



**Legislative Assembly for the
Australian Capital Territory**

Standing Committee on Administration
and Procedure

Review of the Standing Orders and Continuing Resolutions of the Tenth Assembly

Volume 1

Legislative Assembly for the Australian Capital Territory
Standing Committee on Administration and Procedure

Approved for publication

Report 10
10th Assembly
August 2023

About the committee

Establishing resolution

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 and Assembly business; and
 - (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.
- (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.

Committee members

Ms Joy Burch MLA, Speaker, Chair

Ms Nicole Lawder MLA, Deputy Chair

Mr Andrew Braddock MLA

Ms Suzanne Orr MLA

Secretariat

Tom Duncan, Committee Secretary

Janice Rafferty, Assistant Secretary

Joanne Cullen, Acting Assistant Secretary (Oct 2022 – July 2023)

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About this inquiry

This inquiry is conducted pursuant to standing order 16, which states that the Standing Committee on Administration and Procedure is established at the commencement of each Assembly to, among other things:

... in the third year of an Assembly term ... 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 ...

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Acronyms

Acronym	Long form
ACT	Australian Capital Territory
ANU	Australian National University
the Committee	Standing Committee on Administration and Procedure
CPSU	Community and Public Sector Union
OLA	Office of the Legislative Assembly
PMB	Private Members' Business
SO	Standing Order
UC	University of Canberra

Recommendations

Recommendation 1

The Committee recommends that amendments to the standing orders numbers 1 to 74 be adopted.

Recommendation 2

The Committee recommends that amendments to the continuing resolutions of the Assembly contained in recommended amendments numbers 75 to 84 be adopted.

Recommendation 3

The Committee recommends that OLA investigate the ability of the parliamentary portal to allow for the co-sponsorship of petitions.

Recommendation 4

The Standing Committee on Administration and Procedure undertake an inquiry into Continuing resolution 3—Broadcasting guidelines.

Recommendation 5

The Committee recommends that the proposed amendments to the Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory as recommended by the Ethics and Integrity Adviser and detailed in Appendix B, Attachment A, be adopted.

Recommendation 6

The Committee recommends the glossary of terms be included in the standing orders.

Recommendation 7

The Committee recommends that future amendments to the glossary can be agreed to and authorised by the Standing Committee on Administration and Procedure for inclusion and publication in the Standing Orders.

Recommendation 8

The Committee recommends that the number of hard copy annual reports provided by the ACT Government for tabling in the Assembly be reduced from 35 to 20 to ensure sufficient copies are available for tabling and all non-executive Members.

Recommendation 9

The Standing Committee on Administration and Procedure undertake an inquiry into the electronic tabling of documents.

Recommendation 10

The Committee recommends that the Speaker provide question time statistics to the Standing Committee on Administration and Procedure during the sitting week order of business meeting.

Recommendation 11

The Standing Committee on Administration and Procedure undertake an inquiry into the feasibility of community input into the Assembly through a Matters of Public Importance process.

1. Conduct of Inquiry

- 1.1. On 21 September 2022, the Speaker informed the Assembly that the Standing Committee on Administration and Procedure (the Committee) had agreed at their meeting of 31 May 2022, to commence its inquiry into the operation of standing orders and continuing resolutions of the Assembly.¹
- 1.2. The Committee invited submissions from:
 - Members of the Tenth Assembly;
 - political parties—Labor Party, Canberra Liberals and ACT Greens;
 - former Chief Ministers and Speakers;
 - Unions ACT and Community and Public Sector Union (CPSU);
 - Political science academics at the Australian National University (ANU) and the University of Canberra (UC).
- 1.3. The Committee invited submissions in October 2022, which closed on 23 December 2022. A total of 6 submissions were received by the Committee. A list of all the submissions is provided at **Appendix A**.
- 1.4. The Committee did not hold public hearings but met on 14 occasions to review submissions and to consider proposed changes.

¹ ACT Legislative Assembly, [Minutes of Proceedings, No. 59](#), 21 September 2022, p 808.

2. Format of the Report

- 2.1. This report is presented in two volumes.
- 2.2. The first volume addresses: changes to the standing orders that the Committee recommends be adopted by the Assembly; changes to continuing resolutions that the Committee recommends be adopted by the Assembly; a listing of proposals that the Committee does not recommend be adopted at this time; and brief discussion of several related matters that were raised in the course of the inquiry.
- 2.3. The second volume sets out a draft revision of the standing orders and continuing resolutions as they would appear were the Assembly to adopt the recommendations of the Committee's report.

3. Recommended amendments to the standing orders

- 3.1. As part of its inquiry, the Committee was mindful of its terms of reference to examine the standing orders with a view to ensuring that the practices and procedures remain relevant and reflect best practice.
- 3.2. The Committee’s recommendations draw heavily on the submissions that were provided to the Committee and the Committee wishes to thank all submitters to the inquiry. Through its own deliberations and internal discussions, the Committee also encountered opportunities for improvements that could be made to existing procedural arrangements embodied in the standing orders and continuing resolutions.

Chapter 3—Administration and Procedure Committee

Standing Order 16—Administration and Procedure Committee

- 3.3. Standing order 16 establishes the Standing Committee on Administration and Procedure at the commencement of a new Assembly and sets out the role and operation of the Committee. The Committee notes that paragraph 16(a)(i) makes provision in relation to a review of the standing orders by the Committee in the third year of an Assembly term.
- 3.4. The Canberra Liberals noted in their submission that under the current standing orders this review commenced in the second year of term of the Assembly and suggest that the wording of SO 16(a)(i) be changed to provide more flexibility in the review timeline.²
- 3.5. In its submission OLA recommends the removal of references to entitlements in SO 16(a)(ii)(A) as these refer to previous arrangements managed by the Office such as study travel and motor vehicles that no longer apply. Similarly SO 16(a)(ii)(D) applied when the Assembly library was managed by the Executive, however it is now a section of OLA.³
- 3.6. During the pandemic the Committee endorsed the COVIDSafe plan for the precincts and so it was considered appropriate to formalise this practice in the terms of reference.

Recommended amendment 1

Standing order 16(a)(i)—

omit “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”,

substitute “the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly by the end of the third year of an Assembly term”.

² Canberra Liberals, *Submission 2*, p 2.

³ Office of the Legislative Assembly, *Submission 5*, pp 33–34.

Recommended amendment 2

Standing order 16(a)(ii)(A)—*omit “Members’ entitlements including facilities and services”, substitute “Members’ services and facilities;”*

Recommended amendment 3

Standing order 16(a)(ii)(D)—*omit “the operation of the Assembly library”, substitute “management of the Assembly precincts including Work Health and Safety obligations;”*

Recommended amendment 4

New Standing order 16 (a) (ia)—insert “develop a guidance note for all Members outlining who is responsible for the various undertakings and activities of the Legislative Assembly, recognising the unique working environment of the Legislative Assembly, within 6 months of the commencement of a new term;”

Chapter 4—Administration

Standing Order 22—Leave of absence

- 3.7. Standing order 22 entitles Members to 18 weeks of a maternity leave of absence without the need for a vote of the Assembly.
- 3.8. The Canberra Liberals noted in their submission that current community standards provide for paternal, parental and adoption leave and recommend that SO 22 be updated to include these additional types of leave for Members.⁴
- 3.9. The Committee considered the full range of leave entitlements available to ACT Public Service staff, and agreed that primary care giver (for gender neutrality) and adoption leave be provided through a letter of notification to the Speaker from the Member requiring the leave.
- 3.10. The Committee also agreed that the length of primary care giver and adoption leave is to be aligned with the provisions of the ACT Public Service.

Recommended amendment 5

Omit standing order 22 and substitute:

“22. A Member may be granted leave of absence from the Assembly, on motion moved without notice, stating the reason for leave and the period of absence. Except that a Member who shall be entitled, without a vote of the Assembly, to a leave of absence for primary or secondary care giver or adoption leave entitlements in line with the provision of the ACT Public Service, and that leave shall commence at a time notified by the Member to the Speaker who, in turn, shall notify the Assembly.”

⁴ Canberra Liberals, *Submission 2*, pp 2–3.

Chapter 5—Sittings and adjournment of the Assembly

Standing Order 30—Prayer or Reflection

- 3.11. Standing order 30 states that, at the beginning of each sitting, the Speaker invites Members to pray or reflect on their responsibilities to the people of the Australian Capital Territory and then acknowledges that the Assembly is meeting on the lands of the traditional custodians.
- 3.12. The Office of the Legislative Assembly (OLA) noted in its submission that the current practice of the Assembly is for an acknowledgement, in Ngunnawal language with an English translation occurring first followed by the Speaker inviting Members to pray or reflect. It recommends that SO 23 be updated to reflect the current practice of the Assembly.⁵
- 3.13. The Canberra Liberals supports the same amendment, noting in their submission that SO 30 needs to be updated to include the acknowledgement and reflect the current practice of the Assembly.⁶

Recommended amendment 6

Omit standing order 30 and substitute:

“Acknowledgement and prayer or reflection

30. Upon the Speaker taking the Chair at the commencement of each sitting, and a quorum of Members being present, the Speaker shall acknowledge in the Ngunnawal language followed by an English translation, that the Assembly is meeting on the lands of the traditional custodians; and then the following shall be read by the Speaker:

Members, at the beginning of this sitting of the Assembly, I would ask you to stand in silence and pray or reflect on our responsibilities to the people of the Australian Capital Territory.”

New Standing Order 33A—90 second statements by Members

- 3.14. The ACT Labor Caucus recommended in its submission that a new period of 10 minutes consisting of 90 second Member statements be added to each sitting day.⁷
- 3.15. The submission suggested changing SO 34 to achieve this, however the committee notes that this SO relates to the automatic adjournment question that is put at 6.30 pm if the Assembly is still sitting. If the Assembly is not still sitting at 6.30 pm there would be no opportunity for the 90 second statements to occur. The Committee therefore proposes a new standing order to facilitate the addition of Member 90 second statements.

⁵ Office of the Legislative Assembly, *Submission 5*, pp 5–6.

⁶ Canberra Liberals, *Submission 2*, p 3.

⁷ ACT Labor Caucus, *Submission 4*, p [2].

- 3.16. Consequential changes will be made in SO 69 and SO 74 to reflect new SO 33A.

Recommended amendment 7

Insert new standing order 33A

“90 second Member statements

33A. Immediately prior to the adjournment debate, the Speaker shall ask whether any Member wishes to make a 90 second statement, for a period of no more than 10 minutes. This will not occur on sitting days where the automatic adjournment question is put at 6.30 pm.”.

New Standing Order 36A—Fixing an alternative day or hour to sit

- 3.17. The [Australian Capital Territory \(Self Government\) Act 1988](#) (Cwlth), section 17 provides the basis for the Assembly to meet. OLA noted in its submission that the Assembly has not enacted section 17(1):

(b) within 7 days after a written request for a meeting, signed by such number of Members as is fixed by enactment, is delivered to the Presiding Officer.⁸

- 3.18. Whilst not an enactment, OLA recommends that a new standing order be inserted to reflect this section of the Self-Government Act.⁹

Recommended amendment 8

Insert new SO 36A

“Fixing an alternative day or hour to sit

36A. The Speaker may fix an alternative day or hour of meeting on receipt of a request in writing from an absolute majority of Members.”.

Chapter 6—Rules of debate

Standing Order 42A—Speaking in a language other than English

- 3.19. Standing order 42A requires Members to provide both an oral and written translation of any language used in the chamber in another language.
- 3.20. In their submission to the inquiry, the Canberra Liberals noted that the standing order requires translation “prior to the words spoken in the language other than English” and that this is not the current practice of the Assembly for the words spoken by the Speaker upon taking the Chair, where usually the English translation is provided after the words in another language have been spoken. They suggest that the standing order needs to be amended to reflect the current practice.¹⁰

⁸ *Australian Capital Territory (Self Government) Act 1988* (Cwlth), s 17.

⁹ Office of the Legislative Assembly, *Submission 5*, p 6.

¹⁰ Canberra Liberals, *Submission 2*, pp 3–4.

Recommended amendment 9

Standing order 42A(b)—*add* “This does not apply to the Acknowledgement made by the Speaker under standing order 30.”.

Standing Order 43—Indulgence to Members unable to stand

- 3.21. It was recommended in two submissions that the standing orders be updated to be gender neutral.¹¹
- 3.22. The Committee agreed to update all gender references in the standing orders to be gender neutral.

Recommended amendment 10

Standing order 43—*omit* “he or she”, substitute “they”.

Standing Order 53—Use of Queen’s, Governor-General’s or Governor’s name

- 3.23. It was recommended in multiple submissions that, following her death, references to the Queen also be updated.¹² OLA recommended replacing the word “Queen” with “Sovereign”,¹³ while the ACT Labor Caucus recommended that “Queen” be replaced with “their Majesty”.¹⁴
- 3.24. The Committee agreed to the replacement of all references to the “Queen” and “Her Majesty” with “Sovereign”.

Recommended amendment 11

Omit standing order 53 and heading, substitute the following standing order and heading:

“Use of the Sovereign’s, Governor-General’s or Governor’s name

53. A Member may not use the name of the Sovereign or their representative in Australia disrespectfully in debate, nor for the purpose of influencing the Assembly in its deliberations.”.

Standing Order 69—Time limits for debates and speeches

- 3.25. Standing order 69 sets out the time limits for Members speaking to items of business before the Assembly.
- 3.26. The Committee agreed that the standing orders would be updated to be gender neutral, the first paragraph of the standing order will be changed to reflect this.

¹¹ ACT Greens, *Submission 3*, p [1], Office of the Legislative Assembly, *Submission 5*, pp 32–33

¹² Canberra Liberals, *Submission 2*, p 4.

¹³ Office of the Legislative Assembly, *Submission 5*, p 5.

¹⁴ ACT Labor Caucus, *Submission 4*, p [2].

- 3.27. There is a consequential amendment to this standing order which inserts (ba) as a result of new SO33A which allows for 90 second Member statements.
- 3.28. A second consequential amendment to this standing order inserts (ha) as a result of new SO73A which allows for debate to occur when there is dissent to a Chair’s ruling.

<p><u>Recommended amendment 12</u></p> <p>Standing order 69—paragraph 1—omit “his/her”, substitute “their”.</p> <p><u>Recommended amendment 13</u></p> <p>Standing order 69—<i>Insert new (ba)</i></p> <p>“(ba) 90 second Member statements</p> <p>Whole debate no more than 10 minutes Each Member90 seconds”</p> <p><u>Recommended amendment 14</u></p> <p>Standing order 69—<i>Insert new (ha)</i></p> <p>“(ha) Dissent from Chair’s ruling</p> <p>Whole debate no more than 30 minutes Each Member 5 minutes”</p>
--

Standing Order 73—Proceedings on question of order

- 3.29. As already noted the Committee agreed to update language to be gender neutral.

<p><u>Recommended amendment 15</u></p> <p>Standing order 73—omit “his/her”, substitute “their”.</p>
--

New Standing Order 73A—Dissent from Chair’s ruling

- 3.30. In its submission OLA noted that there is currently no mechanism in the standing orders for a Member to express dissent with a ruling by the Chair.

It is practice that there has been often robust debate on a matter raised by a member; either a point of order or a request for a ruling, prior to the Chair’s decision. House of Representative Practice states that a dissent from a ruling must be declared at once, submitted in writing, and dealt with immediately. 30 minutes is allocated for the whole debate: proposer 10 minutes, any other member 5 minutes. No amendment may be moved as the ruling is either accepted or rejected.¹⁵

¹⁵ Office of the Legislative Assembly, *Submission 5*, p 7.

- 3.31. The Committee noted that there is currently some uncertainty on how to dissent from a Chair’s ruling and considered this new standing order a useful tool for helping Members to follow correct procedures when dissenting.

Recommended amendment 16

Insert new standing order 73A

“73A. Dissent from Chair’s Ruling

73A. A motion of dissent from the Chair’s ruling may be made, without notice, as soon as practical following the ruling. The motion must be in writing and relate specifically to the matter raised. The time allocated for the debate shall be 30 minutes with each Member speaking for not more than 5 minutes.”.

Chapter 7—Business

Standing Order 74—Routine of business

- 3.32. Standing order 74 sets out the order of business for sitting days in the Assembly.
- 3.33. There were a number of submissions suggesting changes to this standing order, including adding:
- the Acknowledgement and motion to note petitions;¹⁶
 - a specific time for Assembly/Committee business each sitting day;¹⁷ and
 - constituency statements (on sitting Tuesdays and Wednesdays).¹⁸
- 3.34. OLA also suggested in its submission that one Private Members’ Business (PMB) motion be debated in the morning and one in the afternoon.¹⁹
- 3.35. Consequential changes to this standing order are also required due to the change in SO211 relating to the presentation of papers which allows for a motion to take note of papers at the conclusion of PMB.
- 3.36. The Committee discussed the various proposed changes, accepting some and rejecting others, and agreed that this standing order would be changed so that routine of business would be the same for all sitting days.

Recommended amendment 17

Standing order 74—*Omit*:

“Prayer or reflection
Presentation of petitions
Ministerial statements

¹⁶ Canberra Liberals, *Submission 2*, p 5.

¹⁷ ACT Labor Caucus, *Submission 4*, p [2].

¹⁸ Office of the Legislative Assembly, *Submission 5*, p 8.

¹⁹ Office of the Legislative Assembly, *Submission 5*, pp 8-9.

Notices and orders of the day
Questions without notice
Presentation of papers
Private Members' business
Ministerial statements
Notices and orders of the day:"

Substitute:

"Acknowledgement and Prayer or reflection
Presentation of petitions
Take note of petitions
Ministerial statements
Assembly/Committee Business
Notices and orders of the day
Questions without notice
Presentation of papers
Private Members' business
Take note of papers
Ministerial statements
Notices and orders of the day
Member 90 second statements
Adjournment:"

Standing Order 75—Presentation of papers and reports

- 3.37. Standing order 75 relates to the presentation of committee reports. OLA recommended in its submission that the word "committee" be included in the heading to better reflect the content of the standing order.²⁰

Recommended amendment 18

Standing order 75 heading—*insert "committee" before "papers"*.

Standing Order 77—Business - precedence over

- 3.38. As a result of the move to a standard routine of business (SO 74) for all sitting days many of the parts in SO 77 are now redundant, the Committee agreed these should be removed. The time limit that previously applied to Assembly business was also removed.
- 3.39. In defining Assembly Business, OLA noted in its submission that:

standing order 77(k) does not include notices for presentation of bills by the Speaker that relate to the administration of the Assembly or the manner in which

²⁰ Office of the Legislative Assembly, *Submission 5*, p 35.

the Assembly conducts its proceedings. The Office considers this an oversight and proposes to include notices to present bills in this standing order.²¹

- 3.40. In addition, the Committee considered that the definition of Assembly business in SO 77(h) be amended to include reports of standing or select committees that have ordered to be presented by the Assembly.
- 3.41. The Committee was in agreement with this proposal.

Recommended amendment 19

Proposal: Delete standing order 77(b).

Recommended amendment 20

Proposal: Delete standing order 77(f).

Recommended amendment 21

Proposal: Delete standing order 77(g).

Recommended amendment 22

Proposal: Add “or the presentation of a committee report ordered by the Assembly”.

Recommended amendment 23

Proposal: standing order 77(k)

Insert after “any notice of motion”, “, notice to present a bill”.

Standing Order 81A—Censure motions and Privileges Committee proposals

- 3.42. Standing order 81A deals with the requirement for a Member to give a copy of any proposed motion of censure or motion to establish a privileges committee to Members 90 minutes prior to the time proposed to move the motion.
- 3.43. The Committee was in agreement with the OLA proposal to change this standing order as:

Recent circumstances indicated a need to expand the scope of this standing order to facilitate due consideration of the referral of additional matters to an existing privileges committee. In relation to the presentation of a privileges committee report, it is also proposed that a copy of such report be provided to all members 90 minutes prior to the report being presented to the Assembly to ensure sufficient time for members to consider the findings and/or recommendations of the report.²²

²¹ Office of the Legislative Assembly, *Submission 5*, p 35.

²² Office of the Legislative Assembly, *Submission 5*, p 11.

Recommended amendment 24

Omit standing order 81A and substitute:

“81A. In relation to proposed motions of censure, motions of no confidence, the proposed establishment of a new privileges committee and the referral of additional matters to an existing privileges committee, copies of the relevant motions shall be provided to the Speaker for circulation to all Members 90 minutes prior to the time at which the motion is proposed to be moved.

In addition, upon completion of a privileges committee’s inquiry, the Chair shall provide to the Speaker a copy of the Committee’s report for circulation to all Members 90 minutes prior to the time at which the report is expected to be presented.”.

Chapter 8—Petitions

Standing Order 83—Petitions to be lodged with Clerk and to bear certificate

- 3.44. The Committee considered a suggestion that the language be updated to reflect current practice of the Assembly. The Clerk does not complete a certificate, rather they sign each petition (paper and e-petition) to “certify” that it is in order before it is presented to the Assembly.

Recommended amendment 25

Standing order 83 heading—*omit “certificate”, substitute “certification”.*

Recommended amendment 26

Standing order 83—*omit “certificate signed by the Clerk or the Deputy Clerk”, substitute “signature by the Clerk or the Deputy Clerk, to certify.”.*

Standing Order 83A—Petitions which do not conform with the Standing Orders

- 3.45. Standing order 83A relates to the tabling of out-of-order petitions by Members.
- 3.46. In its submission, OLA recommended that this standing order be updated to reflect the current practice of a Member seeking leave to table out-of-order petitions during the 30 minute motion to take note of petitions and responses that occurs after petitions and responses have been presented to the Assembly.²³
- 3.47. After further consideration of this proposed change the Committee determined that all out-of-order petitions be notified to the Clerk so that they can appear on the daily program

²³ Office of the Legislative Assembly, *Submission 5*, pp 35–36.

and all Members will be aware that they are part of the debate to take note of petitions and responses.

Recommended amendment 27

Omit standing order 83A and substitute

“83A. Petitions which do not conform with the standing orders, as determined by the Clerk, may be presented, by leave, by a Member in the 30-minute debate on the motion that petitions and responses so lodged be noted. The Member must indicate the intention to table an out-of-order petition to the Clerk by 5 pm on the day previous to the meeting of the Assembly at which it is proposed that the out-of-order petition is to be presented, and provide the subject matter and the number of signatories.”.

Standing Order 85—To be addressed to the Assembly and legible

- 3.48. To improve the language used in the standing orders, the Committee considered a suggestion to update SO 85 to reflect “plain English”, to ensure instructions for people wishing to set up a petition to the Assembly are clear and easily understood.

Recommended amendment 28

Standing order 85—*omit “interlineation and erasure”, substitute “insertions or deletions.”.*

Standing Order 87—To be in English or accompanied by translation

- 3.49. Standing order to be updated to be gender neutral.

Recommended amendment 29

Standing order 87—*omit “his or her”, substitute “their”.*

Standing Order 89—To be signed by person themselves

- 3.50. Standing order to be updated to be gender neutral.

Recommended amendment 30

Standing order 89—*omit “his or her” (twice occurring), substitute “their” (twice occurring).*

Standing Order 92—From corporations

- 3.51. It was noted by OLA in its submission that corporations no longer require a common seal for official documents and recommend that SO 92 be updated to reflect this change in the Corporation Act.²⁴

²⁴ Office of the Legislative Assembly, *Submission 5*, p 36.

Recommended amendment 31

Omit standing order 92, substitute:

“92. Corporations may make a petition by executing the documents by any method that would be lawful for the purposes of the execution of a deed.”.

Standing Order 95—Must be lodged by a Member

- 3.52. The Committee wants to update SO 95 to improve consistency between petitions and e-petitions. OLA noted in its submission that:

The e-petition process requires a member to be a sponsor for a petition prior to the petition being made public. Paper petitions should not have any indication that it may have been initiated by a member. As such the two styles of petition are inconsistent in relation to the involvement of a member in the development of a petition. The proposed amendment removes that inconsistency.²⁵

Recommended amendment 32

Standing order 95—*Omit* “Petitions shall be free from any indication that a Member may have initiated the petition.”.

Standing Order 98A

- 3.53. Standing order 98A relates to the motion to note petitions and responses that occurs after petitions have been presented to the Assembly.
- 3.54. In its submission, OLA recommended that this standing order be updated to reflect the current procedure where a Member can speak to a petition or government response for a maximum of 5 minutes. The proposed changes to SO 83A to allow Members to table, by leave, out-of-order petitions in this 30-minute debate requires this standing order to also be updated to reflect this procedure.²⁶

Recommended amendment 33

Standing order 98A—insert new heading “Motion to note petitions and responses”

Recommended amendment 34

Standing order 98A—add “A Member may, by leave, table out-of-order petitions during the debate on the motion to note petitions and responses.”.

²⁵ Office of the Legislative Assembly, *Submission 5*, p 36.

²⁶ Office of the Legislative Assembly, *Submission 5*, p 36.

Standing Order 99—Question on presentation

- 3.55. The Committee agreed to the proposal by OLA in its submission that SO 99 be updated to clarify that petitions must be referred to an Assembly committee on the same sitting day that it is presented.²⁷

Recommended amendment 35

Standing order 99—*Omit “or on the next sitting day”, substitute “or on that sitting day”.*

New Standing Order 99B—Referred to committee

- 3.56. In its submission the ACT Government proposed a new standing order in relation to petitions that are referred to committee. It noted that there is currently no specified timeframe for Committees to advise if they will or will not be undertaking an inquiry into a petition.²⁸ The Committee agreed that there are timelines for advising the Assembly on other matters and therefore for consistency, decisions on referred petitions should also be reported to the Assembly.

Recommended amendment 36

Insert new standing order 99B

“Advice on decision to inquire

99B. The relevant Assembly Standing Committee should provide advice on their decision to inquire, or not, into a petition to the Speaker within 28 days of the Minister’s response to the petition being tabled in the Assembly.”.

Standing Order 100—Referred to Ministers – Minister’s response

- 3.57. Standing order 100 relates to Minister’s responses to petitions that have been tabled in the Assembly.
- 3.58. It was recommended by the ACT Greens in their submission that responses be made available to Members two hours prior to tabling to allow for timely and informed debate during the 30 minute debate on the motion to take note of petitions and responses.²⁹
- 3.59. The OLA submission also highlighted the need for prompt access to Ministerial responses to petitions, particularly as committees usually wait for the response to a petition before making a final decision whether to inquire, or not, into the issues being raised. The current procedure is that:

Ministers’ responses to petitions are required to be provided to the Clerk who presents them to the Assembly at the next sitting and not made publicly available until tabled.³⁰

²⁷ Office of the Legislative Assembly, *Submission 5*, pp 36–37.

²⁸ ACT Government, *Submission 6*, p 2.

²⁹ ACT Greens, *Submission 3*, p [2].

³⁰ Office of the Legislative Assembly, *Submission 5*, p 13.

- 3.60. The Committee was in agreement with the proposal for government responses to petitions being circulated by the Clerk upon receipt and that they would be authorised for publication on the website once circulated to all Members.

Recommended amendment 37

Standing order 100—*add*

“When the Minister’s response is received by the Clerk, the Clerk shall circulate to all Members, and the response is deemed to be authorised for publication.”.

Standing Order 100A—Electronic petitions (“e-petitions”)

- 3.61. The new Parliamentary Portal for petitions that has been implemented has new workflows. OLA proposed updating this standing order to reflect the new workflows,³¹ and the Committee agreed to this change.

Recommended amendment 38

Standing order 100A—*Omit* 100A (c) and (d).

Chapter 9—Notices of motion

Standing Order 101—Notice of motion – how given

- 3.62. Standing order 101 relates to how notices are lodged and the timelines for Members to meet when lodging a motion for a sitting week.
- 3.63. In its submission, OLA states that notices for consideration by the Committee, under standing order 16(a)(iii), need to be delivered to the Clerk no later than 12 noon on the Monday of the sitting week at which it is proposed to be moved. OLA also notes that:

During the COVID-19 pandemic it was agreed that members could provide notices to the Clerk electronically due to a large number of members and staff working remotely. The Office suggests that this arrangement be formally reflected in the standing orders.³²

- 3.64. OLA also recommended that if Monday of a sitting week is a public holiday, this standing order be amended to allow for notices to be delivered on the Tuesday instead.³³

Recommended amendment 39

Omit standing order 101, substitute:

“Notices of motion – how given

³¹ Office of the Legislative Assembly, *Submission 5*, p 34.

³² Office of the Legislative Assembly, *Submission 5*, p 14.

³³ Office of the Legislative Assembly, *Submission 5*, p 14.

101. Notice of motion shall be given by delivering a copy of its terms to the Clerk in the Chamber during a sitting. The notice must be signed by the Member, (if a co-sponsored motion, by all Members whose names are on the notice).

Except that a proposed notice of motion to be considered by the Standing Committee on Administration and Procedure under standing order 16(a)(iii) must be delivered to the Clerk, either in signed hard copy or signed electronic copy, no later than 12 noon on the Monday of the sitting week at which it is proposed to be moved. In instances where the Monday is a public holiday, no later than 12 noon on the Tuesday of the sitting week at which it is proposed to be moved.”.

Standing Order 104—Given for absent Member

3.65. It was noted by OLA in its submission that standing orders refer to a “co-sponsor” implying that only two Members are sponsoring a motion or bill. Co-sponsorship is not limited, therefore OLA recommends that the standing orders update references to co-sponsor be updated to indicate multiple “co-sponsor/s”.³⁴

3.66. The Committee agreed to this change across the standing orders.

Recommended amendment 40

Standing order 104—*omit “the co-sponsor”, substitute “the co-sponsor/s” and omit “or co-sponsor’s”, substitute “or co-sponsor/s”.*

New Standing Order 106A—Length of Notices

3.67. The Committee noted that notices of motion being lodged in recent times have become large, running to two or three pages and sometimes four. Any amendments moved in the Chamber for such motions are consequently also long. The Committee is of the view that a word limit is required to ensure motions are succinct and focused on the issue proposed for debate.

³⁴ Office of the Legislative Assembly, *Submission 5*, pp 34–35.

Recommended amendment 41

Proposal: New standing order 106A:

“Notices limits

106A. No Member may give a notice in excess of 500 words, except that the Speaker may accept a notice in excess of 500 words in length from:

- (a) a Minister, provided such a motion is required by statute; or
- (b) a Member giving notice to establish a committee or refer a matter to a committee; or
- (c) a Member giving notice of a want of confidence in the Chief Minister or a Minister.”.

Standing Order 110—Terms altered

- 3.68. As agreed by the Committee update to reflect multiple co-sponsor/s.

Recommended amendment 42

Standing order 110—*omit “the co-sponsor”, substitute “the co-sponsor/s”.*

Standing Order 111—Withdrawal of notice

- 3.69. As agreed by the Committee update to reflect multiple co-sponsor/s.

Recommended amendment 43

Standing order 111—*omit “the co-sponsor”, substitute “the co-sponsor/s”.*

Chapter 10—Questions seeking information

Standing Order 117—Rules for all questions

- 3.70. A minor change was recommended in the submission from the ACT Labor Caucus to split SO 117(d) so that more prominence could be given to the section relating to questions critical of the character or conduct of people.³⁵

Recommended amendment 44

Omit standing order 117(d) and substitute:

- “(d) questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged on a substantive motion;
- (da) notice must be given of questions critical of the character or conduct of other persons;”

³⁵ ACT Labor Caucus, *Submission 4*, pp [4–5].

Standing Order 118—Answers to questions without notice

- 3.71. Standing order 118 sets out the rules for answers provided by Ministers to questions without notice.
- 3.72. The Canberra Liberals point out in their submission that the rules for questions under SO117 state that they must not contain ‘ironical expressions’, ‘inferences’ or ‘imputations.’ They note that there are no equivalent rules under SO 118 leading to:
- ...an unbalanced situation where the questions have to be very carefully worded, but the answers can – and often are - full of ironic expressions, inferences and imputations. As just one example, In a recent question time (24 Nov 2022), the Chief Minister’s first words were “If Mr Cain could stay awake for earlier, or stay awake for any questions, he would know...”³⁶
- 3.73. The submission recommends that the same rules should be applied to both questions and answers³⁷ and the Committee agreed to this proposal, with minor edits to allow for the discussion of hypothetical matters by the Executive when providing explanations of policy.
- 3.74. The standing order will also be updated to be gender neutral.

Recommended amendment 45

Standing order 118—*add 118(d)*.

“(d) shall not contain:

- (i) statements of fact or names of persons unless they are strictly necessary to render the answer intelligible and the facts can be authenticated;
- (ii) inferences;
- (iii) imputations;
- (iv) ironical expressions; or
- (v) hypothetical matters; but may provide explanation regarding the policy of the Executive and its application.”.

Recommended amendment 46

Standing order 118(c)—*omit “his/her”, substitute “their”*.

Standing Order 122—Answers to Question on Notice

- 3.75. Standing order 122 deals with answers to questions on notice. Ministers currently have 30 days to answer questions, however sometimes questions need to be redirected from one Minister to another. The standing orders do not have any direction on what happens to the 30-day limit. In its submission, OLA has recommended that the 30-day deadline remain, regardless of any redirections.³⁸ The Committee discussed the standing order and

³⁶ Canberra Liberals, *Submission 2*, p 9.

³⁷ Canberra Liberals, *Submission 2*, p 9.

³⁸ Office of the Legislative Assembly, *Submission 5*, pp 17–18.

decided that redirections needed a time limit, 15 days was agreed to. They also agreed that if a question is redirected the Minister would still have 30 days from receipt of the redirected question.

Recommended amendment 47

Standing order 122—*add*

“Questions may be redirected within 15 days, and the Minister receiving the redirected question has 30 days to answer once the redirection has been agreed to.”.

Chapter 11—Motions, questions, votes and resolutions

New Standing Order 126A—Request for no condolence motion

- 3.76. Members of the Victorian parliament are able to request that no condolence motion be moved after their death.³⁹ The Committee agreed to a new standing order, similar to Victoria, to allow a Member to express their wish for no condolence motion in the Assembly.

Recommended amendment 48

“Request for no condolence motion

126A. A Member or former Member may notify the Clerk that they do not want a condolence motion to be moved in the event of their death. On the occasion of their death the Clerk will advise the Speaker, Chief Minister, Leader of the Opposition and any other minor party and independent of their wishes.”.

Standing Order 136—Same question may be disallowed

- 3.77. The Committee agreed to change the reference to “calendar year” in this standing order to “the previous 12 months”.

Recommended amendment 49

Standing order 136—*Omit “during that calendar year”, substitute “in the previous 12 months”.*

Standing Order 137—resolution or vote rescinded

- 3.78. The Committee agreed to change the reference to “calendar year” in this standing order to the “previous 12 months”.

Recommended amendment 50

Standing order 136—*Omit “same calendar year”, substitute “previous 12 months”.*

³⁹ Office of the Legislative Assembly, *Submission 5*, pp 17–18.

New Standing Order 137A—Assembly resolutions

3.79. The ACT Government noted in its submission that:

Unlike Committee Reports, there is no advice in Standing Orders about how to deal with delays to an Assembly Resolution response. Under current practice, at the end of a sitting period the Speaker writes to Ministers regarding the resolutions of the Assembly. As such, much of the ACT Government assume that if there is a delay, the Minister needs to write back to the Speaker to advise. The ACT Government therefore recommend that the committee consider adding a standing order in relation to the process for a delayed response to an Assembly Resolution.”⁴⁰

3.80. To allow for effective scrutiny of resolutions, the Committee agreed that the addition of a new standing order to allow for Minister’s to advise Members directly when a response to resolution date is not going to be met, to improve accountability to the Assembly.

Recommended amendment 51

Insert new standing order 137A

“Assembly resolutions

137A. Where the Assembly passes a resolution requiring the Government or a Minister to undertake certain action and report back to the Assembly by a specified date, and the Government or the Minister is unable to meet the deadline, the Government or Minister shall write to all Members of the Assembly directly informing them that the deadline will not be met and including the reasons for the delay. The Minister must then table the correspondence.”.

Chapter 12—Amendments

Standing Order 139—Amendments - proposed

3.81. Standing order 139 deals with amendments to motions proposed in the Assembly. In its submission, OLA has recommended the addition of a requirement to lodge amendment motions electronically as they can be quite lengthy, this will assist the timely production of the minutes of proceedings at the end of the day.⁴¹

Recommended amendment 52

Standing order 139—*after “mover”, insert “Where applicable an electronic copy is also to be provided to the Office of the Legislative Assembly.”.*

⁴⁰ ACT Government, *Submission 6*, p 5.

⁴¹ Office of the Legislative Assembly, *Submission 5*, p 18.

Chapter 13—Orders of the day

Standing Order 152A—Removal of private Members' business orders of the day from the *Notice Paper*

- 3.82. Standing order 152A allows for private Members' business orders of the day (excluding bills), and Assembly business orders of the day to take note of papers or reports, to be removed from the Notice Paper if they have not been called on for four sitting weeks.
- 3.83. Recent practice has been for all papers tabled having a motion to take note moved that is subsequently adjourning as Members have not yet seen the papers and want a chance to look at them prior to debating this motion. This has resulted in a large number of orders of the day appearing under Executive business that are then not further debated by the Assembly but continue to appear on the Notice Paper. In its submission, OLA proposed that Executive business orders of the day to take note of papers be included within the terms of this standing order.⁴²

Recommended amendment 53

Omit standing order 152A and heading, substitute:

“Removal of certain orders of the day from the *Notice Paper*

152A. After notifying the Member in charge, the Clerk shall remove from the *Notice Paper* any:

- (a) private Members' business order of the day, excluding bills;
 - (b) Assembly business order of the day to take note of a paper or report; and
 - (c) Executive business order of the day to take note of a paper;
- which has not been called on for four sitting weeks.”.

Chapter 14—Voting/divisions

Standing Order 160—Question stated – call of Assembly

- 3.84. The current practice in the Assembly when a division is called, is for the Clerk to read out each Member's name using a gender-identifying term.⁴³ In line with the agreement by the Committee to move to gender neutral terminology throughout the standing orders, this standing order will be changed to each Member being called by their first name and surname.

Recommended amendment 54

Standing order 160—Omit “names”, substitute “first name and surname”

⁴² Office of the Legislative Assembly, *Submission 5*, p 18.

⁴³ Office of the Legislative Assembly, *Submission 5*, p 19.

Chapter 15—Bills

Standing Order 168—How initiated

- 3.85. Standing order 168 provides the process for presentation of a notice of intention to present a bill.
- 3.86. OLA recommends in its submission that this standing order be amended to allow bill notices to be delivered on the Tuesday of a sitting week, where Monday is a public holiday. They also propose an amendment to allow for signed electronic copies of bill notices to be provided to the Clerk on a non-sitting day.⁴⁴
- 3.87. As already agreed by the Committee update SO 168(b) to reflect multiple co-sponsor/s.

Recommended amendment 55

Standing order 168—

(a)(i)—omit “to the Clerk’s Office by 12 noon on a Monday of the sitting week of which a bill is proposed to be introduced;”, substitute “to the Clerk’s Office, either in hard copy or signed electronic copy, by 12 noon on a Monday of the sitting week of which a bill is proposed to be introduced or, in instances where the Monday is a public holiday, no later than 12 noon on the Tuesday of the sitting week at which it is proposed to be moved;”

(b)—omit “another”, substitute “any”.

Standing Order 174—Reference to select or standing committee

- 3.88. Standing order 174 makes a general requirement that bills be referred to the relevant standing committee.
- 3.89. After a general election the Assembly will debate and pass a motion to establish the standing committees which provides the detail for their operation for the term of an Assembly. In the Tenth Assembly all bills are referred to a committee and the resolution of appointment includes the timelines for committees must decide on conducting an inquiry and presenting the final report on the bill. The submission from OLA outlined the timelines for committee bill inquiries:
- a decision to inquire must be advised to the Speaker within three weeks of the bill being tabled (extended from two weeks on 10 February 2022);
 - the inquiry must be completed within two months of bill tabling, or three months if the bill is presented in the last sitting week of the year.⁴⁵
- 3.90. The submission also notes that committees:
- have been selective in conducting bill inquiries;

⁴⁴ Office of the Legislative Assembly, *Submission 5*, p 19.

⁴⁵ Office of the Legislative Assembly, *Submission 5*, p 21.

- sometimes have to decide on an inquiry prior to the scrutiny report on the bill being available (extending the decision period from two to three weeks has reduced the frequency of this);
- also consider the Government responses to comments on bills and also any proposed amendments reported on in scrutiny reports;
- have a two-month limit to report which increases peaks in committee work;
- have sometimes decided against inquiring into a bill because of work pressures caused by other bill inquiries;
- bill inquiries can be either small or large in scale and are sometimes conducted without a public hearing;
- bill inquiries conducted over the Christmas and New Year limit the opportunities for the community to contribute; and
- are increasingly seeking bill inquiry extensions from the Assembly.⁴⁶

3.91. The Committee considered bill inquiries to be core business for committees whose recommendations can improve legislation under consideration by the Assembly. The Committee agreed with OLA's proposed amendments to this standing order that is aimed to allow for committees:

- to make positive contributions to legislation;
- having access to the relevant scrutiny report prior to deciding on whether to inquire into a bill; and
- having more time to conduct bill inquiries, which will help manage workload.⁴⁷

Recommended amendment 56

Omit standing order 174, substitute:

"174. Upon a Bill being presented to the Assembly, the bill stands referred to the relevant Assembly standing or select committee for consideration, and:

- (a) if the subject matter of the bill makes it unclear which committee it should be referred to, the Speaker will determine the appropriate committee;
- (b) the committee must advise the Speaker of its decision to inquire into the bill within three weeks of its presentation, or one week after the relevant scrutiny report is tabled, whichever is later;
- (c) the Speaker must arrange for all Members to be notified; and
- (d) the committee must complete its report within three months of the bill's presentation, with the exception of the last sitting period of the year where the committee must report within four months of the bill's presentation."

⁴⁶ Office of the Legislative Assembly, *Submission 5*, pp 21–22.

⁴⁷ Office of the Legislative Assembly, *Submission 5*, p 22.

Standing Order 179—Title and preamble stand postponed Clauses considered

- 3.92. The wording of standing order 179 assumes that every bill contains a preamble, however this is not always the case. Therefore OLA recommends that the standing order be amended to reflect that it applies to all bills, whether those bills do or do not have a preamble.⁴⁸ The Committee agreed to this change.

Recommended amendment 57

Standing order 179—*Omit “the preamble”, substitute “any preamble”.*

Chapter 17—Disorder

Standing Order 204—Period of suspension

- 3.93. Standing order 204 provides the period of suspension for Members who have been named due to disorderly conduct in the chamber.
- 3.94. The ACT Labor Caucus suggest in their submission that this standing order be amended “to a rolling 12-month period to encourage orderly behaviour across the full year”.⁴⁹ The Committee agreed to this change.

Recommended amendment 58

Standing order 204—Omit “the same calendar year”, substitute “a 12 month period” (twice occurring)

Chapter 19—Papers and documents

Standing Order 211—Papers presented

- 3.95. Standing order 211 sets out the procedure for the tabling of papers by the Executive.
- 3.96. There was broad agreement in submissions received that the procedures for tabling of papers were not working efficiently. The current process is for a list of papers to be tabled being provided to the whips by the Manager of Government Business by 12 noon of a sitting day. If Members wish to have a paper noted so that there can be debate they will advise the Manager of Government Business who will move a motion after the presentation of the papers. The ACT Labor Caucus noted that this process is cumbersome and needs improvement.⁵⁰
- 3.97. OLA noted in its submission that:

Members are not aware of the content of these documents and so cannot make an informed decision. It has recently become the practice of the Opposition to ask

⁴⁸ Office of the Legislative Assembly, *Submission 5*, p 37.

⁴⁹ ACT Labor Caucus, *Submission 4*, p [5].

⁵⁰ ACT Labor Caucus, *Submission 4*, p [5].

that all papers be noted and debate adjourned. This is time consuming and clogs up the Notice Paper. Debate on these orders of the day is at the discretion of the Executive and they rarely call the items on for debate.⁵¹

3.98. The ACT Greens also agreed with the deficiencies of the current process, stating that:

Members are required to decide on short notice based purely on the title as to whether a paper should be noted or debated. Where noted, it is reliant on the Manager of Government Business agreeing for an item to be brought back for debate. Any subsequent debate can also be severely delayed whilst waiting for next sitting day. The inability for Members to debate papers in a timely-fashion delays and reduces the level of scrutiny, accountability and oversight.⁵²

3.99. After consideration of the submissions, the Committee agreed to change SO 211 to past practices of papers being presented without the need to circulate a list. A new SO 211A stipulates a motion to take note of papers being moved after Private Members' business to allow time for Members to look at the content of any tabled papers. The debate would mirror the current procedure for taking note of petitions and responses, with each Member allowed five minutes to speak on a paper and the total debate is for 30 minutes.

Recommended amendment 59

Proposal: omit 211, substitute:

“Papers presented

211. Papers may be presented to the Assembly by a Minister or the Speaker and be made available to all Members upon presentation.”.

Recommended amendment 60

Proposal: insert new SO 211A

“Take note of papers presented

211A. At the conclusion of Private Members' business, the Speaker shall propose the question—That the papers presented under standing order 211 during presentation of papers in the routine of business, be noted. The time allocated for the debate shall be 30 minutes with each Member speaking for not more than 5 minutes after which time the motion be agreed to.”.

Standing Order 214—Motion to take note or refer to a committee

3.100. OLA noted in its submission that SO 214(b) has only been rarely used and not since 1999. The Committee agreed to omit part (b) of this standing order as committees can decide to inquire into any paper using their self-referral powers.⁵³

⁵¹ Office of the Legislative Assembly, *Submission 5*, p 23.

⁵² ACT Greens, *Submission 3*, p [2].

⁵³ Office of the Legislative Assembly, *Submission 5*, p 37.

Recommended amendment 61

Standing order 214—omit (b).

Chapter 20—Committees

Standing Order 220—Membership

- 3.101. Standing order 220 sets out the maximum number of Members on committees. Multiple submissions suggested that when determining committee membership, gender balance should be considered by each of the parties. In line with other changes to update for gender balance, the committee agreed that where possible committees should have a gender balance, and that party whips have a role to play in ensuring this when committees are set-up.

Recommended amendment 62

Standing order 220—add “Overall membership of committees shall comprise Members of all genders as nearly as practicable proportional to their representation in the Assembly.”.

Standing Order 229B—Use of audio visual or audio links

- 3.102. Standing order 229B allows committees to conduct their proceedings via audio visual or audio links without the requirement to attend in person. In its submission, OLA suggests that the use of the term “resolve to” implies that a committee needs to meet at least once in person to set up the arrangements for remote proceedings, and recommend removing these words from the standing order.⁵⁴ The Committee agreed to this amendment.

Recommended amendment 63

Standing order 229B—omit “resolve to”.

Standing Order 245—Examination of witnesses

- 3.103. Standing order 245 outlines the examination of witness and the asking of questions by visiting members. The ACT Labor Caucus submission suggested that further clarity needs to be provided to make it clear that the standing orders are also a guide to committee proceedings.⁵⁵

Recommended amendment 64

⁵⁴ Office of the Legislative Assembly, *Submission 5*, p 37.

⁵⁵ ACT Labor Caucus, *Submission 4*, p [6].

Standing order 245—add “In asking questions of witnesses Members should be mindful of the provisions of Chapter 10 – Questions seeking information.”.

Chapter 21—Witnesses

Standing Order 254B—Tabling a Government Response to Committee Report

- 3.104. The ACT Government noted in its submission that SO 254B requires a response to all committee reports, however when an inquiry looks into a private Member’s bill it can be difficult for the government to respond to recommendations not made to them.⁵⁶ Recommendations for private Member’s bills are usually, but not always, made to the Member who presented the bill.
- 3.105. The Committee agreed that clarity should be provided in this standing order so that the government need only respond to those recommendations made directly to them for any inquiry into a private Member’s bill. This can also be extended to all committee reports.

Recommended amendment 65

Standing order 254B— after “publication”, insert new paragraph:

“A Government response is not required to a Committee report which does not contain specific recommendations directed to the Government.”.

Standing Order 254C—Non-sitting circulation of report

- 3.106. Standing order 254C authorises the chair of a committee to provide reports to the Speaker during non-sitting periods. Reports are provided electronically and must be circulated to all Members after tabling.
- 3.107. OLA noted in its submission that current practice is to provide and circulate the report electronically and recommend this standing order be updated to reflect this.⁵⁷ OLA also proposed that the standing order be amended to provide clarity that:

the transaction between the Chair and Speaker is complete when there is evidence that the Speaker has received the report and authorised publication.⁵⁸

Recommended amendment 66

Proposal: standing order 254C(a):

omit “, and a copy for each Member of the Legislative Assembly, to the Speaker”, substitute “electronically to the Speaker to authorise the report for circulation and publication”.

⁵⁶ ACT Government, *Submission 6*, p 3.

⁵⁷ Office of the Legislative Assembly, *Submission 5*, p 38.

⁵⁸ Office of the Legislative Assembly, *Submission 5*, p 38.

Recommended amendment 67

Proposal: standing order 254C(b):

omit “the Chair gives it to the Speaker,” substitute “the Chair receives authorisation from the Speaker”.

Standing Order 254D—Questions arising from committee hearings

- 3.108. The Committee also agreed to minor proposals by OLA to clarify timelines around the answering of questions, which is five business days once they have been received.⁵⁹

Recommended amendment 68

Proposal: standing order 254D(a):

omit “5 business day of receipt”, substitute “5 business days of the answering entity receiving”.

Recommended amendment 69

Proposal: standing order 254D(b):

omit “A member”, substitute “An answering entity”; and

omit “receipt of”, substitute “answering entity receiving”.

Standing Order 264A—Dealing with witnesses

- 3.109. Standing order 264A outlines the procedures for Assembly committees when dealing with witnesses.
- 3.110. The requirement under SO 264A(c) to provide witnesses with any relevant transcript was considered redundant by OLA and it is suggested that this requirement be removed from the standing order.⁶⁰ The Committee agreed to remove the reference to transcripts in SO 264A(c).

Recommended amendment 70

Standing order 264A(c), omit “a transcript of” and “already taken”.

Chapter 23—Addresses to the Queen or the Governor-General

Standing Order 268—How moved

- 3.111. The Committee agreed to update all references to the “Queen” or “Her Majesty” with “Sovereign”.

⁵⁹ Office of the Legislative Assembly, *Submission 5*, p 38.

⁶⁰ Office of the Legislative Assembly, *Submission 5*, p 39.

Recommended amendment 71

Chapter 23 heading—*omit “Queen”, substitute “Sovereign”.*

Recommended amendment 72

Standing Order 268—*omit “Her Majesty”, substitute “the Sovereign”.*

Standing Order 269—Addresses to Queen sent to Governor-General by Speaker

- 3.112. The Committee agreed to update all references to the “Queen” or “Her Majesty” with “Sovereign”.

Recommended amendment 73

Omit standing order 269, substitute:

“Addresses to the Sovereign sent to Governor-General by Speaker

269. Addresses to the Sovereign shall be transmitted to the Governor-General of Australia by the Speaker, who shall request the representative to cause them to be forwarded for presentation.”.

Chapter 26—Privilege and contempt

Standing Order 277—Contempt – Matters constituting contempt

- 3.113. Standing order 277 relates to matters constituting contempt. A technical amendment is recommended by OLA to remove a duplicate heading “Interference with witnesses” that are in SO 277 (j) and (k).⁶¹

Recommended amendment 74

Standing order 277(k)—*omit heading “Interference with witnesses”.*

- 3.114. The Committee endorses all of these proposed changes to ensure that the Assembly’s standing orders remain relevant and reflect best practice for parliamentary procedures.

Recommendation 1

The Committee recommends that amendments to the standing orders numbers 1 to 74 be adopted.

⁶¹ Office of the Legislative Assembly, *Submission 5*, pp 39–40.

4. Recommended amendments to continuing resolutions

- 4.1. The Committee also considered proposed amendments to the continuing resolutions of the Assembly.

Continuing resolution 4—Citizen’s right of reply

- 4.2. The Canberra Liberals submission highlighted the lack of clarity in relation to citizen’s right of reply. It was suggested that the resolution needed to make it clear that submissions were written, there is no opportunity for a verbal response to be made by the person or corporation making the application.⁶²
- 4.3. The Committee agreed to change (7)(b) to reflect that citizen’s right of reply are to be provided in writing by the applicant.

Recommended amendment 75

Continuing resolution 4—

Paragraph (7)(b)—*omit “that a response”, substitute “that the written response”; and*

Paragraph (7)(b)—*after “Hansard”, insert “(noting that there is no provision for a verbal response);”.*

Continuing resolution 5—Code of conduct for all members of the Legislative Assembly for the ACT

- 4.4. As agreed by the Committee, this continuing resolution is to be updated to be gender neutral.

Recommended amendment 76

Continuing resolution 5—

Paragraph (22)—*omit “he or she makes”, substitute “they make”; and*

Paragraph (22)—*omit “his or her”, substitute “they”.*

Continuing resolution 5AA—Commissioner for Standards

- 4.5. As agreed by the Committee, this continuing resolution is to be updated to be gender neutral.

⁶² Canberra Liberals, *Submission 2*, p 14.

- 4.6. The Committee also agreed to minor technical change in the explanation next to the 5AA (heading box) where Commissioner of Standards would be changed to Commissioner for Standards

Recommended amendment 77

Continuing resolution 5AA—

Resolution explanation—*omit* “This resolution provides for the appointment of a Legislative Assembly Commissioner of Standards”, *substitute* “This resolution provides for the appointment of a Legislative Assembly Commissioner for Standards”

Paragraph (7)(a), *omit* “he or she has”, *substitute* “they have”.

Continuing resolution 6—Declaration of private interests of members

- 4.7. As agreed by the Committee, this continuing resolution is to be updated to be gender neutral.

Recommended amendment 78

Continuing Resolution 6—Paragraph (2), *omit* “his or her” and “his/her”, *substitute* “their” (twice occurring).

Continuing resolution 6A—Ethics and Integrity Adviser

- 4.8. As agreed by the Committee, this continuing resolution is to be updated to be gender neutral.

Recommended amendment 79

Continuing resolution 6A—

Under the heading Provision of advice, paragraph (1)—*omit* “his or her”, *substitute* “their”.

Under the heading Records, paragraphs (2) and (5)—*omit* “him/her”, *substitute* “them”.

Continuing resolution 8AC—Lobbyist Register—ACT Lobbyist Regulation Guidelines

- 4.9. As agreed by the Committee, this continuing resolution is to be updated to be gender neutral.

Recommended amendment 80

Continuing resolution 8AC—

Under the heading Registration Forms, first paragraph—*omit “he or she”, substitute “they”*.

Recommended amendment 81

Under the heading Registration decisions, paragraph (2)(a)—*omit “he or she believes”, substitute “they believe”*.

Recommended amendment 82

Under the heading Handling of Complaints, paragraph (1)—*omit “he is”, substitute “they are”*.

Continuing resolution 8B—Public interest immunity

- 4.10. This amendment is fix a reference to standing order 264A(o) in this continuing resolution, this is incorrect and should be 264A(l).⁶³

Recommended amendment 83

Continuing resolution 8AD—*omit “264A (o)”, substitute “264A (l)”*.

Continuing resolution 9—Senator for the Australian Capital Territory—Procedures for election

- 4.11. As agreed by the Committee, this continuing resolution is to be updated to be gender neutral.

Recommended amendment 84

Continuing resolution 9—

Paragraphs (1) and (2)(a)—*omit “his or her”, substitute “their”*.

Paragraph (2)(b)—*omit “he or she is”, substitute “they are”*.

- 4.12. The Committee endorses all of these proposed changes to ensure that the Assembly’s continuing resolutions remain relevant and reflect best practice for parliamentary procedures.

Recommendation 2

The Committee recommends that amendments to the continuing resolutions of the Assembly contained in recommended amendments numbers 75 to 84 be adopted.

⁶³ Office of the Legislative Assembly, *Submission 5*, pp 39–40.

5. Additional recommendations

Standing order 98—Clerk to announce particulars of petitions lodged

- 5.1. The Committee was advised that the proposed change to SO98 in relation to petition co-sponsorship would require further investigation. Petitions are now handled through the parliamentary portal and that a change to add additional sponsoring Members would require further investigation. There may be costs involved in altering the portal to accept co-sponsoring Members. OLA will investigate the options for changing the petitions section of the portal and will report back to the Committee on the work required, and any potential costs involved. The Committee agreed that until OLA has been able to report back to them, that SO98 would remain unchanged.

Recommendation 3

The Committee recommends that OLA investigate the ability of the parliamentary portal to allow for the co-sponsorship of petitions.

Continuing resolution 3—Broadcasting guidelines

- 5.2. Continuing resolution 3 was passed by the Assembly on 7 March 2002, and in accordance with subsection 5(2) of the *Legislative Assembly (Broadcasting) Act 2001*, sets out the guidelines for the broadcasting of both Assembly and Committee proceedings.
- 5.3. The Committee noted that, while there have been some amendments, it has been over 20 years since this resolution was adopted. Given this the Committee resolved that a separate inquiry be undertaken, and until that inquiry is complete, no changes be made to continuing resolution 3.

Recommendation 4

The Standing Committee on Administration and Procedure undertake an inquiry into Continuing resolution 3—Broadcasting guidelines.

Continuing resolution 5—Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory

- 5.4. Continuing resolution 5 was passed by the Assembly on 25 August 2005, and provides a code of conduct for all Members of the Legislative Assembly.

- 5.5. The Committee noted that several parliaments across Australia and New Zealand have held inquiries into matters relating to the code of conduct, and it sees merit in examining those reports to see if changes were warranted to the ACT code.
- 5.6. The Committee contacted Mr Stephen Skehill, Ethics and Integrity Advisor, to undertake the review and received his report and recommendations on 4 August 2023. The Committee considered the report at its meeting on 17 August 2023; agreed with the recommendations, and resolved that the report and the amended Code of Conduct be incorporated in this review.
- 5.7. The report is attached at Appendix B and includes recommended amendments at attachment A.

Recommendation 5

The Committee recommends that the proposed amendments to the Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory as recommended by the Ethics and Integrity Adviser and detailed in Appendix B, Attachment A, be adopted.

Glossary

- 5.8. In its submission OLA suggested a glossary could be added to the standing order to provide a quick reference point for terms that are embedded in the standing orders.⁶⁴
- 5.9. The Secretariat provided this list of terms for inclusion in the glossary.

Term	Definition
30 days	30 calendar days
Absolute majority	Half the number of elected Members rounded up to the nearest whole number (in a 25 Member Assembly this equals 13 Members)
Answering entity	A Minister, Member, directorate, business or organisation
Electronic copy	Word version of a document
Monday of the sitting week	If Monday is a public holiday, substitute Tuesday of the sitting week
Month	Pursuant to the <i>Legislation Act 2001</i> , month means a period beginning at the start of any day of one of the calendar months and ending—

⁶⁴ Office of the Legislative Assembly, *Submission 5*, p 41.

	<p>(a) Immediately before the corresponding day of the next calendar month; or</p> <p>(b) If there is no such corresponding day—at the end of the next calendar month.</p> <p>For example, the period beginning at the start of 8 May and ending at midnight on 7 June is a month</p>
Non-executive government Member	Is a Member who is not a Minister but who belongs to a party which includes a Member who is a Minister
Non-government Member	Is a Member who is not a minister but who does not belongs to a party which has a Member who is a Minister
Scrutiny committee	Standing Committee on Justice and Community Safety (performing in its legislative scrutiny role)
Signed electronic copy	A scanned pdf of a signed original document (may include e-signature) from the Member
Sitting day (of the Legislative Assembly)	<p>A period that commences on a day the Assembly meets and continues until the Assembly next adjourns</p> <p><u>Note</u>: a sitting day may continue for one or more days</p>
Special majority	Two thirds of the number of elected Members rounded up to the nearest whole number (in a 25 Member Assembly this equals 17 Members)
Written notice (in relation to SO 24A)	Signed hardcopy

- 5.10. The Committee agreed to the glossary, and further recommends that changes to the glossary can be made by the agreement of the Committee as new terms are identified for inclusion in the glossary.

Recommendation 6

The Committee recommends the glossary of terms be included in the standing orders.

Recommendation 7

The Committee recommends that future amendments to the glossary can be agreed to and authorised by the Standing Committee on Administration and Procedure for inclusion and publication in the Standing Orders.

Electronic tabling

- 5.11. The ACT Government asked the Committee as part of their submission to consider whether an ‘opt-in’ approach could be given for hard copies of Annual Reports. It noted that:

... many Members use the online version, with hard copies remaining unused and even placed into recycling bins once issued. Currently there are 32 annual reports tabled each year in the Legislative Assembly. Noting that currently 35 hard copies of every annual report is required, having an opt-in process would reduce the number of resources required to produce annual reports.⁶⁵

- 5.12. The Committee did not support the opt-in approach but agreed that the number of hard copies could be reduced.

Recommendation 8

The Committee recommends that the number of hard copy annual reports provided by the ACT Government for tabling in the Assembly be reduced from 35 to 20 to ensure sufficient copies are available for tabling and all non-executive Members.

- 5.13. The requirement to table a hard copy of every paper remains despite the advances in technology and data storage solutions. Inquiries and solutions offered in the past have not satisfactorily addressed this issue to ensure the authenticity of documents and the requirement that these documents are forever records. The keeping of hard copy records poses difficulties for all jurisdictions having to safely store large quantities of paper. The Office submits that there would be a number of advantages in the Standing Committee on Administration and Procedure inquiring into e-tabling.

Recommendation 9

The Standing Committee on Administration and Procedure undertake an inquiry into the electronic tabling of documents.

Distribution of questions without notice

- 5.14. The Committee also considered the issue of the distribution of questions during question time raised by the Canberra Liberals in their submission.⁶⁶ The Committee was advised that statistics on the distribution of questions without notice were kept by the Chamber Support team. These are provided to the Speaker every sitting day to help ensure an equal distribution of questions in proportion to party representation in the Assembly. The Speaker advised that she would be happy to provide these statistics to the Committee at the order of business meetings on the first day of a sitting week.

⁶⁵ ACT Government, *Submission 6*, p 4.

⁶⁶ Canberra Liberals, *Submission 2*, p 16.

Recommendation 10

The Committee recommends that the Speaker provide question time statistics to the Standing Committee on Administration and Procedure during the sitting week order of business meeting.

Matters of Public Importance

5.15. The Committee also considered the ACT Greens submission proposing:

.... a more direct path for citizens to raise community concerns for Assembly discussion and consideration as Matters of Public Importance (MPI). MPIs, whilst not utilised this term have demonstrated value in raising policy issues that would not normally be debated in the normal course of Assembly business. A citizens MPI would also strengthen our democracy through greater civic engagement in parliamentary processes, and allow citizens to discover their representatives' (and parties) views with respect to issues that are important to them.⁶⁷

5.16. The committee considered this proposal should be considered as a separate inquiry and therefore no change to the standing orders would be made as part of the review of standing orders inquiry.

Recommendation 11

The Standing Committee on Administration and Procedure undertake an inquiry into the feasibility of community input into the Assembly through a Matters of Public Importance process.

⁶⁷ Canberra Liberals, *Submission 2*, p 16.

6. Proposals, changes or comments that were not supported

- 6.1. Although the committee carefully considered all the submissions it received, there were a number of proposals, suggested changes or comments that the committee did not agree to.
- 6.2. In some cases, the committee determined that the proposal, comment or suggested change would be better addressed through an alternative approach made by another submitter. In other cases, the committee was not persuaded on the merits of the change.
- 6.3. These are outlined in Table 1 below.

Table 1: Proposed amendments to the standing orders not agreed to

Standing order number	Proposed amendment	Submission
6A	after “enactments.”, insert “In this standing order, absence means being away from the Territory for more than 24 hours.”.	No. 5—OLA
34	omit “6.30 pm”, substitute “6.20 pm”.	No. 4—ACT Labor Caucus
69	69. The maximum period for which a Member may speak on any subject indicated in this standing order, and the maximum period for any debate, shall not, unless otherwise ordered, exceed the period specified opposite to that subject in the following schedule. The Speaker may at his/her discretion direct the clock to be stopped. Ministerial Statements Minister.....not specified Any other member.....10 minutes	No. 6—ACT Government
69	Ministerial Statements Whole debate.....60 minutes	No. 4—ACT Labor Caucus
74	Ministerial Statements: Ministers shall table a copy of the statement and move that the paper be noted. Statements shall not be read out except in exceptional circumstances, by leave. A Minister can speak for up to 2 minutes to explain why reading out a statement is warranted, then seek leave.	No. 2—Canberra Liberals

74	<p>“Standing order 74 – Routine of business</p> <p>74. The Assembly shall proceed each day with its ordinary business in the following routine:</p> <p>Prayer or reflection Presentation of petitions and responses Constituency statements (on sitting Tuesdays and Wednesdays) Ministerial statements Executive Notices and orders of the day Private Members business (1 item) Questions without notice Presentation of papers Private Members’ business (1 item) Executive Notices and orders of the day:”</p>	No. 5—OLA
76	omit “10.00 pm”, substitute “7.00 or 8.00 pm”	No. 2—Canberra Liberals
99A	SO99A orders petitions with more than 500 signatures to be automatically referred to the relevant standing committee for consideration. It has been suggested that this figure is too low as the number of actual inquiries by committees remains small.	No. 5—OLA
100	<p><i>Omit:</i></p> <p>“A Minister must respond to that petition within 3 months of the tabling of the petition by lodging a response with the Clerk for presentation to the Assembly, such responses being announced at the end of the petitions announcement.”.</p> <p><i>Substitute:</i></p> <p>“A Minister must respond to that petition within 30 days of the tabling of the petition by lodging a response with the Clerk for presentation to the Assembly, such responses being announced at the end of the petitions announcement. If the Assembly is not sitting when the Minister’s response is received by the Clerk, the response is deemed to authorised for publication and circulated to all Members.”.</p>	No. 5—OLA
101	<p><i>Add:</i></p> <p>Where the Monday of the sitting week at which the motion is proposed to be moved is a public holiday the motion can be submitted electronically and a physical copy provided on the next business day</p>	No. 4—ACT Labor Caucus

101	Insert a section that allows Private Members Motions or Bills which have been adjourned to be brought back to conclude debate	No. 4—ACT Labor Caucus
113A	<i>Omit standing order, substitute:</i> “Questions without notice shall not be concluded until non-Executive Members seeking to ask a question have asked at least the number of questions equivalent to the number of non-Executive Members elected from either party or group represented in the Assembly.”	No. 2—Canberra Liberals
113A	<i>Omit standing order 113A, substitute:</i> “Questions without notice Questions without notice shall not conclude until non-government members seeking to ask a question have asked at least the number of questions equivalent to the number of non-government Members present in the chamber.”	No. 5—OLA
113B	<i>Omit standing order 113B, substitute:</i> “Supplementary questions 113B. Immediately following an answer to a question without notice, two supplementary questions may be asked by each non-government member who asked the original question. A supplementary question shall: (a) be precise and direct in its terms; (b) be relevant to the original question or shall arise out of the answer given; (c) not contain any preamble; not introduce new subject matter.”	No. 5—OLA
New 113D	<i>Insert new standing order 113D:</i> “Constituency questions. 113D (a) At the conclusion of questions without notice, up to 6 non-executive government Members and 6 non-government Members may, without notice, ask a constituency question of a minister. (b) A constituency question must— (i) relate to matters falling within the ACT jurisdiction; (ii) ask a question seeking information; and (iii) relate to a specific matter within the Members’ constituency. (c) Two supplementary questions may be asked in relation to each constituency question by the Member asking the original question.”	No. 5—OLA

New 113E	<p><i>Insert new standing order 113E and heading:</i></p> <p>“Answers to be noted</p> <p>113E. After question time the Speaker shall move that the Assembly take note of answers given that day to questions without notice and constituency questions. A Member may speak for not more than 5 minutes on the motion. The time for debate on the motion shall not exceed 30 minutes.”</p>	No. 5—OLA
118	<p><i>Proposal: Omit standing order 118(b), substitute:</i></p> <p>“(b) shall not introduce matter extraneous to the question and shall not debate the subject to which the question refers; and”</p>	No. 2—Canberra Liberals
118A	<p>Motions to take note become part of the standing orders for the Assembly to allow members the chance to counterpoint the answers provided by Ministers as is the case in the Senate</p>	No. 2—Canberra Liberals
New 122A	<p><i>Insert new standing order 122A:</i></p> <p>“The Speaker may direct that a question or part of a question on notice which has been answered be reinstated to the Notice Paper, if following a request of the Member asking the question, the Speaker is of the opinion that the question has not been fully answered.”.</p>	No. 2—Canberra Liberals
168(c)	<p><i>Proposal: Insert new standing order 168(c):</i></p> <p>“An explanatory statement accompanying a government bill (except appropriation bills) shall include a Statement of Public Interest that addresses each of the following questions:</p> <ol style="list-style-type: none"> 1. Need Why is the policy needed based on factual evidence and stakeholder input? 2. Objectives What is the policy’s objective couched in terms of the public interest? 3. Options What alternative policies and mechanisms were considered prior to the finalisation of the bill as presented? 4. Analysis What were the pros/cons and benefits/costs of each option considered? 5. Pathway What are the timetable and steps for the policy’s rollout and who will administer it? <p>Consultation Were the views of affected stakeholders sought and</p>	No. 5—OLA

	considered in making the policy? What stakeholder objections were encountered and how were these evaluated and incorporated in the finalised policy, or, on what grounds were they rejected?”	
176	<i>Omit standing order 176, substitute:</i> When a bill has been referred to a select or standing committee, has been reported on, and the Government has tabled its response to the report, the Assembly shall proceed to the next stage of the bill as reported at the next sitting.”.	No. 5—OLA
211	<i>Proposal: Omit standing order 211, substitute:</i> “Papers presented 211. Papers may be presented to the Assembly by a Minister or the Speaker. By 12 noon on a sitting day, electronic copies of all papers to be presented by the Executive will be made available to all members. Prior to Question Time, any Member may indicate to the Manager of Government Business which papers are to be noted, and, upon presentation of papers, the Manager of Government Business shall move a motion to take note of the relevant papers.”.	No. 5—OLA
213A	It is suggested that all references to the Chief Minister’s Directorate under SO 213A should be revised to the Chief Minister.	No. 6—ACT Government
213A	<i>Omit standing order 213A and insert the following:</i> (a) A Member may lodge a notice of motion ordering to be tabled in the Assembly any document or documents that are held by or in the control of the ACT Executive, its directorates or agencies, or any other government entity operating within the purview of Executive government or that is in direct receipt of Territory funding. (b) The Clerk is to communicate to the Head of Service all orders made by the Assembly for a document or documents. (c) The Chief Minister is entitled to make a claim of privilege in relation to any document—or part thereof—the subject of a production order of the Assembly. (d) In accordance with any production order, the Head of Service must return to the Clerk within 14 calendar days of the date of the order: a. all documents falling within the terms of the order;	No. 5—OLA

- b. an indexed list of all documents subject to the order, showing the date of creation of the document, a description of the document and the author of the document;
 - c. details of any privilege claims, including reasons for a claim, made by the Chief Minister in relation to any returned document or part thereof.
- (e) All documents not the subject of a claim of privilege will be presented in the Assembly by the Clerk, or, if the Assembly is not sitting, will be circulated to Members and will be deemed to have been presented to the Assembly and authorised for publication; the Clerk will table such documents at the next sitting of the Assembly.
- (f) Any document the subject of a claim of privilege, along with the Chief Minister's reasons for a claim, will be made available by the Clerk only to Members of the Legislative Assembly and will not be published or copied without an order of the Assembly.
- (g) Any Member may, by communication in writing to the Clerk, dispute the validity of a claim of privilege made by the Chief Minister in relation to a document or part thereof. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, along with the reasons for a claim and any reasons advanced by a Member disputing the claim, for evaluation and report.
- (h) Where a dispute regarding a claim of privilege arises, an independent legal arbiter is to be appointed by the Speaker and must be a King's Counsel, Senior Counsel, or a retired judge of the Supreme Court, Federal Court, or High Court.
- (i) A report of the independent legal arbiter is to be lodged with the Clerk setting out whether or not any privilege claim is substantiated and the reasons for the arbiter's determination.
- (j) A report from the independent legal arbiter is to be lodged with the Clerk and:
- (i) made available only to Members; and
 - (ii) not published or copied without an order of the Assembly.

	<p>(k) Any document, or part thereof, over which a claim of privilege is made that is not substantiated by the independent legal arbiter will be laid on the table by the Clerk, or, if the Assembly is not sitting, will be circulated to Members and will be deemed to have been presented to the Assembly and authorised for publication.</p> <p>(i) Any document, or part thereof, over which a claim of privilege is made and substantiated by the independent legal arbiter is: to be made available only to Members; and</p> <p>(ii) not to be published or copied without an order of the Assembly.</p> <p>(l) The Clerk is to maintain a register showing the name of any person examining documents tabled under this order.</p>	
245	<p><i>Add to standing order 245:</i></p> <p>“If a member chooses not to put a question the question is forfeited and the opportunity to put a question cannot be given in lieu too another member.”.</p>	No. 4—ACT Labor Caucus
246A	<p><i>Add to standing order 246A:</i></p> <p>Standing order 246A—add “Any statement or discussion paper cannot contain statements prejudicial to a person or organisation.”</p>	No. 4—ACT Labor Caucus
254A	<p><i>Proposed amendments Standing order 254A:</i></p> <ul style="list-style-type: none"> • <i>in the title, delete “to Committee report”.</i> • <i>after “presentation of the report” insert “and any dissenting reports and additional comments”.</i> • <i>delete “to the committee report”.</i> <p><i>Proposed amendment Standing order 254A(a):</i></p> <p><i>delete “to the committee report”.</i></p>	No. 5—OLA
254B	<p><i>Proposed amendments Standing order 254B:</i></p> <ul style="list-style-type: none"> • <i>in the title, delete “to Committee report”.</i> • <i>, after “A government response to a Committee report” insert “and any dissenting reports and additional comments”.</i> 	No. 5—OLA
254B	<p><i>Proposal: Omit standing order 254B, omit the last paragraph, substitute the following:</i></p> <p>“This standing order does not apply to government responses to legislative scrutiny reports.”</p>	No. 5—OLA

New 254BA	<p><i>after Standing order 254B insert:</i></p> <p>“Content of Government Responses</p> <p>254BA. A government response to a committee report and any dissenting reports and additional comments must include statements as to:</p> <p>(a) which (if any) recommendations will be carried out and the manner in which they will be carried out; and</p> <p>(b) which (if any) recommendations will not be carried out and the reasons for not carrying them out.”.</p>	No. 5—OLA
254D	<p><i>Proposal: Omit standing order 254D, substitute:</i></p> <p>“254D. (a) A member must lodge a question on notice with the Committee within 5 business days following the conclusion of a Committee hearing. A response is due within 5 business day of receipt of the question. (b) A member must respond to a question taken on notice in the course of a Committee hearing within 5 business days of the receipt of the uncorrected proof Hansard. When the question lodged is complex or contains multiple parts the member responding can take up to 5 additional business days to respond to the question.”</p>	No. 4—ACT Labor Caucus
254D	<p><i>Standing order 254D(a)—omit and substitute:</i></p> <p>“(a) A member must lodge a question on notice with the Committee within 5 business days following the conclusion of a Committee hearing. The Committee Secretariat will provide the question to the Executive within two business days following receipt of the question on notice. A response is due within 5 business day of receipt of the question;”</p>	No. 6—ACT Government
254D	<p><i>Proposal: standing order 254D, insert (c):</i></p> <p>“(c) The 5 business day time limit for the answering of a question remains in place in the event that the question is redirected to a different Minister.”.</p>	No. 5—OLA
264A	<p><i>Proposal:</i></p> <p>Omit Standing order 264A(g)</p>	No. 5—OLA
New continuing resolution 8AD	<p>Insert new continuing resolution 8AD as follows:</p> <p>“Independence of the Legislative Assembly, its committees, and its Members from Executive government</p>	No. 5—OLA

That this Assembly:

- (a) acknowledges that the Legislative Assembly is a distinct and separate branch of government responsible for a range of representative, accountability and legislative roles and functions that are exercised independently of the ACT Executive, ministers and their staff, and government agencies;
- (b) acknowledges that the law of parliamentary privilege protects the ability of the Assembly, its committees, and its members to exercise their authority and perform their parliamentary functions and duties without improper external interference, including by the ACT Executive, ministers and their staff, and government agencies;
- (c) acknowledges that the ACT Executive, ministers, and government agencies are subject to the scrutiny, inquiry and accountability functions performed by the Assembly and its committees;
- (d) affirms the right of the Assembly and its committees to determine their own meetings;
- (e) reminds the ACT Executive, ministers and their staff, and agencies of executive government that improper interference in the affairs of the Assembly, its committees or its members may constitute a contempt;
- (f) calls on the ACT Executive, ministers and their staff, and agencies government agencies to, in the course of the exercise of their powers or functions, seek appropriate advice and to undertake appropriate consultation where the powers, privileges or immunities of the Assembly are potentially engaged; and
- (g) calls on the ACT Executive, ministers and their staff, and government agencies to have appropriate regard to these matters in exercising their roles, powers, or functions.”

Pairing
arrangements

Proposal for party whips to be provided evidence of previous agreements between parties.

No. 2—Canberra
Liberals

The Committee did not agree to include pair arrangements in the standing orders as pairing is an internal arrangement between parties and is managed by party whips.

Embargo Appendix	For clarity and reference, that the number of copies required for embargo be added as an annex to SO.	No. 6—ACT Government
Honorifics	<p>It has been thought that because the ACT does not have a vice-regal function within its system of government and therefore no Executive Council to advise it, the honorific was not applicable. However, on the basis that the s 37(d) of the Australian Capital Territory (Self-Government) Act 1988 (Cth) vests in the Executive all the “prerogatives of the Crown”, there is an argument that ministers forming the ACT Executive are not merely able to advise the Crown’s representative but, in fact, to exercise the functions of the Crown and on this basis the title “the Honourable” could reasonably be applied.</p> <p>The Office has been advised that there is no legal impediment to adopting the title to members of the ACT Executive and the Presiding Officer as a matter of convention and were the Assembly of a mind to do so, a parliamentary basis for the title could be achieved through the inclusion of a provision in the standing orders.</p> <p>As mentioned above, such a change would bring the Assembly into line with the practice of the Federal, State and Northern Territory parliaments, as well as other legislatures in the Commonwealth.</p>	No. 5—OLA
Considered outside the scope of this inquiry	<p>A note on money proposals – standing orders 200 to 201A—Proposed recommendation:</p> <p>To ensure certainty and clarity in the operation of the standing orders, the Office recommends that the Standing Committee on Administration and Procedure of the Tenth Assembly consider resuming the committee’s inquiry into these matters</p>	No. 5—OLA
Considered outside the scope of this inquiry	<p>Size of the Assembly</p> <p>It is noted that the population of the ACT in 2022 (according to the latest ABS figures) is 465,000, which is well over the projected number of 428,000 predicted for 2024 in the report.</p> <p>Given this and noting that there is now a minister of 9 members and 8 standing committees with some Green/Labour members sitting on up to 4 committees each, it may be timely to consider whether the Assembly should increase to 27 members at the 2028 election.</p>	No. 5—OLA

Joy Burch MLA

Chair

August 2023

Appendix A: Submissions

No.	Submission by	Published
1	Stephen Skehill, Ethics and Integrity Adviser	17/11/2022
2	Canberra Liberals	28/11/2022
3	ACT Greens MLAs	28/11/2022
4	ACT Labor Caucus	28/11/2022
5	Office of the Legislative Assembly	28/11/2022
6	ACT Government	28/11/2022

Appendix B: Review of the Code of Conduct for Members of the Legislative Assembly—Mr S Skehill

Review of the Code of Conduct for Members of the Legislative Assembly

August 2023

Introduction

The Code of Conduct for Members of the Legislative Assembly of the Australian Capital Territory is set out in Continuing Resolution 5.

It provides that:

At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure.

On 1 May 2023 I was advised that the Committee had resolved to ask me to undertake that review and, in particular, that it wished me *to examine the code to ensure that it reflects best practice after considering the reviews conducted in the Federal Parliament, the NSW Parliament, the SA Parliament and the Tasmanian Parliament.*

Conduct of the Review

On 28 May 2023 I wrote to all Members of the Assembly as follows:

To assist me in the conduct of the review, I would welcome any comments you may have on the current Code and, in particular on:

- *Whether any current provision of the Code imposes an unwarranted imposition on your conduct as a Member;*
- *Whether there are any circumstances where the Code does not currently provide guidance on your conduct as a Member but should do so; and*
- *Whether any current provision of the Code should be amended to provide further and better guidance to you as a Member.*

In relation to the more specific issues of bullying, sexual and other harassment, sexual assault and discrimination in parliamentary workplaces, I would welcome

your views both generally and more specifically on the following questions:

- *Noting that the Code already contains various provisions requiring people to be treated with courtesy and respect, should the Code make more specific provision dealing with the issues of bullying, sexual and other harassment, sexual assault and discrimination;*
- *If so, should that provision be simply a high-level 'headline' clause expressing, for example, zero tolerance for bullying, sexual and other harassment, sexual assault and discrimination in parliamentary workplaces;*
- *Alternatively, should the Code go further and provide principles (as opposed to detailed procedures) for the guidance of Members in relation to related issues such as calling out infringing conduct by others, supporting complainants, reporting a/legations to appropriate authorities and retaliatory action against complainants; and*
- *If the Code should make provision in relation to discrimination, should it do so only generally or should it more explicitly extend to discrimination based on all or only some of the following attributes which were identified (in descending order of frequency) as the cause for complaints in the report prepared for the Tasmanian Parliament:*
 - *Gender*
 - *Family responsibilities*
 - *Age*
 - *Political belief, affiliation or activity*
 - *Parental status (having or not having children)*
 - *Association with someone who has one of the other attributes*
 - *Marital status or relationship status*
 - *Sexual orientation*
 - *Religious belief, affiliation or activity*
 - *Pregnancy*
 - *Industrial activity*
 - *Disability (including temporary disability)*
 - *Gender identity*
 - *Race*

- o *Breastfeeding.*

I requested responses from Members by 30 June 2023.

Only two members responded to my request, and I take this opportunity to thank them for doing so.

In addition to seeking the views of Members, I also reviewed the advices I had provided to Members since the Code was last reviewed. I concluded that, in each case, the current Code provided pertinent guidance that allowed me to formulate the advice I gave and that none of the requests for advice I had received raises any significant area of conduct not covered by the Code.

Views of Members in relation to the current Code

One of the members who responded stated that their *main consideration for change of the Code of Conduct is that MLA's should declare super and any beneficial or other interest in land, shares, income etc under a trust arrangement.*

The current Code already provides that Members should:

- (b) *declare their private interests and those of their immediate family and ensure that their declaration is kept up to date, as required by Continuing Resolution 6 (as amended or replaced from time to time); and*
- (c) *disclose at a time and in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) and any friendship, relationship or other circumstance which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.*

The Declaration of Member's Private Interests form currently provides:

At Item 6: You must list here any trust under which a beneficial interest is held by you or a member of your immediate family, or in which you or a member of your immediate family is a trustee and another member of your (immediate or extended) family holds a beneficial interest ...

At Item 7: You must list here any blind trust under which you or a member of your immediate family holds a beneficial interest ...

At Item 10: You must list here assets that are not listed in any other category on this form (such as savings or investment accounts, debentures, bonds, superannuation accounts, etc ...).

In light of the above, I concluded that the current Code already makes adequate provision for the disclosure of superannuation and trust interests.

The second Member who responded to my request for comment raised a number of points about the current Code. This member said:

- *One area the current code does not provide guidance is point 3 Member should uphold the separation of powers and the rule of law.*
 - *Firstly where there are disputed interpretations of the rule of law which have not yet had the opportunity to be resolved by the courts, Members may seek to follow the interpretation that is most advantageous to them without acknowledging or respecting alternative interpretations.*
 - *Secondly I would argue the separation of powers needs emboldened/emphasised (sic) given:*
 - *We have a unicameral legislature {albeit with proportional representation}*
 - *A single party has been in power more than two decades;*
 - *Recent experience where an arm of the executive shut down the parliament and a breach of privilege was found*
 - *Numerous sections of the community have been calling for government intervention in the judiciary over sentencing.*

In my view it is neither legally possible nor desirable for the Assembly, through a Code of Conduct for Members, to seek to codify the content of such fundamental matters as the rule of law or the separation of powers which underlie the very basis of Australian democracy.

Moreover, where a Member follows one interpretation of the law, it is always open to other persons to challenge their actions, including in the courts. And community calls for "government intervention" in sentencing by the judiciary may lead to relevant legislative amendments on that subject, which is a legitimate role of the Assembly.

I thus suggest no change to the current provision that requires that *Members should uphold the separation of powers and the rule of law.*

This Member also said:

I have also seen complaints made to the Commissioner for Standards concerning claims made by a current member, which were ruled to be within the jurisdiction of the Elections Commissioner as a 'truth in advertising' matter. I would appreciate you turning your mind as to whether the code should also cover statements made by members that are subject to this legislation.

The Code already provides that *Members should ... act ... in conformity with all laws applicable in the Territory.* Those laws of course include legislation administered by the ACT Electoral Commission. The Code also provides that *Members should be transparent in, and*

accountable for, their decisions and actions and should submit themselves to appropriate scrutiny".

It seems to me that it would be inappropriate for the Code to make specific reference to compliance with laws relating to 'truth in advertising' in the electoral context when that subject is governed by existing statutes. If such a matter was to be covered by the Code, it could not be in terms inconsistent with those statutes. To do so would also raise questions as to why compliance with other statutory requirements was not also specifically required by the Code. In my view, the Code should not be seen as a detailed compendium of all the diverse pre-existing obligations on Members.

This Member also drew my attention to the Report of the Select Committee on Privileges 2022 entitled *Imposition of a prohibition notice by WorkSafe ACT* and said:

I recommend that you review the Privileges Committee report which contained some findings and recommendations that need to be considered as part of a review of the code.

As above from Privileges I would include the following recommendations:

- o *Recommendation 6 that all Ministers ensure that they and their offices keep appropriate written records of significant matters. - whilst this recommendation specified Ministers I believe this should be applicable to all Members.*

- o *Recommendation 7 that Ministers should take care to provide accurate information to the media and the public, particularly on any matters that could risk the reputation of the assembly or the Government. - whilst this recommendation specified Ministers I believe this should be applicable to all Members.*

The relevant recommendations of the Select Committee were as follows:

Recommendation 6

The Committee recommends that all Ministers ensure that they and their offices keep appropriate written records of significant matters.

Recommendation 7

The Committee recommends that Ministers should take care to provide accurate information to the media and the public, particularly on key matters that could risk the reputation of the Assembly or the Government.

Recommendation 8

The Committee recommends that in the next review of the Latimer House principles, the Speaker refer:

- (1) *for assessment the Executive's compliance with the objectives enunciated in the*

principles, particularly in its relationship with the Legislative Assembly; and

- (2) *to the Standing Committee on Administration and Procedure whether Continuing Resolution BA requires amendment or re-affirmation to accentuate the independence of the legislature from Executive interference, in terms similar to the motion passed by the Senate.*

Recommendation 9

The Committee recommends that Continuing Resolution 5 relating to the code of conduct for all Members of the Legislative Assembly for the Australian Capital Territory be amended to make clear that Members, in carrying out their responsibilities, have a duty to act in way that does not unreasonably place the health, safety and wellbeing of others at risk.

As is apparent from the text of the recommendations 6, 7 and 8, the Committee did not recommend any amendment to the Code of Conduct (the Latimer House principles being governed by a separate Standing Resolution).

Given that the current Code already requires all Members to be *transparent in, and accountable for, their decisions and actions* and to *submit themselves to appropriate scrutiny*, I consider that there is in the Code a pre-existing obligation to provide accurate information to the media and the public. Moreover, I do not think it is necessary for the Code to go further and specify exactly how Members should meet these obligations, such as through the keeping of "written records" as opposed to other processes.

In contrast, recommendation 9 does recommend a specific amendment to the Code. In the context of making that recommendation, the Committee said:

Members occupy a privileged place in the governance of the Territory. With that privilege comes a responsibility to act in a manner that does not jeopardise the health, safety and wellbeing of others, be they members of the public, Territory officials, other Members or staff. As such the Committee is of the view that that obligation be recognised in the Members' code of conduct.

In the same vein, in its December 2022 submission to the Standing Committee on Administration and Procedures' Review of Standing Orders and Continuing Resolutions, the Office of the Legislative Assembly stated as follows:

WHS duties

In its report, the Select Committee on Privileges 2022 recommended that the code of conduct be amended to make provision that members have a 'duty to act in a way that does not unreasonably place the health, safety and wellbeing of others at risk'. (Recommendation 8, Select Committee on Privileges 2022)¹ The Office submits that in the interests of consistency, it may be sensible to strengthen the provision to more closely align with the proactive duties of the WHS Act (i.e., that members have a duty to eliminate or minimise health and safety risks so far as reasonably practicable).

I have sought to reflect what I think is the spirit of recommendation 9 in the amendment suggested in what would become clause C.(7)(a) as shown in the revision-mode version of the Code at Attachment A to this report. This amendment would build on the existing Code provisions requiring Members to comply with applicable laws and with policies and practices including those relating to occupational health and safety, discrimination, harassment and bullying. [It also seeks to promote a workplace that is not only safe but also collegiate, inclusive and diverse, which would, I believe, be an appropriate extension of the existing Code.]

I note that I have couched this new clause in terms of a Member's obligation as an employer rather than more generally. This because it seems to me that it is only in that capacity that a Member has the capacity and authority to affect the health, safety and wellbeing of people on Assembly premises. Other relevant capacity and authority rests in the Assembly itself, the office of the Speaker and the Assembly's administrative arm, the Office of the Legislative Assembly, each of which is not subject to the Member's Code of Conduct.

Bullying, sexual and other harassment, sexual assault and discrimination

Over recent years there have been numerous reviews of the culture of, and allegations of serious events in, parliamentary workplaces in Australia and various other countries.

These reports generally paint a very disturbing picture and highlight numerous problems involving allegations of bullying, sexual and other harassment, sexual assault and discrimination. They generally make multiple recommendations. These cover various topics such as training for members of Parliament and their staff, the establishment of effective complaint-handling mechanisms and procedures, and the establishment or amendment of codes of conduct to deal with such issues. The question of dealing with such issues in the Members' Code of Conduct falls squarely within the scope of this review; while other matters such as training do not, I note that the Assembly already has an established mechanism and procedures for dealing with complaints alleging breach of the Code.

There is no comparable report in relation to the ACT Legislative Assembly, and I am unaware of any systemic or historic problems of the nature highlighted in the reports of the various reviews. Nevertheless, I consider that it would be short-sighted and inappropriate to consider that issues of this nature could not arise in the future.

In its December 2022 submission to the Standing Committee on Administration and Procedures' Review of Standing Orders and Continuing Resolutions, the Office of the Legislative Assembly stated as follows:

Bullying and harassment

Currently, the Code of Conduct for all Members of the Legislative Assembly requires that Members are to 'extend professional courtesy and respect' and 'act consistently with

accepted workplace conduct standards' in their dealings with 'staff of the Assembly, staff of other Members and members of the ACT Public Sector'. However, in the course of a recent gender audit undertaken by Commonwealth Women Parliamentarians (CWP) it has been noted that the Assembly code does not make specific provision in relation to the prohibition of bullying or harassment, including in relation to sexual harassment.

Specific provision would provide a firmer basis on which the Legislative Assembly Commissioner for Standards could proceed to investigate a Member where relevant provisions of continuing resolution SAA were also satisfied.

Coincidentally, in my own 19 October 2022 submission to that review I had suggested that, when the Code of Conduct was next reviewed,

it would be appropriate to consider, in light of experience in other parliaments, whether or not the Code should more closely address the culture and safety of those who work within the context of the Assembly.

The current code already embodies at a high level the concepts of respect for all people of the ACT and for their interests, dignity, privacy and diversity. While bullying, sexual and other harassment, sexual assault and discrimination would infringe those principles, I consider that the mere expression of such high-level concepts is insufficient to provoke concentrated thought about, and deter, such actions. Prevention is far better than cure, and dealing expressly with such issues in the Members' Code of Conduct may raise levels of awareness and assist in deterring future conduct of this nature.

The one Member who offered comment on this matter advised that:

In response to my question Noting that the Code already contains various provisions requiring people to be treated with courtesy and respect, should the Code make more specific provision dealing with the issues of bullying, sexual and other harassment, sexual assault and discrimination:

I am of the view and explicit statement of what is unacceptable sends a more powerful message;

In response to my question should the Code go further and provide principles (as opposed to detailed procedures) for the guidance of Members in relation to related issues such as calling out infringing conduct by others, supporting complainants, reporting allegations to appropriate authorities and retaliatory action against complainants:

I would support an active duty on members to act rather than just remain bystanders and

In response to my question If the Code should make provision in relation to discrimination, should it do so only generally or should it more explicitly extend to discrimination based on all or only some of the [listed] attributes which were identified (in descending order of frequency) as the cause for complaints in the report prepared for the

Tasmanian Parliament:

I recommend that it do so generally to allow flexibility to deal with all of these elements plus whatever else we may not have thought of.

I agree with that Member that the Members' Code of Conduct should include an express statement of what is unacceptable, and that it should impose a duty on Members to take appropriate action in relation to infringing conduct by others rather than simply act as a bystander. While I agree that the Code should not limit the scope of *discrimination* and be flexible enough to allow other bases to be dealt with as they emerge, I differ in thinking that the Code should go beyond merely proscribing an undefined concept.

While various reports have proposed that these issues be specifically dealt with in parliamentary codes of conduct, I have identified only one Australian code that actually does so to date. This is the *South Australian Code of Conduct for Members of Parliament*, in the Standing Orders of the Legislative Council and of the House of Assembly, which relevantly states as follows:

Standards of Behaviour

5. *Members of Parliament must not harass, sexually harass, or discriminate against:*
 - a. *A member of their staff;*
 - b. *Another Member of Parliament;*
 - c. *A member of the staff of another Member of Parliament;*
 - d. *An officer or member of the staff of the Parliament;*
 - e. *Any other person who in the course of employment performs duties at Parliament House.*

Definitions

For the purposes of this Code -

a person sexually harasses another (the person harassed) if —

- (i) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*
- (ii) engages in other unwelcome conduct of a sexual nature in relation to the person harassed,*

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated; and

- (a) conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally*

or in writing;

- (b) *a person is harassed if, an individual or a group of individuals repeatedly behaves unreasonably towards the person, and the behaviour creates a risk to health and safety.*

- (c) *a person is discriminated against when they are treated less favourably than another person in the same or similar circumstances due to their attributes or characteristics, and includes unlawful discrimination under the Equal Opportunity Act 1984.*

While this was undoubtedly a step in the right direction, I do not consider that it provides a 'model' that should be simply adopted by the Assembly. It does not deal squarely with sexual assault or bullying, or the actions of a person other than the parliamentarian. And, very importantly, it does not make any provision in relation to the handling of complaints of infringing behaviour. Experience in recent years clearly shows that the way a complaint of such behaviour is handled may greatly exacerbate the trauma of the behaviour itself.

The Commonwealth Parliament does not have a code of conduct for either Members of the House of Representatives or for Senators. However, Recommendation 2 of the November 2022 report of the Joint Select Committee on Parliamentary Standards is as follows:

The committee recommends the House of Representatives and the Senate adopt the following Behaviour Standards and Codes (as outlined in Appendix 1 of this report) into their respective standing orders in the first sitting week after the establishment of the Independent Parliamentary Standards Commission:

- *Behaviour Standards for Commonwealth Parliamentary Workplaces; and*
- *Behaviour Code for Parliamentarians.*

This represents a major step forward for the Commonwealth Parliament which for decades has rejected calls for the establishment of a code of conduct for Members and Senators. However, the relevant provision of the recommended Behaviour Code for Parliamentarians does not, in my view, provide a 'model' that should be adopted by the Assembly. It provides as follows:

Prohibited behaviours

11) Bullying and harassment, sexual harassment and assault, discrimination in all its forms including on the grounds of race, age, sex, sexuality, gender identity, disability, or religion is unacceptable. Such behaviour will not be tolerated, condoned or ignored.

While it avoids certain of the problems identified above in relation to the South Australian Codes, it similarly does not make any provision in relation to the handling of complaints of

infringing behaviour. In my view, this matter cannot be left unaddressed.

Looking beyond Australia, I have found no code in any other country that I consider would provide a 'model' that might be adopted by the Assembly. For example, the Code of Conduct for Members of the House of Lords in the UK provides only that:

18. Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities (including parliamentary proceedings) with respect and courtesy. Behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code.

I have therefore drafted more comprehensive provisions for consideration in the Assembly Code. These are shown at Clause D in the revision-mode version at [Attachment A](#). In the table below I provide an explanation of the reasoning behind my drafting.

Provision	Comment
Through this Code of Conduct, Members express that they have zero tolerance for bullying, sexual and other harassment, sexual assault and discrimination and pledge that they will not themselves engage in such conduct.	I have drafted this provision in unqualified terms. It is therefore not limited to conduct by Members, or conduct connected to the Assembly or the work of Members. In my view, there can be no circumstances in which bullying, sexual and other harassment, sexual assault and discrimination (as defined in the footnote, discussed below) can be, or seen to be, condoned.
Consistently with this, Members undertake that, in the course of their duties and activities as a Member, they will:	I have drafted the balance of Clause D so that it seeks to regulate the conduct of Members only to the extent of their duties and activities as a Member. I have done this to avoid any suggestion that Members have an obligation to intervene or act in relation to infringing behaviour in the community at large and unconnected to their position as a Member.

<p>Consistently with this, Members undertake that, in the course of their duties and activities as a Member, they will:</p>	<p>I have drafted the balance of Clause D so that it seeks to regulate the conduct of Members only to the extent of their duties and activities as a Member. I have done this to avoid any suggestion that Members have an obligation to intervene or act in relation to infringing behaviour in the community at large and unconnected to their position as a Member.</p>
<p>(1) offer and provide support to a person who indicated that they are making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination;</p>	<p>It is clear from relevant reports and the events of recent years that those who have been (or allege that they have been) the subject of bullying, sexual and other harassment, sexual assault and discrimination may need considerable support in deciding whether or not to make a complaint or in progressing a complaint once made. I have not, however, sought to impose an obligation on Members to "believe" anything that such a person may say. Whether what they say is believable is a matter for determination by a court or other dispute resolution body.</p>
<p>(2) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma- informed care;</p>	<p>I have inserted this provision in an endeavour to make sure that interactions with a complainant are not viewed as routine "business" meetings and to foster recognition that they may require a very different approach. This may extend to what is known as trauma- informed care as it is possible that the individual may be suffering from PTSD or other psychological damage by reason of the conduct of which they complain.</p> <p>In this and subsequent provisions I have referred to "complainant" rather than "victim". I consider this terminology to be important in recognition of the presumption of innocence that should be afforded to the person who is the subject of</p>

	the complaint unless and until a court or other dispute resolution body has made an adverse finding against them.
(3) as appropriate, seek expert advice and assistance as to the manner in which the Member should act in such circumstances;	I have inserted this provision essentially as a reminder to Members that they may need expert assistance in their dealings with complainants who may be in considerable emotional distress and potentially require or already be receiving psychological or psychiatric care. The first source of such advice may well be within the Office of the Legislative Assembly. It may thus be appropriate for the Clerk to consider whether or not any OLA staff require some special training in this regard, such as that offered by Phoenix Australia, the Australian National Centre of Excellence in Posttraumatic Mental Health.
(4) recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint;	While there have been some suggestions that anyone with knowledge of an offence should be bound to report it to the police, unless and until the law provides to that effect I consider it vital to recognise that the complainant should have agency to decide for themselves whether and how to progress their complaint.
(5) respect the confidentiality of personal information concerning a complainant;	Clearly matters concerning a complaint of bullying, sexual and other harassment, sexual assault and discrimination are deeply personal and, unless otherwise required by law, should not be divulged without the knowledge and consent of the complainant.

<p>(6) not imply, threaten or take detrimental action against a person because they are, or have indicated that they may become, a complainant;</p>	<p>To take such action may leave the Member themselves open to a complaint of bullying.</p> <p>The proposed obligation to not take retaliatory action mirrors that in the Public Interest Disclosure Act.</p>
<p>(7) not offer any improper inducement to a person to not take, or to withdraw, such a complaint;</p>	<p>Limiting this provision to an "improper" inducement would not preclude a Member from agreeing, for example, to change working arrangements within their office so that a complainant was no longer required to report to the person alleged to have committed infringing behaviour where the complainant had indicated that such a change would resolve their concerns</p>
<p>(8) seek to preserve any evidence that may be relevant to the investigation of such a complaint;</p>	<p>Care should be taken to not destroy, cleanse or otherwise tamper with documents, CCTV footage or other material that may be of forensic advantage to an investigator in dealing with a complaint.</p>
<p>(9) fully cooperate with any official inquiry in connection with a complaint; and</p>	<p>This provision mirrors the existing provision requiring a Member to cooperate with an inquiry into a complaint of a breach of the Code itself.</p>
<p>(10) take appropriate action if they observe another person engaging in bullying, sexual and other harassment, sexual assault and discrimination.</p>	<p>Under this provision a Member may be expected, for example, to counsel a heckler at a community engagement meeting about intemperate discriminatory language, or to suggest that another person should refrain from making unwelcome physical gestures or approaches to another at an official social function. However, I have limited this provision to require only "appropriate" action. This is because privacy or defamation laws may apply in some circumstances if there were an absolute and unqualified obligation on a Member to "call out" any and all infringing behaviour.</p>

<p>1 In this Code "discrimination" means differential treatment of a person based on personal attributes such as gender; family responsibilities; parental status (having or not having children); marital status or relationship status; pregnancy; breastfeeding; sexual orientation; gender identity; religious belief, affiliation or activity; industrial activity; disability (including temporary disability); race; age; association with someone who has one of these attributes; or other attributes unrelated to the person's education, qualifications, experience, capacity or performance.</p>	<p>I have drafted this definition of "discrimination" to cover most of the bases for discrimination that have been the subject of complaints in parliamentary work places. However, I have not included discrimination based on "political belief, affiliation or activity" as I consider this would be an inappropriate limitation on the activities of a parliamentarian. The proposed definition is not "closed" and would allow other unstated forms of discrimination to come within scope at a later stage, as suggested by the Member who commented in this regard. The closing words concerning "education, qualifications, experience, capacity or performance" are intended to make clear that ordinary "employer" decisions (such as promotion or the allocation of roles amongst staff) do not involve discrimination even though they result in differential treatment of individuals</p>
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Recommendations

In light of all of the above, I recommend that the Assembly consider amending the current Code of Conduct for Member along the lines shown in the revision-mode version at Attachment A to this report. The substantive amendments related to workplace safety and wellbeing (Clause C.(7)(a)) and bullying, sexual and other harassment, sexual assault and discrimination (Clause D.). Other changes shown in revision-mode are only minor, to clarify the numbering and grammatical sense of the existing Code.

A "clean" version of the revised draft Code with the revision-mode changes accepted is at Attachment B.

I would of course be happy to discuss these recommendations with the Committee at any time.

Stephen Skehill

**Ethics and Integrity Adviser to the Members of the Legislative Assembly
Of the Australian Capital Territory**

4 August 2023

Continuing resolution 5

Code of conduct for all Members of the Legislative Assembly for the Australian Capital Territory

5

This resolution provides for a code of conduct for Members of the Legislative Assembly.

Resolution agreed by the Assembly

25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019 and 30 March 2021)

(A) The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

(B) In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should uphold the separation of powers and the rule of law.

- (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.
- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should treat each other with courtesy and propriety, observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

(C) Consistent with the above principles, Members further undertake that they should:

- ~~(111)~~ Treat all people with courtesy, and respect the diversity of their backgrounds, experiences and views.
- ~~(122)~~ Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests,

take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:

- (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
 - (b) declare their private interests and those of their immediate family and ensure that their declaration is kept up to date, as required by Continuing Resolution 6 (as amended or replaced from time to time); and
 - (c) disclose at a time and in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) and any friendship, relationship or other circumstance which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (414) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person, and not accept any inappropriate benefit in connection with their activity as a Member.
- (515) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (616) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.

~~(717)~~ In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:

~~(a)~~ seek to promote, and by their conduct reflect, an Assembly workplace that is collegiate, inclusive and diverse and in which health and safety risks are eliminated or minimised;

~~(ba)~~ familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);

~~(cb)~~ not employ a family member as defined in that Act;

~~(de)~~ take all reasonable steps to ensure that, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct; and

~~(ed)~~ not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.

~~(818)~~ In all their dealings with staff of the Assembly, staff of other Members and members of the ACT Public Sector:

(a) extend professional courtesy and respect;

(b) act consistently with accepted workplace conduct standards; and

(c) recognise the unique position of impartiality and the obligations of public sector officials, including members of the ACT Public Service.

~~(919)~~ Only make a complaint about the compliance of another Member with this Code of Conduct where they

believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.

(10)___ Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.

(D) Through this Code of Conduct, Members express that they have zero tolerance for bullying, sexual and other harassment, sexual assault and discrimination¹ and pledge that they will not themselves engage in such conduct. Consistently with this, Members undertake that, in the course of their duties and activities as a Member, they will:

- (1) offer and provide support to a person who indicate they were making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination;
- (2) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma-informed care;
- (3) as appropriate, seek expert advice and assistance as to the manner in which the Members should act in such circumstances;
- (4) recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint;
- (5) respect the confidentiality of personal information concerning a complainant;
- (6) not imply, threaten or take detrimental action against a person because they are, or have indicated that they may become a complainant;
- (7) not offer any improper inducement to a person to not make, or to withdraw, such a complaint;

(8) seek to preserve any evidence that may be relevant to the investigation of such a complaint;

(9) fully cooperation with any official inquiry in connection with a complaint; and

(10) take appropriate action if they observe another person engaging in bullying, sexual and ither harassment, sexual assault or discrimination.

(E) ~~(21)~~ Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of this e-Code of Conduct.

(F) ~~(22)~~ Where a Member who had not voted on the most recent reaffirmation required under clause (E~~21~~) is elected to the Assembly, that Member shall, before they make an inaugural speech or otherwise participates in parliamentary processes, affirm that they will abide by this Code of Conducte-code.

(G~~23~~) ____ At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure.

1—In this Code "discrimination" means differential treatment of a person based on personal attributes such as gender; family responsibilities, parental status (having or not having children); marital status or relationship status; pregnancy; breastfeeding; sexual orientation; gender identity; religious belief; affiliation or activity; industrial activity; disability (including temporary disability); race; age; association with someone who has one of these attributes; or other attributes unrelated to the person's education, qualifications, experience, capacity or performance.

Attachment B - proposed code

Code of conduct for all Members of the Legislative Assembly for the Australian Capital Territory

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This resolution provides for a code of conduct for Members of the Legislative Assembly.

Resolution agreed by the Assembly

25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019, 30 March 2021 and)

- (A) The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.
- (B) In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:
- (1) Members should at all times act with integrity, honesty and diligence.
 - (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
 - (3) Members should uphold the separation of powers and the rule of law.
 - (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
 - (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.

- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
 - (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.
 - (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
 - (9) Members should treat each other with courtesy and propriety, observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
 - (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.
- (C) Consistent with the above principles, Members further undertake that they should:
- (1) Treat all people with courtesy, and respect the diversity of their backgrounds, experiences and views.
 - (2) Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
 - (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
 - (b) declare their private interests and those of their immediate family and ensure that their declaration is kept up to date, as required by Continuing Resolution 6 (as amended or replaced from time to time); and
 - (c) disclose at a time and in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) and any friendship, relationship or other circumstance which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.

- (3) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (4) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person, and not accept any inappropriate benefit in connection with their activity as a Member.
- (5) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (6) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.
- (7) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
 - (a) seek to promote, and by their conduct reflect, an Assembly workplace that is collegiate, inclusive and diverse and in which health and safety risks are eliminated or minimised;
 - (b) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
 - (c) not employ a family member as defined in that Act;
 - (d) take all reasonable steps to ensure that, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct; and
 - (e) not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.

- (8) In all their dealings with staff of the Assembly, staff of other Members and members of the ACT Public Sector:
 - (a) extend professional courtesy and respect;
 - (b) act consistently with accepted workplace conduct standards; and
 - (c) recognise the unique position of impartiality and the obligations of public sector officials, including members of the ACT Public Service.
 - (9) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
 - (10) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.
- (D) Through this code of conduct, Members express that they have zero tolerance for bullying, sexual and other harassment, sexual assault and discrimination¹ and pledge that they will not themselves engage in such conduct. Consistently with this, Members undertake that, in the course of their duties and activities as a Member, they will:
- (1) offer and provide support to a person who indicate they were making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination;
 - (2) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma-informed care;
 - (3) as appropriate, seek expert advice and assistance as to the manner in which the Members should act in such circumstances;
 - (4) recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint;
 - (5) respect the confidentiality of personal information concerning a complainant;
 - (6) not imply, threaten or take detrimental action against a person because they are, or have indicated that they may become a complainant;

- (7) not offer any improper inducement to a person to not make, or to withdraw, such a complaint;
 - (8) seek to preserve any evidence that may be relevant to the investigation of such a complaint;
 - (9) fully cooperation with any official inquiry in connection with a complaint; and
 - (10) take appropriate action if they observe another person engaging in bullying, sexual and other harassment, sexual assault or discrimination.
- (E) Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of this Code of Conduct.
- (F) Where a Member who had not voted on the most recent reaffirmation required under clause (E) is elected to the Assembly, that Member shall, before they make an inaugural speech or otherwise participates in parliamentary processes, affirm that they will abide by this Code of Conduct.
- (G) At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure.
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1—In this Code "discrimination" means differential treatment of a person based on personal attributes such as gender; family responsibilities; parental status (having or not having children); marital status or relationship status; pregnancy; breastfeeding; sexual orientation; gender identity; religious belief, affiliation or activity; industrial activity; disability (including temporary disability); race; age; association with someone who has one of these attributes; or other attributes unrelated to the person's education, qualifications, experience, capacity or performance.