

REVIEW OF STANDING ORDERS FOR THE TENTH ASSEMBLY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

MARCH 2021

REPORT 4

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Resolution of appointment

The Standing Committee on Administration and Procedure Committee is established pursuant to Standing Order 16:

16. (a) A Standing Committee on Administration and Procedure is established at the commencement of each Assembly to:
 - (i) undertake self-referred inquiries or inquiries referred by the Assembly and, in addition, in the third year of an Assembly term the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice;
 - (ii) advise the Speaker on:
 - (A) Members' entitlements including facilities and services;
 - (B) the operation of the transcription service (Hansard);
 - (C) the availability to the public of Assembly documents;
 - (D) the operation of the Assembly library;
 - (iii) arrange the order of private Members' business, Assembly business and Crossbench Executive Members' business;
- (b) the Committee shall consist of:
 - (i) the Speaker;
 - (ii) the Government whip;
 - (iii) the Opposition whip; and
 - (iv) a representative of the crossbench (or if a single party, the whip of that party);
- (ba) Should a whip be unable to attend a meeting, the Party nominated deputy whip may attend in their place;
- (c) the Speaker shall be the Chair of the Committee; and
- (d) the Committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedure appointed during the previous Assemblies.

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1. BACKGROUND

- 1.1. At its meeting on 7 December 2020 the Standing Committee on Administration and Procedure agreed to discuss possible amendments to the standing orders to reflect changes in the composition of the Assembly. As a consequence, Members of the Committee and the Office of the Legislative Assembly (OLA) advised that there were a number of matters that needed to be considered in the short term with some other issues requiring more detailed review.
- 1.2. This Report details the Committee's proposed changes to the standing orders.

2. CHANGES TO STANDING ORDERS

- 2.1. The Committee deliberated on the amendments proposed by Members and the Clerk and recommends that the following changes to the standing orders be made.

STANDING ORDER 16—STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE—
ADDITIONAL TERMS OF REFERENCE

- 2.2. The Standing Committee on Administration and Procedure, in addition to the roles prescribed in standing order 16, undertakes a number of activities pursuant to continuing resolutions. This proposed amendment clarifies the role of the Committee in light of these other assigned activities.

RECOMMENDATION 1

- 2.3. That standing order 16 be amended by adding:
- “16(a)(iv) as required by continuing resolutions of the Assembly, consider, inquire and report on matters relating to citizen’s right of reply, claims of parliamentary privilege, reports of the Commissioner for Standards and the Ethics and Integrity Adviser and the implementation of Latimer House Principles.”

STANDING ORDER 69—TIME LIMITS FOR DEBATES AND SPEECHES—REMOVAL OF
REFERENCES TO CROSSBENCH

- 2.4. The Committee was of the view that the language allocating time limits for certain speeches should be amended to be more generic.

RECOMMENDATION 2

- 2.5. That standing order 69 be amended by omitting 69 (d), and substituting as follows:
- “(d) Bill be agreed to in principle
- Main Appropriation Bill for year
- Movernot specified
- First member speaking from each party.....not specified
- Any other Member 15 minutes
- Other bills
- Mover 20 minutes
- First member speaking from each party..... 20 minutes
- Any other Member 15 minutes

Co-sponsored bills

Each Co-sponsor.....	20 minutes
First member speaking from each party.....	20 minutes
Any other Member	15 minutes
Each Co-sponsor closing debate	15 minutes”

2.6. **That standing order 69 be amended by omitting 69 (ga), and substituting as follows:**

“(ga) Co-sponsored motions

Each Co-sponsor.....	15 minutes
First member speaking from each party.....	15 minutes
Any other Member	10 minutes
Each Co-sponsor closing debate	10 minutes”

2.7. **That standing order 69 be amended by omitting 69 (i), and substituting as follows:**

“(i) Debates not otherwise provided for

Mover.....	15 minutes
First member speaking from each party.....	15 minutes
Any other Member	10 minutes”

REMOVAL OF CROSSBENCH EXECUTIVE MEMBERS’ BUSINESS

- 2.8. During 2020, the Crossbench Executive Members’ business procedure was truncated and only used on a few occasions. With the appointment of 3 Greens members to Cabinet, it was argued that there is less of a need for this category of business.

RECOMMENDATION 3

- 2.9. That standing order 16 (a)(iii) be amended by omitting “, Assembly business and Crossbench Executive Members’ business” and substituting “and Assembly business”.

RECOMMENDATION 4

- 2.10. That standing order 77 (Business – precedence over) be amended as follows:

omit paragraph (c);

77 (e), after Assembly business (first occurring) omit “or Crossbench Executive Members’ business”;

77 (e), after “debate”, omit all words;

77 (f), after “Assembly business”, omit “or Crossbench Executive Members’ Business”;

77 (g), omit each occurrence of “or Crossbench Executive Members’ business”; and

77 (k), after the conclusion of paragraph (k), omit all words.

REMOVAL OF MATTERS OF PUBLIC IMPORTANCE

- 2.11. During 2020, the matter of public importance (MPI) procedure was suspended due to the restricted sitting arrangement surrounding COVID-19.
- 2.12. The MPI procedure was a feature of the House of Representatives and was inserted in the Assembly standing orders in 1989. For both the House and the Assembly it was felt that non-executive Members should be able to raise topical matters for discussion due to the small amount of time set aside for private Members' business. Up until 1996, the Assembly standing orders specified that only two hours be set aside for private Members. In 1996, that standing was changed to allow of a full day of sitting (i.e. Wednesday) be allocated for private Members' business, and that practice has continued until this day.
- 2.13. Arguably the need for the MPI procedure, with a full day of private members business, allows sufficient time for non-executive Members to raise matters and the MPI procedure is not required.

RECOMMENDATION 5

- 2.14. That standing order 69(g) be omitted
- 2.15. That standing order 74 (Routine of business) be amended by omitting the words "Matters of public importance".
- 2.16. That standing order 79 (Matter of public importance) be omitted.
- 2.17. That standing order 130 (Anticipation of business) be amended by omitting the words "a matter of public importance,"

PRIVATE MEMBERS BUSINESS EACH SITTING DAY

- 2.18. As a result of the COVID sitting arrangements during 2020, there was time set aside in the weekly one day sittings that occurred for two items of private members to be dealt with each sitting day. The Committee agreed to continue that arrangement.

RECOMMENDATION 6

- 2.19. That standing order 77 (Business – precedence over) be amended as follows:
Omit paragraph 77(a), substitute:
- (a) On each sitting day, private Members business (as ordered by the Standing Committee on Administration and Procedure) shall have precedence over Executive business immediately after the presentation of papers;
- 2.20. That standing order 77A (Order of private Members' business) be omitted.
- 2.21. That standing order 74 (Routine of business) be amended by inserting "Private Members

business” after “Presentation of Papers”.

HOW AMENDMENTS MOVED

- 2.22. Standing order 142 as currently worded is not entirely clear. The standing order currently states:

No amendment to earlier part

142. An amendment may not be moved to any part of a question after a later part has been amended, or after a question has been proposed on an amendment thereto, unless the proposed amendment has, by leave, been withdrawn.

As can be seen the standing order is not written in plain English and is difficult to understand. A simplified wording of the standing order would assist in making its intention clear.

RECOMMENDATION 7

- 2.23. That standing order 142 (No amendment of earlier part) be amended by omitting all words and substituting:

“142. An amendment may not be moved to any part of a question after a later part has been amended, or after a question has been proposed on an amendment to a later part.”

BILLS—REFERENCE TO COMMITTEE

- 2.24. Standing orders 174 and 175 as presently drafted provide for a mechanism for a bill, once introduced, to be referred to a standing or select committee. With the resolution of the Assembly of 2 December 2020 providing that all bills are referred automatically to committees, this standing order is redundant and could be removed. However, there is no procedure that covers the situation that could arise where it is not clear which committee is the relevant committee to examine the bill, especially in cases where bills cover a wide subject area.
- 2.25. It is suggested that, like standing order 99A in relation to petitions, the Speaker be given the power, in the event that it is not clear which is the relevant committee, to determine which committee shall consider the bill. Standing order 175 also needs to be amended to ensure that the Assembly does not pass a bill that is the subject of a committee inquiry.

RECOMMENDATION 8

- 2.26. That standing order 174 (Reference to select or standing committee) and standing order 175 (Committee proceeding not noticed until reported) be amended by omitting all words and substituting:

“174. Upon a Bill being presented to the Assembly, the bill stands referred to the relevant Assembly standing committee for consideration and, in the event that the subject matter of the bill makes it unclear which committee it should be referred to, the Speaker will determine the appropriate committee.

Bill debate suspended until committee reports

175. When the Assembly has been informed that the relevant standing committee will inquire into and report on a bill, that bill cannot be dealt with by the Assembly until the committee has reported.”

TABLING OF GOVERNMENT RESPONSES TO COMMITTEE REPORTS

- 2.27. Standing order 254B states:

Tabling of a Government Response to Committee Report

- 254B. A government response to a Committee report must, within four months of presentation of the report, be: (a) tabled in the Legislative Assembly if the Legislative Assembly is sitting; or (b) provided to the Speaker for non-sitting circulation to members and be tabled on the next available sitting day. A government response that has been circulated when the Assembly is not sitting is taken to have been tabled and authorised for publication. (*Inserted 29 November 2018*)
- 2.28. One issue that has arisen in relation to this standing order is that government responses to the Legislative Scrutiny Committee are not necessarily complying with this standing order. This is because there is a long standing practice between the Legislative Scrutiny Committee and the Executive that, based on the often tight timeframes which that committee sometimes operates on, government responses are sent to the committee, who then considers the response, sometimes comments on them, but mostly authorises the response for publication and places it on the Assembly website.
- 2.29. This practice appears to work well, so it is suggested that the government responses to the Legislative Scrutiny committee be exempted from this standing order.

RECOMMENDATION 9

- 2.30. That standing order 254B (Tabling of a Government Response to Committee Report) be amended by adding the following words:
- “This standing order does not apply to government responses to Legislative Scrutiny Committee reports.”

MATTERS CONSTITUTING CONTEMPT—LANGUAGE

- 2.31. The use of term “molestation” in standing order 277 (d) (Molestation of Members) was considered in common usage to mean “to assault sexually” and this is the way in which many/most people would understand the term whilst the legal definition is ‘to act with the intent to annoy, and to annoy, a person with ordinary and reasonable feeling’. The Committee was of the view that this was not the intent of standing order to imply the common usage meaning and agreed that the more appropriate term was “interference”. The same amendment should be applied to standing order 277(k) (Molestation of witnesses).

RECOMMENDATION 10

- 2.32. That standing order 277 (d) (Molestation of Members) and standing order 277 (k) be amended by omitting “Molestation of” substitute “Interference with”.

CONTINUING RESOLUTION 4A—CLAIMS OF PARLIAMENTARY PRIVILEGE THAT ARISE DURING THE EXERCISE OF THE ACT INTEGRITY COMMISSION’S POWERS AND FUNCTIONS

- 2.33. The proposed amendments to this continuing resolution clarifies how the Integrity Commission requests are dealt with by the Assembly.
- 2.34. Section 177 of the *Integrity Commission Act 2018* provides that claims of parliamentary privilege that are made in the exercise of the Integrity Commission’s functions must be dealt with by the Assembly and Continuing resolution 4A was passed by the Assembly on 29 November 2018 to set out the arrangements to be adopted by the Assembly in such an event.
- 2.35. Section 89 of the Integrity Commission Act provides that the Integrity Commission may request certain information from the head of a public service entity as part of a preliminary inquiry and, unless there is a reasonable excuse, the head of the entity must provide the requested material.
- 2.36. Much of the information that is owned by the Assembly, its committees, its members, their staff and the Office of the Legislative Assembly is stored and managed—or ‘held’—by SSICT. There is a suggestion that were a request to be made of the Head of Service (who has administrative responsibility for SSICT) by the Commission for such information, it would be open to the Head of Service under the Act to provide it. Such an approach is a potential threat to the powers, privileges and immunities of the Assembly and its Members.
- 2.37. While it may be necessary to amend the relevant provisions of the Act to clarify that such requests for Assembly documents or information must be directed to the Assembly, amendments to continuing resolution 4A should be adopted to make the Assembly’s intentions on these matters clearer and to ensure that the Assembly retains control of over its proceedings and the documents and records that form part of those proceedings.

RECOMMENDATION 11

- 2.38. That Continuing resolution 4A be amended by omitting all words and substituting:

“PREAMBLE

- (1) The Assembly:
- (a) reserves all its powers, privileges and immunities, and those of its Members, derived from all sources of law;
 - (b) affirms that parliamentary privilege attaches to all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly or an Assembly committee, including to documents and information falling

within the scope of “proceedings in Parliament” as provided for in article 9 of the Bill of Rights 1689 and section 16 of the *Parliamentary Privileges Act 1987* (Cth);

- (c) acknowledges that, pursuant to the *Integrity Commission Act 2018*, statutory powers and functions have been vested in the ACT Integrity Commission to investigate and report on corruption in the ACT and that the Commission is empowered, subject to that Act, to investigate allegations of corrupt conduct involving a Member of the Legislative Assembly;
- (d) notes that section 7 the Integrity Commission Act does not affect the law relating to the privileges of the Legislative Assembly;
- (e) notes that section 177 of the Integrity Commission Act provides that claims of parliamentary privilege that are made in the exercise of the Integrity Commission’s functions must be dealt with by the Assembly;
- (f) declares, for the avoidance of doubt, the right of the Assembly to determine claims of parliamentary privilege over material sought to be seized or accessed by the Integrity Commission regardless of the form of the material or, the means by which the Commission seeks seizure or access;
- (g) acknowledges that there may be occasions where the exercise of the Commission’s powers and functions gives rise to a claim of parliamentary privilege; and
- (h) resolves that where such a claim is made, it will be addressed and resolved in accordance with the arrangements and principles provided for in this continuing resolution.

SEEKING ASSEMBLY INFORMATION

- (2) Where the Integrity Commission or a person acting under the direction of the Commission seeks to exercise a power to inspect, examine, make a record of, copy, or take possession of “Assembly information” that is held by the Assembly, an Assembly committee, a Member or a former Member, or that is held by another person or entity on behalf of the Assembly, an Assembly committee, a Member or a former Member, an “affected Member” is entitled to claim that parliamentary privilege applies to the information.
- (3) An “affected Member” is a Member about whom Assembly information relates or to whom the Commission addresses an inquiry pursuant to the exercise of a power or function by the Commission.
- (4) “Assembly information” includes all information, data, records and “documents” that have been prepared or received by the Assembly, its members, staff of Members or the Office of the Legislative Assembly in connection with the roles and functions of the Assembly, its committees and its Members.
- (5) “Document” means any record of information, and includes—

- (a) anything on which there is writing; or
 - (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them; or
 - (c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or
 - (d) a drawing, map, photograph or plan.
- (6) Where Assembly information is sought by the Commission that relates to a former Member's time as a Member, the Commission must notify the Speaker of the Assembly who shall consider whether issues of parliamentary privilege arise.
 - (7) In order to protect the powers, privileges and immunities of the Assembly, its committees, its Members (including former Members in relation to their time as a Member), the Speaker may seek to make a claim in relation to parliamentary privilege in the same way as an affected Member.
 - (8) The Commission must advise an affected Member that they are entitled to make a claim relating to parliamentary privilege prior to the purported exercise of a compulsory power to inspect, examine, make a record of, copy, or take possession of Assembly information that is held by the Assembly, an Assembly committee or a Member, or that is held by another person or entity on behalf of the Assembly, an Assembly committee or a Member. Where a claim is to be made, it must be notified by the affected Member to:
 - a) the Commission or a person acting under the direction of the Commission in writing; and
 - b) the Speaker in writing.
 - (9) In the first instance, a claim may be made in general terms and verbally.
 - (10) Where an affected Member makes a claim in relation to parliamentary privilege, the Commission or a person acting under the direction of the Commission must not inspect, examine, access, make a record of, copy, or take possession of Assembly information over which a claim has been made until such time as parliamentary privilege has been determined not to apply pursuant to this resolution or a claim has been withdrawn. Any Assembly information that is the subject of a claim must be placed in the secure custody of the Clerk of the Legislative Assembly.
 - (11) Where an item of Assembly information is held in a digital form, either within the Assembly precincts or by a third-party such as on a computer network or storage device that is administered by the ACT Government or a person or firm contracted on behalf of the Territory by the ACT Government, steps must be taken to secure the information via suitable encryption technology with access being granted solely to the Clerk until such time as it is made available to an Independent Arbiter.

- (12) Within five calendar days of a claim having been made by an affected Member that parliamentary privilege applies to a document, the affected Member must write to the Speaker and the Commissioner advising of the scope and basis of the claim. The Speaker must provide the affected Member's written advice of a claim to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (13) Where an affected Member makes a claim in relation to parliamentary privilege over a document, the Commissioner must notify the affected Member and the Speaker whether or not the Commission intends to dispute the claim. The notification may be given verbally in the first instance. Where no such notification is given, any item of Assembly information the subject of the claim will be returned to the affected Member and may not be inspected, examined, or copied by the Commission.
- (14) Within five calendar days of the receipt of the affected Member's written advice outlining the scope and basis of the claim, the Commissioner must either give notification that the claim is not disputed or write to the Speaker and the affected Member advising of the scope and basis of the dispute of the claim. The Speaker must provide the Commissioner's written advice of a dispute to the Standing Committee on Administration and Procedure within five calendar days of receipt.
- (15) The Speaker must appoint an Independent Legal Arbiter to adjudicate any claim that is disputed by the Commissioner. Upon the appointment of an Arbiter, the Clerk must hand over custody to the Arbiter any item of Assembly information that is the subject of the disputed claim. The Clerk must return any item of Assembly information to the affected Member over which there is an undisputed claim. The Speaker may make available to the Arbiter a secure space within the Legislative Assembly precincts to facilitate examination of any document that is the subject of a claim.
- (16) Upon appointment, the Speaker must make the affected Member's and the Commissioner's written advices available to the Arbiter. The Arbiter may seek written submissions from the affected Member and the Commissioner in which any additional reasons for or against a claim or related information may be stated.
- (17) The Arbiter must review each item of Assembly information that is the subject of a claim and determine whether or not the item falls within the scope of the "proceedings in Parliament". Where there is a large volume of material that is the subject of a claim, the Arbiter may receive assistance from a person, or persons, acting under the direction of the Arbiter to review the material.
- (18) Where the Arbiter determines that an item of information does fall within the scope of "proceedings in Parliament", it is protected by parliamentary privilege and it will be returned to the affected Member and may not be inspected, accessed, examined, or copied by the Commission.
- (19) Where the Arbiter determines that an item of information does not fall within the scope "proceedings in Parliament", it is not protected by parliamentary privilege and it will be

provided to the Commissioner (subject to any other lawful requirement that may have been imposed).

- (20) The Arbiter's determination must: be in writing; include reasons; and be transmitted by the Arbiter to the affected Member, the Commissioner, and the Speaker. The Speaker is required to provide a copy of the Arbiter's determination to the Standing Committee on Administration and Procedure within five calendar days of its receipt.

EXAMINATION OR QUESTIONING

- (21) Where a Member (an affected Member) appears under summons to give evidence before the Commission, they are entitled to decline to answer a question on the basis that the information in answer to the question is protected by parliamentary privilege.
- (22) Where a claim is made by an affected Member that the information in answer to a question is protected by parliamentary privilege, it is open to the Commissioner to:
 - (a) withdraw the question; or
 - (b) advise the affected Member that the Commissioner intends to dispute the claim of parliamentary privilege.
- (23) Where an affected Member makes a claim relating to parliamentary privilege under examination, the affected Member must advise the Speaker and the Commissioner in writing as to the scope and basis of the claim within five calendar days of the claim being made. The Speaker must provide the affected Member's written advice to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (24) Where the Commissioner disputes a claim made by an affected Member under examination, the Commissioner must advise the Speaker and the affected Member in writing as to the scope and basis of the dispute of the claim within five calendar days of the receipt of the affected Member's written advice of a claim. The Speaker must provide the Commissioner's written advice to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (25) Where the Speaker receives advice from the Commissioner that a disputed claim of parliamentary privilege has arisen in the course of an examination, the Speaker must appoint an Independent Legal Arbiter to adjudicate the claim. The Speaker must provide to the Arbiter the affected Member's written claim and the Commissioner's written dispute of the claim.
- (26) The Arbiter may seek written submissions from the affected Member and the Commissioner in which any additional reasons for or against a claim or related information may be stated.
- (27) Where the Arbiter determines that the information sought by the Commissioner, by way of a question asked under examination, does fall within the scope of "proceedings in Parliament", an immunity from the provision of that information to the Commission will operate by reason of parliamentary privilege.

- (28) Where the Arbiter determines that the information sought by the Commissioner, by way of a question asked under examination, does not fall within the scope of “proceedings in Parliament”, no immunity by reason of parliamentary privilege will operate.
- (29) The Arbiter’s determination must: be in writing; include reasons; and be transmitted by the Arbiter to the affected Member, the Commissioner, and the Speaker. The Speaker is required to provide a copy of the Arbiter’s determination to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (30) In determining a question of parliamentary privilege in relation to a question that is posed or information that is sought during an examination, the Arbiter may express the determination:
- by way of specific questions that, if asked, would or would not engage the privilege;
 - by way of more general areas of inquiry that, if explored, would or would not engage the privilege; or
 - in some other way that clarifies the limits of the operation of parliamentary privilege.

MAKING A DETERMINATION

- (31) The Arbiter may, but is not bound to, apply the following test to determine whether or not Assembly information that is sought pursuant to a compulsory production power or information that is sought pursuant to a compulsory examination falls within “proceedings in Parliament”.

STEP 1: Was the Assembly information that is sought by the Commission ***brought into existence*** in the course of, or for purposes of or incidental to, the transacting of business of the Assembly or an Assembly committee?

YES → Falls within the scope of “proceedings in Parliament” and parliamentary privilege applies.

NO → Move to step 2.

STEP 2: Has the Assembly information that is sought by the Commission been ***subsequently used*** in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly or an Assembly committee?

YES → Falls within the scope of “proceedings in Parliament” and parliamentary privilege applies.

NO → Move to step 3.

STEP 3: Is there any contemporary or contextual evidence that the Assembly information that is sought by the Commission was ***retained or intended*** for use in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly or an Assembly committee?

YES → Falls within the scope of “proceedings in Parliament” and parliamentary privilege applies.

NO → The Assembly information does not fall within the scope of “proceedings in Parliament” and is not immune from production / the information sought by the Commissioner in the course of an examination is not covered by parliamentary privilege.

- (32) In determining whether or not parliamentary privilege applies to an item of Assembly information, the Arbiter must have regard to:
- the written claim made by the affected Member;
 - the written dispute of the claim by the Commissioner;
 - any transcript of an examination of the affected Member in which a claim relating to parliamentary privilege has arisen;
 - any written submission made by the affected Member or by the Commissioner;
 - applicable law relating to parliamentary privilege;
 - the Assembly’s standing orders and continuing resolutions;
 - reports of an Assembly committee or of a committee of either House of the Commonwealth Parliament relating to parliamentary privilege; and
 - any other matter that the Arbiter considers to be relevant.
- (33) Assembly information that may fall within the scope of “proceedings in Parliament” may include (but is not confined to):
- a. notes, draft speeches and questions prepared by a Member for use in the Assembly or an Assembly committee;
 - b. correspondence received by a Member from a constituent where the Member has raised or is intending to raise a matter in the Assembly or an Assembly committee;
 - c. correspondence prepared by a Member where the Member has raised or intends to raise a matter in the Assembly or an Assembly committee;
 - d. information as it relates to words said or actions done in the course of a proceeding of the Assembly or an Assembly committee; and
 - e. submissions and other material provided to a Member as part of a Member’s participation in an Assembly committee.
- (34) In some cases the question will turn on what has been done with an item of information or document, or what a Member intends to do with the document or information, rather than

what is contained in the document or the substance of the information, or where the document or information is held.

- (35) Documents or information that are unlikely to be within the scope of “proceedings in Parliament” include material relating to a Member’s travel or entitlements, or party-political material.
- (36) In determining a claim, the Arbiter may speak with the affected Member who has made a claim or with the Commissioner. The Arbiter may permit the affected Member to view a document in the presence of the Arbiter.
- (37) The Arbiter must only determine the question of whether an item of Assembly information sought by the Commission is protected by parliamentary privilege and no other question.
- (38) The Arbiter must consider, determine and report on a determination relating to a claim of parliamentary privilege in a timely manner.

REQUIREMENTS FOR APPOINTING AN ARBITER

- (39) The Independent Legal Arbiter must be a Queen’s Counsel, Senior Counsel, or a retired judge or justice of the Supreme, Federal or High Court and the Speaker must consult with the Standing Committee on Administration and Procedure prior to making an appointment. The Arbiter will be paid a fee approved by the Speaker.

MEMORANDUM OF UNDERSTANDING

- (40) For the purposes of facilitating the effective administration of this resolution, the Speaker may enter into a memorandum of understanding with the Integrity Commissioner in relation to parliamentary privilege and the exercise of the Commission’s powers. A memorandum of understanding must not be inconsistent with this resolution and must be tabled in the Assembly on the first available sitting day following its finalisation.

RECUSAL OF THE SPEAKER OR A MEMBER OF THE STANDING COMMITTEE

- (41) Where the Speaker makes a claim of parliamentary privilege in relation to the exercise of a power or function by the Commission (except where the Speaker is making a claim pursuant to paragraph (7) of this resolution), the Speaker must recuse themselves from the exercise of the Speaker’s functions pursuant to this resolution and the Deputy Speaker will instead perform the functions.
- (42) Where a member of the Standing Committee on Administration and Procedure makes a claim of parliamentary privilege in relation to the exercise of a power or function by the Commissioner, the Member must recuse themselves from any consideration by the committee of the matter.”

CONTINUING RESOLUTION 8A—LATIMER HOUSE PRINCIPLES

2.39. In the last Assembly this Committee, in reviewing the report of the Review of the Latimer

House Principles, pursuant to continuing resolution 8A, made the following comment and recommendation:

5.103 COMMENT—The Committee is appreciative of the efforts of the Review team and notes that this is the third review of the Assembly in 12 years. As the Assembly is now 30 years old, it is considered that perhaps a review once every four years is not warranted, and a better time frame is once every eight years.

Recommendation 4—The Committee recommends that Continuing Resolution 8A be amended at paragraph 2A to ensure that a review is undertaken in the second year of every second Assembly.

RECOMMENDATION 12

2.40. That Continuing resolution 8A (Latimer House Principles) be amended by omitting paragraph (2A) and substituting:

- “(2A) In the second year after a general election for each alternate Assembly, following consultation with the Standing Committee on Administration and Procedure, the Speaker shall appoint a suitably qualified person to conduct an assessment of the implementation of the Latimer House Principles in the governance of the ACT with the resultant report:
- (a) to be tabled in the Legislative Assembly by the Speaker; and
 - (b) to be referred to the Standing Committee on Administration and Procedure for inquiry and report.
- (2B) For paragraph (2A), the Assembly in which the Speaker shall next appoint a suitably qualified person is the 11th Assembly.”

Joy Burch MLA, Chair

March 2021

