromise in the 'communities of interest' principle.²¹ It is only in very rare circumstances that 'you are going to get an electorate that is perfectly right on the numbers and also perfectly right on communities of interest'²². The only way a community of interest can be achieved is to have fewer members in each electorate. The Entrenchment Act has entrenched a principle that there should not be fewer than five members in an electorate.

3.12. The Electoral Commission advised that while the different sized electorates mean that different proportions of the vote are required to gain a quota in five and seven seat electorates, the actual number of votes required for a quota is the same in each electorate.²³ The Committee accepts the advice of the Electoral Commission.

Recommendation 4

3.13. The Committee recommends that:

the number and size of electorates continue to be determined on the application of the 'one vote, one value' principle.

¹⁹ Australian Labor Party, *Submission*

²⁰ Harold Hird, *Submission*

²¹ ACT Electoral Commission, *Transcript*

²² *Ibid*

²³ ACT Electoral Commission, *Submission*

Number of Representatives

3.14. The Committee notes the Pettit Review's conclusion that in terms of overall representation, the people of Canberra were severely under-represented with a ratio of population to Members that was over six times higher than the Australian average.

3.15. It has been argued that there is an optimum size, not related to the size of the electorate, below which a legislature cannot operate effectively.²⁴ With a small legislature, it is more difficult to secure adequate representation of all shades of opinion. In addition the maintenance of a system of cabinet government requires the Assembly to have a certain number of members. The cabinet system evolved in a house of over 600 members. The ACT Assembly was considered well below the optimum size.²⁵

3.16. Some witnesses agreed with the Pettit Review conclusion that the ratio of MLAs to electors should be maintained at the level prevailing in 1989, the year that self-government was introduced. A number saw it as a means to allow a modest increase in numbers but at the same time taking decisions relating to the size of the Assembly out of the hands of (possibly) self interested Members.²⁶

3.17. On the other hand, others were opposed to the automatic increase in the size of the Assembly in accordance with population movements.²⁷ The Committee was reminded that the original reason for the seventeen members is that this was the number in the old Advisory Assembly. As the original number was arbitrary, it followed that the Pettit Review's ratio was itself arbitrary.²⁸

3.18. The Committee considers that this is possibly the most unpopular recommendation with the Canberra community. The Committee considers that the Pettit Review did not give adequate weight to a number of arguments against increases in the number of Members.

3.19. Little account was taken of the additional cost of four extra parliamentarians. A rough estimate made by the Committee of the additional cost shows that it is perhaps as much as \$3 million over the three-year term of the Assembly.

3.20. While Canberra's representation is far less than the NT and Tasmania, the Committee questions whether these two jurisdictions require this level of representation. The Committee notes that Tasmania has commenced a process of reducing the number of members.

3.21. While the Pettit Review rejected arguments advanced against increased members as 'a view from the top', the fact remains that Canberra *is* relatively

²⁴ Harry Evans, *Constitutional safeguards, bicameralism, small jurisdictions and Tasmania*, Paper presented to Australasian Study of Parliament Group, September 1998

²⁵ *Ibid*

²⁶ ACT Greens, *Submission*, Michael Moore, *Submission*, and Harold Hird *Submission*

²⁷ Proportional Representation Society, *Submission*

²⁸ Australian Labor Party, *Submission*

compact and homogeneous. Members are more readily accessible because they do not have to travel to a distant legislature. Nor are they required to be absent from their electorates for extensive periods of time during parliamentary sittings.

3.22. The Pettit Review appears to suggest a correlation between the number of parliamentarians and the well being of the community. The Review observed that there are problems which exist in Canberra, as elsewhere, such as poverty and dependency, unemployment, youth suicide and a drug culture and feelings of vulnerability. The Review commented that there will always be a need for representatives to listen to people, to guide them around the services, to assure them and so on. The Committee agrees. The Committee, however, is not aware of any evidence to suggest that the high proportion of politicians to electors in jurisdictions like Tasmania has resulted in any better circumstances for the disadvantaged. Nor has the Committee seen evidence of any relationship between the number of politicians and the level of crime or substance abuse.

3.23. The Committee notes that one argument advanced in favour of increased numbers of members is that it will increase the number of Government members available to serve on Committees. The Committee considers that the reasoning behind this argument is not necessarily valid. There is no guarantee that the sixth or seventh member in each electorate will be a government member. If there were four additional seats at the last election, however, two additional government members would have been elected.²⁹

3.24. The Committee notes however, the argument of the Women's Electoral Lobby that research around the World indicates that increasing the size of a legislature has the effect of improving the representation of women.³⁰ The Committee also suspects that by reverting to a single ACT electorate, the number of women Members would increase without the need to increase the number of Members in the Assembly.

3.25. The Pettit Review did not fully explore how the present Assembly of seventeen members could perform better. As a number of witnesses suggested, the conventions relating to the position of Speaker and the capacity of Ministers to serve on committees were not fully explored. The Pettit Review did not examine possible alternative measures such as changes to the electoral system to enable the direct election of the Chief Minister and the appointment of the Executive from outside the Assembly, and at the same time maintaining a seventeen seat legislature (or less).

3.26. The Government agreed with the proposal for an increase in the size of the Assembly in principle.³¹ It considered that the issues of adequate representation identified by the Pettit Review outweigh any financial implications associated with this recommendation and smooth functioning of the Assembly.

3.27. The Committee accepts that strong arguments can be made for an increase in the number of members. Mr. Cornwell considers that these arguments are

²⁹ ACT Greens, *Submission*

³⁰ Women's Electoral Lobby, *Transcript*

³¹ ACT Government, *Submission*

compelling and supports an increase in the number of Members to twenty-one. On balance however, Mr Osborne and Mr. Stanhope believe that the arguments against an increase in members outweigh the arguments in support. While self-government is now more generally accepted by the people of Canberra, it is still unpopular with some. To increase the number of local politicians at this stage of self-government will only increase the cynicism and opposition.

Recommendation 5

3.28. The Committee recommends that:

the number of seats in the Fifth Assembly remain as seventeen.

How-to-Vote Cards

3.29. The Pettit Review identified three features of the electoral system which make it difficult for party machines to control the outcome of people's voting:

- there is no 'above the line' voting,
- Robson rotation is used, and
- the distribution of how-to-vote cards is prohibited within 100 metres of a polling place.

3.30. The Pettit Review considered the policy that currently prevails on how-to-vote cards was extremely paternalistic. It argued that it was reasonable for voters to vote in the order proposed by a party or grouping and recommended that voters should be able to obtain how-to-vote cards in polling places, even if the ban on distributing them outside was maintained.

3.31. The Government supports the provision of how-to-vote cards in polling booths subject to the ban on distributing how-to-vote cards outside polling booths being maintained, with the Committee to determine the most appropriate way to display how-to-vote cards inside polling booths.³²

3.32. Of the submissions received by the Committee on how-to-vote cards, only the ALP argued in favour of their reintroduction³³, although the Greens would support their availability in polling places, provided that no party workers were present.³⁴ The ACT Branch of the Proportional Representation Society commented on what it saw as the remarkable use by the Pettit Review of the word "paternalistic" in relation to the absence of how-to-vote cards.³⁵ In the Society's view, Members of the Working Party 'betrayed a condescending view of voters' abilities reminiscent of hankerings for guided democracy in some countries'.³⁶

3.33. The ALP considered that voters are motivated by a range of considerations from individual candidates to loyalty and assessment of political parties and

³² ACT Government, *Submission*

³³ Australian Labor Party, *Submission*

³⁴ ACT Greens, *Submission*

³⁵ Proportional Representation Society of Australia, *Supplementary Submission*

³⁶ *Ibid*

groupings.³⁷ The selection of a preferred order by a political party involves a conscious process and helps balance the unsatisfactory and arbitrary outcomes of the present rotation system. The ALP considers that in a free democratic society there can be no justification for the current ban.³⁸

3.34. The Electoral Commission conducted an exit poll at the last Election that showed, amongst other things, that 84 percent of those polled found the absence of how-to-vote cards was not a problem, while fifteen percent did.³⁹ The Electoral Commission does not support the placing of how-to-vote cards inside polling places. The Commission advised that if how-to-vote cards were available in polling booths, it would add to costs and place additional responsibility on electoral staff. It also thought that given the ban was to remove the influence of how-to-vote cards from the vicinity of polling places, providing them inside polling places would seem to be at odds with this intention.⁴⁰

3.35. Mr. Stanhope considers that there is no justification for the current ban. Mr. Osborne and Mr. Cornwell, on the other hand, consider that the ban should remain.

Recommendation 6

3.36. The Committee recommends that:

the present ban on how-to-vote cards at polling places remain.

Party Linear Voting

3.37. As one submission pointed out, for its simplicity, Robson Rotation has served the ACT extremely well, enabling voters to determine the composition of the Legislative Assembly.⁴¹ In its 1995 review, the Electoral Commission noted that, while Robson rotation did share the linear vote evenly between candidates within a party column when first preference votes were counted, it did not effectively share the linear vote equally between candidates whenever a candidate was excluded during the scrutiny and later preferences were counted. In 1995 the Commission took the view that this apparent effect of the linear vote was likely to diminish over time as voters, candidates and parties became used to the new system.⁴²

3.38. However, despite increased emphasis in the Commission's 1998 election advertising on encouraging deliberate votes for particular candidates, and evidence that the proportion of linear votes did decrease from 1995 to 1998, it was apparent that the linear vote had an effect in every case where a candidate was excluded in 1998. While the linear vote will not have an influence on the number of seats won by

³⁷ Australian Labor Party, *Submission*

³⁸ *Ibid*

³⁹ ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*

⁴⁰ ACT Electoral Commission, *Submission*

⁴¹ Proportional Representation Society of Australia, *Supplementary Submission*

⁴² ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*

any particular party, it may influence which individual candidates within a party are elected.⁴³

3.39. Modern printing techniques enable the printing of many more variations of ballot papers without greatly increasing costs. The Committee received a number of submissions relating to increasing the number of rotations to take advantage of these new printing techniques.⁴⁴ The submissions were technical, and the Committee considers that it is not its role to select the most appropriate model for the ACT. The Committee, however, strongly supports the introduction of a rotation system that eliminates or greatly reduces the element of chance. The Committee notes that the Electoral Commission has developed a model which it claims would eliminate the advantages of some candidates over others through the 'luck of the draw' which still remained in other models.⁴⁵

3.40. The current specific form of Robson rotation set out in Schedule 2 of the Electoral Act has been entrenched by the Proportional Representation (Hare-Clark) Entrenchment Act and can only be altered by a two-thirds majority of Assembly Members or by a referendum.

3.41. The Commission recommended reducing the maximum permissible column length to 7 candidates, rather than the current maximum length of 12. According to the Commission, allowing column lengths greater than 7 would greatly add to the complexity of printing ballot papers by requiring significantly more versions.⁴⁶ One submission however considered that the column limit should be nine candidates.⁴⁷

3.42. The Electoral Commission considered that limiting the number of candidates should not prove to be a problem, as in practice parties or non-party groups are not likely to nominate more candidates than there are vacancies in an electorate (because to do so would run the risk of losing the preferences of those voters who only complete as many preferences as there are vacancies). If a group of candidates longer than the minimum was nominated, that group would be split over two or more columns.⁴⁸ Mr. Osborne and Mr. Cornwell agree with the Electoral Commission.

3.43. Mr. Stanhope considered that limiting the number of candidates raises possible problems if there were to be a number of resignations of members elected to one seat and/or eligible replacements declined the positions (as happened in the Molonglo seat during the third Assembly). This problem would not arise if casual vacancies were filled by nomination of the relevant party or grouping (the Committee

⁴³ Ibid

⁴⁴ See: Ken Brewer, *Submission*; Miko Kirshbaum, *Submission*; Proportional Representation Society of Australia, *Supplementary Submission*, and ACT Electoral Commission, *Supplementary Submission*

⁴⁵ ACT Electoral Commission, *Supplementary Submission*

⁴⁶ ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*

⁴⁷ Proportional Representation Society of Australia, *Supplementary Submission*

⁴⁸ ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*

discusses the filling of casual vacancies in a later section of the Report). An alternative would be to make the column length nine in seven member electorates.

Recommendation 7

3.44. The Committee recommends that:

on the advice of the Electoral Commission, the Government draft legislation to amend Schedule 2 of the Electoral Act to include more rotations.

Recommendation 8

3.45. The Committee recommends that:

the Electoral Act be amended to reduce the maximum number of candidates included in one column on the ballot paper.

3.46. The Electoral Commission considers that the additional rotations would add considerably to the task of typesetting and proof reading the ballot papers. The Commission recommended bringing the close of the nomination period forward by one day to give the Commission more time to prepare ballot papers.⁴⁹

Recommendation 9

3.47. The Committee recommends that:

the close of the nomination period be brought forward by one day.

Exhaustion of Votes

3.48. The Committee was advised that informal voting dropped by one-third to about 4 percent, most of it deliberate. Ballot-papers ask voters to mark at least as many preferences as there are vacancies. Survey findings of the ACT Electoral Commission indicate that only one voter in three goes beyond the number of vacancies.⁵⁰

3.49. The Conservation Council of the South-East Region and Canberra advised the Committee that at a number of polling booths staff instructed voters to only put a number from 1 to 5 against 5 candidates.⁵¹ The Proportional Representation Society believed that that if more voters understood the risks they were taking of their vote exhausting, they would mark more squares.⁵²

3.50. The Committee agrees with the views put to it that in 2001, the Electoral Commission should devote resources to explaining to voters the choices they have and the possible outcomes of those various choices. The Committee however considers that the manner in which voters are advised to cast their votes should not

⁴⁹ ACT Electoral Commission, *Supplementary Submission*

⁵⁰ Proportional Representation Society of Australia, *Supplementary Submission*

⁵¹ Conservation Council of the South-East Region and Canberra, *Submission*

⁵² Proportional Representation Society of Australia, *Supplementary Submission*

be prescriptive. It is a fallacy to believe that if all preferences were numbered on a ticket of thirty or more candidates, that the distribution of the lower order preferences accurately reflects the considered wishes of voters. Electors must also be made aware that a single '1' vote is a valid vote, if that reflects their wishes.

Recommendation 10

3.51. The Committee recommends that:

the Electoral Commission, as part of its information program, ensure that resources are devoted to explaining the implications of preference choices, including numbering only one box, numbering the number of boxes for which there are seats in the electorate, or giving preferences to as many candidates as electors wish.

Casual Vacancies

3.52. While the Pettit Review described the method by which casual vacancies are filled it did not comment on whether it considered that the 'count-back' system was the most appropriate.

3.53. The ALP advised the Committee that it does not accept the rationale that an unsuccessful candidate necessarily reflects the popular will more than a replacement appointed by the party or the political grouping, as occurs in the Senate.⁵³

3.54. The Electoral Commissioner considered that the manner in which casual vacancies were filled was essentially a policy decision.⁵⁴ He advised that a feature of proportional representation systems was that it was not possible to have a bi-election for one vacancy, because rather than representing 50 per cent plus of the electorate, the member was actually representing 'a sixth or an eighth or whatever of that particular electorate'.⁵⁵ The Commissioner's view was that the count back method was an effective method, as it required voters who chose that member to also choose that member's replacement.⁵⁶

3.55. The Committee notes that the method of filling vacancies is entrenched. It is the view of Mr. Stanhope, however, that the count-back system does not necessarily result in outcomes that reflect the wishes of the electorate. In fact it could result in outcomes which could distort voters intentions to the detriment of governance in the ACT. His preferred model is for vacancies to be filled by nomination of the party, political grouping or independent. In the case where a vacating independent is unable or unwilling to nominate a replacement, then it would be for the Assembly to choose a replacement.

Mr. Osborne and Mr. Cornwell strongly disagree. They agree with the Electoral Commissioner's view that the present count back system requires voters to

⁵³ Australian Labor Party, *Submission*

⁵⁴ ACT Electoral Commissioner, *Transcript*

⁵⁵ *ibid*

⁵⁶ *ibid*

thoughtfully allocate preferences to ensure any replacement Member reflects their preference at the time of voting. In addition they have concerns about the appointment of a new Member to the Assembly who may not have been a candidate at the previous election.

Disclosure of funding

3.56. The Election Funding and Financial Disclosure (FAD) scheme in the ACT is modelled closely on the Commonwealth's FAD scheme to reduce the administrative load on parties registered both with the Commonwealth and the ACT. As a result, in the past, as amendments are made to the Commonwealth's FAD scheme the ACT has passed legislation to ensure that the ACT FAD scheme remains in line with that of the Commonwealth.⁵⁷ As a result, there is no requirement to declare donations of less than \$500. The Pettit Review considered that the rules should be amended to require the disclosure of a donor who made a series of such donations.

3.57. In its report on the 1995 election, the Commission recommended against adopting the Commonwealth provision whereby individual donations of less than \$500 did not need to be taken into account when determining whether a donor had given more than \$1500 to a party in a financial year. The Assembly did not accept this recommendation, and adopted this provision as part of bringing the ACT provisions into line with the Commonwealth provisions.

3.58. The Electoral Commission advised that the Commonwealth Government has indicated that it proposes to introduce changes which will include:

- raising the threshold amount at which the identity of donors to political parties has to be disclosed from \$1500 to \$5000 received during the financial year,
- raising the amount of individual donations that need to be taken into account in determining whether a donor has given more than the threshold amount to a political party in a financial year from \$500 to \$1500, and
- raising the threshold amount above which a donor to a political party must submit an annual return from \$1500 to \$10000.⁵⁸

3.59. If these changes were to be adopted by the ACT they would significantly change the nature of the ACT FAD scheme. The Committee notes with concern that because of the smaller scale of ACT politics compared to Federal politics, the implementation of the proposed higher threshold amounts for disclosure would mean that registered parties would not be required to list many of the donors that are currently listed.

3.60. Mr. Osborne and Mr. Stanhope support an amendment to the Act which would break the nexus between the Commonwealth and ACT FAD schemes. Mr. Cornwell has concerns, however, that this move could result in donations, which might otherwise be made to the ACT branches of parties, now being directed to the Federal party.

⁵⁷ ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*

⁵⁸ *Ibid*

Recommendation 11

3.61. The Committee recommends that:

the Electoral Act be amended to break the nexus between the Commonwealth FAD scheme and the ACT's FAD scheme.

Registration of Political Parties

3.62. The Electoral Commission considers that the scheme for registration of political parties could be improved to remove some apparent anomalies. The Electoral Commission proposes that the party registration scheme be revamped to provide for the registration of parties, and for the registration of 'group names' for use on ballot papers.⁵⁹

3.63. To be registered as a political party, an organisation should have a formal constitution and at least 100 members eligible to be electors in the ACT. Members of the Legislative Assembly who were not members of a registered political party would be entitled to register a group name. If a Member did want to use the word 'party', he or she would be required to register a party with at least 100 members. Registration of 'group' names would be similar to parties, except that the word 'party' could not be used. The Commission proposes that a ballot name registered by an elected Member could be used in all three electorates by candidates sponsored by that elected Member.

3.64. At present, any political party that can claim to have a member elected to any Commonwealth, State or Territory parliament can apply to be registered as an ACT political party without having to satisfy a membership requirement. The Commission proposes that parliamentary parties should also need to satisfy the Electoral Commissioner that they have at least 100 members eligible to enrol for ACT elections before being eligible for party registration.

3.65. The Committee agrees with the recommendations of the Electoral Commission which are detailed at Appendix C.

Recommendation 12

3.66. The Committee recommends that:

recommendations 6 to 12 of the ACT Electoral Commission's review of the 1998 ACT Legislative Assembly election be adopted.

⁵⁹ Ibid

4. THE LEGISLATIVE SYSTEM

The Hybrid System

4.1. The Pettit Review observed that the Assembly has two main functions, namely, electing the Head of the Executive and serving as a legislative chamber. The Clerk of the Assembly saw the role of the legislature as being somewhat wider than that outlined by the Review.⁶⁰ As well as choosing the Executive and initiating and considering legislation, the legislature has a wider role in scrutinising and appraising the performance of the Executive and its administration. It also considers its financial proposals, receives petitions from the electors, scrutinises the Executive's subordinate legislation and, through its Members, ventilates grievances of the electorate. The Committee agrees with the Clerk's wider view of the role of the Assembly.

4.2. The Pettit Review thought that of the ACT's government system was a hybrid structure in that it was fundamentally Westminster in character, but it also incorporated an element of the Washington model. In accordance with the Westminster system, the MLAs elect the Chief Minister, who then appoints other members of the Executive from among the MLAs. But, in a feature characteristic of the Washington system, the Assembly is not usually controlled by the Executive and is a relatively independent body with which the Executive must negotiate.

4.3. The Clerk advised the Committee that he was puzzled by the notion that the ACT had a 'hybrid system'.⁶¹ Clearly, the Assembly was not 'Westminster' but a derivative of that system and, as pointed out by the Review, the role of the Assembly is developing in ways that are different from other Australian legislatures (and ways which some may see as a blurring of the lines between the Executive and the legislature). However the Clerk was not so sure that he would call it a hybrid that resembles the Washington system. In fact, there are fundamental differences. For example, the Chief Minister does not have the power of veto.⁶²

4.4. The Committee agrees with the Clerk's view that it should not be assumed that the Westminster parliament and its derivatives always have governments supported by the majority of the lower House. For much of the first 10 years of the Commonwealth the party in government in Australia did not have a majority in the House of Representatives and in Westminster itself minority governments are not uncommon. Since 1900 there have been eight in the United Kingdom⁶³.

4.5. The Committee notes that minority governments are not that unusual in the 'Westminster' system and its derivatives. The fact that the ACT has minority governments should not be used to blur the distinction between the role of the Executive and that of the legislature to the detriment of either.

⁶⁰ Clerk of Assembly, *Submission*

⁶¹ *Ibid*

⁶² *Ibid*

⁶³ *Ibid*

Budget Consideration

4.6. The Committee considers that the question of the budgetary process is fundamental to government.

4.7. The Government has agreed to the Pettit Review philosophy on engaging the Assembly in the development and debate of budget matters⁶⁴. The Government also has agreed however that the central business of an Executive is to devise and implement a Budget, and that in order to do this it has to enjoy a great deal of autonomy.

4.8. The Pettit Review envisioned that portfolio estimates and annual and financial reports would be referred to the standing committees. The Government advised that it would like further consideration of the manner in which the Assembly handles the Estimates process for the Budget.⁶⁵ While the Government supported the role of the Select Committee on Estimates in 1998-99, it would support the referral of the Appropriation Bill to the agency-tracking Committees in future years.

4.9. The Committee notes that the Senate no longer appoints estimates committees and its standing committees now consider the appropriation bills. Annual reports stand referred to House of Representatives Standing Committees.

4.10. It is the Committee's view that the estimates process, as it is currently structured, does not work effectively. It is a time consuming highly politicised exercise that at times contributes little to the budget process. The same can be said for Assembly examination of agency annual and financial reports.

4.11. While the Pettit Review proposals seem fine in principle, the Committee considers that the Review's recommendations and the Government actions fall far short of what it considers to be meaningful input into the formulation of the Budget.

4.12. Given the current level of resources available to Assembly committees, the Clerk queried to what extent the legislature or a committee thereof could be expected to fulfil the full role that appeared to be envisaged by the Pettit Review.⁶⁶ The Clerk drew the Committee's attention to a now discarded committee of supply and committee of ways and means of the Federal Parliament. All matters concerning the raising and granting of public money had to be considered in committee of the whole House before legislation could be introduced to give effect to financial procedures. A derivative of such a procedure where an Assembly committee or committees could consider and report on (for full debate in the plenum) the Executive's revenue and expenditure proposals for the year may be well worth consideration.⁶⁷ While attracted to the Clerk's suggestion, the Committee is concerned that the normal conventions relating to modification of the Executive's budget would still apply.

⁶⁴ ACT Government, *Submission*

⁶⁵ ACT Government, *Submission*

⁶⁶ Clerk of the Assembly, *Submission*

⁶⁷ *Ibid*

4.13. The preferred option of Mr. Osborne and Mr. Cornwell is for the Government to prepare preliminary budget papers that clearly indicate the Government's proposed over-all budget deficit or surplus. The 'bottom line' for each of the portfolios would not be changed during any budget negotiations. However, Members should be free to make any amendments to the components within the portfolios as they see fit.

4.14. Both Mr. Osborne and Mr. Cornwell see the revised procedures being introduced on a trial basis and assessed later as to their effectiveness. Mr. Osborne, while supporting the proposed procedures, is disappointed that he could not get agreement on procedures that would have also enabled Members to make amendments between portfolios but still maintaining the overall budget 'bottom line'.

4.15. In detail, Mr. Osborne and Mr. Cornwell consider that the following process should be followed:

- the Government prepare draft estimates of expenditure and revenue proposals and statements of fiscal intent which are presented to the Assembly,
- the Assembly refers the draft budget to the relevant standing committee,
- each standing committee scrutinise the budget and hold any inquiry it sees fit,
- each committee reports to the Assembly, (within say a 2 to 3 week period) with or without a statement, which may include recommendations for changes while maintaining each portfolio's 'bottom line',
- the Government considers the committees' suggestions and presents its budget to the Assembly,
- the budget is referred to the relevant standing committees for the estimates process,
- each committee prepares a report which is presented to the Assembly in a combined format with those of the other committees,
- the estimates report, the Government's response and the budget are debated and the budget is either passed or rejected by the Assembly.

4.16. Because of the draft budget process, the final estimates process would be focussed and streamlined and need not take up much of the Assembly's time.

4.17. The Committee was concerned that fragmented examination of the budget by the individual standing committees may not work in a legislature as small as the Assembly. All members have interests wider than the committees on which they serve and not all political groupings are represented on all committees. Mr. Osborne and Mr. Cornwell note however that Standing Order 235 enables Assembly Members, not being members of a particular committee, to examine witnesses. Standing Order 234 however excludes those Members from participating in any vote or resolution of that committee. Those Members however retain their right to debate any resolution or report presented to the Assembly by the committee. To facilitate participation of all Members in committee proceedings, a schedule of meetings might be developed to enable Members to participate across a range of committees.

4.18. Mr Stanhope does not agree with the majority of the Committee. He believes that it is the role of Government to prepare and propose a budget. Further the

proposal for the reference of a draft budget to the various standing committees would lead to a chaotic situation that would seriously inhibit the preparation of a coherent budget.

Recommendation 13

4.19. The Committee recommends that:

the Government and the Assembly adopt, on a trial basis, the revised budget processes outlined by the Committee, which include the development of a draft budget and the involvement of the standing committees in the budget process.

Legislative Program

4.20. The Pettit Review recommended that in order to facilitate orderly business, and to allow for good financial management of the Assembly, non-Executive Members should normally be expected to give notice of bills that they plan to bring forward in each quarter. The Government supported this recommendation.⁶⁸

4.21. The Committee agrees with the concerns expressed by Members and the Clerk about this recommendation.⁶⁹ A question that immediately springs to mind is whether the Members proposing such a program are to be required to implement it or are to be permitted to present legislation that has not been foreshadowed. Also, would those Members with only limited access to drafting assistance be seen as not fulfilling their duties as Members?

4.22. As the Clerk commented, it is to the advantage of the Assembly and the Territory that non-Executive Members have the opportunity to present legislative proposals to the Assembly (both by way of access to Assembly time and access to drafting assistance), but to suggest that this is a requirement or duty of Members possibly indicates a misunderstanding of the ACT's constitutional framework.⁷⁰ The Committee agrees that there may be good reasons why a Member may not wish to give notice of the presentation of a Bill.⁷¹

4.23. The Executive's program has always been regarded as a useful tool in organising the bureaucracy. Finally, it is the Executive that has the responsibility for governing the Territory and executing and maintaining enactments - not non-Executive Members. The program has always been regarded as a useful tool in organising the bureaucracy.

4.24. The Committee is concerned that the publishing of the Members' legislative programs and the amount of that legislation passed could be incorrectly used by the media and others as a means of assessing a Member's effectiveness.

⁶⁸ ACT Government, *Submission*

⁶⁹ Michael Moore, *Submission* and Clerk of the Assembly, *Submission*

⁷⁰ Clerk of the Assembly, *Submission*

⁷¹ *Ibid*

4.25. Of far more importance than the prior provision of a legislative program is the availability of quality drafting assistance to enable Members to introduce legislation to the Assembly. Mr. Osborne and Mr. Stanhope consider that the resources available for the provision of drafting services to non-Executive Members are inadequate. Mr. Cornwell considers that they are adequate and, in fact, compare favourably with, and sometimes exceed, those available to non-Executive Members in other jurisdictions.

Recommendation 14

4.26. The Committee recommends that:

the resources available for the provision of drafting services to non-Executive Members be increased.

Assembly Appropriation

4.27. The Pettit Review commented that the Speaker, without the backing of an Assembly resolution, negotiated funds for central Assembly administration. The Review considered that the Assembly should propose a suitable appropriation to the Executive and that any disagreement should be referred to the Administration and Procedure Committee.

4.28. The Government advised the Committee that it supports these recommendations in-principle.⁷² The Government supports the suggestion that the Assembly submit a proposal to the Executive for the funding of the Assembly. The Government would not support an interpretation of this recommendation which would allow the Assembly to alter or vote down the allocation proposed in the Appropriation Bill without the Government having recourse to all the subsequent action which would normally flow from such a vote (i.e. loss of supply and bringing down of the Government).⁷³

4.29. The Committee considers that the Pettit Review did not fully understand the current procedures by which the Assembly's appropriation is determined.

4.30. Currently, Section 20 of the Financial Management Act 1996 sets down a procedure whereby the Speaker, after consulting with a relevant committee of the Assembly, advises the Treasurer of the appropriations that he or she considers should be made for the Legislative Assembly Secretariat. Whilst the appropriation proposed is not formally debated in the Chamber prior to the consideration of the main appropriation Bill (as the recommendation appears to envisage), the appropriation proposal is initiated by the Speaker following advice from the Standing Committee on Administration and Procedure which has representatives from all the groups in the Legislative Assembly.

⁷² ACT Government, *Submission*

⁷³ *Ibid*

4.31. The Clerk suggested that an alternative approach might be for the Executive, following consultation with the Speaker, to introduce a separate appropriation Bill for the Assembly appropriation. That Bill could then be referred to the Standing Committee on Administration and Procedure (after the in principle stage) for consideration and report. And that report would then be considered by the Assembly prior to the Assembly's further consideration of the Bill. Any proposed changes to the Budget envisaged could be proposed to the Assembly by way of recommendation by the committee or during consideration of any recommendations the committee may make.⁷⁴

4.32. The Clerk however considered that the current system works well. He noted that the Standing Committee on Administration and Procedure has the power to report to the Assembly on the estimates for the Assembly should it see fit.⁷⁵

4.33. The Committee considers that the current arrangements for the development of the Assembly appropriation are satisfactory. Mr. Osborne and Mr. Stanhope believe however, that the independence of the Assembly would be enhanced if the Assembly's appropriation were provided in a separate bill. Mr. Cornwell sees no need to change the current arrangements.

4.34. Mr. Osborne is surprised that the Government would consider an amendment to the Assembly appropriation as a vote of no confidence. He considers this interpretation to be very narrow and in conflict with concepts such as the independence of the legislature. Mr. Cornwell, on the other hand, sees no reason why the Assembly component of the budget should be considered to be different to any other component of the budget. Mr. Stanhope considers that appropriate conventions can be developed to address the Government's concerns about amendment to the Assembly's appropriation being taken as a confidence matter.

Recommendation 15

4.35. The Committee recommends that:

the appropriation for the Legislative Assembly be provided in a separate bill.

4.36. The Committee supports the Pettit Review's recommendation that there should be a modest increase in secretarial support for committees and in the material resources available to individual MLAs. The Committee is not sure what level of increase the Pettit Review thought would be appropriate. The Committee is intrigued however by the Government's response that the Committee may wish to consider, in the first instance, possible efficiencies that can be achieved in the Committee Secretariat, given that the Secretariat consists of only six permanent staff.

4.37. The Pettit Review considered that as an independent body the Assembly should assume responsibility either for providing the services that are essential to its

⁷⁴ Clerk of Assembly, *Submission*

⁷⁵ *Ibid*

members or, as the purchaser-provider model suggests, for purchasing them from elsewhere. The Review observed that the services such as those of the Parliamentary Counsel are available only to the Executive. This is not correct, as the services are available to all Members of the Assembly.

4.38. The Government supported this recommendation in-principle. Under the ACT financial framework, it is reasonable for the Speaker to purchase various services on behalf of the Assembly. This is also consistent with the theme of the Assembly taking responsibility for the provision of services to its Members.⁷⁶

4.39. The Clerk advised that the vast bulk of the drafting services provided to Members is provided by the Office of Parliamentary Counsel. In relation to the resources needed for the provision of drafting assistance for non-Executive Members, quite clearly the demand will fluctuate from time to time and from Member to Member. To date, there has been no formalised provision for the allocation of resources between Members.⁷⁷

4.40. The Clerk advised that what is of critical importance was the fact that, by Australian standards, a very high proportion of the Bills introduced are sponsored by non-Executive Members and a very high proportion of these are enacted. It was therefore essential that there be a consistent and high standard of drafting available.

The Library

4.41. The Pettit Review argued for control of the Library to be transferred to the Assembly. The Government does not support this proposal.

4.42. The ACT Government and Assembly Library provides services to the Legislative Assembly and to ACT Public Service Officers. To implement the Pettit Review's recommendation would require separating the operations of the Assembly Library from that of the Government Library. Separation of these two functions would likely result in a reduction in the level of service to both the Assembly and other Government users. Currently 54 percent of enquiries, which are answered by library staff, come from the Assembly.⁷⁸

4.43. The Government suggested that an alternative to separating the two services would be an arrangement whereby the Assembly 'purchases' these services from the Government Library.

4.44. A review of the structure and operations of the Assembly Secretariat found that there was little support among Members for transferring responsibility for the Library to the Assembly. It considered that with electronic access to a range of data sources, Members and committees do not necessarily have to rely on a library to obtain information and data sources.⁷⁹

⁷⁶ ACT Government, *Submission*

⁷⁷ Clerk of Assembly, *Submission*

⁷⁸ ACT Government, *Submission*

⁷⁹ ACT Legislative Assembly Secretariat, *Review of Structure and Operations*, Review Commissioned by Legislative Assembly Secretariat, 1998

4.45. The Clerk advised that the Speaker and the Standing Committee on Administration and Procedure already have some level of control over the operation of the Library in-so-far as it is an Assembly library. Standing Order 16 states that the Committee shall advise the Speaker on the operation of the Assembly library. Over the past 10 years there have been a number of occasions that the Committee has discussed the Library and its operation.⁸⁰

4.46. The Committee does not support the transfer of responsibility for the Library to the Assembly. Nor does it support the division of the Library's collections and functions between the Executive and the Assembly. The Committee considers that the transfer of responsibility for administration of the Library from the Executive to the Assembly would be primarily a symbolic gesture and is unlikely to result in improved services to Members or enhance the independence of the Assembly. It may even have the opposite effect.

4.47. The Committee believes however that the Assembly should be recognised as the Library's 'priority client'.

Recommendation 16

4.48. The Committee recommends that:

a charter be developed which recognises, as the prime responsibility of the Library, service to the Assembly, its Members and staff.

Recommendation 17

4.49. The Committee recommends that:

the senior librarian be assigned the title 'Assembly Librarian'.

Recommendation 18

4.50. The Committee recommends that:

library services be provided to the Assembly on a purchaser provider basis.

Assembly Research Service

4.51. The Pettit Review recommended that there should be a modestly funded research service associated with the Library. The Government advised the Committee that it is keen to implement this recommendation in one of two ways:

- the Assembly fund the library to provide the service. Under this model, the Library would agree to provide research assistance, either in-house or outsourced, to the level requested; or

⁸⁰ Clerk of Assembly, *Submission*

- that the Assembly appoint research staff, or engage an outsourced provider. Staff would utilise the resources of the ACT Government Library, and other ACT libraries to meet their research needs as required.⁸¹

4.52. Under the first model, staff supervision and appointment would be the responsibility of the library, and be funded by the Assembly. The second model would require the Assembly to fulfil these functions and fund the associated costs.

4.53. The Pettit Review did not provide any details of its view of the size, function or nature of the research service. The Committee notes however that to provide useful support to Members, across the range of 'state' and local issues, would be costly. Given that the Pettit Review recommended only a 'modestly' funded research service, it would seem difficult to appoint the range of staff with expertise in all the areas dealt with by the Assembly. In addition it is difficult to see how permanent staff would be able to cover the changing issues over time.

4.54. A paper presented at a seminar on legislative research services indicated how research services vary between Australian jurisdictions.⁸² The paper stated that the nature of the research provided depends on the amount of funding provided. The most important service identified by Members was to provide specific briefing papers in response to requests from individual Members.

Basic Data on Legislative Research Services in Australian Parliamentary Libraries

Jurisdiction	No. Members Currently	Staff (FTE) April 1998	
		Professional	Support Staff
National: Commonwealth of Australia	226	44	11
State: New South Wales	141	7	1
Queensland	89	11	1.5
South Australia	69	5	0
Tasmania	34	5	1
Victoria	132	2	0

Notes: These figures represent designated Research Officer positions, with full-time duties wholly or almost wholly devoted to research for Members. South Australian researchers provide information encompassing both reference and research i.e. there are no reference librarian positions. In all State libraries there is a basic degree of overlap in tasks carried out by reference librarians and researchers.

Support staff are non-professionals engaged in paraprofessional, clerical and administrative tasks. An attempt has been made to apportion time where this is shared with other services e.g. Reference.

Source: Nick Bannenberg, *Research Services in Australian State Parliamentary Libraries*, Paper presented to Seminar on Comparative Legislative Research Services, April 1998

4.55. The review of the structure and operations of the Assembly Secretariat found that some members saw a need for some capacity for analysis and interpretation of information through a parliamentary research service. It saw a need to establish an

⁸¹ ACT Government, *Submission*

⁸² Nick Bannenberg, *Research Services in Australian State Parliamentary Libraries*, Paper presented to Seminar on Comparative Legislative Research Services, April 1998

office of research and information, which would be responsible for all aspects of research and the information requirements of Members, both in their capacity as individual members and as members of committees.⁸³

4.56. The Clerk advised that it may be feasible for Members to be allocated additional resources for individual research and be allowed to expend the funds as they see fit between employing staff or purchasing research externally, subject to appropriate accountability.⁸⁴

4.57. The Committee agrees that Members should have access to quality multi-disciplined research, but does not support the establishment of a research service attached to the Library. Nor does it support the appointment of specific Assembly research personnel other than staff with research capabilities appointed to normal procedural, committee or corporate support positions. The Committee sees no need for the bureaucratic structure contained in one of the options of the consultant's report. It would be costly and consume resources in administering the research effort that would be better allocated to conducting the research itself.

4.58. The Committee considers that rather than appointing permanent staff, an appropriation should be provided to purchase expertise or commission papers as required. The total amount of funds available for research purposes would be determined as part of the normal Assembly appropriation processes, and would be apportioned notionally between political groupings.

Recommendation 19

4.59. The Committee recommends that:

an Assembly research capacity be available to enable non-Executive Members to commission papers or seek expert advice.

Role of the Opposition

4.60. . The Pettit Review advised that there were differing views among Members concerning the need for a formal Opposition. The Review noted that Opposition Members believe that part of their role is to represent an alternative Executive. On the other hand, the Review noted that the cross-benchers and minor parties saw no need for the role. They argued that essentially all non-Executive Members have the same task. The Review considered that the Assembly could function perfectly well without formal recognition of the position of Leader of the Opposition. The Pettit Review concluded however that the only way to change the Executive (other than by an election) was by putting the main non-Executive party in power and consequently the community assigns an important place to the Leader of the Opposition. The Review supported the continuation of the position.

4.61. Mr. Stanhope and Mr. Cornwell agree with the findings of the Pettit Review. Mr. Osborne, on the other hand, considers the views of the independents and cross-

⁸³ *ACT Legislative Assembly Secretariat, Review of Structure and Operations, Review Commissioned by Legislative Assembly Secretariat, 1998*

⁸⁴ Clerk of Assembly, *Submission*

benchers compelling. He views the term 'Opposition' as confrontational and unsuitable for a small legislature. In addition he agrees with the Greens that alternative views have come as much from the cross-benches as from the formal Opposition.⁸⁵ Similarly he rejects the concept of a 'Shadow Ministry'.

Appointment of the Speaker

4.62. The question of how the Speaker was chosen was considered by the Committee, particularly, the appointment of a Speaker who was not an elected member of the Assembly.

4.63. The appointment of a Speaker who was not an elected Member would significantly alter the way the Assembly currently operates. There are parliaments in the Commonwealth that choose their speakers in this manner, and some within the Australasian region. The major argument in favour include that it overcomes the difficulty of a small assembly providing ministers and other office holders, while at the same time maintaining an effective backbench. It also enables the utilisation of talented people from outside the legislature, which may enhance the authority and dignity of the institution of Parliament. Most importantly, it allows the Speaker to be truly independent.

4.64. The advantages of a Speaker who is a MLA include accountability to the electorate and the special relationship the Speaker has with other Members as a fellow Member.

4.65. One Member told the Committee that he thought that there could be some advantages in appointing a retired member of the Assembly or a retired member of another parliament or somebody who has been used to dealing with parliamentary processes. However the Member's preferred position was to seek a two-thirds vote in the Assembly for the position of Speaker.⁸⁶ Another Member considered that one of the fundamental principles of Westminster was that the house was its own master and it controlled itself. He had philosophical problems with a Speaker who was not a Member.⁸⁷

4.66. The Clerk advised that the issue of appointment and removal of the Speaker would need to be addressed, as well as tenure and voting rights.⁸⁸

4.67. The Committee considers that the Assembly is unlikely to accept the appointment of a non-Assembly Member to the position. The Committee does not support the appointment of retired Assembly Members to the position. It has no objections, however, to the appointment of a non-government Member to the position. On balance, the Committee considers that a strong case has not been made to suggest that the current arrangements need to be changed.

⁸⁵ ACT Greens, *Submission*

⁸⁶ Michael Moore, *Transcript*

⁸⁷ Gary Humphries, *Transcript*

⁸⁸ Clerk of Assembly, *Submission*

Code of Ethics

4.68. A matter which was not discussed by the Pettit Review but was raised with both the Review and the Committee was the development of a code of conduct for MLAs and the appointment of a 'Commissioner for Parliamentary Ethics'.⁸⁹

4.69. It was suggested that the Commissioner for Parliamentary Ethics would be a part time position and would be a reference point for any Minister or Member who had a doubt about whether a decision for some action was ethical. A code of ethics was being developed during the Third Assembly, but was incomplete at the time of the Election

4.70. The Government has recently released a discussion paper on this issue. The Committee supports both the development of the code of ethics and the appointment of a Commissioner of Parliamentary Ethics.

Recommendation 20

4.71. The Committee recommends that:

a Commissioner for Parliamentary Ethics be appointed.

Recommendation 21

4.72. The Committee recommends that:

a Code of Ethics for MLAs be developed.

⁸⁹ Michael Moore, *Transcript, and Submission to the Working Party on the Review of Governance*

5. COMMITTEE SYSTEM

Introduction

5.1. Submissions to the Pettit Review consistently remarked on the strength and importance of the Assembly's committee system. The committee system's value stemmed from its capacity to:

- bring together MLAs from different parties to work towards a common purpose,
- educate MLAs,
- provide the opportunity for community input to decision making,
- provide a means for scrutiny of the Executive, and
- provide a forum for developing policy advice.

5.2. The Committee agrees with these views.

The Committee Structure

5.3. The arrangements for the Standing Committees adopted for the Fourth Assembly reflect the Pettit Review recommendations that the standing committees be reorganised to reflect the portfolio structure.

5.4. While there was support for agency tracking committees, the Committee received some adverse comments. Concern was expressed that they may become captive of the particular agencies.⁹⁰ One community organisation had grave misgivings in that the former committees had developed expertise and operated across portfolios while the new committees do not.⁹¹

5.5. The Government incorrectly asserted that the previous structure reflects the system of the Commonwealth Parliament.⁹² The new Assembly structure now more closely resembles the existing Commonwealth structure than it ever did in the past.

5.6. It is too early to properly assess the effectiveness of the new system. The Committee notes that the ALP opposed the new structure. The Clerk advised that, in his view, in the transmission between the former structure and the new structure, the opportunities offered by the new structure have not always been taken up. There are problems perceived by Secretariat committee staff with the current structure where, inter alia, it is seen to be not working well in practice in some respects or not working as effectively as it could. There seems to be a problem emerging with restrictions to pursue broad ranging inquiries being felt. He thought that it might well be that the structure could be reassessed further down the track.⁹³

5.7. The Committee considers that a structure that reflects the portfolio arrangements seems logical. The Committee, however, is concerned that the resolution appointing the committees could be interpreted as restricting inquiries to

⁹⁰ ACT Greens, *Submission*

⁹¹ North Canberra Community Council, *Submission*

⁹² ACT Government, *Submission*

⁹³ Clerk of Assembly, *Submission*

matters that are the responsibility of a single Minister and preclude cross-portfolio examination of issues. The Committee believes that this was never the intention of the Assembly. While Government administration is divided into departments, several of those departments overlap. The Committee considers that it is not appropriate to completely isolate committee activity to a single portfolio.

Recommendation 22

5.8. The Committee recommends that:

the resolution establishing the standing committees be amended to enable each committee to examine related matters in other portfolios.

5.9. The Committee notes the concerns that the new committees may become captive of particular agencies. The Committee considers that there is no more danger of portfolio committees becoming beholden to their departments than were the committees of the Third Assembly.

5.10. The Committee also notes the concerns expressed about possible 'demarcation disputes'. The Committee believes this potential has always existed and can be resolved through negotiation and compromise, and if needs be, by the Assembly.

Committee Chairs

5.11. The Committee notes that the Pettit Review did not comment on who should be appointed as committee chairs. At present all members of the Assembly are eligible for appointment to committees. Each committee elects its Presiding Member (Chair) from its members. There is no requirement that the Chairs should be non-Government Members. Mr. Osborne considers that the appointment of non-Government Members as Chairs would seem important in the light of the crucial role committees play in scrutinising Government policy. Mr. Stanhope and Mr. Cornwell do not agree.

Public Accounts Committee

5.12. The Pettit Review considered that the new standing committees should undertake the role of the Public Accounts Committee. The Government supports the findings of the Pettit Review that referral of Auditor General's reports to the agency tracking Committee would assist those Committees to fully immerse themselves in all issues related to the relevant portfolios and maintain detailed scrutiny of those portfolios.

5.13. While a separate public accounts committee was not appointed in the Fourth Assembly, the resolution appointing the standing committees requires the Standing Committee for the Chief Minister's Portfolio to perform the functions of the former PAC. The Standing Committee conducts its PAC activities as if the PAC continued to exist as a 'stand alone' committee.

5.14. Submissions generally did not support the Pettit Review's findings relating to the PAC. The ALP, for instance, believed that an active and independent PAC is fundamental to an effective legislature.⁹⁴

5.15. The Committee notes that the current arrangements reflect a process that is occurring in other jurisdictions. At the Commonwealth level, the Public Accounts Committee continues to have statutory authority for audit reports. However, it only examines about eight in detail each year. Increasingly the standing committees of the House and the Senate are examining the audit reports. The House of Representatives has amended its standing orders to provide for Audit reports to stand referred to House general purpose standing committees.

5.16. Unlike the Pettit Review, the Committee considers that there should be an Assembly committee that is required to perform the functions of a public accounts committee. The Committee considers that it is essential that there is a committee that can examine financial management in the ACT across the range of portfolios, in other words, to examine 'the big picture'. Mr Osborne and Mr. Cornwell, however, see no reason why that committee cannot be incorporated in a committee with wider responsibilities. Mr. Stanhope, however, considers that an active and independent PAC is fundamental to an effective legislature and does not support the inclusion of its functions in a wider committee.

Recommendation 23

5.17. The Committee recommends that:

the functions of a public accounts committee continue to be undertaken by a committee with wider responsibilities.

5.18. The Committee considers that it may not be possible for the committee with PAC responsibilities to examine, in detail, all audit reports. There is merit in the argument that the standing committees, with their specific interests and detailed knowledge can provide a level of expertise superior to that of the PAC. It is the Committee's view that the resolution appointing the standing committees should provide for audit reports to 'stand referred' to the relevant standing committee. Care will be necessary to ensure there is no duplication of reviews of audit reports. Standing committees should formally advise of their intention to inquire into a particular audit report. The question of demarcation disputes again arises but can be resolved as stated previously.

Recommendation 24

5.19. The Committee recommends that:

the resolution appointing the standing committees be amended to provide for reports of the Auditor General to stand referred to the standing committees for any inquiry they wish to make within their terms of reference.

⁹⁴ Australian Labor Party, *Submission*

Recommendation 25

5.20. The Committee recommends that:

the Standing Orders be amended to require each committee to notify the committee with Public Accounts Committee responsibilities of its intention to examine an audit report.

Bills

5.21. The Pettit Review recommended that all legislation should be referred to the relevant committee. It believed that not only policy related matters should be considered but also the technical aspects of bills formerly examined by the Committee for the Scrutiny of Bills and Subordinate Legislation.

5.22. The Assembly considered that the duties of the Standing Committee on Scrutiny of Bills and Subordinate Legislation should continue to be performed by a single committee and resolved that the Standing Committee on Justice and Community Safety perform those duties.

5.23. The Clerk advised that the Scrutiny Committee function is a very different role to that undertaken by the Standing Committee on Justice and Community Safety.⁹⁵ Like scrutiny committees in other Australian Parliaments a legal adviser assists it and it has strict terms of reference relating to the protection of personal rights and liberties. Whilst the new arrangements have worked reasonably well, the Clerk argues that there is a case for having the Scrutiny Committee as a separate entity.⁹⁶

5.24. The Committee supports the continuation of the process of examination of the technical aspects of legislation by a single committee dedicated to that process. As with the functions of the Public Accounts Committee, Mr. Osborne and Mr. Cornwell have no difficulty in accepting the fact that a committee with wider responsibilities now perform these duties. Mr. Stanhope, however, agrees with the Clerk and supports the re-establishment of a scrutiny of bills committee as a separate entity.

Recommendation 26

5.25. The Committee recommends that:

the functions of a scrutiny of bills committee continue to be undertaken by a committee with wider responsibilities.

5.26. The Government advised the Committee that it gives in-principle support for agency-tracking committees examining the legislation presented which falls within their portfolio areas. However, the Government is concerned that this may lead to the delay of debate of legislation by the Legislative Assembly. The absence of a report on a Bill should not be sufficient reason to delay debate of a Bill where it relates to a matter of priority.⁹⁷

⁹⁵ Clerk of Assembly, *Submission*

⁹⁶ *Ibid*

⁹⁷ ACT Government, *Submission*

5.27. The Clerk advised that should this recommendation be implemented the role of committees would change significantly as would the time taken for legislation to be considered by the Assembly. Clearly it could lead to an enhanced legislative role by the Assembly though it could be at the expense of other committee activities, or other demands on Members' time. On the other hand he counselled strongly against committees considering legislation that had not been referred (either by way of a specific or general order).⁹⁸

5.28. The Committee agrees that ultimately it is for the Assembly as a whole to consider the merits of proposed legislation. There is no doubt that referral of bills will enhance the role of committees and make them more relevant to the workings of the Assembly. Where bills have been referred to committees in the past, consideration of the legislation has been assisted and in many cases better legislation has resulted.

5.29. The Committee, however, notes the many issues that need to be considered before the recommendation is adopted. The recommendation does not take account of issues such as timetabling, scope of committee consideration and report, committee support, and participation of non-committee members with an interest in the bill. Nor was account taken of uneven legislative programs across portfolios, which could see some committees 'swamped' while others have little legislation to consider.

Recommendation 27

5.30. The Committee recommends that:

committees continue to consider bills, but only those referred by the Assembly.

Annual and Financial Reports

5.31. The Committee discusses in an earlier section of the Report revised procedures for consideration of the budget. It is the Committee's view that it would be appropriate for the performance of individual agencies to be assessed by the standing committees over-sighting that portfolio. The Committee agrees with the Pettit Review that annual and financial reports be considered by the standing committees.

Recommendation 28

5.32. The Committee recommends that:

the resolution appointing the standing committees be amended to provide for agency annual and financial reports to stand referred to the standing committees for any inquiry they wish to make within their terms of reference.

⁹⁸ Clerk of Assembly, *Submission*

Agency Briefings

5.33. The Pettit Review thought that the Executive should establish a system of regular, private briefings for each agency-tracking Committee by officials of the relevant Department and, where appropriate, by the Minister responsible.

5.34. The Committee notes that briefings of this nature have occurred from time to time but have not been formalised. The Government has no difficulties with this proposal provided proper procedures are followed.⁹⁹

5.35. The Clerk cautioned that what an agency may consider to be private information, may not be considered so by a committee. There may be a need to ensure that such communication between the committee and the agency is dealt with in some form of protocol so that no misunderstanding occurs. The Committee notes that this matter is currently under consideration of the Standing Committee on Administration and Procedure. In this regard, the Government has also developed principles and guidelines for the treatment of commercial information held by ACT Government agencies.¹⁰⁰

5.36. The Committee considers that the current arrangement works effectively, and leaves it to committees to request briefings as required. However, care should be taken that committees do not become 'locked into' confidentiality arrangements with agencies, which could diminish their effectiveness in scrutinising the Executive.

Self-Referral Powers

5.37. The Pettit Review recommended that committees should obtain endorsement of the Assembly for any ad hoc matter that they wish to investigate or pursue. It thought that the self-referral power runs the risk of 'turning Committees into side-shows'. The government supports the Pettit Review's recommendation.¹⁰¹

5.38. The Committee notes that House of Representatives and Senate committees do not have the power to determine their own references. In terms of the House, with its Government majority, the only matters referred are those agreed to by the Government. While this might not be a problem for the Assembly now, with its minority Government, a future Assembly, with a Government majority, may significantly restrict the work of committees. The Committee considers that to some extent the issue is irrelevant as it is envisaged that annual and financial reports be referred to committees. This in effect gives committees a platform to inquire into anything they wish within their terms of reference.

5.39. The Clerk observed that while this recommendation could be seen to have the effect of limiting the nature and scope of committee inquiries it should always be remembered that committees are creatures of the Assembly and the need to obtain such endorsement reinforces that. He thought that fears that this could limit the nature and scope of committee inquiries may be allayed by the fact that any debate

⁹⁹ ACT Government, *Submission*

¹⁰⁰ Clerk of Assembly, *Submission*

¹⁰¹ ACT Government, *Submission*

on such a motion would be on the public record and those against such an endorsement would be expected to argue their case.¹⁰²

5.40. The Committee considers that it is essential that committees retain the right to determine their own inquiries within their terms of reference.

5.41. Notwithstanding the previous comment, it would seem appropriate that the committee, as a creature of the Assembly, inform it of any new inquiries agreed to by the committee.

Recommendation 29

5.42. The Committee recommends that:

the standing committees retain the power to determine their own inquiries within their terms of reference.

Recommendation 30

5.43. The Committee recommends that:

the Standing Orders be amended to require committee chairs to inform the Assembly of any new inquiry their committees propose to undertake.

Committee Support

5.44. The Pettit Review considered that the level of support available to committees was inadequate. It recommended 'a modest increase' in secretarial support for committees. The review of the structure and operations of the Assembly Secretariat correctly identified the work of committee staff as consisting of two components:

- procedural and administrative, and
- content and analytical.¹⁰³

5.45. It was the consultant's view that it should not be expected that one person could perform both these roles. The Committee considers that this conclusion is wrong.

5.46. The committees of the Assembly have successfully operated for a decade, served by secretaries able to provide both high-level procedural and subject matter advice. There has been an expectation that people recruited with a procedural background would have the ability to quickly gain a working knowledge of the issues under investigation and demonstrate high level writing and analytical skills. On the other hand, those recruited with a research and analysis background would have shown an ability to quickly gain a sound working knowledge of parliamentary procedure as it relates to committees.

¹⁰² Ibid

¹⁰³ ACT *Legislative Assembly Secretariat, Review of Structure and Operations*, Review Commissioned by Legislative Assembly Secretariat, 1998

5.47. The Committee considers each committee should have a designated secretary who may service more than one committee.

5.48. The Committee feels that the consultants did not fully understand the circumstances of the Committee Office. They appeared to have over emphasised the technical nature of the issues dealt with in inquiries. On the other hand, the consultants underestimated the ability of committee secretaries to deal with the technical aspects of the inquiries.

5.49. The Committee agrees that the Secretariat should access external input as required, either by way of seconded staff and consultants or commissioned papers. It appears that the consultants did not appreciate the extent to which this already occurs. The Committee considers, however, that these external sources are a supplement to, rather than a replacement of permanent committee staff.

Recommendation 31

5.50. The Committee recommends that:

the Committee Office be maintained as a separate office able to provide the range of administrative, procedural and research support to committees.

Recommendation 32

5.51. The Committee recommends that:

the position of committee secretary be maintained and at a common classification across committees.

Recommendation 33

5.52. The Committee recommends that:

the Assembly Secretariat recognise that other support for committees can be provided by a range of means including, permanent and temporary administrative and research appointments, secondments, and consultants.

6. THE EXECUTIVE SYSTEM

Number of Ministers

6.1. The Pettit Review believed the effective operation of the ACT Public Service requires a division into a number of Departments. It recommended that each Department should have to answer to one, and only one, Minister. The Government has implemented this recommendation in its current administrative arrangements.¹⁰⁴

6.2. The Committee supports this recommendation, but notes that some functions of departments overlap. It is essential that proper co-ordination procedures are in place where this occurs.

6.3. The Committee agrees with the Pettit Review that because the responsibilities of Ministers are so varied and complex, it is almost inconceivable that four Ministers would be able to carry out those responsibilities. The Committee supports the increase of the Executive to five.

Loose Coalitions

6.4. The Pettit Review thought that it was inevitable that Executives would be broadly shaped by party allegiances. But the Pettit Review envisaged circumstances where an Executive including a cross-bench member might work. It saw three elements in the arrangement, namely:

notice by cross-bench Minister of matters on which they reserve the right to dissent in public,

an undertaking to implement decisions from which they dissent where it falls within their portfolio, and

renouncing the use of the threat to resign in Cabinet negotiations.

6.5. Mr. Moore was appointed to the Executive as the fifth Minister in accordance with the elements outlined above.

6.6. The Minister explained to the Committee that he had expected to be able to play a stronger independent role but in fact his ministerial responsibilities have made that difficult.¹⁰⁵

6.7. Notwithstanding the Minister's view of his own position, the Committee believes that there is strong opposition in some sections of the community to the appointment of independents to the Ministry, particularly if they had been elected on a platform of scrutinising the Government. The Committee considers that while a strong case can be made for the need to widen the talent pool available to the Chief Minister, the fact remains that public trust in the Assembly could be eroded.

6.8. On balance, the Committee considers that it is up to the Chief Minister to determine if he/she wishes to appoint non-Government Members to the Ministry and it is for individual Members to decide if they will accept the appointment.

Statutory Appointments

¹⁰⁴ ACT Government, *Submission*

¹⁰⁵ Michael Moore, *Submission*

6.9. The Pettit Review did not make any recommendations concerning the appointment to statutory bodies. The ALP alleges that there has been strong politicisation of statutory offices and bodies.¹⁰⁶ The submission argues that there should be a requirement that the Minister consult and respond to concerns of the Leader of the Opposition and the Chair of the relevant committee before any major appointment is made.

6.10. The Committee does not wish to comment on the politicisation of statutory appointments. The Committee notes however, that the *Statutory Appointments Act 1994* requires the Minister to consult with relevant standing committees before making statutory appointments. The Committee understands this consultation normally takes the form of a letter to the committees advising of the intention to appoint. It is the Committee's view that it is up to the relevant committee to seek further information if it so desires. All statutory appointments are subject to disallowance in the Assembly.

6.11. The Committee considers that mechanisms already exist to ensure Assembly scrutiny of statutory appointments. The Committee is concerned, however, that at times insufficient notice is given to enable meaningful Member input. The Committee also is not convinced that Members always use the mechanisms available to them. It is up to Members to better use existing mechanisms and for Ministers to give more notice. The Committee proposes no changes to the current arrangements.

Recommendation 34

6.12. The Committee recommends that:

the Standing Committees and the Assembly more rigorously use existing mechanisms to scrutinise statutory appointments.

¹⁰⁶ Australian Labor Party, *Submission*

7. COMMUNITY AWARENESS AND ACCESS

Public Information

7.1. The Committee agrees with the Pettit Review that some people may not understand that if self-government had not been introduced, it is likely that a decline in Commonwealth funding for the ACT would still have occurred. Nor do they necessarily understand that the Commonwealth or State Governments would be reluctant to provide state-like services to the ACT on other than a full cost recovery basis.

7.2. While accepting that there is a need to improve the way some within the community view the Assembly, the Committee believes that attempts to change attitudes through unsolicited information included with rates notices, as suggested by the Review, or in electricity bills, as suggested by others, may antagonise recipients and add to existing ill feeling. The Committee also sees potential for this process to be abused with party biased messages being sent, particularly close to election time.

7.3. The Secretariat of the Assembly recently conducted (through the University of Canberra) a marketing exercise which sought the views of 300 Canberra residents.¹⁰⁷ The survey indicated a low level of knowledge about the Legislative Assembly within the community, but also found that most residents were eager to find out more information about the Assembly, mostly by way of newspapers.

7.4. The Committee cannot accept, however, that the lack of community awareness results from inadequate publicity of Assembly and Government business. As one Member pointed out, Canberra's media coverage is very large for the size of the population - one metropolitan newspaper, three television stations each with local news, a number of radio stations with local news and some local newspapers.¹⁰⁸ With the existing abundant coverage of Assembly and Government business in the local media, the Committee doubts that a publicity campaign, as outlined by the Pettit Review, would make much difference to people's views of self-government or increase their understanding of governance issues.

7.5. The Committee agrees with the Clerk of the Assembly, that there are other existing alternatives to the provision of information in rates notices to inform the community of the existence and operation of the Assembly and the Government.¹⁰⁹ Given the blurring of the distinction between the Executive and the legislature in the minds of many in the community, the Committee shares the Clerk's reservations about the use of Government material to promote the Assembly which is not part of the Government.¹¹⁰

¹⁰⁷ University of Canberra, *Marketing Research Report*

¹⁰⁸ Gary Humphries, *Submission*

¹⁰⁹ Clerk of Assembly, *Submission*

¹¹⁰ *Ibid*

7.6. The Legislative Assembly Secretariat, through its Education Office, provides factual information on the roles and responsibilities of the Legislative Assembly and the Executive. Through the program of school visits and other activities undertaken by the Education Office, young people receive a valuable early introduction to the working of their legislature. Recently it trialed a community seminar on the operation of the Assembly, and it is hoped to undertake more of these in the future.

7.7. The Committee believes that the Assembly Education Office provides an effective means of publicising the Assembly and the ACT Government and of assisting those who wish to know more about them. The Committee considers that the Education Office should be given an expanded role in promoting, in the wider community, an understanding of the roles of the Assembly, the Executive and committees, and as one organisation considered important¹¹¹, in promoting an understanding of how people can become active participants in the decision making process.

Recommendation 35

7.8. The Committee recommends that:

sufficient resources be allocated to the Assembly Education Office to enable it to effectively carry out its current functions and the expanded functions envisaged by the Committee.

Electorate Offices

7.9. The Pettit Review considered that voters in the ACT are constrained in making personal contact with MLAs because there are only seventeen representatives to cover three hundred thousand people. This was exacerbated by the fact that there are no electorate offices. The Pettit Review commented that it had been told that up to half of the demands made on ACT Federal Members related to matters that should be the responsibility of the MLAs.

7.10. The Pettit Review recommended that the Assembly explore financially modest arrangements where local MLAs can make themselves available to their constituents, at convenient times, on a rota basis.

7.11. This recommendation was generally supported in submissions to the Committee particularly for the outlying areas of Brindabella and Ginninderra. One former Member advised the Committee that her biggest frustration was the fact that the members' only office space was in the Assembly building.¹¹² She advised that while she used shopping centre stalls, clubs and community centres, it was still very difficult to alert people of the availability of their Member. She did not believe that there needed to be one office for each Member, but considered that an office could be provided in the major regional centres.

¹¹¹ YWCA of Canberra, *Submission*

¹¹² Marion Reilly, *Transcript*

7.12. The Clerk considered that the regular presence of Members in the electorate on a day to day basis might enhance community acceptance of the Assembly.¹¹³ This would be one way of helping the community understand that Members are there working for them, and would also make them more accessible to those residents not able, disposed or willing to come into Civic. However, the issue needed more thorough examination in light of the possible cost, availability of Assembly Members to meet their committee responsibilities and other issues such as IT and OH&S matters and staffing.

7.13. The Committee is aware that some Members already have electorate consultative arrangements in place. The Committee understands that others are content to have constituents visit them in the Assembly. The Committee acknowledges that the 'fish bowl' atmosphere of the Assembly building may inhibit some visitors and the security arrangements and parking may inhibit others. On the other hand, the Assembly is centrally located and well served by public transport. Compared with many State and Federal electorates, the ACT is geographically compact and the people of the ACT have ready access to their Members.

7.14. A recent survey conducted for the Assembly indicated that the majority of individuals who made contact with the Legislative Assembly did so by phone.¹¹⁴ The majority of those who had made no contact with the Legislative Assembly indicated that if they were to do so they would use the phone. For these people it is irrelevant where their Member is located.

7.15. The Committee considers that it is up to individual Members to determine which electorate consultative arrangements suit them best. Obviously, if the arrangements chosen by Members do not suit their constituents, they may not remain members after the next election.

Recommendation 36

7.16. The Committee recommends that:

each Member, using their existing entitlements, determine which electorate consultative arrangements suit them best.

Access to Committees

7.17. A weakness perceived by the Pettit Review was that contact with committees generally only occurs when the committee had some matter under investigation. The Pettit Review recommended that each of the committees hold public sessions on matters not the subject of an inquiry on a regular basis.

7.18. The Government supported this recommendation in principle but only on the basis that the public sessions are undertaken using the resources that are already available to the Committees.¹¹⁵

¹¹³ Clerk of Assembly, *Submission*

¹¹⁴ University of Canberra, *Marketing Research Report*

¹¹⁵ ACT Government, *Submission*

7.19. The Committee considers that the means by which standing committees provide for public input is a matter for each committee to determine. Regular meetings could be very time consuming and with doubtful outcomes. Issue driven meetings, however, might be useful to determine public attitudes.

7.20. While committee activity need not be confined to formal inquiries, in general, time and resource constraints mean that the examination of issues is normally undertaken within an inquiry framework. The Committee questions the evidence that the Pettit Review had which suggests that access is limited.

7.21. The recommendation seems to overlook the fact that individual Members constantly consult the community as part of their normal electoral duties. It is the Committee's view that Members therefore are well placed to bring matters of community concern before the Assembly and its committees.

Recommendation 37

7.22. The Committee recommends that:

there be no changes to the Standing Orders which would prevent standing committees determining their own public consultative procedures.

Access to Government

7.23. The Pettit Review noted that consultation with the Executive could be both frustrating and satisfying. Such consultation could generate high expectations and also widespread disillusion and scepticism. The Pettit Review believed that it was important that consultation commenced early in the decision making process and that sufficient time be allowed for comment. It also noted the difficulties in ensuring that during the consultation process, the government heard the views of the major groups as well as minority special interest groups.

7.24. Submissions to the Committee were generally critical of the Government's consultative processes. Submissions claimed that consultation was inadequate and biased. Nor was there any mechanism to encourage the formation of neighbourhood groups and no register is kept of existing groups. There was also the difficulty in obtaining information under FOI, not only by the use of 'commercial-in-confidence' but also 'advice-to-minister'.

7.25. One Minister told the Committee that the 'Meet the Minister' program was very useful in providing access to the Government. He considered that it was enormously important in providing people with the opportunity 'to come and front a minister face to face'. Without this opportunity they might express their frustration in some less healthy way.¹¹⁶

¹¹⁶ Gary Humphries, *Transcript*

7.26. The Committee agrees that the 'Meet the Minister' program provides an effective means of community access to the Government and supports its continuation.

7.27. The Government advised the Committee that the Government's Consultation Protocol deals with strategies that maximise the public's ability to participate in the consultation process.¹¹⁷ The Protocol specifically states '...the consultation process aims at allowing maximum opportunity for citizens to make their concerns heard and be taken into account, before a final decision is made by Government. The Protocol also states that feedback on the outcome of decisions following consultation needs to be provided to participants in a timely manner, no longer than four months after the completion of the consultation'.

7.28. From time to time, individual Members and Assembly committees have raised the question of the use of 'commercial-in-confidence' to prevent the release of information. The Committee considers that it is unacceptable that access to information may be reduced because of the secrecy that 'commercial-in-confidence' implies. As governments increasingly move to be purchasers of services and programs rather than providers, the principles of Executive accountability will diminish.

7.29. The Standing Committee for the Chief Minister's Portfolio inquired into the Government's draft guidelines for the treatment of confidential information held by ACT Government agencies. The Standing Committee found that it had no difficulty endorsing the guidelines as they relate to public disclosure of commercial information. It concluded that as framed, the guidelines establish an appropriate balance between government accountability, public interest and the rights of individuals and businesses which claim confidentiality for information provided to government.

7.30. The Standing Committee, however, had reservations about the draft guidelines as they apply to the disclosure of information to the Assembly or its committees. It recommended that the Assembly invite the Standing Committee on Administration and Procedure to develop a standing order requiring the Minister to provide a *prima facie* justification for the non-provision of information.

7.31. The Committee notes that the Standing Committee on Justice and Community Safety is examining the Freedom of Information Bill. The Justice Committee is particularly interested in the use of 'commercial in confidence', 'advice to Minister' and 'in the public interest'.

Women's Access and Participation

7.32. The Committee is surprised that the Pettit Review did not mention gender issues in its report, given that it received submissions on the issue. While the Committee did not undertake a detailed examination of the status of women in the ACT, it did receive evidence from a number of women's organisations.

¹¹⁷ ACT Government, *Submission*

7.33. The Committee was advised that no activity of government should be assumed to be gender neutral. All policy needs to be monitored for gender-specific effects, to ensure that policy and programs are compatible with government objectives of advancing the status of women. There is no longer any machinery within the Government to ensure routine monitoring of policy for different gender impact or any form of accountability for gender outcomes.

7.34. The Committee was told that the ACT is the only jurisdiction in Australia which lacks such a framework. WEL advised that Government was committed to mainstreaming of gender perspectives in government, but at the same time it has dismantled the actual machinery for achieving such main-streaming.¹¹⁸

7.35. A number of organisations believed that there was an inadequate framework for consultation with women despite the establishment of the ACT Women's Consultative Committee. One organisation considered that the members of the Council are appointed in a personal capacity and do not have the resources, authority or in many cases, the expertise to develop or monitor women's policy.¹¹⁹

7.36. Women's organisations argued for, amongst other things, a co-ordinating unit in the central policy co-ordination agency of government (the Chief Minister's Department) to ensure that gender analysis is a routine aspect of policy development across government and that submissions to Cabinet do not go forward without such gender analysis having taken place.

7.37. Women's organisations considered that a central women's policy unit would play an important role in ensuring effective consultation with women in the community and the two-way flow of information.¹²⁰ There also needed to be a genuine commitment on behalf of the Government to ensure all opportunities offered by the Government for formal community involvement have equal representation of the community.¹²¹ The Committee was urged to give gender equity concerns and strategies and women's participation a central place in the governance of the ACT.

Recommendation 38

7.38. The Committee recommends that:

the Government, in consultation with relevant organisations, ensure gender equity across government policies, programs and appointments.

7.39. Mr Cornwell does not support the recommendation because the ACT Government is already investigating women's issues by conducting extensive surveys into community services, employment issues and Government provided facilities in preparation for the release later this year of a "Women's Action Plan".

¹¹⁸ WEL, *Submission*

¹¹⁹ Women's Legal Centre, *Submission*

¹²⁰ WEL, *Submission*

¹²¹ YWCA, *Submission*

Indigenous Participation in Government

7.40. While the Pettit Review did not address the question of indigenous participation in Government, it was a matter that was raised with the Committee.

7.41. A submission to the Committee observed that the low level of indigenous participation in government can be directly attributed to previous government policies and practices that marginalised indigenous people from Australian society and excluded participation in government.¹²² It stated that the Australian community has been seeking various ways of renegotiating and reconciling their relationship with indigenous people and that the reconciliation process includes the issue of indigenous representation in government.

7.42. The Committee was told that some form of indigenous representation in the Assembly would provide three distinct benefits for the ACT community, namely:

- it would provide an indigenous perspective in the Assembly which would lead to greater understanding of indigenous issues by MLAs,
- an indigenous representative would continually work with both the Assembly and the Government to develop solutions to address indigenous disadvantage, and
- an indigenous representative would broaden discussion and arouse community interest and willingness to participate in debates on indigenous issues.¹²³

7.43. The Committee was urged to recommend to the Assembly that they, in fulfilling their obligations to the reconciliation process, establish a select committee to conduct a public inquiry into indigenous representation in the Legislative Assembly. It was considered that a public inquiry into indigenous representation in the Assembly would be an education for the entire community. It would also enable an assessment to be made of the level of community support, prior to having a referendum on the issue, possibly at the next ACT election.¹²⁴

7.44. The Committee supports the Assembly becoming more involved in indigenous issues and more involved in discussions and debate about genuine reconciliation. The Committee is conscious however, that if a select committee was established to look only at indigenous representation in the Assembly, this may prejudice an outcome about the most appropriate form of indigenous participation in the affairs of the ACT.

7.45. The Committee supports the establishment of a select committee to look at the most appropriate means to ensure greater indigenous representation in the processes of government. Accordingly the Committee supports the establishment of a committee that would not only examine the question of an indigenous seat, but would also examine indigenous representation on policy making and program delivery bodies, improvement in consultative processes and ways of progressing the reconciliation process.

¹²² Fred Leftwich and Wally Bell, *Submission*

¹²³ Fred Leftwich, *Transcript*

¹²⁴ *ibid*

Recommendation 39

7.46. The Committee recommends that:

the Assembly establish a select committee to examine the most appropriate means of indigenous participation in government in the ACT, and to examine ways of progressing the reconciliation process.

Paul Osborne
Chair

Appendix A Participants in the Inquiry

The following organisations and individuals assisted the inquiry through submissions, public hearings, and informal discussions:

Australian Labor Party (Tasmania)
Australian Labor Party (ACT)
Liberal Party of Australia (Tasmania)
Liberal Party of Australia (ACT)
Tasmanian Greens
ACT Greens
Tasmanian Electoral Commission
Richard Herr, University of Tasmania
Speaker, Tasmanian Legislative Assembly
Members and officials of the Tasmanian Parliament
Philip Pettit, Review of Governance Working Party
Michael Moore MLA
ACT Electoral Commission
Colin Doy, private citizen
Proportional Representation Society
ACT Government
Gary Humphries MLA
Harold Hird MLA
Norma Flint, private citizen
Morgan Graham, private citizen
North Canberra Community Council
Women's Electoral Lobby
YWCA
Fred Leftwich, private citizen
Clerk, ACT Legislative Assembly
Ngunawal ACT and District Aboriginal Council of Elders
Maxwell Smithies, private citizen
Women's Legal Centre
Anne Moten, private citizen
Michael Talberg, private citizen
Tony Powell, private citizen
Grant Jones, University of Canberra
Jim Leedman, private citizen
Gary Whitley, private citizen
Don Aitkin, University of Canberra
David Mossop, private citizen
Ken Brewer, Australian National University
Miko Kirschbaum, private citizen
Brisbane City Council
Conservation Council of the South-East Region and Canberra

Appendix B Recommendations of the Review of Governance in the ACT

1. The ACT Executive should make use of existing opportunities for communicating with the public for example, via enclosures with rates bills - to provide factual information on the roles, responsibilities and costs of the Legislative Assembly and the Executive itself; this would help to raise community understanding of the context in which self-government operates.
2. The Self-Government Act should contain a preamble, indicating that if the Commonwealth Parliament intervenes in Assembly business, or if the Governor-General chooses to disallow an enactment of the Assembly, then that should be on the grounds that the legitimate interests of the Commonwealth require such action.
3. The Self-Government Act should assign to the Legislative Assembly the power to alter arrangements having to do with the normal processes of government; in this respect the Assembly should have the same powers as those enjoyed by a State parliament.
4. The fixed term of the Assembly should be extended from three years to four.
5. The minimum number of seats in an electorate should continue to be five.
6. As the ACT population grows, the ratio of representatives to electors should be maintained at or above the very modest level of 1:10,000 that obtained in 1989, when self-government was introduced.
7. The total number of seats in the ACT should be odd rather than even and electorates should be divided so as to ensure that they are geographically as small and coherent as possible, consistently with Recommendation 5, and that they are as close to each other as possible in numbers of seats.
8. We recommend that voters should be able, if they wish, to obtain how-to-vote cards at polling places; such cards should be available in each polling place, even if the ban on distributing them outside is maintained.
9. Subject to the advice of the Electoral Commission, the rules for the disclosure of contributions to electoral funds should be amended so as to remove any obvious loopholes in the current system.
10. The Speaker currently has responsibility for the services of the Clerk and Secretariat of the Assembly and we recommend that this responsibility be extended to include the Parliamentary Library.
11. There should be a modestly funded research service associated with the Library and we recommend that the Speaker also have responsibility for the management of this service.

12. With other services required by non-Executive members of the Assembly, such as those of the Parliamentary Counsel, or those of expert advisors, we believe that the Speaker ought to purchase them on behalf of the Assembly from the Executive or from elsewhere.
13. The Assembly should debate and decide on the level of funding that it requires for providing and purchasing central services and for supporting individual MLAs and it should formally propose a suitable appropriation to the Executive.
14. If the Executive does not endorse the appropriation proposed, then it should consult with the domestic Committee of the Assembly - Administration and Procedures - about feasible reductions.
15. The level of support demanded and provided should be sufficient to provide for a modest increase in secretarial support for Committees, and in the material resources available to individual MLAs.
16. In order to facilitate orderly business, and in order to allow for good financial management of the Assembly, non-Executive Members should normally be expected, as the Executive is expected, to give notice of bills that they plan to bring forward in each quarter.
17. Early each year the Assembly ought to debate, a number of general issues relating to the budget, referring them for fuller consideration to one of its Committees; that Committee ought to receive submissions from the public - written and oral - in the course of discussing those issues; and it should report its recommendations to the Assembly, and indirectly to the Executive, on the matters covered.
18. The issues to be addressed in the debate mentioned in Recommendation 17 ought to include: whether there should be an operating loss and if so, how it should be funded,. what level of support should be provided for the Assembly itself,. and whether, consistently with the line taken on those first two questions, there should be any major changes in budget priorities.
19. While taking account of the Assembly Committee report, the Executive should be free to develop and bring down a budget on more or less the same pattern, and under the same conventions, as at present,- the only difference would be that it need not duplicate the Committee's activities by inviting submissions from the public.
20. The Standing Committees of the Assembly should be restructured so that there is a Committee to track each of the main agencies - and, in particular, each of the main policy areas of government.
21. All legislation coming before the Assembly should be referred to the relevant Committee for discussion, with a procedure for fast-tracking in unproblematic cases; and where the proposer wishes, the Committee should be able to consider policy proposals that have the potential to lead to legislation.

22. The Speaker should assign to relevant agency-tracking Committees the responsibility currently discharged by the Public Accounts Committee and by the Committee for the Scrutiny of bills and Subordinate Legislation.
23. The Executive should establish a system of regular, private briefings for each agency-tracking Committee by officials of the relevant Department and, where appropriate, by the Minister responsible.
24. Committees should obtain endorsement of the Assembly for any ad hoc matter that they wish to investigate or pursue.
25. An effective ACT Public Service requires a number of separate Departments and each such agency should have to answer to one, and only one, Minister.
26. The Executive should be increased beyond the figure, prevailing up to now, of four Ministers, including the Chief Minister; the minimal number of ministers required for the effective political control of ACT government is five.
27. The Assembly ought to explore financially modest arrangements - we do not envisage a need to hire additional staff for electorate offices where local MLAs can make themselves available to their constituents, at convenient times, on a rota basis.
28. Each of the agency-tracking Committees suggested in Recommendation 20 ought to hold public sessions on a regular basis.
29. When consulting with the public, the Executive should be careful to allow sufficient time for community associations to make contact with their members and it should make every effort to publicise its reasons for taking whatever course is eventually adopted.
30. In order to guard against hearing only special interests in the course of consulting the public, the Executive should consider recourse to methods for obtaining the considered opinions of people from across the community as a whole.

Source: *Review of the Governance of the Australian Capital Territory*, Report of the Working Party, Australian Capital Territory, 1998

Appendix C Summary of Recommendations Related to Party Registration

Recommendation 6. That the Electoral Act be amended to provide that, to be eligible for registration on the ACT register of political parties, parties must have at least 100 members who are ACT electors or who are entitled to be an ACT elector.

Recommendation 7. That the Electoral Act be amended to give the Electoral Commissioner a specific power to request lists of members of parties applying for registration and to communicate with those members for the purpose of confirming that they are members of the proposed party.

Recommendation 8. That the Electoral Act be amended to provide that the Electoral Commissioner may not make personal political party membership information available to any person except for the purpose of checking a party's claim to have sufficient members for registration.

Recommendation 9. That the Electoral Act be amended to provide for a scheme of registration of group names along the following lines:

MLAs who are not members of a registered political party (Independent MLAs) may apply to register a group name for use on ballot papers.

Group names would be used on ballot papers in the same way as registered party names or abbreviations.

Independent MLAs registering a group name could appoint a registered officer who would carry the same rights and responsibilities as currently apply to registered officers of registered parties.

If an Independent MLA did not appoint a registered officer, the Independent MLA would be taken to be the registered officer.

A constitution would not be required for registration of a group name.

The same naming restrictions as those that apply to registered party names would apply to group names, with the added restriction that the word "party" may not be used in a group name.

Public objections to the name of a proposed group name would be invited in the same way as objections to a party's registration are currently invited.

Recommendation 10. That the Electoral Act be amended to provide that a registered political party must at all times have a constitution. Any amendments to a party's constitution must be provided to the Electoral Commissioner. The Electoral Commissioner should be required to make the latest available version of a party's constitution available for public inspection on request. The Electoral Commissioner may deregister a registered party if he or she is not satisfied that a party has a valid constitution.

Recommendation 11. That the Electoral Act be amended to provide that the disclosure thresholds relating to Independent MLAs be brought into line with the thresholds relating to registered parties.

Recommendation 12. That transitional provisions be enacted to provide that each party currently registered would have, say, two months in which to prove to the Electoral Commissioner that it had at least 100 members eligible for enrolment in the ACT and that it had a valid constitution. If a party could not so satisfy the Commissioner, the party would be deregistered. An Independent MLA would have the option of "converting" a registered party name into a group name.

Source: ACT Electoral Commission, *Review of the Electoral Act 1992: The 1998 ACT Legislative Assembly Election*