



STANDING COMMITTEE ON PUBLIC ACCOUNTS

Elizabeth Kikkert MLA (Chair), Michael Pettersson MLA (Deputy Chair),  
Andrew Braddock MLA

**Inquiry into Financial Management Amendment Bill 2021 (No 2)**  
**QUESTION TAKEN ON NOTICE**

ANDREW BRADDOCK MLA: To ask the Minister for Industrial Relations and Workplace Safety

[Ref: Subject matter]

In relation to: Providing a copy of the GSO Legal Advice to Committee

**MR BRADDOCK:** I just ask a supplementary to just something earlier. Minister, you mentioned some GSO advice to the extent that the view was presented that this would not necessarily bind the officers of the Assembly. Is it possible to obtain a copy of that advice?

**Mr Gentleman:** I would have to take that on notice, Mr Braddock.

Answer to question taken on notice:

The advice of the Solicitor-General is the subject of legal professional privilege and is not waived. Accordingly, consistent with the Law Officers (General) Legal Services Directions 2012 and long-standing practice, a copy of the advice will not be provided.

While legal privilege applies to the advice, the Committee should note the summary of the advice provided by Officials during the Hearings. Further, as noted during the hearings, a similar practice as adopted in the Bill has been enacted by the Commonwealth Parliament. The Commonwealth's *Public Governance, Performance and Accountability Act 2013* provides for the Commonwealth's Finance Minister to make rules for Commonwealth entities (sections 101 and 102). The definition of a Commonwealth entities includes the parliamentary departments (subsection 10(1)(b)). Included in the Finance Minister's rule making powers is the ability to create rules relating to the proper use and management of public resources (subsection 102(1)(a)).

The *Financial Management Amendment Bill 2021 (No 2)* will operate in an analogous way in the Territory. The framework that will be created will not oblige a decision maker to make any particular decision but rather will seek that the decision maker consider a range of factors with regard to the proper management of public resources. The primary consideration is if the service or thing should be delivered internally or by an external private party. In this regard, the provisions in the framework builds on considerations already required.

For example, in relation to officers of the Assembly, the common clauses in the Territory's enterprise agreements, including in the Office of the Legislative Assembly Enterprise Agreement 2021-22, contain obligations in relation to insourcing. Common clause B11.5 outlines a requirement for consultation with

relevant employees and unions prior to making a decision to outsource services or works. Common clause G7 limits the circumstances in which a service provided by the Office of the Legislative Assembly can be privatised, and provides a process that must be followed should a privatisation of services be sought.

The *Financial Management Amendment Bill 2021 (No 2)* will operate in a manner that is consistent with the obligations already established in the Territory's industrial framework with respect of the Clerk, as noted above.

Further to the issue of compelling officers of the Assembly, the *Financial Management Act 1996* (FM Act) provides at section 4 that the provisions of parts 2 to 5 of the Act apply to the Office of the Legislative Assembly as if-

- (i) A reference in those provisions to a directorate included a reference to the office; and
- (ii) A reference in those provisions to the responsible Minister of a directorate were a reference to the Speaker; and
- (iii) A reference in those provisions to the responsibility director-general of a directorate included a reference to the Clerk of the Legislative Assembly.

Section 4 also outlines that the provisions of parts 2 to 5 of the Act apply to an officer of the Legislative Assembly as if –

- (i) A reference in those provisions to a directorate included a reference to the officer; and
- (ii) A reference in those provisions to the responsible Minister of a directorate were a reference to the Legislative Assembly; and
- (iii) A reference in those provisions to a responsible director-general of a directorate included a reference to the officer.

The Committee should note Part 4 of the FM Act, which provides at subsection 31(2)(c) that the responsible Director-General (including the Clerk of the Legislative Assembly) must manage the directorate (the Office of the Legislative Assembly) in a way that is not inconsistent with the policies of the government. Noting that the intention of the framework under the Bill is to provide guidance around matters that should be considered when determining 'efficient and effective financial management of the public resource'; the primary consideration required under section 31(1) of the FM Act. Further, section 31A(2) of the FM Act already places an obligation on Directors-General (including the Clerk of the Legislative Assembly) to follow 'any requirement prescribed by regulation for this section'.

As noted at the Hearings, the Government has committed to releasing the framework prior to the Bill being called on for debate in the Legislative Assembly.

Approved for circulation to the Standing Committee on Public Accounts

Signature: 

Date: 28/2/22

By the Acting Minister for Industrial Relations and Workplace Safety, Chris Steel MLA