

COMPANION TO THE
STANDING ORDERS
OF THE
LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN
CAPITAL TERRITORY

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REFERENCE GUIDE

ABBREVIATION	FULL TEXT
ACT	Australian Capital Territory.
Assembly	<p>The Legislative Assembly for the Australian Capital Territory established pursuant to section 8 of the <i>Australian Capital Territory (Self-Government) Act 1988</i>.</p> <p>The term is also used to denote the period between the first meeting of an Assembly following a general election and, unless the Assembly were to be dissolved earlier by the Governor-General, the polling day for the next general election.</p>
Assembly Debates	Debates of the Legislative Assembly for the Australian Capital Territory (Hansard) from 1989 to present. Contained in bound volumes. References are to date and page, eg Assembly Debates (21.6.1995) 969-71.
Commonwealth Gazette	Commonwealth of Australia Gazette and, from July 1973 until June 1977, Australian Government Gazette.
House of Commons	United Kingdom House of Commons (unless otherwise indicated).
House of Representatives Practice	House of Representatives Practice. The edition current at December 2007 is the Fifth edition published in 2005. This will be the edition referred to unless otherwise stated.
H.R. Deb.	Debates of the House of Representatives (Hansard). References are to date and page, eg H.R. Deb. (6.3.1991) 1419.
J	Journals of the Senate. References are to sessional volume/page, eg J 1974-75/628.
May	Erskine May, <i>The Law, Privileges, Proceedings and Usage of Parliament</i> . The edition current at December 2007 is the Twenty-third edition published in 2004. This will be the edition referred to unless otherwise stated.
McGee	David McGee, <i>Parliamentary Practice in New Zealand</i> . The edition current at December 2007 is the Third edition published in 2005. This will be the edition referred to unless otherwise stated.
MLA	Member of the Legislative Assembly.
MoP	Minutes of Proceedings of the Legislative Assembly for the Australian Capital Territory from 1989 to present. Contained in bound volumes and indexed according to each Assembly. References are to years of Assembly and page, eg MoP 1998-2001/22.

ABBREVIATION	FULL TEXT
NP	Notice Paper of the Legislative Assembly for the Australian Capital Territory from 1989 to present. Contained in bound annual volumes. References are to date and page, eg NP (16.2.2000) 123.
Odgers'	Odgers' Australian Senate Practice. The edition current at December 2007 is the Eleventh edition published in 2004. This will be the edition referred to unless otherwise stated.
PP	Parliamentary Paper. Parliamentary Papers are papers which have been presented to either House of the Commonwealth Parliament and which have been ordered to be printed or to be made a Parliamentary Paper. References are to number and year, eg PP 405 (1989).
Quick and Garran	J Quick and R R Garran, <i>The Annotated Constitution of the Australian Commonwealth</i> , published in 1901.
Redlich	Josef Redlich, <i>The Procedure of the House of Commons: A Study of its History and Present Form</i> , Volumes I, II and III, Archibald Constable & Co Ltd, London, 1908.
Scrutiny Committee	Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)
Self-Government Act	<i>Australian Capital Territory (Self-Government) Act 1988</i> (Commonwealth), Act No. 106 of 1988 (as at July 2005).
Sen. Deb.	Debates of the Senate (Hansard). References are to date and page, eg Sen. Deb. (24.11.1988) 2731-3.
Special Gazette	Special Gazette of the Australian Capital Territory. References are to issue number and date, eg No.52, Sunday 1 May, 2005.
Territory	Australian Capital Territory.
Territory Gazette	Australian Capital Territory Gazette
VP	Votes and Proceedings of the House of Representatives. References are to sessional volume/page, eg VP 1998-2001/240.



PREFACE

I am pleased to be able to introduce the first edition of the *Companion to the standing orders of the Legislative Assembly for the Australian Capital Territory*. This publication incorporates close to 20 years of parliamentary practice of the Legislative Assembly and was produced to assist the Speaker, Members and others with an interest in understanding the workings of the Assembly and its practices and procedures.

Since the establishment of the Assembly in 1989, where the standing orders have been silent on various procedural issues that have arisen, Members and officers of the Assembly have relied upon a variety of authoritative works to consider precedent and seek clarity. As the Assembly standing orders are largely based on those of the Commonwealth Parliament's House of Representatives, *House of Representatives Practice* has been heavily used, as has *Erskine May Parliamentary Practice*.

With six out of seven Assemblies elected having had minority governments formed, increasing reference has also been made of *Odgers' Australian Senate Practice* which reflects that legislature's familiarity with non-government majorities and the substantial body of practice and procedure that has evolved to meet its distinct needs.

The purpose of the *Companion* is to detail both the Assembly Standing Orders as well as the procedures and practices that are not necessarily covered by those standing orders.

The *Companion* will be of primary interest to ACT MLAs, their staff and Secretariat staff involved in the conduct of Assembly business. As a reference, it sheds light on the specific procedural issues that have arisen in the Assembly since its inception and provides insights into the thinking behind major developments in Assembly practice and procedure.

The *Companion* may also be of interest to parliaments of a similar size to the Legislative Assembly, particularly where they find themselves in the situation of having a minority government.

As a relatively young legislature the Legislative Assembly has been able to rely on other parliamentary reference materials to assist in developing an understanding of its own practices and procedures. These publications are referred to throughout the text and include *House of Representatives Practice*, *Odgers' Australian Senate Practice*, *Erskine May Parliamentary Practice* and *Parliamentary Practice in New Zealand*.

This publication has been under preparation for some four years, and would not have come to fruition without the dedication of many people.

The principal person lending his considerable expertise and knowledge to the development of this publication is Mark McRae OAM. As a former Clerk of the Legislative Assembly, Mark's knowledge of its practice and procedure is invaluable and I am extremely grateful for the pivotal role he has played in the drafting and editing of this important work. His previous role in assisting with the drafting of the first edition of *House of Representatives Practice* was put to good use on this publication. As Assistant Editor of the *Companion*, Derek Abbott was also instrumental in ensuring that the publication that has been produced is of a high quality.

I must also thank Secretariat colleagues who have made important contributions throughout the drafting of the Companion, especially Max Kiermaier, Janice Rafferty and Anne Shannon.

I would also like to thank Phillip Green, the ACT Electoral Commissioner, as well as Stephen Argument, the Legal Advisor to the Standing Committee on Justice and Community Safety, for reviewing the chapters relating to elections and subordinate legislation respectively.

I would also like to thank the many proof readers of the edition, especially Russell Lutton and Keith Ryder (both former Editors-of Debates for the Assembly), as well as David Skinner, Sue Matthews and Julie Gilbertson.

Finally I would like to make particular mention of the contribution Celeste Italiano, the Assembly Secretariat's Notice Paper and Projects Officer, has made to the project. Her research, professional management of the publication, and dedication ensured that it met the required deadlines, and was able to be brought to fruition.

This publication would not have been produced without the support of the former Speaker, Mr Wayne Berry, MLA, and the current Speaker, Mr Shane Rattenbury, MLA, both of whom are strong believers in the institution of parliament.

I am certain that the *Companion to the standing orders of the Legislative Assembly for the Australian Capital Territory* will become the definitive reference on the Assembly's practice and procedure and will evolve to incorporate new developments over time.

Tom Duncan
Clerk of the Legislative Assembly

April 2009



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY – AN INTRODUCTION

The Commonwealth of Australia was created by legislation of the United Kingdom Parliament¹ by which six pre-existing Crown colonies were joined in a federation in 1901 and became the component states of that federation. The structure of the new federation reflected, among other things, the concern of the individual states to retain a high degree of autonomy in domestic matters and to ensure that those states with the largest populations did not come to dominate the new Commonwealth. One expression of this was the decision to have the seat of government located away from the two largest cities, Sydney and Melbourne. Section 125 of the Constitution gave effect to this:

The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within a territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles [one hundred and sixty kilometres] from Sydney.²

The actual site for the seat of government was chosen by ballot by the Senate and the House of Representatives, respectively, in 1909.³ Section 3 of the *Seat of Government Act 1908* had determined that the seat of government of the Commonwealth shall be in the district of Yass-Canberra in the state of New South Wales (assented to on 14 December 1908).⁴

In 1911, 910 square miles (2,357 square kilometres) of sparsely inhabited⁵ rural land was transferred to the Commonwealth as the Australian Capital Territory (ACT) though it was commonly referred to as the Federal Capital Territory for some years.⁶ The name ‘Canberra’ was announced by the wife of the Governor-General, Lady Denman, on 12 March 1913 – ‘I name the capital of Australia Canberra’.⁷ Progress on the construction of Canberra was slow; the Royal Military College at Duntroon was established in 1911; a ‘provisional’ Parliament House was opened in 1927; and a small number of public servants and military personnel moved to the capital. The Depression further slowed progress and by the mid-1930s the population was approximately 7,000, rising to about 10,000 by the outbreak of the Second World War in 1939. The war resulted in an influx of officials to the national capital but at the same time meant the deferral of any further significant public building projects.

1 *Commonwealth of Australia Constitution Act 1900* (63 and 64 Victoria, Chapter 12).

2 *Commonwealth of Australia Constitution Act 1900*, section 125.

3 Lyall Gillespie, *Canberra 1820-1913*, AGPS 1991, p. 245.

4 The *Seat of Government Act 1904* had nominated a large area at Dalgety as the site for the seat of government but Parliament continued to debate the issue without reaching agreement. The *Seat of Government Act 1908* repealed the 1904 Act. <<http://www.canberrahistory.org.au/discover.asp>>.

5 *Seat of Government (Administration) Act 1910* – commenced 1 January 1911. At the time it was estimated that the human population was 1,714, somewhat overshadowed by approximately 224,764 sheep. Of the original inhabitants of the region Queen Nellie, who died in the Queanbeyan Hospital at the age of about 60 on 1 January 1887, was believed to be the last full blood member of her tribe see <www.legislation.act.gov.au/di/2001-329/current/rtf/2001-329.rtf>.

6 The Territory was generally known as the ‘Federal Capital Territory’ until 1938 when the *Seat of Government (Administration) Act 1910* was amended to confer the name ‘Australian Capital Territory’. See Drinkwater, Derek, *How McDougall reached the shore: the Senate and the federal capital site 1901-1910*, Canberra Historical Journal, Vol. 42, September 1998, pp. 26-35 and Pegrum, David, *The Bush Capital*, Hale and Iremonger, Sydney, 1983.

7 Lyall Gillespie, *Canberra 1820-1913*, AGPS, 1991, p. 254.

During the war Australia finally took control of its own foreign policy and the steady growth of a diplomatic community increased the pressure for the Commonwealth Government to create a genuine capital city. In the late 1950s the government of Sir Robert Menzies committed itself to the full development of the national capital. A National Capital Development Commission was created and the transfer of government functions from Melbourne and Sydney accelerated population growth.⁸

The debate on the Seat of Government (Administration) Act had foreshadowed a local legislature but throughout this long period the ACT was governed by the Commonwealth government through a Minister for the Interior and a Department of Territories (under various portfolios and titles). As the population, and consequently its demands for services such as health and education, grew, numerous other Commonwealth agencies became involved with the result that minor issues of ACT management were sometimes decided by the cabinet of the national government.⁹ The resulting system has been characterised as fluctuating between 'inert' and 'active' paternalism.¹⁰ It might be argued that the high proportion of public servants in the ACT population, particularly prior to the rapid expansion in the 1970s, disposed its population to accept a bureaucratic rather than a representative form of government.

The first representative body for the ACT was the Advisory Council established in 1930, comprising three elected and four appointed members. There followed a succession of advisory councils composed of government appointees and elected representatives, the latter increasing in number from three to five and finally, in 1959, to eight. In 1974 a fully elected, but still wholly advisory, Legislative Assembly (later the House of Assembly) of 18 Members was established. It ceased to exist on 30 June 1986.¹¹ The role of these bodies was to provide 'some popularly elected voice within the governmental system, despite the general unwillingness of Ministers and departmental officials to listen to it'.¹²

The ACT also gained representation in the Commonwealth Parliament as its population grew. It was represented by one Member in the House of Representative from 1949 (with limited voting rights until 1966), two in 1974 and, briefly, three in 1996 (for one parliament only).¹³ The ACT has also elected two Senators since 1975.

Throughout the ACT's history there have been advocates of some form of self-government analogous to either the familiar 'town council' model of local government or a 'state-type' government for the Territory. However, support for self-government, while sometimes vocal, did not command majority support. An advisory referendum held in 1978 was the only occasion on which voters in the ACT were offered an opportunity to indicate their preferences. The questions posed by the plebiscite were:

- That self-government be granted to the ACT by delegating functions to a locally elected legislative body.
- That a locally elected legislative body be established in the ACT with local government-type legislative and executive functions.
- That the present arrangements for governing the ACT should continue for the time being.

8 The ACT's population was 41 000 in 1958, 103 000 in 1967, 207 000 in 1976 and 322 000 in 2006.

9 For a detailed study of the government and administration of the ACT and the emergence of self-government see: P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996.

10 P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996, p. 84.

11 P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996, p. 219.

12 P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996, p. 7.

13 The ACT's population is sufficient to justify two large House of Representatives electorates but in 1996 was just sufficient to allow for the division of the ACT into three somewhat smaller electorates.

The results of the advisory referendum showed that 63.75%, a majority, of the electors casting a valid vote at the referendum voted in favour of continuing with the present arrangements for the time being.¹⁴

A decade later the then Commonwealth government introduced legislation to give the ACT a measure of self-government without conducting another plebiscite or referendum. Contemporary commentary suggests that opposition to self-government may have declined since 1978 but that it was still significant.¹⁵ This was to be reflected by the success of candidates running on explicit anti self-government tickets in the first election after self-government.

The case for self-government was, on purely numerical terms, overwhelming. By the late 1980s the ACT had a population of more than a quarter of a million, yet its four representatives in the Commonwealth Parliament were its only elected representatives to a body having genuine legislative authority. The national parliament was at the least an unwieldy institution through which to consider the minutiae of managing urban services in the ACT. Whether contrasted with Australia's smallest state, Tasmania, or cities of comparable size to Canberra, the ACT suffered a severe 'democratic deficit'.¹⁶ While it has been argued that, even with self-government, the ACT's voters have too few elected representatives, it should be noted that, unlike any other Australian state or territory, the ACT is almost wholly urban, with its population concentrated in the city of Canberra. Thus the problems of distance and geographical dispersion that face other jurisdictions do not affect the ACT.

The ACT's system of government, created by the Self-Government Act, has a single legislative chamber of 17 Members. Executive responsibility is vested in a Chief Minister, elected by the Assembly, and no more than five Ministers, who must also be Members of the legislature. The government is responsible for a range of 'state' and 'local government' functions at the one level. This broad range of responsibilities results in governments with significant legislative programs.¹⁷

The Assembly has the right to develop its own practices and procedures. However, in relation to powers and immunities the Self-Government Act, at subsection 24(3), establishes that 'until the Assembly makes a law with respect to its powers' they are taken to be the same as those of the House of Representatives. The first standing orders of the Assembly were prepared in consultation with officers of the Territory Administration, the Department of the House of Representatives and the Assembly secretariat but in significant areas reflected House of Representatives practice. The Legislative Assembly has amended its standing orders and adopted a number of resolutions with regard to its practices and procedures since its establishment.

Members are elected to the Legislative Assembly from three multi-Member constituencies (two returning five Members and the third returning seven), using a system of proportional

14 <<http://www.elections.act.gov.au/FactReferendum.html>>.

15 See P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, pp. 181-2. An opinion poll was conducted on behalf of the *Canberra Times* while the package of self-government legislation was before the Senate, the results of which were published in the paper on 20 November 1988, indicated that, were a referendum to be held on self-government, 44.7% of respondents would have voted in favour, 46.9% against. If offered a choice, 27% favoured no self-government, 38.7% favoured a local council-type government and 30.8% supported state-type self-government (essentially the proposal before the Senate). The same poll indicated that Canberrans overwhelmingly supported (76.5%) any proposal for self-government being put to them in a referendum prior to its adoption. The government did not offer Canberra's citizens a referendum; as ACT Senator Bob McMullan put it, '... this is not an appropriate matter for a referendum. In my view democracy is not optional.' *Sen. Deb.* (23.11.1988) 2602.

16 In September 2006 the Australian Bureau of Statistics recorded a population of approximately 329 500 for the ACT and 489 600 for Tasmania. Tasmania has five Members of the House of Representatives, 12 Senators, a bi-cameral state parliament with 15 Members in the Legislative Council and 25 in the Assembly and 30 local government areas.

17 The ACT Government has responsibility for education, health, social welfare, housing, justice and policing, land management, licensing and municipal services such as public transport, water and power supply and household waste management.

representation.¹⁸ The electoral system resulted in a series of minority governments. During the course of the First Assembly there was one coalition government for almost 20 months. Not until the Sixth Assembly, elected in 2004, did a single party have a majority.

The small size of the Legislative Assembly, the preponderance of minority governments and, perhaps, its unicameral structure, have contributed to a certain complexity in its operations. Procedures have been adopted in response to the exigencies of the moment which depart from 'standard' practice, thus providing a range of sometimes conflicting precedents. The demands of coalition building have on occasion resulted in innovative solutions; for example, one minor party Member held a ministerial portfolio yet was not bound by cabinet solidarity in relation to matters outside his portfolio.

In a parliamentary context, the combination of state and local government functions at the one level is unique in Australia. The small membership puts considerable strain on Ministers whose portfolios are extensive and often include diverse responsibilities. The Assembly's committees have similarly wide-ranging responsibilities, while the small number of backbenchers available to serve on them can present problems which larger legislatures do not confront.¹⁹

Located as it is in a 'city state', the Legislative Assembly is immediately accessible to the public and closely scrutinised by the local media. This adds to the pressure on Members in particular and the institution more generally. To these pressures might be added the scepticism of the electorate, many of whom were unconvinced of the need for self-government²⁰ and voted for a succession of minority governments.

Debate on the nature of the ACT's self-government continues. In 2006, during consideration of a bill to amend the Self-Government Act to limit the Governor-General's (effectively the Commonwealth government's) power to disallow ACT legislation, a Federal government Minister provided, at best, lukewarm support for self-government in the ACT.

The reality is that the Assembly will always be subject to the wishes of the Commonwealth Parliament. In addition, unlike the Northern Territory, the ACT can have no aspirations to statehood. The Territory is and will remain the seat of government of the Commonwealth. Experience has demonstrated that when the Commonwealth Parliament has seen fit it has amended the Self-Government Act to remove certain legislative powers from the Assembly and has supported the Federal government in the steps it has taken to disallow an enactment where it felt the need to.

2009 marks the 20th anniversary of the Assembly's establishment. This book chronicles how much it has matured as a parliamentary institution over those 20 years. If the experiences to date serve as a guide, it will undoubtedly continue to develop and enhance the way it governs the Territory in the future.

18 Elections to the First Assembly were conducted under a modified d'Hondt system that proved to be extremely complex. It was described by the Australian Electoral Commission as 'fatally flawed'; see Grundy et al, *op cit*, p. 199. This was replaced by the Hare-Clark system.

19 See Chapter 16 – *Committees*, p. 1.

20 Four candidates specifically committed to the abolition of self-government were elected to the First Assembly; one became the first Speaker.

THE LEGISLATIVE ASSEMBLY, ITS ESTABLISHMENT, ROLE AND MEMBERSHIP

1.1 The *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act) passed by the Commonwealth Parliament establishes the Australian Capital Territory (ACT)¹ as a body politic under the Crown.² Parts III and IV of the Act (sections 8 to 35) create the Legislative Assembly for the Australian Capital Territory and make a number of provisions in relation to the constitution of the Assembly, its procedures and powers. Part VIII sets out the broad principles that govern elections to the ACT Assembly.

1.2 The ACT executive, the government of the Territory, is established by Part V of the Self-Government Act. Part VII makes provisions relating to the finances of the ACT, notably that 'no public money of the Territory shall be issued or spent except as authorised by enactment'.³ Section 37 of the Self-Government Act sets out the general powers of the executive, principally the responsibility of governing the Territory with respect to matters listed in Schedule 4 of the Self-Government Act.⁴

1.3 The ACT Supreme Court already existed at the time of the granting of self-government. Part VA of the Self-Government Act defines the extent of its jurisdiction and makes provisions with regard to the retirement of judges of the Court. This part also provides for the establishment of a judicial commission and the removal of judicial officers.

POWERS OF THE LEGISLATIVE ASSEMBLY

1.4 The Legislative Assembly undertakes the basic functions of legislatures: making laws for the Territory, scrutinising the executive's administration of the Territory, and considering and legitimising revenue and expenditure proposals. The Assembly does not have the responsibility for governing the ACT. That lies with the executive.⁵ However, the executive is a product of the Assembly and accountable to it.

1.5 Key provisions of the Self-Government Act stipulate that:

- the Assembly is vested with the power to make laws for the peace, order and good government of the Territory;⁶
- the receipt, spending and control of the public money of the Territory is subject to laws enacted by the Assembly;
- the Chief Minister (head of the executive) is elected by the Assembly from among its own number;

1 Throughout this work the Australian Capital Territory is referred to as 'the Territory' or 'the ACT'.

2 *Australian Capital Territory (Self-Government) Act 1988*, section 7. The Australian Capital Territory (Self-Government) Bill was introduced in the House of Representatives (by the Minister for the Arts and Territories) on 19 October 1988 as part of a package of four bills introduced by the then government to establish self-government in the Territory. The other bills were the Australian Capital Territory (Electoral) Bill 1988 (the government's third attempt at introducing an electoral system for the Territory), the Australian Capital Territory (Planning and Land Management) Bill 1988 (aimed at establishing a framework for funding and administering national capital concerns separately from municipal and territorial concerns), and the A.C.T. Self-Government (Consequential Provisions) Bill 1988.

3 'Enactment' means a law made by the Assembly or certain specified Commonwealth Acts or other Acts in force in the Territory.

4 Schedule 4 is reproduced at Appendix 23.

5 Self-Government Act, sections 36-7.

6 Self-Government Act, section 22.

- other members of the executive (Ministers) are appointed by the Chief Minister from among the Members of the Assembly; and
- the executive is answerable to the Assembly.⁷

These powers are substantial and will be discussed in detail elsewhere in the *Companion*.

1.6 The Assembly is also empowered to make legislation regulating its own affairs, including:

- declaring the powers of the Assembly and of its Members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives or of its Members or committees;⁸ and
- providing for the manner in which powers so declared may be exercised or upheld.⁹

1.7 The Assembly has not made such a law with respect to its non-legislative powers (including privileges and immunities). Thus, with two exceptions, its powers are the same as those of the House of Representatives, its Members and committees, including the key immunity of freedom of speech and the power to conduct inquiries by compelling the attendance of witnesses, the giving of evidence and the production of documents.¹⁰

CASUAL VACANCIES IN THE SENATE

1.8 The *Commonwealth Electoral Act 1918* imposes a particular duty upon the Assembly. If the place of a Senator for the Australian Capital Territory becomes vacant before the expiration of his or her term of service, the Assembly must choose a person to hold the place until the expiration of the term.¹¹ The precedents and procedures adopted by the Assembly are outlined at paragraphs 9.105 to 9.107.

POWER TO MAKE LAWS

1.9 With certain qualifications, the Assembly may make laws for the ACT, that power extending to the power to make laws with respect to the exercise of powers by the Australian Capital Territory executive.¹² Schedule 4 of the Self-Government Act lists those matters; they may be described as ‘domestic’ matters relating to the Territory, encompassing matters that are the direct responsibilities of both state governments and local governments elsewhere in Australia.

1.10 In introducing the Australian Capital Territory (Self-Government) Bill 1988 into the House of Representatives, the responsible Minister advised the House that the ACT would have the same legislative and executive powers as the states and the Northern Territory.¹³ Subsection 23(1) of the Self-Government Act sets out specific matters where

7 Self-Government Act, sections 40-1 and 48.

8 Self-Government Act, section 24.

9 Self-Government Act, section 24.

10 Self-Government Act, section 24. The powers do not include the power to imprison or fine a person. See also *House of Representatives Practice*, Chapter 19 and pp. 643-8, and *Odgers*, 12th edn, pp. 59-61.

11 *Commonwealth Electoral Act 1918*, section 44.

12 Self-Government Act, section 22.

13 H.R. Deb. (19.10.1988) 1923. Certain transitional provisions were put in place and the Commonwealth retained powers in relation to the establishment of courts, the provision of police services and the control of legal practitioners, companies and securities.

the Assembly has no powers to make laws¹⁴ and subsection 23(2) provides that the regulations may omit any of the paragraphs in subsection (1) or reduce the scope of any of those paragraphs.

1.11 Neither of these categories is closed. Since the enactment of the Self-Government Act the Commonwealth has used its powers both to extend and to limit the legislative and executive responsibilities of the Territory. Regulations have been made to exclude paragraphs 23(1)(g) and (h) of the Self-Government Act¹⁵ and to add matters to Schedule 4 of the Act extending the range of matters for which the ACT executive is responsible.¹⁶

1.12 The *Euthanasia Laws Act 1997* (Cwlth) was passed in response to Northern Territory legislation (*Rights of the Terminally Ill Act 1995*) legalising euthanasia in that jurisdiction. It declared the Northern Territory law void and amended the Self-Government Acts of the Northern Territory, the ACT and Norfolk Island, removing from their Assemblies the power to make certain laws with respect to euthanasia and mercy killing.¹⁷

1.13 The Euthanasia Laws Bill provoked considerable debate on two distinct grounds. The Senate Standing Committee for the Scrutiny of Bills, in its Fourth Report of 1997 argued that:

The Commonwealth Parliament having given the Legislative Assembly of each Territory the power 'to make laws for the peace, order and good government' of each Territory, would, by this bill, negate the valid exercise of that legislative power by one of them, and by doing so ... creates a situation where some Australians are treated in a way different from other citizens because it curtails their present right to self-government in circumstances where, were they to live in the States, it could not do so.

1.14 A further objection made by the Senate committee was that:

The Commonwealth Parliament, by this bill, proposes to intrude on the law-making function of the Territories not in accordance with a general principle but on an ad hoc basis. This threatens the certainty which ought exist for its citizens when any one or more of the Territories passes a valid law.¹⁸

1.15 The ACT Legislative Assembly identified itself with the views of the Senate committee, resolving on 25 September 1996 that:

... this Assembly endorses the findings of the Senate Standing Committee for the Scrutiny of Bills in relation to the Euthanasia Laws Bill 1996.¹⁹

14 Subject to this section, the Assembly has no power to make laws with respect to:

- (a) the acquisition of property otherwise than on just terms;
- (c) the provision by the Australian Federal Police of police services in relation to the Territory;
- (d) the raising or maintaining of any naval, military or air force;
- (e) the coining of money; and
- (g) the classification of materials for the purposes of censorship.

15 Australian Capital Territory (Self-Government) Regulations 1989, Statutory Rules 1989 No. 86 as amended—section 3A. These paragraphs referred to the admission and regulation of legal practitioners and companies, acquisitions and securities.

16 Australian Capital Territory (Self-Government) Regulations 1989. The matters added to Schedule 4 were 'Law and Order', 'Legal practitioners', 'Magistrates Court and Coroners Court' and 'Courts (other than the Magistrates Court and Coroners Court)'.

17 Sections 23(1A) and 23(1B) of the Self-Government Act (ACT).

18 Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 1997, 19 March 1997, pp. 59-60. This report also contains the response of the bill's proposer to the committee's comments.

19 Assembly Debates (25.9.1996) 3406-17. The resolution of the Assembly referred to preliminary comments made on the bill by the committee in its *Alert Digest* which were repeated in its final report quoted above.

1.16 The Assembly also supported a Remonstrance from the Northern Territory Legislative Assembly presented to the Speaker of the House of Representatives and the President of the Senate on 27 October 1996.²⁰

1.17 The power of the Commonwealth Parliament to pass the Euthanasia Laws Act was not questioned and neither the territories' nor the Senate committee's reservations persuaded the Parliament that the matter should be left to the territories' own legislatures. The concern remains that the Commonwealth Government can intervene to alter the legislative authority of a territory, not on a matter of general principle, but because of an objection to a specific measure passed by a territory legislature.

1.18 In this case it was not disputed that the Northern Territory Assembly had acted within its powers when it passed the *Rights of the Terminally Ill Act 1995*. This was distinct from the circumstances in which the Commonwealth in 2006 disallowed the ACT's *Civil Unions Act 2006* on the grounds that it was in conflict with Commonwealth legislation.

1.19 Section 28 of the Self-Government Act provides that an Assembly enactment²¹ is subordinate to laws of the Commonwealth in force in the Territory or instruments of a legislative character made under those laws. This means that a Territory enactment has no effect to the extent that it is inconsistent with a Commonwealth law. Subsection 35(2) of the Self-Government Act gives the Governor-General, acting on the advice of the Federal Executive Council—in practice the Commonwealth government of the day²²—the power to disallow an enactment of the Assembly.

1.20 As mentioned above, the power to disallow an enactment of the Legislative Assembly was, controversially, used in 2006 to disallow the ACT's *Civil Unions Act 2006*, apparently on the grounds of inconsistency with the Commonwealth's Marriage Act:

We have consistently said ... that we would indeed reserve our right to act on this matter if the ACT act, once enacted, continued to contravene, in our view, the clearly stated position in relation to marriage as defined by the *Commonwealth Marriage Act 1961*.²³

1.21 The law stated at subsection 5(2) that, 'A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.' The Act applied only to ACT legislation and did not purport to give couples who entered into a civil union rights under Commonwealth laws—for example, with regard to taxation or immigration.

1.22 The introduction of legislation on civil unions had been part of the platform of the recently elected ACT executive, representative of a party that was the first to command a majority in the Assembly in its own right, and was viewed by many as a valid exercise of the Assembly's legislative power. In response to the threat of disallowance, the Legislative Assembly unanimously adopted an Address to the Governor-General which noted the unusual position

20 A remonstrance is a petition making a declaration of grievances. On 27 October 1996 the Speaker, the Chief Minister and other Members supported the Speaker of the Northern Territory Legislative Assembly and the Chief Minister of the Northern Territory and their delegation in presenting the remonstrance to the President of the Senate and the Speaker of the House of Representatives. *Secretariat annual report 1996-97*, Part A, p. 4.

21 Section 3 (Interpretation) of the Self-Government Act defines an 'enactment' as meaning (a) a law (however described or entitled) made by the Assembly under the Self-Government Act; or (b) a law, or part of a law, that is an enactment because of section 34 (Certain laws converted into enactments) of the Self-Government Act. See also footnote 3.

22 See footnote 40 of Chapter 3: Elections and the electoral system.

23 Senator the Hon N Minchin, Minister for Finance and Administration, Sen. Deb. (15.6.2006) 19. The Minister also said, 'it is clear that the intent and purpose of that act is to equate a civil union with a marriage. In that sense we regarded it as repugnant', (Sen. Deb. (15.6.2006) 18), suggesting that the Commonwealth Government's objection was to the policy rather than any conflict with existing Commonwealth law.

of the Governor-General who 'neither represents the Crown in relation to the Australian Capital Territory nor acts on advice of the Executive of the Australian Capital Territory' and asserted that:

The *Civil Unions Act 2006* is a lawful exercise of the legislative power of the parliament of the Australian Capital Territory, made in pursuance of a political mandate given the parliament by the people of the Australian Capital Territory.²⁴

1.23 The Address went on to indicate that the ACT believed that the power to disallow was constrained by the conventions pertaining to intervention by the Crown in the legislative process and that the ACT stood 'ready to consider amending the Act in accordance with any recommendation made by the Governor-General under subsection 35(4) of the *Australian Capital Territory (Self-Government) Act 1988*.' Subsection 35(4) gives the Governor-General the power to make recommendations to the Legislative Assembly with regard to possible amendments to any enactment. No formal approach to the Territory under subsection 35(4) was made.²⁵

1.24 In the explanatory statement to the Instrument of Disallowance issued by authority of the Commonwealth Attorney-General it was argued that the Act passed by the Assembly:

... created a statutory scheme for the recognition of relationships which bore a marked similarity to the Commonwealth's scheme for the regulation of marriage. This legislation appeared to undermine marriage, attempted to circumvent the *Marriage Act 1961* (Cth), and may have created ambiguity between civil unions and marriages.

1.25 The statement claimed that the Commonwealth's action 'supports the fundamental institution of marriage' which would be 'undermined by any measures that elevate other relationships to the same or similar level of public recognition or status'.²⁶

1.26 The explanatory statement also took issue with the claims made in the Legislative Assembly's Address to the Governor-General, arguing that:

... the power of the Governor-General to disallow an enactment under section 35 of the Act is at large and is not constrained by the policy considerations set out in that Address. The ACT Self-Government Act specifies no conditions that need to be satisfied before the power to disallow an enactment may be exercised.²⁷

1.27 A subsequent bill, the *Civil Partnerships Bill 2006*, ostensibly drafted to overcome objections to the first Act, was introduced into the Assembly in late 2006 but not proceeded with in the Assembly after the Commonwealth's Attorney-General indicated that he would recommend to the Governor-General that it also be disallowed.²⁸ The bill passed the Assembly with amendments (that were in line with the Commonwealth Attorney-General's comments) on 9 May 2008.

²⁴ MoP 2004-08/738.

²⁵ MoP 2004-08/738-9. It should be noted that, in debate in the Senate, the Minister for Finance and Administration, Senator Minchin, stated that the Commonwealth 'gave the ACT every opportunity to restructure its *Civil Unions Act* to ensure that it did not contradict the Commonwealth's responsibility for and its definition of the institution of marriage.' (Sen. Deb. (14.9.2006) 80).

²⁶ Explanatory Statement, issued by the Authority of the Attorney-General for the Minister for Local Government, Territories and Roads, 13 June 2006.

²⁷ Explanatory Statement, issued by the Authority of the Attorney-General for the Minister for Local Government, Territories and Roads, 13 June 2006.

²⁸ Catherine Naylor, 'Feds quash second gay bill', *The Canberra Times*, 7 February 2007, p. 1.

1.28 In June 2006 a private Senator's bill was introduced in the Senate to amend the Self-Government Act to remove the power of the Governor-General to disallow Territory legislation. The Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006 sought to replace that power with a requirement that Territory legislation could only be overturned by an Act of the Commonwealth Parliament.

1.29 Senator Brown, in speaking to the bill, acknowledged that the Commonwealth had the power to override Territory legislation but argued that it was inappropriate that legislation properly made by a democratically elected legislature should be subject to disallowance by government fiat.²⁹ The bill was adjourned at the second reading in September 2006 and proceeded no further.

1.30 The histories of the Northern Territory's Rights of the Terminally Ill Act and of the ACT's Civil Unions Act are reminders that the powers vested in the territories are not entrenched 'constitutional' rights analogous to the powers of the Commonwealth and states.

1.31 The Commonwealth Minister for Finance and Administration made that clear during debate on a motion to disallow the instrument that disallowed the Civil Unions Act:

... the constitutional fact is that the territories are not states and that the territories are subject to the Commonwealth's authority, as set out clearly in section 122 of the Constitution ... We seek to grant a degree of autonomy to the territories but, at the end of the day, to the extent that territories, which are ultimately answerable to this Commonwealth, contravene positions of the Commonwealth then we have the obvious authority—and indeed in this case, in our strong view, the responsibility—to act.³⁰

1.32 Senator Ludwig, speaking on behalf of the Labor Party in the Senate, articulated an alternative position:

If self-government in the ACT is to have any meaning at all, it must mean that the ACT legislature can determine policy of this sort. It has no bearing on what happens outside the ACT and it has no bearing on the ACT's special role as the seat of the Commonwealth government. It will only affect the way certain relationships are treated within the Canberra community and under territory law. It has no further effect than that.³¹

1.33 Senator Ludwig noted the differences between marriage as described in the Commonwealth Marriage Act and civil unions as described in the ACT legislation. He argued that the two pieces of legislation were not in conflict and that the Commonwealth Government's objection was to the specific policy, not to the exercise of legislative authority by the Assembly.

1.34 In introducing the Self-Government Bill into the House of Representatives in 1988, the then Minister for the Arts and Territories asked what were assumed at the time to be rhetorical questions:

Are these people somehow different from other Australians? Are they second-class citizens in some way? Do they not understand, or have opinions on, the issues that confront them daily? Can they not be trusted with their own destiny?

29 Senator Bob Brown, Sen. Deb. (14.9.2006) 59-61.

30 Senator N Minchin, Sen. Deb. (15.6.2006) 19-20.

31 Senator J Ludwig, Sen. Deb. (15.6.2006) 21.

1.35 The Minister also stressed that the powers retained by the Commonwealth over the ACT were ‘instruments of last resort’.³² This suggests an intention to give the ACT a high degree of autonomy in dealing with its own affairs. Clearly the Minister’s questions remain to be answered and the real extent of self-government in the ACT remains subject to the fluctuations of the political process.

NON-INTERFERENCE WITH THE COMMONWEALTH PARLIAMENT

1.36 Section 29 of the Self-Government Act also gives each House of the Commonwealth Parliament the power to resolve that particular enactments or parts of an enactment of the Assembly do not apply to that House, to the Members of that House or within the parliamentary precincts. Such resolutions cannot operate retroactively and have effect as if the enactment was repealed by another enactment.³³

SIZE OF THE ASSEMBLY

1.37 Subsection 8(2) of the Self-Government Act states that the Assembly shall consist of 17 Members. This number may be varied by joint action of the Commonwealth and the Territory. The Assembly must pass a resolution requesting a change in the number of its Members but any such regulations would be made by the Governor-General acting with the advice of the Federal Executive Council. Such regulations would be laid before each House of the Commonwealth Parliament and be subject to scrutiny and the disallowance provisions set out in the Acts Interpretation Act of the Commonwealth.³⁴

1.38 Although the possibility of increasing the size of the Assembly has been mooted from time to time,³⁵ no proposed resolution to vary the number of Members in accordance with section 8 of the Self-Government Act has been considered by the Assembly.³⁶ It is relevant to note that should the Commonwealth devolve to the Assembly the power to legislate for the number of Members of the Assembly, any such legislation would be subject to the entrenching provisions adopted by the Assembly pursuant to the relevant section of the Self-Government Act.³⁷

32 Hon C Holding, Minister for the Arts and Territories, H.R. Deb. (19.10.1988) 1922.

33 Self-Government Act, section 29. The provision was inserted during Senate consideration of the self-government legislation, there having been concern within the Territory, within the Parliament and on behalf of some officers of the Parliament that the Assembly could inadvertently make laws that could detrimentally affect the functioning of the Commonwealth Parliament; domestic matters such as shopping hours and parking were referred to as examples—see Sen. Deb. (24.11.1988) 2817-8. This is clearly an issue of long standing. In 1714, as the House of Lords dealt with the Hanoverian succession, it nevertheless found time to direct the High Steward of the City of Westminster to ensure that no hackney coaches, carriages, drays or carts obstructed access to Parliament during its sittings—see House of Lords Journals, Vol 20, 9 August 1714.

34 Self-Government Act, sections 8 and 74; *Acts Interpretation Act 1901* (Cwth), sections 16A and 48.

35 See, for example resolution passed by the Assembly, MoP 2001-04/24-5. The resolution requested the Chief Minister to discuss with the Commonwealth Minister for Territories the possibility of amendments to the Self-Government Act to give the Assembly the power to determine the number of Members. The resolution also referred to the Standing Committee on Legal Affairs for inquiry and report the matter of the appropriateness of the size of the Legislative Assembly and options for changing the number of Members, electorates and other related matters. The number of Members of the Assembly is discussed in Chapter 3: Elections and the electoral system, paragraphs 3.36 to 3.46.

36 On 25 September 2002 the Chief Minister gave notice of a motion proposing to increase the number of Members from 17 to 25 and calling on the Chief Minister to communicate the resolution to the Commonwealth Government with a request that the necessary regulations be made. The notice was never called on and lapsed at the expiration of the Fifth Assembly. NP (26.9.2002) 476; NP (26.8.2004) 2631.

37 Section 26 of the Self-Government Act allows the Assembly to pass legislation prescribing restrictions on the manner and form of making particular enactments—entrenching laws. See Chapter 3: Elections and the electoral system, paragraphs 3.36 to 3.46 for further discussion of the application of this section to the number of Members of the Assembly.

CONDUCT OF PROCEEDINGS

1.39 Subject to the provisions of the Self-Government Act, the Assembly may make rules and orders with respect to the conduct of its business.³⁸ Standing orders were adopted by the Assembly on 11 May 1989 and have been amended from time to time since. The Assembly has also adopted temporary orders for specified periods and has adopted resolutions and orders to have effect for specified periods or to continue in force unless and until amended or repealed.

GOVERNOR-GENERAL

1.40 The Self-Government Act makes no provision for an Administrator or Governor of the ACT, who has powers analogous to the Northern Territory Administrator or state Governors.³⁹ However, the Governor-General of the Commonwealth retains significant powers with regard to the ACT.

1.41 The Self-Government Act makes provision for the Governor-General to dissolve the Assembly if, in the opinion of the Governor-General, the Assembly:

- is incapable of effectively performing its functions; or
- is conducting its affairs in a grossly improper manner.⁴⁰

This is the only provision for dissolution of the Assembly⁴¹ and, to date, the Assembly has never been dissolved.

1.42 In reaching the decision to dissolve the Assembly, the Governor-General would act on the advice of the Federal Executive Council. The Self-Government Act provides no guide as to the criteria to be applied in reaching the decision, other than the general grounds cited above. However, subsection 16(8) of the Self-Government Act does require the responsible Commonwealth Minister to publish a statement of reasons in the *Commonwealth Gazette*.⁴²

1.43 Where the Assembly is dissolved, the Self-Government Act makes provision requiring the Governor-General to appoint a commissioner and provides that the Governor-General may, at any time, give directions to the commissioner about the exercise of the powers of the executive. Subsections 16(4) to 16(6) of the Self-Government Act make a number of provisions concerning the appointment and exercise of power by the commissioner and his or her remuneration and allowances and term of office.

1.44 In addition, a general election for the Assembly must be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*. The date of the general election for the Assembly must be between 36 and 90 days after the dissolution of the Assembly.

38 Self-Government Act, section 21.

39 Note that as a consequence of this the Territory does not have a process of assent to legislation by the Monarch or her representatives as is found in other Australian jurisdictions. The process of certification and notification of Acts is discussed in Chapter 11: Legislation, at paragraphs 11.114 to 11.119.

40 Self-Government Act, section 16. The Governor-General does not perform executive acts alone but does so 'in Council' (that is, acting on the advice of the Federal Executive Council (effectively the Federal Government) as required by section 63 of the Constitution; *House of Representatives Practice*, p. 13.

41 The Legislative Assembly currently has a fixed term of four years. See Term of the Assembly in Chapter 7: Sittings and adjournment of the Assembly, paragraphs 7.3 to 7.7.

42 Paragraph 16(8)(b) of the Self-Government Act also requires that the statement of reasons be laid before each House of the Federal Parliament within 15 sitting days of that House after the day of dissolution.

1.45 As discussed above, the Governor-General can also disallow an enactment or part thereof and recommend an amendment to an enactment of the Assembly.⁴³

1.46 Assembly standing orders make provision for Addresses to the Queen and to the Governor-General, an Address being a method traditionally employed by a legislature for making its desires, feelings and opinions known to the Crown.⁴⁴ Standing orders provide that whenever it is deemed proper to present an Address to Her Majesty or the Governor-General, a motion on notice stating the terms of an Address shall be moved. Addresses to Her Majesty shall be transmitted by the Speaker to the Governor-General to be forwarded for presentation. Addresses to the Governor-General are presented by the Speaker, and standing orders require that the response to any Address shall be reported by the Speaker to the Assembly.⁴⁵

1.47 Addresses to the Monarch tend to be largely formal—for example, the Address expressing condolences on the death of the Queen Mother.⁴⁶ Addresses may also deal with matters of substance relating to government matters relevant to the ACT or the Governor-General's exercise of powers under the Self-Government Act.

1.48 In August 1990 the Assembly requested that the Speaker 'address the Governor-General in the terms of' a resolution concerning the Commonwealth fixing, by regulation, an increase in the number of Ministers (in accordance with the then provisions of the Self-Government Act).⁴⁷ The Speaker, however, did not proceed as requested, advising the Assembly that, having considered the nature of the relationship between the Assembly and the Governor-General, he had concluded that:

... we do not have the same constitutional link between the Governor-General and the Assembly as there is between the Governor-General and the House of Representatives and the Senate, nor are there the same traditional ceremonial links.

I therefore propose not to proceed with the presentation of the address ... In conclusion, I understand that the Chief Minister will be conveying the terms of the resolution to the Commonwealth Government.⁴⁸

1.49 As discussed in paragraphs 1.22 to 1.26, the Legislative Assembly sent an Address to the Governor-General with regard to the possible disallowance of the *Civil Unions Act 2006*.

1.50 In communicating the views of the Assembly to the Commonwealth on matters for which the Commonwealth has constitutional responsibility, it may be considered more appropriate for the ACT executive, in response to a direction or request from the Assembly, to communicate directly with the relevant Minister—for example, the Minister responsible for the administration of the Self-Government Act.

1.51 On occasion the Legislative Assembly has had direct communication with the Commonwealth Parliament by an exchange of correspondence between the Presiding Officers. In 1992 the Commonwealth Parliament was considering amendments to the Self-Government Act. The Legislative Assembly adopted a resolution inviting the Commonwealth Parliament to

43 See Chapter 11: Legislation.

44 *House of Representatives Practice*, p. 324.

45 Standing orders 268-271.

46 MoP 2001-04/101. See also MoP 1995-97/61 (Condolences on the death of Diana, Princess of Wales); MoP 1995-97/831 (Response from the Royal Household to the Condolence Motion).

47 MoP 1989-91/286, 289.

48 Assembly Debates (20.9.1990) 3591.

make certain amendments to the Act (and consequential amendments to other legislation) and including the detailed terms of the proposed amendments. The resolution was transmitted to the Speaker of the House of Representatives and the President of the Senate by the Assembly Speaker with a request that the Presiding Officers inform all Members of its contents.⁴⁹

COURTS

1.52 When introduced into the House of Representatives in 1988, the Australian Capital Territory (Self-Government) Bill 1988 did not propose to transfer to the Territory responsibility for the court system, paragraph 22(1)(b) of the bill providing that the Assembly had no power to make laws with respect to the establishment of courts.⁵⁰ Amendments initiated in the Senate provided that the paragraph cease to have effect from 1 July 1990 (in its application to magistrates courts and coroner's courts) and the whole proviso from 1 July 1992 unless sooner omitted by regulations.⁵¹

1.53 Following a request from the Assembly in 1992,⁵² the Commonwealth Parliament enacted the *ACT Supreme Court (Transfer) Act 1992*,⁵³ an Act relating to the transfer of responsibility for the Supreme Court of the Australian Capital Territory from the Commonwealth to the Territory. As a consequence, Part VA, 'The Judiciary' (sections 48A to 48D), was inserted in the Self-Government Act.

1.54 Part VA sets out the jurisdiction and powers of the Supreme Court, makes provision for the retirement ages of the Chief Justice, judges and the Master of the Supreme Court and makes provision for the removal from office of a judicial officer. The Self-Government Act now sets out the requirements for any enactment relating to the establishment of a judicial commission for the Territory and any enactment relating to the removal from office of a judicial officer.⁵⁴

1.55 Key provisions of Part VA are that it effectively entrenches:

- the Supreme Court in that it is to have all original and appellate jurisdiction that is necessary for the administration of justice in the Territory. In addition, further jurisdiction may be conferred by any Act, enactment (law made by the Assembly) or ordinance⁵⁵ or any law made under any Act, enactment or ordinance; and

49 MoP 1992-94/22-23; Speaker of the Legislative Assembly to the Presiding Officers of the Commonwealth Parliament, 10 April 1992. And see footnote 52 below.

50 It was proposed to transfer this and other responsibilities after a settling in period. H.R. Deb. (19.10.1988) 1924.

51 Sen. Deb. (24.11.1988) 2731-3; H.R. Deb. (29.11.1988) 3455.

52 MoP 1992-94/17-18, 22-3; Assembly Debates (8.4.1992) 122-6, (9.4.1992) 152-8. The resolution of the Assembly (sent to the President of the Senate and the Speaker of the House of Representatives) sought legislative action by the Commonwealth Parliament to provide, inter alia, for:

- the existence of the Supreme Court of the ACT having all original and appellate jurisdiction that is necessary to administer justice in the ACT;
- provision for the removal from office of a judicial officer or a member of a tribunal by the ACT executive, but only at the request, by resolution, of the Legislative Assembly acting in accordance with a report by a judicial commission which had found that the officer's behaviour or physical or mental capacity could amount to proved misbehaviour or incapacity such as to warrant removal from office; and
- provisions for the determination of judicial remuneration and retiring ages of judicial officers.

53 Act No. 49 of 1992. The Act amended the Self-Government Act, the *ACT Self-Government (Consequential Provisions) Act 1988*, the *ACT Supreme Court Act 1933* and the *Federal Court of Australia Act 1976*.

54 The Self-Government Act defines the term 'judicial officer' as meaning the Chief Justice of the Supreme Court; or a Judge (other than an additional judge) of the Supreme Court; or the Master of the Supreme Court; or the Chief Magistrate or a Magistrate; or any other judicial officeholder or member of a tribunal specified in an enactment relating to the establishment of a judicial commission for the Territory.

55 See paragraph 11.3 for an explanation of the term ordinance.

- the composition and core functions of a judicial commission and the procedures for the removal from office of a judicial officer.⁵⁶

1.56 The enactment of the *Supreme Court Amendment Act 2001*, together with the enactment of complementary legislation by the Commonwealth Parliament⁵⁷ to amend the *Federal Court of Australia Act 1976* and the *Judiciary Act 1903*, established the Australian Capital Territory Court of Appeal and removed the jurisdiction of the Federal Court in relation to appeals from the ACT Supreme Court.⁵⁸

APPOINTMENT OF JUDICIAL OFFICERS

1.57 The appointments of the Chief Justice, justices and the Master of the Supreme Court are made by the executive, as are the appointments of the Chief Magistrate and magistrates.⁵⁹ It should be noted that these appointments are not subject to the Assembly's scrutiny and the disallowance provisions of division 19.3.3 of the *Legislation Act 2001*.⁶⁰

COMPLAINTS CONCERNING THE CONDUCT OR CAPACITY OF JUDICIAL OFFICERS AND THEIR REMOVAL FROM OFFICE

1.58 There are procedures for dealing with complaints against judicial officers in the Legislative Assembly and they are discussed here at some length. They are complex but that complexity reflects a desire to protect the judiciary from interference either by the executive or the legislature. As outlined above, the Self-Government Act entrenches certain provisions for any enactment relating to the establishment of a judicial commission to investigate complaints concerning the conduct or the physical or mental capacity of a judicial officer and any enactment relating to the removal from office of a judicial officer.⁶¹

1.59 Legislation relating to the examination of complaints in respect of judicial officers and to provide for their removal from office in certain circumstances was considered and agreed to by the Second Assembly.⁶² The *Judicial Commissions Act 1994* sets out the procedure for making complaints against judicial officers⁶³ (including an Assembly motion to have an allegation in respect of a judicial officer examined by a judicial commission), the constitution and appointment of a judicial commission, the proceedings of commissions and the removal of judicial officers (following an appropriate Assembly resolution).

56 Insofar as they directly relate to Assembly procedures, the provisions stipulate that an enactment relating to the removal from office of a judicial officer must provide that the Assembly has determined that the facts found by a judicial commission amount to misbehaviour or physical or mental incapacity identified by the commission and has passed a motion requiring the executive to remove the officer on the ground of that behaviour or incapacity.

57 *The Jurisdiction of Courts Legislation Amendment Act 2002* (Cwlth).

58 The court operates as a division of the Supreme Court and comprises all ACT Supreme Court judges. However a judge cannot hear a matter on appeal from a decision he or she gave in the Supreme Court.

59 *Supreme Court Act 1933*, sections 4, 4A, 4B and 40; *Magistrates Court Act 1930*, subsection 7(2).

60 Pursuant to which certain statutory appointments require prior consultation with an Assembly committee nominated by the Speaker and are also disallowable instruments. Division 19.3.3 of the *Legislation Act 2001* applies 'if a Minister has the power under an Act to appoint a person to a statutory position'. The judicial appointments are made by the executive, established by section 36 of the Self-Government Act and comprising the Chief Minister and such other Ministers as are appointed by the Chief Minister. See paragraphs 11.221 to 11.271 for a discussion on Assembly scrutiny and disallowance provisions.

61 Self-Government Act, sections 48C and 48D.

62 MoP 1992-94/519-20, 539-40; Assembly Debates (16.12.1993) 4695-8, (1.3.1994) 342-54. Exposure drafts of the legislation were presented earlier in the Second Assembly, MoP 1992-94/125; Assembly Debates (20.3.1992) 1917-9.

63 The *Judicial Commissions Act 1994* defines 'judicial officer' as meaning a judge of the Supreme Court (other than a person who is an additional judge appointed under the *Supreme Court Act 1933*, section 4A); or the master of the Supreme Court; or a magistrate; or a member of the administrative appeals tribunal (other than a person who is also a member of the Commonwealth administrative appeals tribunal).

1.60 Part 4 of the *Judicial Commissions Act 1994* provides for persons to make a complaint against a judicial officer. It also sets out the steps that must be followed by the Attorney-General should he or she be satisfied on reasonable grounds that the complaint could, if substantiated, justify consideration by the Assembly of a resolution requiring the removal from office of the judicial officer who is the subject of the complaint. The provisions have a particular impact on Members and Assembly procedures in that the legislation contains particular procedures to be followed by a Member raising a matter in the Assembly that relates to the behaviour or capacity of a judicial officer.⁶⁴

1.61 Key provisions of the legislation are:

- persons may complain to the Attorney-General about a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer;
- restrictions on Assembly Members raising such allegations in the Assembly (they must first give notice of the motion to the Attorney-General);
- unless the Attorney-General declines to take any action under the Act in respect of a complaint (or the allegation of a Member of which notice has been given),⁶⁵ he or she must inform the judicial officer (and, where appropriate, the relevant head of jurisdiction) of the subject of the complaint;
- if the Attorney-General is satisfied on reasonable grounds that the complaint (or allegation) could, if substantiated, justify consideration by the Assembly of a resolution requiring the removal from office of the judicial officer:
 - the Attorney-General must, in writing, request the executive to appoint a judicial commission to examine the complaint;⁶⁶ and
 - the executive must appoint a judicial commission to examine and report to the Attorney General on the complaint.⁶⁷

1.62 The provisions of the Act that constrain the manner in which a Member may raise a matter in the Assembly that may relate to the behaviour or physical or mental capacity of a judicial officer are as follows:

- it may be raised only by way of a motion to have a specific allegation in respect of the judicial officer (made in precise terms) examined by a judicial commission;
- the Member is obliged to give the Attorney-General not less than five sitting days notice of the motion; and
- the Member can proceed with the motion in the Assembly only if the Attorney-General declines to act on the complaint or, more precisely, if, within the period of notice, the Member has not been notified by the Attorney-General that the executive has been requested to appoint a commission to examine the allegation.⁶⁸

64 These restrictions are not a requirement of sections 48C and 48D of the Self-Government Act.

65 The Attorney-General may decline to take any action if he or she considers that the complaint has been made vexatiously, frivolously or without reasonable grounds; that it lacks relevant sufficient detail; or, even if the matter complained of were proved, that it could not amount to misbehaviour or incapacity such as to warrant removal of the judicial officer. Should the Attorney-General decline to take any action in respect of a complaint as set out in section 17 he or she must advise the complainant or the Member (as the case may be) accordingly. See *Judicial Commissions Act 1994*, section 17.

66 And must inform the complainant (or the Assembly Member who raised the matter), the judicial officer and, where appropriate, the relevant head of jurisdiction in writing of whether or not the executive has been requested to appoint a commission to examine the complaint.

67 *Judicial Commissions Act 1994*, section 16.

68 *Judicial Commissions Act 1994*, subsection 14(3). The terms of the paragraph are 'unless the member has given to the Attorney-General not less than 5 sitting days notice of the motion and the member has not been notified by the Attorney-General within that period ... that the Executive has been requested to appoint a commission to examine the allegation.'

1.63 Should a Member then proceed with the motion in the Assembly (the requirements of subsection 14(3) of the Act having been fulfilled) and the Assembly agree to a resolution for the examination of a judicial officer by a judicial commission, the executive must appoint a judicial commission to examine the complaint. The commission is required to submit to the Attorney-General a report of its examination within the period specified by the executive or within such further period that the executive, by notice in writing, allows.⁶⁹

JUDICIAL COMMISSION EXAMINATION AND REPORT

1.64 A judicial commission must conduct its examination as soon as practicable after being appointed to examine a complaint.

1.65 Of note is section 60 of the Act, which provides that no proceedings for an injunction, declaration or prerogative order must be brought in relation to, inter alia:

- a decision of an Assembly Member to propose a motion to have a specific allegation made in precise terms in respect of a judicial officer examined by a judicial commission in accordance with paragraph 14(3)(a) of the Act or to give notice of the motion to the Attorney-General in accordance with paragraph 14(3)(b) of the Act; or
- a resolution for the examination of a complaint in respect of a judicial officer by a judicial commission passed by the Assembly.

1.66 On completion of its examination of a complaint, a judicial commission is required to prepare a report of its examination and submit the report to the Attorney-General,⁷⁰ who is required to lay a copy of the report before the Assembly as soon as possible.⁷¹ On doing so the Attorney-General must give a copy to the judicial officer the subject of the complaint (and, where appropriate, the relevant head of jurisdiction).⁷²

1.67 The Act also makes provision for a separate report. Where the commission is of the opinion that any findings or evidence could prejudice a person (other than the judicial officer the subject of the complaint) in proceedings or the conduct of an investigation or the existence or identity of confidential sources, it may include those findings or that evidence in a separate report together with a recommendation that the report not be laid before the Assembly. The Attorney-General must accept the recommendation unless he or she is satisfied that there are compelling reasons of public policy why the relevant report should be laid before the Assembly.⁷³

1.68 Where the judicial officer delivers to the Attorney-General a written statement containing particulars of any matter relating to the commission's findings, the Attorney-General must lay a copy of the statement before the Assembly as soon as practicable after receiving it.⁷⁴

⁶⁹ *Judicial Commissions Act 1994*, section 18.

⁷⁰ *Judicial Commissions Act 1994*, subsection 22(1). Section 22 of the Act also makes provision for what must be included in the report.

⁷¹ *Judicial Commissions Act 1994*, subsection 23(1).

⁷² *Judicial Commissions Act 1994*, subsection 23(2).

⁷³ *Judicial Commissions Act 1994*, section 22. A copy of such a report may be given to the judicial officer the subject of the complaint: *Judicial Commissions Act 1994*, subsection 23(3).

⁷⁴ *Judicial Commissions Act 1994*, subsections 24(1), (2) and (3). The statement cannot contain references to persons or things inconsistent with the commission's reasons for submitting a separate report and must be delivered to the Attorney-General within 14 days after the Attorney-General has presented the report to the Assembly or, where the Assembly has by resolution fixed a longer period, within that period. *Judicial Commissions Act 1994*, subsections 24(2) and (3).

REMOVAL OF A JUDICIAL OFFICER

1.69 Should the Assembly pass 'in the appropriate manner' a resolution requiring the executive to remove a judicial officer from office on the ground of misbehaviour or physical or mental incapacity, the executive must, by instrument, remove the judicial officer from the office.⁷⁵ The Act sets out conditions for a resolution of the Assembly to be passed 'in an appropriate manner,' which includes the requirement of 'a formal process' that includes the Assembly granting the judicial officer, or a legal practitioner on the judicial officer's behalf, a reasonable opportunity to address the Assembly.

1.70 The Assembly shall be taken to have passed the resolution in the appropriate manner if it is passed pursuant to a motion of which notice has been given after completion of the formal process. The motion must be passed by a majority of the Assembly Members present and voting within 15 sitting days of the Attorney-General tabling the report of the commission appointed to examine the complaint in respect of the judicial officer.

1.71 The formal process shall be taken to have been completed when:

- the commission has submitted its report and has concluded that the behaviour or physical or mental capacity of the judicial officer concerned could amount to proved misbehaviour or incapacity such as to warrant removal from office and the Attorney-General has laid the report before the Assembly in accordance with the provisions set out in section 23 of the Act;
- following the submission of the report, the judicial officer has delivered to the Attorney-General a statement in relation to the report and the Attorney-General has tabled the statement in accordance with subsection 24(4) of the Act, or the period for delivering such a statement has expired and no such statement has been delivered by the judicial officer to the Attorney-General;
- the judicial officer has been given a reasonable opportunity by the Assembly to address the Assembly (whether in person or by a legal practitioner on the judicial officer's behalf) in relation to any matter relating to the commission's findings or conclusions (though the address may not contain any references to persons or things that are inconsistent with the commission's reasons for submitting a separate report) in accordance with subsection 22(3) of the Act; and
- the Assembly has determined that the findings by the commission amount to misbehaviour or physical or mental incapacity identified by the commission.

DISPUTED ELECTIONS

1.72 The Supreme Court of the ACT also acts as the Court of Disputed Elections for the ACT. This role is discussed in Chapter 3: Elections and the electoral system, paragraphs 3.26 to 3.31.

⁷⁵ *Judicial Commissions Act 1994*, subsection 5(1).

2.1 This chapter examines the powers of the Legislative Assembly necessary for the conduct of its business. These powers are distinct from its legislative powers—that is, the range of subjects in relation to which the Assembly may make laws. The first category of these additional powers includes those necessary to undertake the core functions of examining legislative proposals and scrutinising the administration of the executive. Examples of these powers include the power to call witnesses and, if necessary, compel the attendance of witnesses and to order the production of documents. A second category includes those powers necessary to ensure that the institution can conduct its business free from interference, including the power to examine and punish contempts or offences against the legislature. This is analogous to powers relating to contempt of court.

2.2 The powers and immunities of legislatures are frequently referred to collectively as 'privileges'. It is more useful to consider privilege in the narrower (and more accurate) sense of the immunities from the ordinary law which attach to legislatures and their Members and which underpin Members' right of freedom of speech in the Assembly. The use of the term 'immunities' also avoids the confusion between 'privilege' in its parliamentary sense and the common meaning of 'privilege' as an exceptional advantage or benefit, a confusion which does nothing for the standing of parliamentarians in the eyes of a sometimes sceptical electorate.¹

2.3 *Odgers'* summarises certain erroneous notions which have arisen in the past, particularly references to 'breaches of privilege' for what were in fact contempts, notions which tended to create the impression that there existed a large number of confusing parliamentary privileges, immunities and powers.² To an extent, legislatures contribute to this confusion. In the Legislative Assembly the standing orders relating to issues of privilege also apply to possible contempts and matters of contempt of the Assembly are considered by 'privileges' committees.

SOURCES OF THE LEGISLATIVE ASSEMBLY'S POWERS

2.4 Section 24 of the Self-Government Act empowers the Assembly to make laws. It declares its powers, other than legislative powers, and those of its Members and committees. The Assembly cannot give itself powers that exceed those of the House of Representatives, its Members and committees.

¹ Historically, privilege did attach to a very broad range of activities of Members of Parliament and their households, particularly when parliament was meeting. For example, interference with the property interests of a Member of the House of Lords could constitute a breach of privilege of that House:

Complaint being made to the House, and Oath made at the Bar, 'That Richard Wilkinson, [and others], Fishermen, have fished in that Part of the River of Burnham, ... belonging to the Right Honourable Charles Lord Fitzwalter, ... during the Time of Privilege of Parliament, in Breach of the Privilege of this House.' *House of Lords Journal*, Vol 20. 1 June 1715.

² *Odgers'*, pp. 30-1. See also Memorandum by Mr L A Abraham CB CBE in the *Report from the Select Committee on Parliamentary Privilege of the House of Commons*, HC 34 (1967-68) p. 89ff. The background to certain of the inaccuracies is outlined in the memorandum. Mr Abraham, in particular, outlines how the inaccurate and indiscriminate use of the term 'privilege' gave rise to the natural, though erroneous, supposition that to every type of act declared a breach of privilege there must be a corresponding privilege—as the categories of breach of privilege increased in number, so did the supposed privileges.

2.5 The Assembly may also make laws providing for the manner in which powers may be exercised or upheld. In the absence of such legislation, the Assembly, its Members and its committees have the same powers as the House of Representatives with the significant exception that subsection 24(4) states that 'Nothing in this section empowers the Assembly to imprison or fine a person'. The House and the Senate retain the power to impose such penalties.³

2.6 The House of Representatives derives its powers and privileges from those of the United Kingdom House of Commons and its Members and committees. At the establishment of the Commonwealth of Australia in 1901, section 49 of the Constitution of the Commonwealth provided that:

The powers, privileges and immunities of the Senate and House of Representatives and of the members and the committees of each House shall be as are declared by the Parliament of the Commonwealth and, until declared, shall be the same as those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.⁴

2.7 In 1987 the Commonwealth Parliament enacted the *Parliamentary Privileges Act 1987*—'An Act to declare the powers, privileges and immunities of each House of the Parliament and of the members and committees of each House, and for related purposes'. The bill for the Act was introduced with a twofold purpose: to undertake changes to the law as recommended by the 1984 Joint Select Committee on Parliamentary Privilege; and to avoid the consequences of the interpretation of freedom of speech in parliament by certain judgements in the Supreme Court of New South Wales.⁵

2.8 A key feature of the Parliamentary Privileges Act is that it affirms, 'for the avoidance of doubt', the application of the provisions of Article 9 of the Bill of Rights 1688⁶ to the Parliament of the Commonwealth, clarifies the term 'proceedings in Parliament' and imposes restrictions on the use of the records of these proceedings by courts and tribunals. Other important provisions of the Act:

- limit the penal jurisdiction of the Houses (and remove impediments to judicial review) by defining the essential elements of offences that are punishable by the Houses (section 4);
- abolish the contempt of defamation of a House or a committee or a Member, except when words were spoken or acts done in the presence of a House or a committee (section 6);
- prescribe the penalties that can be imposed by a House (section 7);
- abolish the power of the Houses to expel a Member (section 8);⁷
- provide for the defence of qualified privilege for the publication of reports of parliamentary proceedings (section 10); and

3 As indicated in the Explanatory Memorandum to the Australian Capital Territory (Self-Government) Bill, the Assembly could, under section 24, pass a law providing for the imposition of custodial or financial penalties in cases of contempt of the Assembly. However the actual administration of that law would be a matter for the ordinary legal processes.

4 *Quick and Garran*, pp. 501-2, lists what are among the principal powers, privileges and immunities of each house of the Commonwealth Parliament and of the Members of each house, drawn from the law and custom of the House of Commons as at 1901. The list is reproduced in *House of Representatives Practice*, First edn, p. 645, though it should be read having regard to Australian developments such as the enactment of the *Parliamentary Privileges Act 1987*.

5 For a discussion of these cases, see *Odgers*, pp. 34-8; and see footnote 14.

6 'That the freedom of speech and debates or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament.'

7 The justification for this change was that the disqualification of Members was dealt with in the Constitution and electoral legislation and that, beyond this the fitness of a Member, otherwise qualified for election, was a matter for the electorate. The change was opposed in the Senate. See *Odgers*, pp. 56-7.

- create criminal offences and provide penalties in respect of interference with parliamentary witnesses (section 12) and unauthorised disclosure of in camera evidence taken by a House or a committee (section 13).

2.9 Section 5 of the Act provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of the Senate and the House of Representatives and the Members and committees of each House as in force under section 49 of the Commonwealth Constitution immediately before the commencement of the Act continue in force.

2.10 Section 24 of the Self-Government Act makes the *Parliamentary Privileges Act 1987* definitive of the powers, privileges and immunities of the Assembly, though, as noted in paragraph 2.5, the power to impose penalties by way of fine or imprisonment is withheld.⁸

2.11 The application of the immunities and powers of the House of Representatives to the Assembly, in particular the application of the provisions of the *Parliamentary Privileges Act 1987* of the Commonwealth, was considered in advice to the Clerk by the Government Solicitor in June 2001.⁹ In that advice the Government Solicitor confirmed the extent of the Assembly's powers as outlined above, subject to two qualifications:

- where the Parliamentary Privileges Act is inconsistent with the Self-Government Act the former will not apply; and
- only those provisions which may properly be described as 'powers, privileges and immunities of the House of Representatives and its committees and Members' will apply to the Assembly and its committees. Those parts that empower the House of Representatives to imprison or fine a person or relate to those powers (sections 7 and 9) do not apply.

2.12 The ACT Government Solicitor's advice also argues that those parts of the Act which 'relate to enforcement or administrative detail' would not apply. Thus, for example, sections 12 and 13 of the Act, which create offences in relation to interference with witnesses and unauthorised publication of documents, would not, on this view, apply to the Assembly. However, it is open to the Assembly to legislate to extend these provisions to the ACT.¹⁰ Nor would section 15, which relates to the application of laws to Parliament House, have any relevance to the Assembly.

8 Professor Enid Campbell, *Parliamentary Privileges*, Research Paper 1, 2000-01, Parliamentary Library, Parliament of Australia, p. 4.

9 Advice of the ACT Government Solicitor to the Clerk of the Assembly, dated 28 June 2001.

10 Advice of the ACT Government Solicitor to the Clerk of the Assembly, dated 28 June 2001.

IMMUNITIES

Immunity of proceedings from impeachment or question

2.13 The most significant parliamentary immunity is that neither individual Members nor the legislature itself can be the subject of legal action for anything said or done in the course of proceedings in parliament. Article 9 of the Bill of Rights 1688¹¹ declares:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.¹²

This has been described as 'the only privilege of substance enjoyed by Members of Parliament'.¹³

2.14 This provision became part of the law of the Territory by virtue of section 24 of the Self-Government Act. Section 16 of the *Parliamentary Privileges Act 1987* confirms that Article 9 of the Bill of Rights applies in relation to the Parliament of the Commonwealth. The purpose of the section is to avoid the consequences of the interpretation of Article 9 by the judgements of Mr Justice Cantor and Mr Justice Hunt in the Supreme Court of New South Wales.¹⁴

2.15 *House of Representatives Practice* states:

Absolute privilege exists where no action may lie for a statement, even, for example, if made with malice; it is not limited to action for defamation but extends also to matters such as infringement of copyright or other matters which could otherwise be punished as crimes (for example, contempt of court or breach of a secrecy provision).¹⁵

2.16 As outlined in *Odgers'*, there are two aspects of the immunity:

- Members and other participants in proceedings in Parliament such as witnesses giving evidence before committees are immune from all impeachment or questioning in the courts for their contributions to proceedings, usually known as the right of freedom of speech; and
- parliamentary proceedings as such are immune from impeachment or question in the courts.¹⁶

11 The Bill of Rights 1688, 1 Will. & Mary (UK) was in force in NSW at the time of the establishment of the ACT and by virtue of the Seat of Government Act had effect in the ACT. It was converted into an ACT enactment by virtue of section 34 of the Self-Government Act.

12 See *House of Representatives Practice*, p. 711 ff, and *Odgers'*, p. 34ff.

13 Memorandum by Mr L A Abraham CB CBE in the *Report from the Select Committee on Parliamentary Privilege of the House of Commons*, HC 34 (1967-68) p. 91.

14 *Parliamentary Privileges Bill 1987* (as passed by the Senate), Explanatory Memorandum, p. 9. As outlined in the explanatory memorandum, in June 1985 Mr Justice Cantor had given a judgement to the effect that Article 9 of the Bill of Rights (see below) did not prevent the cross-examination of persons in court proceedings on the evidence they had given to a parliamentary committee, that the test of a violation of Article 9 was whether there was any adverse effect on parliamentary proceedings, and that the protection of parliamentary proceedings must be 'balanced' against the requirements of court proceedings. In April 1986 Mr Justice Hunt had given a judgement which held that Article 9 prevented only parliamentary proceedings being the actual subject of criminal and civil action but allowed the use of parliamentary proceedings as evidence of an offence to impeach the evidence of witnesses or the accused or to support a cause of action. (Explanatory Memorandum pp. 10-11). A summary of the background to the bill is given at *Odgers'*, pp. 34-8.

15 *House of Representatives Practice*, p. 712. See also *The Law of Defamation in Australia and New Zealand*, Michael Gillooly, The Federation Press, 1998, pp. 169-73. See also Qualified privilege at paragraph 2.27.

16 *Odgers'*, pp. 34-8. This immunity in Australia is modified by constitutional law: where the Constitution provides that certain parliamentary procedures must take place for legislation to be validly enacted, as in section 57 of the Constitution, the High Court will inquire and determine whether those procedures have been properly carried out to determine the validity of the resulting legislation.

2.17 The meaning of 'impeachment' is best conveyed by a practical example. In considering the decisions of the Supreme Court of NSW (above), *Odgers'* commented that:

Evidence as to what the witnesses or the accused said before the Senate committees could be admitted [as evidence in a court] for the purpose of establishing some material fact, such as the fact that a person gave evidence before a committee at a particular time, if that fact were relevant ... The evidence put before the committees could not be used ... for the purpose of supporting the prosecution or the defence, nor particularly for attacking the evidence of witnesses or the accused whether given before the [parliamentary] committees or before the court.¹⁷

2.18 Members and witnesses before the Legislative Assembly and its committees cannot be held liable in a court for words spoken in the Assembly or in committee proceedings. They are absolutely privileged from suit or prosecution in respect of anything they may say in the course of proceedings. In addition, parliamentary proceedings cannot be used as the basis for a prosecution (or a defence) in court proceedings.

2.19 It should be noted that the scope of 'proceedings in Parliament' includes the proceedings of a parliamentary committee which is validly constituted and is acting within power. In 2001 McPherson JA stated that a committee that purports to inquire into a matter contrary to express legislative provision may not attract privilege to its inquiry because such action may not be a valid proceeding of Parliament.¹⁸

2.20 The extent of the protection provided to publication of documents authorised by the Legislative Assembly was addressed in August 2001 by the Standing Committee on Administration and Procedure in a report to the Assembly on the Legislative Assembly Privileges Bill 1998. The catalyst for the introduction of the bill had been concerns regarding the protection that was available to the authorised publication of a report of an Assembly committee beyond the Territory but within Australia.¹⁹

2.21 The Committee considered a number of advices, including that of the Clerk of the Senate, who argued that the publication of a document by order of the Legislative Assembly was protected by absolute parliamentary privilege throughout Australia. The basis of his argument was that the Self-Government Act conferred upon the Assembly the same powers and immunities as the Commonwealth Houses, subject to the exception contained in subsection 24(4)—no other exception or limitation being specified. The Senate and the House of Representatives have the power to publish documents with absolute privilege throughout Australia and, by virtue of section 24, this power also adheres undiminished to the Assembly. If the Commonwealth Parliament had intended to limit that power in any way, including by limiting it to the Territory, it would have explicitly specified the limitation, as it had specified a limitation in subsection 24(4).²⁰

17 *Odgers'*, p. 35.

18 'Some cases and commentary relevant to the operation of the *Parliamentary Privileges Act 1987* (the privileges Act)', House of Representatives Committee of Privileges. Notes published by the committee at <<http://www.aph.gov.au/house/committee/priv/feb2005PrivilegesActCases.pdf>>.

19 Assembly Debates (20.5.1988) 368-9. There had been concern for some time as to the extent of the immunity available to the publication of Assembly documents beyond their publication to Members (and particularly their publication beyond the Territory), advice having concluded that the authorised publication of Assembly documents beyond the Assembly was protected by only qualified privilege (see paragraphs 2.27 to 2.29), no matter who publishes them or authorises their publication. A primary purpose of the bill, therefore, was to restate a number of the existing powers, privileges and immunities that operate by virtue of section 24 of the Self-Government Act, to preserve those powers, privileges and immunities and to resolve a possible uncertainty in the law by extending absolute privilege to the authorised publication of Assembly proceedings and related documents. See Legislative Assembly Privileges Bill 1988, Explanatory Memorandum, p. 3.

20 Advice to the Clerk of the Assembly by the Clerk of the Senate, 17 December 1999.

2.22 The advice also argued that this interpretation of the legislation was supported by two other considerations. Under modern conditions, if a document is published, it is effectively published throughout Australia and cannot be restricted to the boundaries of a particular state or territory. In addition, the public interest in legislative proceedings is not restricted to the particular state or territory of the legislature but extends throughout Australia.²¹ For example, the debate on the matter of legalised heroin trials in the ACT attracted nation-wide interest.

2.23 The Clerk of the Senate stressed that his advice applied only to the publication of the whole of a document ordered to be published by the Assembly, and not to partial republications.

2.24 The committee concluded, however, that it was preferable that the Assembly not proceed to declare its powers, privileges and immunities as proposed in the bill or further clarify the law relating to the privilege applying to the authorised publication of documents of the Assembly and its committees.²² The Assembly has not legislated to state its powers and privileges other than with reference to the parliamentary precincts (see Chapter 18: Chamber and Assembly precincts).

2.25 This does not mean that Members of the Assembly and participants in Assembly and committee proceedings have an unlimited right of freedom of speech. The Assembly itself has imposed upon its Members a number of rules that govern the content of speeches and has also, by resolution, set general guidelines for Members in the exercise of their right of freedom of speech. It has also charged the Speaker to draw the spirit and the letter of the resolution to the attention of the Assembly when he or she considers it desirable to do so.²³

2.26 In summary, this resolution reminds Members of the need to exercise their right of freedom of speech in a responsible manner, of the damage that may be done by careless or malicious exercise of that right, and of the limited opportunities available to private citizens to respond to allegations made in the Assembly. (Abuse of the right of freedom of speech and remedies available to members of the public are discussed in paragraphs 2.107 to 2.129.)

Qualified privilege

2.27 Qualified privilege, as distinct from parliamentary privilege, may attach to a range of documents and statements unrelated to parliament. In outlining the difference between absolute and qualified privilege, Odgers' states:

Qualified privilege is not a diluted extension of the absolute parliamentary immunity. The law relating to qualified privilege is a completely separate branch of the law, related to parliamentary immunities only because it has application in respect of reports of proceedings in Parliament. It also applies to other transactions totally unrelated to parliamentary matters, for example, relations between private societies and their members. The law relating to qualified privilege is determined by the ordinary law of defamation of states or territories.²⁴

21 There are new uniform defamation laws that affect parliamentary proceedings; see 'New defamation legislation and its ramifications for committees', discussion paper presented by Russell Grove, Helen Minnican and Hannah Jaireth to the January 2007 ANZACATT Professional Development Seminar.

22 Standing Committee on Administration and Procedure, *Legislative Assembly (Privileges) Bill 1988*, Report No. 9, 21 August 2001, pp. 27-8.

23 'Freedom of Speech', Resolution agreed by the Assembly, 4 May 1995.

24 *Odgers*, p. 54.

2.28 Qualified privilege is so called because, in contrast to absolute privilege, it may be lost if it can be demonstrated that the person or organisation making a statement or publishing a document was motivated by malice or some other improper consideration. Equally, it should be noted that subsection 10(1) of the Parliamentary Privileges Act gives a defence against any action for defamation where 'the defamatory matter was published by the defendant without any adoption by the defendant of the substance of the matter, and the defamatory matter was contained in a fair and accurate report of proceedings'.²⁵ The Government Solicitor's advice referred to in paragraphs 2.11 to 2.12 questioned whether this section would provide a defence to third parties in relation to publication outside the Assembly.

2.29 In its decision in *Lange v Australian Broadcasting Commission* 1997 145 CLR 96, the High Court of Australia found in the Constitution an implied freedom of political communication which might be used to justify claims of qualified privilege attaching to reports of parliamentary proceedings.²⁶

Proceedings in parliament

2.30 Two key issues with regard to the extent of this immunity are what comprises 'proceedings in Parliament' for the purposes of Article 9 and what use can be made of proceedings, particularly by the courts.

2.31 Subsection 16(2) of the Parliamentary Privileges Act defines the phrase 'proceedings in Parliament':

For the purposes of the provisions of article 9 of the Bill of Rights 1688 as applying in relation to the Parliament, and for the purposes of this section, **proceedings in Parliament** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

2.32 What is encompassed by this provision is a matter for interpretation and this is discussed in *House of Representatives Practice*²⁷ and *Odgers*.²⁸ As outlined in *House of Representatives Practice*, the ambit of the term is limited. Repetition by a Member outside the Assembly of a statement made in the Assembly would not be covered by absolute privilege. Nor would conversations or comments among Members or between Members and others which were not part of 'proceedings in parliament'. Nor would general correspondence between a citizen and a Member of Parliament constitute 'proceedings in parliament'.²⁹ Circulation of a

²⁵ *Parliamentary Privileges Act 1987* (Cwth), section 10.

²⁶ *Odgers*, p. 54.

²⁷ *House of Representatives Practice*, pp. 712-4.

²⁸ *Odgers*, pp. 44-55.

²⁹ *House of Representatives Practice*, p. 713.

petition for the purpose of collecting signatures prior to its presentation to the Assembly would not attract the protection of privilege.³⁰

Committee records and correspondence

2.33 The issue of whether certain committee records and correspondence were 'proceedings in parliament' was addressed via an intervention in June 2001 in a matter before the ACT Magistrates Court relating to defamation proceedings being conducted against an ACT Government Minister by a former Member of the Assembly. The matter was later heard in the Supreme Court of the Australian Capital Territory in 2004.³¹

2.34 The documents in question were produced in the ACT Magistrates Court under a summons for production addressed to the Chief Executive Officer of the ACT Department of Justice and Community Safety. They consisted of certain letters that had passed between the Attorney-General and the chair of the Legislative Assembly Standing Committee on Justice and Community Safety relating to a proposal to appoint the plaintiff as a lay member of the Professional Conduct Board of the Law Society of the Australian Capital Territory. The Attorney-General, as the appointing Minister, had sought the views of the committee pursuant to section 4 of the *Statutory Appointments Act 1994*.³²

2.35 Counsel having intervened on behalf of the Acting Speaker (there being concern that the documents may come within 'proceedings in Parliament' for the purposes of section 16 of the *Parliamentary Privileges Act 1987* as it applied to the Assembly), parties in the proceedings agreed to give the Assembly time to have access to the documents, to consider the possible operation of privilege and, if necessary, to prepare submissions to the court about their future use in proceedings.

2.36 Following the examination of documents, the course advised (and followed) was that letters be sent to both parties in the proceedings pointing out the potential issue regarding parliamentary privilege and the potential proscription on their use by the court, given that at that stage it was not known what use may be made of the documents. It was further proposed that:

- the documents identified be separated from other documents tendered in the summons for production on the occasion when the matter next comes before the court; and
- the documents identified be marked with an appropriate warning as to the limitations on their use, with reference to subsection 16(3) of the *Parliamentary Privileges Act* (a suggested wording for the notation was attached).³³

This was the course followed by the parties.

2.37 The question of the plaintiff's appointment to the Professional Conduct Board was peripheral to the issues considered in the judgement and the status of the committee documents was not the subject of comment. It may be surmised that the prompt intervention by the Assembly ensured that the parties to the matter chose to avoid a complex area of the law.

30 See paragraph 2.48, and Chapter 14: Petitions. And see McGee, pp. 620-5, especially pp. 622-3.

31 *Szuty v Smyth*. See <<http://www.austlii.edu.au/au/cases/act/ACTSC/2004/77.html>>.

32 Section 4 of the Act obliged a Minister having the power to appoint a person to a statutory office to consult with a nominated committee of the Assembly and not to make the appointment until receipt of a recommendation by the committee or a set period of time had elapsed. This provision has been replaced by section 228 of the *Legislation Act 2001*.

33 Advice to the Clerk of the Assembly from Clayton Utz, lawyers, dated 7 June 2001.

Use of a tabled document by a court

2.38 In April 2002 counsel representing the Speaker sought and was granted leave to appear as *amicus curiae* in the Supreme Court of the Australian Capital Territory to assist the court in relation to the potential issue of parliamentary privilege attaching to evidence that might be led before the court. The matter before the court concerned the conduct of the Board of Inquiry into Disability Services. Four public servants had commenced actions asserting that, during the conduct of the Board of Inquiry's inquiry, they had been denied procedural fairness.

2.39 The report of the Board of Inquiry had been presented in the Assembly by the Chief Minister, the relevant section of the Inquiries Act providing that the Chief Minister may lay a copy of the report (or part thereof) before the Assembly and may make the report (or part thereof) public whether or not the Assembly was sitting or the report had been laid before the Assembly.³⁴ The Speaker's concern related to the potential use of a document that had been presented to the Assembly, whether the document was a 'proceeding in Parliament' and, if so, what use could be made of the report in the proceedings that the four public servants had commenced.³⁵

2.40 The judge in the matter ruled that, whilst it was possible that the copy of the report of the Board of Inquiry proposed to be tendered by counsel representing one of the four public servants was produced for the purposes of or incidental to the transaction of business of the Assembly, there was simply no evidence to that effect. Therefore, privilege had not been established and a copy of the report could be admitted into evidence.³⁶ It is of note that the Speaker had earlier advised Members of his intention to intervene in the matter.³⁷

2.41 The House of Representatives Standing Committee of Privileges addressed the question of whether the records and correspondence of Members fell within the scope of 'proceedings in parliament' in its November 2000 *Report on the Inquiry into the status of the records and correspondence of members*. The committee, referring to the view of the majority of the Supreme Court of Queensland in *O'Chee v Rowley*, held that:

In determining whether documents have the status of 'proceedings in parliament', the question to be answered has been outlined as: has an act been done [by a member or his or her agent] in relation to the records or correspondence 'in the course of, or for purposes of or incidental to' the transacting of the business of a House [or a committee]?³⁸

³⁴ *Inquiries Act 1991*, section 16.

³⁵ For a background to the concerns of the Speaker see: *Privilege and the Supreme Court*, Paper presented by Mr Wayne Berry MLA Speaker, Legislative Assembly for the Australian Capital Territory, 33rd Conference of Australian and Pacific Presiding Officers and Clerks, Brisbane, July 2002.

³⁶ *Privilege and the Supreme Court*, Paper presented by Mr Wayne Berry MLA Speaker, Legislative Assembly for the Australian Capital Territory, 33rd Conference of Australian and Pacific Presiding Officers and Clerks, Brisbane, July 2002.

³⁷ *Assembly Debates* (19.02.2002) 310. On 24 December 2001, the Supreme Court had issued an order prohibiting the Chief Minister from laying the Report into Disability Services, a copy of that report or any part thereof before the Assembly or otherwise transmitting a copy of the report or any part of the report to the public. Advice was sought on the ramifications of the order and the advice received considered that the matter did not fit easily within the provisions of the Parliamentary Privileges Act, but that, rather, it was to be examined according to what was the common law and parliamentary practice relating to parliamentary privilege. The situation was seen not as one in which there was a possibility that 'proceedings in Parliament' might be impugned in a court or tribunal; rather it was a situation in which a court had ordered that information not be presented to the Assembly until a full hearing took place or other order of the court was made. As such it was seen as potentially a more fundamental interference with the work of the Assembly. In the event no action was required as the original order and a later order on the matter were vacated by consent. There was in fact a variation in the order on 10 January 2001 (the Speaker had not been notified of the further proceedings). Advice to the Clerk of the Assembly from Clayton Utz, Lawyers, dated 18 January 2002, *inter alia*, considered that the injunction was not enforceable against the Chief Minister insofar as it prevented him from tabling the report.

³⁸ House of Representatives Standing Committee of Privileges, *Report of the inquiry into the status of the records and correspondence of members*, November 2000, p. 11.

2.42 The Court of Appeal in Queensland held that if documents came into the possession of a Member of Parliament who retained them with a view to using them, or the information contained in them, for questions or debate in a House of Parliament, then the procuring, obtaining or retaining of possession were acts done for the purpose of, or incidental to, the transacting of the business of that House pursuant to subsection 16(2) of the Privileges Act.

2.43 Whilst it was clear to the committee that some of the records and correspondence of Members would attract parliamentary privilege, much of the material, including most electorate correspondence, would fall outside the definition of 'proceedings in parliament'. The boundary between those records that fell within the definition and those that did not was not always clear and further consideration by the courts was seen as offering greater clarification.

2.44 In the whole area of defining what constitutes a 'proceeding in parliament' and therefore attracts privilege, it is worth bearing in mind the view of the committee that, at the boundary, 'there will always be uncertainty'. The committee report recommended that there should be no additional protection, beyond that provided by the current law, given to the records and correspondence of Members.³⁹

2.45 It is also of note that:

- On two earlier occasions (in 1992 and 1994) the House of Representatives Standing Committee of Privileges had considered complaints arising from action, or threatened action, against Members following letters that Members had written to Ministers. On each occasion the committee had accepted that the correspondence did not form part of 'proceedings in Parliament'.⁴⁰
- Members have no explicit immunity as such against subpoenas or orders for discovery of documents issued by courts or tribunals or by search warrants. The use that a court or tribunal may make of material so obtained is restricted by the law of parliamentary privilege. However, there may be effective immunity from such processes for compulsory production of documents where the documents are so closely connected with proceedings in Parliament that their compulsory disclosure would involve impermissible inquiry into those proceedings.⁴¹
- In the London Electricity Board case in 1957 (more generally known as the Strauss case), the House of Commons rejected a report of the House of Commons Committee of Privileges that had found that a Member, in writing a letter to a Minister criticising certain alleged practices of the Board, was engaged in a 'proceeding in parliament' and that, in threatening a libel action against the Member, both the Board and its solicitors had acted in breach of the privilege of parliament.⁴²
- In 1939 the House of Commons agreed that a notice in writing of a question to be asked in the House was 'protected by privilege'.⁴³

2.46 *Odgers'* states that the fact that the 1987 Act did not explicitly extend the immunity of freedom of speech to activities of Members not related to their participation in proceedings of the Houses and committees reflected a considered view that the extension of

39 At pp. 22-3 the report of the committee addressed the defence of qualified privilege in defamation actions, noting that there have been no reported cases in Australia in which a Member's records and correspondence were considered to be protected by qualified privilege; the committee stated that Members should not seek to rely on any such protection in respect of their records.

40 *House of Representatives Practice*, p. 713.

41 *Odgers'*, p. 46.

42 *House of Representatives Practice*, p. 714.

43 *House of Representatives Practice*, p. 714.

the immunity to such matters is not warranted and, in relation to correspondence of Members, also conformed with the decision of the United Kingdom House of Commons in the Strauss case.⁴⁴

2.47 The answer to the question as to whether the provision of information to Members is covered by parliamentary privilege would depend on the circumstances of the particular case and whether the provision of the information is 'for the purposes of or incidental to' proceedings in a house or a committee. It may attract a qualified privilege under the common law interest and duty doctrine (the provider and recipient of the information each have an interest or a duty in giving or receiving the information) and it may also be held that there is a public interest immunity attaching to the provision of information to Members of parliament.⁴⁵

2.48 In considering the general question of whether the circulation of a petition containing defamatory material is or ought to be privileged, the Senate Standing Committee of Privileges concluded that the circulation was not so covered and that it should not be. The committee made the point that persons with specific grievances could themselves petition the Senate. Their petitions, if in order, could be presented and thus would be covered by privilege. The committee considered it inappropriate that privilege, whether absolute or qualified, should extend to the malicious circulation of defamatory material purportedly to collect signatures for a petition.⁴⁶

2.49 An issue that arises occasionally, most commonly before committees, is the status of a document prepared for another purpose, which is subsequently tabled—for example, as part of a submission to a committee. The actual copy provided to the committee would attract privilege as part of a 'proceeding in parliament'. However, privilege would not attach to publication of other copies of the document. It is a misunderstanding of parliamentary privilege to assume that privilege attaches to all copies of a document once one copy of that document has been tabled in the Assembly or received by a committee.

Use of parliamentary proceedings in legal proceedings

2.50 As outlined above, Article 9 of the Bill of Rights 1688 provides immunity to Members and other participants in proceedings in Parliament, such as witnesses giving evidence before committees, from all impeachment or questioning in the courts in respect of their contributions to parliamentary proceedings (usually known as the right of freedom of speech). Assembly standing orders give expression to these protections, providing:

- 261. All witnesses examined before the Assembly, or any of its committees, are entitled to the protection of the Assembly in respect of anything that may be said by them in their evidence.
- 264. An officer of the Assembly, or person employed by the Assembly, may not give evidence elsewhere in respect of any proceedings or examination of any witness without the special leave of the Assembly.⁴⁷

44 *Odgers*, p. 44.

45 *Odgers*, p. 45.

46 Senate Committee of Privileges, 125th Report, *Precedents, procedures and practice in the Australian Senate 1966-2005*, December 2005, pp. 27-8.

47 These standing orders reflect the equivalent standing orders in the House of Representatives (now 256 and 253) which in turn reflect resolutions of the House of Commons of 26 May 1818.

2.51 Subsection 16(3) of the Privileges Act prevents the use of parliamentary proceedings in any court or tribunal for the purposes of:

- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
- (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
- (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

2.52 In the Act, 'court' means a federal court or a court of a state or territory and 'tribunal' means any person or body (other than a House, a committee or a court) having power to examine witnesses on oath, including a royal commission or other commissions of inquiry of the Commonwealth, a state or a territory. The explanatory memorandum to the bill for the 1987 Act⁴⁸ sets out matters affected by the provision. They include the following:

- A statement in debate by a Member or the evidence of a parliamentary witness being directly questioned for the purpose of court proceedings, or the motives of the Member or the witness in speaking in Parliament or giving evidence being questioned. For example, it could not be submitted that a Member's statement in parliament was untrue or reckless to support a submission to a court that the Member is an untruthful or reckless person.
- A Member's speech in debate or a parliamentary witness's evidence being used to establish their motives or intentions for the purpose of supporting a criminal or civil action against them or against another person. Thus a Member's statements outside parliament cannot be shown to be motivated by malice by reference to alleged malice in the Member's statement in parliament.
- A jury being asked to infer matters from speeches in debate by Members or from evidence of parliamentary witnesses in the course of an action against the Member, the witnesses or another person. This would not prevent the proving of a material fact by reference to a record of proceedings in parliament which establishes that fact (the example given was the tendering of the Journals of the Senate to prove that a Senator was present in the Senate on a particular day).

2.53 The prohibitions in the Act are seen to express the limitations on the use of parliamentary proceedings which were held to flow from Article 9 in the court judgements in *R. v Foord and R. v Murphy*:

Basically, what they prevent is proceedings in Parliament being '*used against*' a person in the broad sense, that is, not only being made the subject of a criminal or civil action, such as where a Member sued for words spoken in debate, but also being used to *support* a civil or criminal action against a person.⁴⁹

2.54 Subsection 16(4) of the 1987 Act prevents evidence which has been taken in camera by a House or a committee and not published (or which a House or a committee has directed to be treated as evidence taken in camera) from being used in court. It covers documents specifically prepared for submission to a House or a committee and accepted as in camera evidence, and oral evidence taken in camera.

⁴⁸ Explanatory Memorandum, pp. 12-3.

⁴⁹ *Parliamentary Privileges Act, 1987*, Explanatory Memorandum, p. 14.

2.55 Subsection 16(5) of the 1987 Act provides that neither section 16 nor the Bill of Rights shall be taken to prevent the admission in evidence in court of parliamentary records for the purposes of:

- determining a question arising under section 57 of the Constitution after a simultaneous dissolution; or
- interpreting an Act of the Parliament as provided for in the Acts Interpretation Act.

2.56 It would be expected that the provisions of section 16 in their application to the Assembly would not prevent the admission into evidence in a court of Assembly records, including debates, committee proceedings and tabled documents, for the purposes of interpreting an Act of the Assembly pursuant to section 142 of the *Legislation Act 2001*⁵⁰ and the Speaker referring relevant documents to the Court of Disputed Elections pursuant to paragraph 276(b) of the *Electoral Act 1992*. Nor would it be expected that the immunities enjoyed by the Assembly would prevent the admission into evidence of a record of proceedings where a court was determining the validity of legislation enacted pursuant to section 26 of the Self-Government Act, which provides for a special procedure for making certain enactments. It certainly would not do so if the evidence was for the purpose of establishing a material fact.

2.57 Subsection 16(6) of the 1987 Act, which allows parliamentary proceedings to be used in court proceedings in relation to an offence against the Parliamentary Privileges Act (the offences set out in sections 12 and 13) or against an Act establishing a statutory committee in the Commonwealth Parliament, do not apply in relation to the Legislative Assembly.⁵¹

2.58 Significant precedents in Australia and elsewhere with regard to the use of parliamentary proceedings by the courts are outlined in *House of Representatives Practice*⁵² and *Odgers*,⁵³ including particular difficulties that have arisen in defamation cases.

2.59 In February 1993 an officer of the Assembly was requested by a Member to give evidence in the Supreme Court of the Australian Capital Territory (in a civil action initiated by the Member for defamation arising out of a broadcast report of proceedings of an Assembly committee). The Member's counsel had sought to introduce into evidence an uncorrected proof transcript of the committee's public hearings.⁵⁴ The request was refused and counsel was briefed to attend the proceedings to represent the Speaker on behalf of the Assembly. Counsel representing the Speaker sought and was granted leave to intervene in the case.

2.60 The Chief Justice, after hearing legal argument and reviewing authorities, ruled that he was satisfied that there was no breach of subsection 16(3) of the Parliamentary Privileges Act and that evidence as to what occurred in the committee hearing, which was in the form of an uncorrected proof transcript, could be admitted.⁵⁵

50 Section 142 of the *Legislation Act 2001* (ACT) lists (but does not limit) material 'not forming part of the Act' that may be considered by a court in interpreting a piece of legislation passed by the Assembly.

51 Subsection 24(4) of the Self-Government Act precludes the Assembly from imposing a fine or imprisoning a person.

52 *House of Representatives Practice*, pp. 715-7.

53 *Odgers*, pp. 33-43.

54 It transpired that counsel for the Member wished to establish that nothing had been presented to the committee hearings that indicated that the plaintiff (a former Minister) had spent \$17 000 on travel (other Ministers had been questioned at the hearing) and thus the defendant (a news organisation) could not claim that the broadcast in question was an accurate account of the proceedings of the committee.

55 *Use of Assembly records in court proceedings*, statement presented in the Assembly by the Speaker, 13 May 1993, MoP 1992-94/344; *The use of Assembly documents in court*, paper presented to the Presiding Officers and Clerks Conference, Vanuatu, July 1993 by the Clerk of the Legislative Assembly for the Australian Capital Territory. The plaintiff and his solicitor had also requested that a letter be prepared confirming the status of the documents which they wished to use in the court.

2.61 There have been other precedents:

- bodies such as the Industrial Relations Commission and the Ombudsman have been alerted to the provisions of section 16 of the Parliamentary Privileges Act when it was understood that Assembly and Assembly committee proceedings may be questioned in the course of hearings and investigations;
- a Member having raised, as a matter of privilege, the fact that a submission to a board of inquiry invited the inquiry to have regard to debates in the Assembly, the Speaker concluded that the matter did merit precedence and advised the Assembly that she would be alerting the board of inquiry to her concerns;⁵⁶ and
- the Speaker wrote to the Chief Minister on 25 August 1997 expressing concern regarding Instrument 29 of July 1997 appointing Major General Smethurst as a board of inquiry into, inter alia, 'the circumstances, including all considerations by the Assembly, the executive, Ministers, officials and agencies relating to the demolition of the Royal Canberra Hospital, since the Acton-Kingston Land Swap'.⁵⁷

Arrangements for the production of Assembly records

2.62 The Houses of the Australian Parliament, like the House of Commons, have in the past followed the practice of requiring leave to be granted both for the attendance of employees and for the production of parliamentary records, the House of Commons having resolved in 1818:

That no Clerk, or officer of this House, or short-hand writer employed to take minutes of evidence before this House or any committee thereof do give evidence elsewhere in respect of any proceedings or examination had at the bar, or before any committee of this House, without the special leave of the House ...⁵⁸

2.63 In 1980 the House of Commons discontinued the practice of requiring persons to petition for leave to refer to parliamentary papers and gave leave for reference to be made in future court proceedings to the official report of debate and to the published reports and evidence of committees.

2.64 In 1984 the Joint Select Committee on Parliamentary Privilege recommended the adoption of similar provisions for the Commonwealth Parliament. The Senate abolished the practice in 1988 (though as a residual safeguard Senators and Senate officers are required to seek the approval of the Senate before giving evidence in respect of proceedings of the Senate or a Senate committee).⁵⁹ The House of Representatives has not implemented the provisions as recommended. *House of Representatives Practice* states that some authorities have held the granting of permission is not required as a matter of law.⁶⁰

2.65 Assembly standing order 264 provides:

An officer of the Assembly, or person employed by the Assembly, may not give evidence elsewhere in respect of any proceedings or examination of any witness without the special leave of the Assembly.

2.66 The Assembly has never formally granted leave for the production of Assembly records or for the attendance of Assembly employees elsewhere. An oral request for an officer

⁵⁶ Assembly Debates (17.5.1994) 1549-52. And see Assembly Debates (19.5.94) 1769-70.

⁵⁷ The inquiry was suspended pending the conclusion of a coronial inquest into the matter and was not reconstituted. See paragraph 10.112.

⁵⁸ Quoted in *House of Representatives Practice*, p. 717.

⁵⁹ *Odgers*, p. 34.

⁶⁰ *House of Representatives Practice*, pp. 710-8.

of the Assembly to appear in court has been refused (see paragraph 2.59) and in July 1998, during a period in which the Assembly was not meeting, the Speaker authorised a copy of certain pages of a paper presented to the Assembly to be tendered as evidence to the Supreme Court subject to the provisions of section 16 of the Parliamentary Privileges Act. The papers had been sought as evidence of the effect of certain provisions of the Territory Plan, and had been sought as an authenticated copy so that there could be no doubt as to authenticity.⁶¹

Freedom of Information Act 1989

2.67 The Freedom of Information Act applies to certain of the Legislative Assembly's records but is restricted to administrative and similar records. Section 46(c) of that Act exempts any document whose disclosure would:

... infringe the privileges of the Legislative Assembly, of the Commonwealth Parliament, of the Parliament of a State or of a House of such Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

2.68 Clerks of the Assembly, who are responsible for freedom of information (FOI) matters, have, in consultation with Speakers, taken the view that the Assembly should be as constructive as possible when responding to FOI requests. Thus, in addition to the ordinary administrative records of the Assembly that broadly equate to those of a public sector agency records—those relating to Members' activities, including the use of entitlements to staff, travel, expenses of office and vehicle use—are open to FOI requests.

Other immunities

2.69 Other immunities (sometimes referred to as 'minor immunities') are:

- freedom from arrest or detention in civil causes;
- exemption from jury service; and
- exemption from compulsory attendance as a witness.

2.70 These immunities are of declining relevance. Arrest arising from a civil case is now extremely unusual while exemption from jury service for Members and some Assembly officers is a statutory right (see paragraph 2.72). In a small legislature such as the Assembly a Member might wish to invoke the exemption for compulsory attendance as a witness but in larger legislatures any competing demand could easily be accommodated by normal pairing arrangements. However, the rationale for the immunities—the need for Parliament and its committees to have first claim on the services of its Members, even to the detriment of civil rights of third parties⁶²—remains valid and should be upheld.

2.71 In earlier times the first two exemptions applied for 40 days before and after a session, reflecting the relatively infrequent sittings of parliaments and the travelling time involved in attending a sitting, particularly for Members from the more remote areas of the United Kingdom. The Parliamentary Privileges Act has reduced these periods to a more realistic five days before and after a meeting of a house or committee. The immunity is extended to officers of the Houses. Persons who are required to attend before a House or a committee on a day shall not be required to attend before a court or a tribunal and may not be arrested or detained in a civil case on that day.⁶³

61 MoP 1998-2001/113. The extract was certified by the Acting Clerk and, the Assembly not meeting at the time, Members were informed in writing.

62 Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984) 70. And see summary of Uren case and p. 724 of *House of Representatives Practice*; and see *Abraham*, pp. 90 and 92.

63 *Parliamentary Privileges Act 1987*, section 14.

2.72 Exemption from jury service is now a statutory right pursuant to the provisions of subsection 11(1) and Schedule 2, Part 2.1 of the *Juries Act 1967*. Members of the Assembly or an adviser or private secretary of a Member are exempt from serving as jurors, as are the Clerk, Deputy Clerk, Clerk Assistant, Serjeant-at-Arms, Editor of Debates and secretary to a committee of the Assembly.⁶⁴

2.73 Section 14 of the *Parliamentary Privileges Act 1987* provides that a Member shall not be required to attend before a court or tribunal on a day on which the House or a committee of which he or she is a member meets or on any day within five days before or after that day. The immunity extends to employees of the House, and applies to any day on which the House or committee that employee is required to attend upon meets or which is within five days before or five days after that day. When a Member has received a subpoena requiring his or her attendance before a court or a tribunal on a day on which a Member could not be compelled to attend, it is not uncommon for the Clerk to write to the relevant officers outlining the provisions and the exemptions that apply.⁶⁵

2.74 These provisions in the Parliamentary Privileges Act are in accordance with the recommendations of the Joint Select Committee on Parliamentary Privilege.⁶⁶

POWERS

2.75 *Odgers'* lists three distinct powers adhering to the two Houses of the Commonwealth Parliament by virtue of section 49 of the Constitution:

- the power of the Houses to determine their own constitution;
- the power to conduct inquiries; and
- the power to punish contempts.

Power to determine own constitution

2.76 Section 47 of the Constitution gives to each house of the Commonwealth Parliament the power to determine 'any question respecting the qualifications of a senator or of a member of the House ... or respecting a vacancy in either House ... and any question of a disputed election'. These extensive powers have largely been replaced by statutory provisions. The power of the Assembly to determine its own constitution⁶⁷ or composition is of reduced significance; the Self-Government Act and statutory law determine most, if not all, matters.

2.77 The qualification of Members and regulation of the filling of casual vacancies is determined by the provisions of the Self-Government Act and the Electoral Act, as is the power to hear and determine applications disputing the validity of elections. The Assembly may refer to the Court of Disputed Elections questions relating to the eligibility of persons declared to be elected or vacancies in the membership of the Assembly (see Chapter 3: Elections and the electoral system).

2.78 The Assembly does not have the power to expel one of its Members. The House of Representatives and Senate lost that power on the commencement of the *Parliamentary*

64 Members of the House of Commons and the House of Lords had a similar exemption. However this exemption as a right was removed by the *Criminal Justice Act 2003* (UK), see *May*, p. 125.

65 Subsection 15(2) of the *Evidence Act 1995* (Cwlth) also provides that a Member of a House of an Australian Parliament is not compelled to give evidence if the Member would, if compelled to give evidence, be prevented from attending, inter alia, a sitting of that House or a meeting of a committee of that House being a committee of which he or she is a Member.

66 Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984) pp. 73-5.

67 For a background to the power see *Abraham*, p. 94 and *May*, pp. 90-1.

Privileges Act 1987 prior to the passage of the Self-Government Act,⁶⁸ it being held that if a Member is not disqualified from membership by the provisions of the relevant statutes, that Member's fitness for membership is a matter for the electorate.

Power to conduct inquiries

2.79 The conduct of committee inquiries has become a principal function of legislatures in most democratic societies in recent decades. Legislation, including appropriation bills, is commonly referred to committees for examination, as are reports by Auditors-General on the public finances and matters of general public concern.

2.80 The power to 'send for persons, papers and records' is an established power of the UK House of Commons and, via section 49 of the Constitution and the provisions of the Self-Government Act, is a power of the Legislative Assembly. It underpins the capacity of the Assembly, usually through delegation of the power to its committees,⁶⁹ to conduct inquiries.⁷⁰

2.81 The High Court of Australia considered both the power to demand the production of papers and the power to punish a Minister for failing to comply with such a demand in *Egan v Willis*, on appeal from the Supreme Court of New South Wales. Justice McHugh stated that:

When the nature of parliamentary government is properly understood, it is apparent that the power ... is one that inheres in the very notion of a parliamentary chamber.⁷¹

The High Court vindicated the rights of the NSW Legislative Council on both matters.

2.82 The resolution appointing standing committees in the Sixth Assembly empowers committees to inquire into and report on 'matters referred to [a committee] by the Assembly or *matters that are considered by the committee to be of concern to the community*'. [Emphasis added.] The ambit of this phrase would clearly be limited by the specific subjects which each committee was charged with monitoring and care would be needed to ground a subject within the jurisdiction of the ACT.

2.83 There is an important limitation on the inquiry power of committees. Committees can only exercise the power delegated to them by the Assembly. Standing order 216 effectively delegates all the inquiry powers of the Assembly to committees 'within the terms of reference agreed to by the Assembly'. Thus the actual powers of a committee may be restricted both as to the subjects it can inquire into and the inquiry powers it possesses by its resolution of appointment. For example, the resolution with regard to the Citizen's Right of Reply (4 May 1995)⁷² states that the Standing Committee on Administration and Procedure, when considering a submission requesting a right of reply, 'shall meet in private session' and 'shall not publish a submission referred to it under this resolution'.

2.84 Behind this power stands the Assembly's power to punish contempts which could be used to compel the attendance of witnesses and the provision of documents.

68 The provision was inserted in the 1987 Act following the 1984 recommendation of the Joint Select Committee on Parliamentary Privilege (see Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984), pp. 121-7 and the Dissent by Senators Jessop and Rae at p. 167). The recommendation and the insertion of the provision met opposition in the Senate (see *Odggers*, pp. 56-7).

69 Standing order 216.

70 There is debate over the limits to the investigatory powers and reach of committees. Discussion of the matter in *House of Representatives Practice*, pp. 621-27 suggests that while limitations may exist their practical significance is not great.

71 *Egan v Willis* (1998) 73 ALJR 75.

72 MoP 1995-97/32-4.

2.85 In practice, while the Assembly has made extensive use of committees (see Chapter 16: Committees), the limits of committees' powers to insist on the attendance of particular persons or the production of documents have rarely been tested. In part this is because of reasonable cooperation with the ACT executive, which has accepted that the established practices of the Commonwealth Parliament, such as detailed scrutiny of appropriations bills by estimates committees, would be followed by the Assembly. At the same time committees have avoided conflict by not pressing requests for the production of documents and being cautious in contesting claims of executive and other privileges with regard to contentious material.

2.86 It is the Assembly itself that has tested the extent of its power vis-à-vis the executive by demanding the production of information both on its own behalf⁷³ and on behalf of a committee.⁷⁴

2.87 *Odgers'* discusses limitations on the power to conduct inquiries in terms of their application to the Houses of the Commonwealth Parliament (therefore, this is of relevance to the Assembly), including the possible limitation of the power relating to subjects in respect of which the Commonwealth Parliament has the power to legislate.⁷⁵ There is also probably an implicit limitation on the power to summon witnesses who are Members of the other House, of a House of a state or territory legislature, or who are state office holders⁷⁶ and to compel them to give evidence.⁷⁷

Public interest immunity

2.88 The doctrine of public interest immunity (sometimes referred to as executive privilege) has been defined concisely as the right of:

... the Executive Government ... to claim immunity from requests or orders, by a court or by Parliament, for the production of documents on the grounds that public disclosure of the documents in question would be contrary to the public interest.⁷⁸

Such claims are typically advanced to prevent the disclosure of cabinet documents or advice tendered to Ministers by their departmental officials.

2.89 Judicial consideration of the scope of this immunity had, for many years, accepted the view that a Minister's certificate that the release of documents was not in the public interest was conclusive and that certain classes of document, most particularly cabinet papers, were also beneficiaries of this immunity and a court would not order their publication. However, more recent decisions have undermined this view. The current position in Australia is that the courts do not accept that any class of documents is automatically immune from disclosure and that cases must be resolved individually having regard to competing public interests.⁷⁹

73 See, for example, MoP 1998-2001/412-4. In the context of a highly charged dispute about the redevelopment of a territory-owned football stadium the Assembly adopted a motion requiring '... the Chief Minister to present to the Assembly, prior to the end of the present financial year [30 June 1999]: (1) certified copies of all the papers in the possession of the Government and its agencies relating to ...' and then listed 14 categories of documents and other details which were to be presented to the Assembly. The motion was, largely, complied with.

74 See MoP 1998-2001/639-40, 686-7 and Select Committee on Government Contracting and Procurement Processes, *Report on government contracting and procurement processes in the Australian Capital Territory*, 26 July 2000, p. 9, where, to assist the committee in its inquiry, the committee obtained, through the Assembly, copies of certain hirers' agreements between Bruce Operations Pty Ltd and other parties and an agreement between the ACT Government and the Sydney Olympic Organising Committee.

75 *Odgers'*, p. 58-60.

76 *Odgers'*, pp. 58-9.

77 *Odgers'*, pp. 58-9. But see a Canadian precedent: the supreme court of a Canadian province held that officers in a federal government agency had no immunity from a summons issued by a committee of the Legislative Assembly of the province in the course of an inquiry into a matter within the legislative powers of the province; see *Attorney General (Canada) v MacPhee* 2003, 661 APR 164.

78 *House of Representatives Practice*, p. 609.

79 *House of Representatives Practice*, p. 608; *Odgers'*, pp. 465-8.

2.90 The position taken by the Houses of the Commonwealth Parliament is similar to that of the courts. The Senate has explicitly stated that 'upon a claim of privilege ... being made to any question or to the production of any documents, the Senate shall consider and determine each such claim'.⁸⁰ The House of Representatives asserts a similar 'unquestioned power', but notes that 'Because of the majority of government Members ... disputes over such matters ... are less likely to arise and when they do, it is likely that a compromise may be reached'.⁸¹

2.91 The Legislative Assembly takes a similar view⁸² to the Senate and has on occasion demanded the production of documents from the executive⁸³ in the face of strenuous opposition, most notably in the matter of the redevelopment of Bruce Stadium.⁸⁴ On that occasion the Assembly sought 'all the papers in the possession of the Government and its agencies relating to' funding, borrowing, subscriptions, tenders, corporate structures and brokers in relation to the project, contracts and arrangements with regard to the future operation of the stadium and details of the timing, amount, purpose and recipient(s) of all payments made by the Territory or on behalf of the Territory', and the legislative authority for payments and guarantees.

2.92 A large volume of material was provided to the Assembly, though by the very nature of the demand it is difficult to say whether it was fully complied with. The handling of this whole issue reinforces the comment from the House of Representatives (see paragraph 2.90). These matters are not determined simply as questions of principle; they are matters of current politics. The capacity of a legislature to press its demands will depend on the political culture of the jurisdiction, the discipline of political parties and the prevailing political reality.

2.93 As *Odgers'* notes, the Senate has generally not used its punitive powers to enforce its demands but has exacted a 'political penalty' or a procedural penalty. For example, where a government does not have a majority, it may be possible to back up a demand by delaying other government business until the demand is complied with. If a government has a majority, as in the House of Representatives, requests are unlikely to be pursued to the point of outright conflict between the legislature and the executive.

2.94 Committees also have the power to call for papers and require answers to questions. Assembly committees generally work by negotiation with the executive to gain access to material. Documents may be received in confidence and evidence taken in camera where claims to confidentiality are accepted by a committee. Where a committee requires the presentation of evidence and that request is denied on grounds that the committee did not consider sufficient, the committee could report the matter to the Assembly and ask that its request be reinforced by an order of the Assembly.⁸⁵ This has not happened yet; however, on one occasion a committee reported a Minister's refusal to answer questions in a committee hearing to the Assembly as a possible contempt.⁸⁶

80 Resolution of the Senate, 16 July 1975, paragraph (4), quoted *Odgers'*, p. 464.

81 *House of Representatives Practice*, p. 609.

82 See Standing Committee on Administration and Procedure, *The Use of Commercial-in-Confidence material and In-Camera Evidence* (August 2001). The committee notes 'The debate over public disclosure is not, it would seem, one of principle but of the appropriate limits of disclosure'.

83 The ACT executive acknowledges its obligations with regard to public accountability. See *Principles and Guidelines for the Treatment of Commercial Information Held by ACT Government Agencies* (1999).

84 See paragraph 2.87 and footnote 71.

85 But see footnote 73 above.

86 Select Committee on Estimates, *Appropriation Bill 2003-2004, Report No 1* (June 2003). The Minister declined to provide information to the committee though he acknowledged that the information was available: '... the government will make decisions when it announces and releases things ...'. The Estimates Committee asked the Assembly to consider whether the Minister's refusal should be referred to a Privileges Committee. A subsequent privilege inquiry made a finding of contempt against the Minister. See Select Committee on Privileges, November 2003, *Minister's Refusal to answer Questions in a Committee Hearing*. The Assembly noted the report and agreed to a resolution expressing 'grave concern in the Minister' for having been found to be in contempt by the committee. MoP 2001-04/995-6. The Minister apologised to the Assembly and the committee. See Assembly Debates (18.11.2003) 4166, 4172-3.

2.95 Any claim of public interest immunity with regard to material held by the executive must be made explicitly and should be made by a Minister. A public servant may take a question on notice or decline to provide a document on the basis that he or she is unsure of the status of the information sought. The status of the material should be clarified; if a claim of immunity is to be made, it should be communicated to the Assembly or the committee in question and should state the grounds for the claim.

2.96 There is a range of other immunities commonly asserted in contesting a request for evidence or documents by either the Assembly or its committees. The most common of these are that the material requested is 'commercial in confidence' or that it is subject to legal professional privilege.

2.97 A claim of commercial in confidence may be made on the basis of an explicit confidentiality clause in a document or on a general principle—for example, that details of tenders submitted in pursuit of a contract or the final contract should remain confidential, at least until the tendering process is finalised.⁸⁷

2.98 Legal professional privilege seeks to protect the communication between a legal practitioner and a client and is in a sense analogous to claims of privilege for advice tendered to Ministers by their public servants. In both cases it is argued that the ability to give 'frank and fearless' advice will be inhibited if there is an apprehension that such advice will be subject to public scrutiny.

2.99 In practice, a legislature should treat these claims in exactly the same way that it treats claims of public interest immunity. The legislature should not concede that any class of documents or any general category of communication attracts automatic immunity. With regard to contracts between public agencies or between the public sector and private organisations, the obligations of public disclosure are quite different from those applying to private transactions.

2.100 The obligations of public accountability cannot be overridden by confidentiality clauses in a contract. Given the proliferation of public-private partnership arrangements for the construction and operation of infrastructure and the delivery of services, it is absolutely vital that public interest in disclosure be upheld against claims of commercial confidentiality.

2.101 Similarly, the use of structures such as statutory authorities and government business enterprises to move public activities outside the constraints of the departmental structure while retaining full or part public ownership should not lead to any diminution of public accountability. The general principle that should be applied is that where expenditure of public funds is involved, irrespective of the mechanism used, the executive is responsible to the legislature to provide information on that expenditure.

2.102 A further ground for resisting requests from parliaments that has been advanced in recent years is to argue that the exemption provisions contained in freedom of information legislation should form the basis of a claim of immunity from parliamentary scrutiny. This view has not been accepted by legislatures.⁸⁸

⁸⁷ The Senate has a long history of conflict with the executive over the provision of information. See *Odgers*, pp. 468-85. With regard to claims of commercial confidentiality for government contracts, in 2001 the Senate adopted a continuing order requiring all government contracts to the value of \$100 000 or more to be published on the Internet with statements of reasons for any confidentiality clauses or claims.

⁸⁸ See, for example, *Odgers*, pp. 473-5.

Right to administer oaths to witnesses

2.103 The Houses of the Commonwealth Parliament, as a result of section 49 of the Constitution, have the right to take evidence on oath from witnesses appearing before either the Houses themselves or committees. However, neither House has a requirement in its standing orders that witnesses be heard on oath. The practice of administering oaths to witnesses, common in the 1970s and early 1980s, is a matter for individual committees and has largely fallen into disuse in the Commonwealth Parliament.⁸⁹ As *Odgers*' states, 'The swearing in of a witness has no effect on the witness's obligation to provide truthful answers'.⁹⁰

2.104 The practice of swearing witnesses was in decline at the time of the granting of self-government to the ACT and was never adopted by the Legislative Assembly. Assembly committees have used various formal opening statements, read at the commencement of hearings, explaining witnesses' rights and responsibilities, including a reminder of their obligation to tell the truth.⁹¹

POWER TO PUNISH CONTEMPTS

2.105 The Assembly has the power to punish breaches of privilege or contempts. The process of doing this is dealt with elsewhere (see paragraphs 17.41 to 17.72 on the conduct of privilege inquiries). Many matters that are breaches of privilege of the Assembly are also crimes under statute law. For example, an attempt to bribe or intimidate a Member of the Assembly is a contempt but it is also an offence against the *Criminal Code 2002*. Chapter 3 of the Code includes Members, Ministers and Assembly staff within its definition of 'public official' and includes offences relating to abuse of public office and intention to dishonestly influence a public official.

2.106 In view of the limited remedies available to the Assembly, in serious cases of contempt which are also criminal offences the Speaker may choose to advise the Attorney-General of the details of the matter with a view to initiating a prosecution.⁹²

ABUSE OF PRIVILEGE

Freedom of speech and right of reply resolution

2.107 The right of freedom of speech possessed by Members of the Legislative Assembly, witnesses before Assembly committees and the protection given to documents and other 'proceedings in parliament' carries with it the risk that that privilege may be abused. The Speaker and Members are generally vigilant in seeking to prevent abuse and the 'Freedom of Speech' resolution (a resolution of continuing effect) adopted by the Assembly in May 1995 counsels Members to:

- (a) ... exercise their valuable right of freedom of speech in a responsible manner; ...
- (c) ... [note] the limited opportunities for persons other than Members of the Assembly to respond to allegations made in the Assembly;
- (d) ... have regard to the rights of others; and
- (e) ... [ensure] that statements reflecting adversely on persons are soundly based.⁹³

89 The Parliamentary Privilege Resolution of the Senate (25 February 1988) at paragraph 2(6) states that 'witnesses shall be heard by the committee on oath or affirmation', reflecting a view that the committee has a quasi-judicial function. See *Odgers*', p. 430.

90 *Odgers*', p. 430.

91 Failure to tell the truth is treated as a serious matter by the Assembly.

92 *House of Representatives Practice*, p. 738 says '... it is a recognised right of a House to request government law officers to prosecute an alleged offender ...'. See also *May*, pp. 162-3; 'In cases of breach of privilege which are also offences at law, where ... the House has thought a proceeding at law necessary, either as a substitute for, or in addition to, its own proceedings, the Attorney-General has been directed to prosecute the offender'.

93 'Freedom of Speech', Resolution agreed to by the Assembly, 4 May 1995.

2.108 In the First Assembly a Member made allegations describing criminal activity against a businessman not resident in the ACT. The allegations received wide publicity and provoked a strong denial from the person in question. The denial was made in writing to all Members. Statements disputing the substance of the accusations and questioning the use of the protections afforded by the Assembly in this way were made by other Members of the Assembly. More than a year after the allegations were made, the Member advised the Assembly that the allegations were false and offered an unreserved apology to the businessman.

2.109 This matter was of considerable concern to the Speaker and other Members, particularly as it had happened in the early days of self-government and was damaging to the reputation of an institution seeking to overcome a large measure of public scepticism. Partly as a result of this incident, a motion to establish a 'Standing Committee on Ethics for Members of the Legislative Assembly' was moved. However, the matter was referred to the Standing Committee on Administration and Procedures, which conducted a broad ranging inquiry into the use of ethics committees in other legislatures and the creation of a code of conduct for Members of the Assembly.

2.110 The committee made a number of recommendations in its report, tabled on 6 June 1991, opposing the idea of an ethics committee but supporting a code of conduct and proposing the establishment of a citizen's right of reply procedure.⁹⁴ The committee had examined the procedure adopted by the Australian Senate and favoured the adoption of a similar procedure in the Assembly. For reasons unrelated to the content of the report, no action was taken on the committee's recommendations.

2.111 In the Second Assembly the Standing Committee on Administration and Procedures returned to the issue, initiating an inquiry specifically into the citizen's right of reply. This inquiry flowed directly from the incident referred to above, involving false accusations of criminal activity made under privilege. The committee's report was tabled in the Assembly on 26 August 1993.⁹⁵ The report emphasised the importance of the privilege of freedom of speech without which legislatures would be 'reduced to "... polite but ineffectual debating societies"'.⁹⁶ However it did acknowledge:

... that mistakes can and do occur. Without a means by which aggrieved individuals can seek to correct the record ... that mistake may never be corrected.⁹⁷

2.112 The Citizen's Right of Reply procedure was adopted by the Assembly for the duration of the Second Assembly and, following a further review by the Standing Committee on Administration and Procedure at the commencement of the Third Assembly,⁹⁸ as a resolution of continuing effect on 4 May 1995,⁹⁹ coupled with the free speech resolution quoted in paragraph 2.107. In adopting the procedure, the Assembly attempted to balance the need to protect the privilege of freedom of speech while providing an effective method of redress. In 2008 the Assembly amended the procedure to make it clear that there was a three-month time limit, unless there were exceptional circumstances.

94 Standing Committee on Administration and Procedures, *Inquiry into the Proposed Ethics Committee/Code of Conduct* (May 1991).

95 Standing Committee on Administration and Procedures, *Citizen's Right of Reply*, (August 1993).

96 Standing Committee on Administration and Procedures, *Citizen's Right of Reply*, (August 1993), p. 8, quoting *House of Representatives Practice*, Second edn, (1989), p. 688.

97 Standing Committee on Administration and Procedures, *Citizen's Right of Reply*, (August 1993), p. 8.

98 Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply*, (May 1995).

99 'Citizen's Right of Reply', Resolution agreed to by the Assembly, 4 May 1995.

2.113 It was not envisaged that the procedure would result in a flood of requests; rather, the Administration and Procedure Committee said that it was:

... not concerned with its lack of use but rather believes that the mere existence of the resolutions act firstly to focus Members on the responsibility they have to exercise their freedom of speech with care and secondly to give those in the community a security by knowing that they do have access to the right of reply.¹⁰⁰

2.114 A citizen or corporation¹⁰¹ wishing to utilise the procedure must first make a written submission to the Speaker outlining the nature of the issue and the Speaker must be satisfied that the matter submitted is not 'obviously trivial or ... so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered'.¹⁰²

2.115 If the Speaker is satisfied that the matter has some substance, it is referred to the Standing Committee on Administration and Procedure for consideration. The committee may also apply the test of triviality or vexatiousness and may dismiss the request at that stage. If it decides to consider the matter, the committee may consult both the complainant and the Member whose comments in the Assembly precipitated the complaint.

2.116 The intention of the procedure is to provide a right of reply where a member of the public has good grounds for believing that they have been adversely affected by comments made about them in the Assembly and that the matter is not trivial. The procedure does not seek to establish the truth or otherwise of either the original statement or the response. Nor is the committee to become a vehicle for continuing the argument between the Member and the complainant. Thus the committee is specifically precluded from considering or judging 'the truth of any statements made in the Assembly or of the submission', and its proceedings and deliberations are private.¹⁰³

2.117 The Senate resolution carries the same restrictions. In advice from the then Deputy Clerk of the Senate and secretary of the Senate's Privileges Committee, it was stated that, in deciding whether a request for a citizen's right of reply should be accepted, 'the Senate tended to apply the same standards and precedents as those applied to personal explanations in the Chamber'.¹⁰⁴ *Odgers'* notes that:

The [personal explanation] procedure is usually employed to respond to some misrepresentation of a senator ... It is not necessary for a senator to claim to be misrepresented ... but the explanation must relate to matters personally affecting the senator.¹⁰⁵

100 Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply* (May 1995), p. 13.

101 Extending the procedure to include corporations as well as natural persons was the one significant departure from the Senate model. The Administration and Procedure Committee noted in its first report on a request to use the procedure that requests from unincorporated organisations would not be covered by the terms of the resolution. Note that the Senate has accepted responses from natural persons being officers or board members of a corporation claiming to have been adversely affected by references to the corporation. See *Odgers'*, p. 74. The House of Representatives guidelines for the application of its right of reply resolution specifically exclude requests on behalf of 'corporations, businesses, firms, organisations or institutions.'

102 'Citizen's Right of Reply', Resolution agreed to by the Assembly, 4 May 1995, paragraph (1)(c).

103 'Citizen's Right of Reply', Resolution agreed to by the Assembly, 4 May 1995, paragraph (6).

104 Standing Committee on Administration and Procedure, *Person Referred to in Assembly—WJ Curnow* (1997), paragraph 5, p. 4.

105 *Odgers'*, pp. 196-7.

2.118 Thus the range of matters to be considered by the committee in determining whether a right of reply should be offered is restricted to the criteria set out in the resolution. It can consider submissions:

... claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded ...¹⁰⁶

Note that the person need only claim to have been adversely affected, though presumably there would be an expectation that some evidence supporting that claim would be presented. A mere assertion would be unlikely to clear the first hurdle. The committee must also decide that the subject of the complainant's submission is sufficiently serious to merit consideration and that the submission is not frivolous, vexatious or offensive.

2.119 The Administration and Procedure Committee is not allowed to give details of its proceedings when considering right of reply requests; so it is difficult to ascertain how it reaches its decisions. The first matter it considered (and the only one in which a right of reply was granted) related to an officeholder of an organisation who had lobbied Members on behalf of that organisation. A Member later said in the Assembly that the organisation's representative, who he did not name but identified by mention of his organisation, had an obligation to produce persuasive evidence that the legal regime he was challenging was not functioning successfully and that the person had 'failed to produce that evidence'.¹⁰⁷

2.120 The aggrieved party interpreted the Member's words to mean that he had failed in his duty to his organisation to present relevant evidence whereas the Member believed that his statement meant no more than that he, the Member, found the evidence presented on behalf of the organisation to be unpersuasive about the point at issue.

2.121 The speeches made at the tabling of the report and the dissenting report by a committee member suggest that the issues debated were:

- whether or not it was sufficient that the complainant had a genuine belief that he had suffered an adverse effect; and
- whether the adverse effect was no more than the normal outcome for a party that loses an argument and thus failed the test of seriousness.

2.122 The member of the committee who moved that the report be adopted argued that the important issue that the committee had to consider was whether the 'individual feels that they were adversely affected' and that all that was required was that the person 'has put a good case that his reputation has been affected, not about the issue itself'.¹⁰⁸

2.123 The dissenting report noted that the resolution required a claim that a person 'has been adversely affected', whereas the submission in the case under consideration used the phrase 'could well impugn my credibility with other people'. The dissenting Member argued that the claimant had not demonstrated that his reputation had been adversely affected and that his claim should fail.¹⁰⁹ The second ground for dissent was that for a politician to find the arguments presented by a person acting as a lobbyist to be unpersuasive is not unusual and for a Member of the Assembly to state that that is the case cannot be characterised as an abuse of privilege.

¹⁰⁶ Standing Committee on Administration and Procedure, *Person Referred to in Assembly—W J Currow* (1997), paragraph (1)(a).

¹⁰⁷ Assembly Debates (8.5.1997) 1123.

¹⁰⁸ Assembly Debates (4.12.1997) 4557, 4559.

¹⁰⁹ The dissenting report is appended to the committee's report. See *Person Referred to in Assembly—W J Currow* (1997), paragraph (7).

2.124 The dissenting Member's first argument requires that the complainant establishes a matter of fact in his submission to the Speaker, that is, that he or she has been adversely affected. In fact, the resolution only requires a claim to have been adversely affected in a matter that is not trivial and that the claim is not being pursued in a vexatious or offensive manner. The dissenting Member's approach also requires the committee to judge whether the complainant has established that matter of fact, which it is precluded from doing by the explicit wording of the resolution.

2.125 The second point may not require the committee to judge a matter of fact but it does require the committee to make a judgement as to whether stating that a lobbyist's arguments were not sustained by the evidence he presented is an abuse of the privilege of free speech or merely a perfectly ordinary response to an argument that one does not accept and part of the normal risk faced by a lobbyist. This argument encapsulates the difficulty of drawing a clear line between robust public debate and abuse of privilege.

2.126 The House of Representatives has a procedure similar to that adopted by the Senate. The Privileges Committee of that House has adopted some further guidelines 'not inconsistent with the resolution establishing the procedure'. These guidelines limit the time available to make a submission, clarify that only 'natural persons' may make a submission, state that applications will not be accepted with regard to the proceedings of select or standing committees and direct the Privileges Committee to 'have regard to the existence of other remedies that may be available to a person referred to in the House and whether they have been exercised'.¹¹⁰

2.127 A paragraph of the guidelines also requires that 'an application must demonstrate that a person ... has been subject to clear, direct and personal attack or criticism, and has been damaged as a result'.¹¹¹ By using the words 'personal attack or criticism' and 'damaged' rather than the more neutral 'referred to' and 'adversely affected' found in the Assembly's resolution, the House of Representatives committee is imposing a more onerous standard for considering submissions but, at the same time, requiring the committee to make judgements of both the character of the Member's statement and the seriousness of its impact on the person referred to.

2.128 In practice, the procedure is little used in the ACT Legislative Assembly¹¹² and perhaps bears out the hopes expressed for it in the first place, that its primary purpose would be 'to focus Members on the responsibility they have to exercise their freedom of speech with care'.

2.129 Persistent abuse of privilege by a Member of the Assembly—for example, by revealing confidential information or making false accusations—would be viewed as misbehaviour. Such a breach of the Members' code of conduct could be dealt with as contempt.

¹¹⁰ *House of Representatives Practice*, p. 752.

¹¹¹ *House of Representatives Practice*, p. 752.

¹¹² The case described here in some detail is the only example of a request for a citizen's right of reply in the Legislative Assembly being successful. Two other issues have been referred to the committee. On a matter reported on in 2004 the committee considered that the person's submission that he had been adversely affected had not been substantiated and recommended that no further action be taken by the Assembly in relation to the submission (Standing Committee on Administration and Procedure, *Person referred to in Assembly, Mr L Burke* (August 2004), p. 1). In 2007 the committee, being deadlocked on whether to grant a citizen's right of reply, recommended that no further action be taken by the Assembly in relation to the decision (Standing Committee on Administration and Procedure, *Application for Citizen's Right of Reply—President of the ACT Volunteer Brigades Association* (August 2007), p. 1).

INTRODUCTION

3.1 The general election for the First Assembly was conducted pursuant to the provisions of the *Australian Capital Territory (Electoral) Act 1988* (Cwlth),¹ one of the four Acts providing for self-government in the ACT. The electoral system used at that election (and, as further modified, at the general election for the Second Assembly) was a modification of the d'Hondt system, which was the then Commonwealth Government's third proposal for an electoral system for the ACT.²

3.2 The conduct of the first elections, held on 4 March 1989, had not been without difficulties. Counting lasted eight weeks and five days and the poll was not declared until 8 May 1989. Widespread dissatisfaction with the modified d'Hondt system resulted in an inquiry by the Commonwealth Parliament's Joint Standing Committee on Electoral Matters into the ACT election and electoral system; the committee reported in November 1989.

3.3 The report recommended that a referendum be held in the Territory to establish whether the majority of voters preferred a system of single-Member electorates using the House of Representatives' voting system or a system of proportional representation with multi-Member electorates modelled on the Tasmanian Hare-Clark system.³

3.4 Arising out of the Commonwealth Government's review of the recommendations of the 1989 report of the joint standing committee, the Australian Capital Territory (Electoral) Amendment Bill 1991 was introduced in the House of Representatives on 6 March 1991. The bill provided for a revised system of election to the Legislative Assembly designed to overcome the inadequacies of the heavily modified d'Hondt system (which in turn had arisen out of parliamentary consideration of the government's legislative proposals in 1988).⁴ As introduced, the bill did not contain a provision for a referendum as recommended by the joint committee.⁵

3.5 Amendments made in the Senate and agreed to by the House inserted a new part 4 in the principal Act making provision for a referendum in the Territory to choose an electoral system. The choice was to be between two voting systems: a single-Member electorate system or a proportional representation (Hare-Clark) system. Voting on the referendum was to be conducted on the same day as the next Assembly general election after the commencement of that part⁶ (which, in fact, would be the general election for the Second Assembly).⁷

1 Act No. 107 of 1988 of the Commonwealth.

2 The then government had first proposed the adoption of single-Member electorates and then proposed a mixed system consisting of approximately half of the Members being elected from single-Member electorates using House of Representatives rules and the balance of the Members being chosen using a proportional Senate style election from one electorate. See H.R. Deb. (19.10.1988) 1926-7; *Inquiry into the ACT Elections and Electoral System*, Report No. 5 of the Joint Standing Committee on Electoral Matters, PP 405 (1989), p. 40.

3 *Inquiry into the ACT Election and Electoral System*, Report No. 5 of the Joint Standing Committee on Electoral Matters, PP 405 (1989), pp. xiii-xiv.

4 H.R. Deb. (6.3.1991) 1419.

5 The government had rejected the joint committee's recommendation for a referendum on the grounds that such a course was not likely to provide a definitive outcome, might not be accepted by the parties concerned and might merely serve to reopen earlier debates on the merits of self-government. The cost of the referendum was a further, but secondary, factor in the decision. See H.R. Deb. (6.3.1991) 1419.

6 Sen. Deb. (4.6.1991) 4254-66, H.R. Deb. (5.6.1991) 4739-48.

7 The election and referendum were held on 15 February 1992.

3.6 Earlier, on 19 February 1991, the Assembly had agreed to two resolutions relating to an electoral system. The first urged Members of the Federal Parliament to adopt the joint committee's recommendation to conduct a Commonwealth funded referendum to allow the people of the ACT to choose their own electoral system. The second:

- welcomed the Federal Government's stated intention to repatriate to the people the power to determine their own electoral arrangements;
- called on the Federal Government to initiate action in this direction; and
- expressed concern at the Federal Government's apparent intention to abolish preferential voting in the Territory and called upon it to preserve this democratic principle in the existing legislation.⁸

3.7 Following the commencement of the *Australian Capital Territory (Electoral) Amendment Act 1991*,⁹ but prior to the scheduled referendum, the Australian Capital Territory Self-Government Legislation Amendment Bill 1991 was introduced into the House of Representatives, fulfilling, inter alia, an undertaking to give the ACT the power to control its own electoral system following the next ACT election.¹⁰ The bill was enacted¹¹ with those sections of the Act providing for the devolution to the Territory of control of the electoral system and for provisional arrangements to commence immediately after polling day for the second general election of Members of the Assembly.

ADOPTION OF HARE-CLARK VOTING SYSTEM

3.8 The referendum provided for by part 4 of the *Australian Capital Territory (Electoral) Amendment Act 1991* was held in conjunction with the general election for the Second Assembly held on 15 February 1992, with 65.3% of the electors voting for the proportional representation (Hare-Clark) electoral system.¹²

3.9 The Hare-Clark system was adopted in the ACT in two stages. The *Electoral Act 1992*, agreed to by the Legislative Assembly, as amended on 24 November 1992,¹³ established the ACT Electoral Commission and an independent procedure for the determination of electoral boundaries. The Assembly's first electoral boundaries were formally determined on 23 August 1993.

3.10 On 16 December 1993 the Electoral (Amendment) Bill 1993 was introduced into the Assembly. It was agreed to, with amendments, on 21 April 1994.¹⁴ This bill provided for the election of 17 Members of the Assembly from three multi-Member electorates by the Hare-Clark electoral system, the essential features of which are:

- it is a type of proportional representation system known as the single transferable vote method;
- electors vote by showing preferences for individual candidates;

8 MoP 1989-91/405-6; Assembly Debates (19.2.1991) 375-452. The resolutions followed discussion of a matter of public importance on the matter.

9 25 June 1991.

10 H.R. Deb. (6.11.1991) 2467.

11 The Act, No. 10 of 1992, was assented to on 6 March 1992.

12 34.4% voted in favour of single Member electorates (the figures represent those electors casting a valid vote), 5.57% of votes were informal. Elections ACT, <<http://www.elections.act.gov.au/ref92.html>>.

13 Electoral Act 1992, No. 71 of 1992.

14 Electoral (Amendment) Act 1994, No. 14 of 1994. This Act was superseded by subsequent legislation and repealed by the Statute Law Amendment Act 2000.

- to be elected, a candidate generally needs to receive a quota of votes;¹⁵ and
- each elector has a single vote, which can be transferred from candidate to candidate according to the preferences shown until all the vacancies are filled.

GENERAL ELECTIONS AND THE ELECTION PROCESS

3.11 The Hare-Clark proportional representation system is a single transferable vote system (thus allowing the direct election of representatives).¹⁶ Electors vote by showing preferences for individual candidates by putting the number '1' next to the name of their preferred candidate (the 'first preference vote') and numbering the remaining candidates sequentially (2, 3, 4, ...) in the order of their preference. Voters are not required to indicate a preference for every candidate.

3.12 Currently, there are three electorates. The electorates of Brindabella and Ginninderra each return five Members and the electorate of Molonglo returns seven Members. To be declared elected, a candidate must obtain a quota of votes in the electorate he or she is contesting (but see footnote 15).

3.13 A quota for an electorate is calculated by dividing the total number of valid votes cast by the number of vacancies plus 1 and adding 1 to the result (disregarding any remainder). In each electorate, those candidates whose first preference (or No. '1') votes are equal to or greater than the quota are declared elected. If all vacancies have been filled at this stage the election is completed.¹⁷

3.14 If all vacancies are not filled, there is, firstly, a downward distribution of the surplus votes (those votes in excess of the quota) of the successful candidates. Should there still be vacancies after all surplus votes have been dealt with, a process of excluding the lowest scoring candidates commences.

3.15 The successful candidates' surplus votes are distributed to continuing candidates at a reduced value (a fractional transfer value)¹⁸ according to the preferences shown on the ballot papers. After the surplus votes from each elected candidate have been distributed, the total number of votes received by each continuing candidate is recalculated. Those continuing candidates who have votes equal to or greater than the quota are elected, and if vacancies remain to be filled, the surplus votes of newly elected candidates are then distributed in the same manner.

3.16 Should there still be vacancies after all the surplus votes from elected candidates are distributed, the process of excluding the lowest scoring candidate begins. The candidate with the lowest number of votes is excluded and his or her ballot papers are distributed to continuing candidates according to the preferences shown by the voters. The ballot papers are distributed according to the value at which they were received by the excluded candidate.¹⁹

¹⁵ Note that a candidate could be elected to the Assembly without receiving a quota of votes where the number of candidates remaining in the count who have not been already elected or excluded is equal to the number of vacancies that remain to be filled. This situation has not arisen in ACT elections to date.

¹⁶ See ACT Electoral Commission fact sheet on Hare-Clark: <<http://www.elections.act.gov.au/hare.html>>.

¹⁷ See ACT Electoral Commission fact sheet on Hare-Clark: <<http://www.elections.act.gov.au/hare.html>>.

¹⁸ See ACT Electoral Commission fact sheet on Hare-Clark: <<http://www.elections.act.gov.au/hare.html>>. The fractional transfer value is determined by dividing the number of surplus votes the successful candidate received by the total number of ballot papers for that candidate with further preferences shown. Following a transfer (either from successful candidates or from an excluded candidate (see below)), should a candidate receive more votes than the required quota, it is only the 'last parcel' of ballot papers the candidate received, (i.e. the transferred votes that 'got the candidate over the line') that are transferred to continuing candidates at the fractional transfer value.

¹⁹ Ballot papers received by the excluded candidate as first preference votes have a value of '1' whilst ballot papers received following a distribution of a surplus have the appropriate fractional transfer value.

3.17 At each stage after ballot papers have been distributed from an excluded candidate, the total votes received by each continuing candidate are recalculated to determine whether any candidate has received votes equal to or greater than the quota. The process of distributing surplus votes from elected candidates and excluding the candidate with the fewest votes continues until all vacancies are filled.

3.18 As soon as practicable after the result of an election has been ascertained, the Electoral Commissioner must declare each of the successful candidates elected, declare the result of the election and notify the Clerk of the Assembly of the names of each of the candidates elected.²⁰ The Clerk is required to present to the Assembly the official notification prior to the Members making and subscribing the prescribed oath or affirmation on the first day of meeting of an Assembly for the dispatch of business after an election.²¹

CASUAL VACANCIES

Selection by recount

3.19 A casual vacancy occurs when a Member of the Assembly vacates their place, or is declared ineligible to sit as a Member by the Court of Disputed Elections (see paragraphs 3.26 to 3.31) during the term of the Assembly. Under the Hare-Clark system as it operates in the ACT, casual vacancies are filled not at by-elections but by a process of re-counting the votes cast at the previous general election to choose a replacement candidate from among those unsuccessful candidates for the electorate who wish to be considered for the vacancy.²²

3.20 The Assembly and the Speaker have specific roles and duties in relation to the filling of casual vacancies.²³ Should the Speaker notify the Electoral Commissioner in writing that the seat of an MLA has become vacant²⁴ and if the Commissioner is satisfied that it is practicable to fill the vacancy in accordance with the provisions of section 194 of the Electoral Act, he or she must publish a notice in a newspaper circulating in the Territory containing a statement to the effect that there is a casual vacancy and that a person may apply to be a candidate if he or she was an unsuccessful candidate at the last election for the relevant electorate and is an eligible person.²⁵ The Commissioner must also, as far as is practicable, give a copy of the notice to any person who may be entitled to make an application in relation to the vacancy.

3.21 If there is only one candidate in relation to the casual vacancy, the Commissioner declares that candidate elected. If there is more than one candidate, the Commissioner must fix a time and place for a re-count of the ballot papers for the former MLA and so notify each candidate. The Commissioner then conducts a re-count of the ballot papers of the vacating Member in order to determine which candidate for the casual vacancy was the next most favoured candidate chosen by the voters who elected the vacating Member.²⁶

20 *Electoral Act 1992*, section 189.

21 Standing order 1(c).

22 Part 13 of the *Electoral Act 1992* deals with the filling of casual vacancies; section 192 refers to the eligibility of candidates.

23 For the purposes of Part 13, should there be a vacancy in the office of Speaker it is the Deputy Speaker who performs the duties; should there be vacancies in both offices, it is the Clerk: *Electoral Act 1992*, section 190.

24 Otherwise than because of the dissolution of the Assembly, the expiration of the term for which MLAs were elected or the failure or partial failure of an election. Interestingly, it appears that there is no statutory compulsion on the Speaker to activate the process or order of the Assembly that requires him or her to do so.

25 *Electoral Act 1992*, section 192. An 'eligible person' is a person who is eligible to be an MLA or would, apart from the provisions of subsection 103(2)(b) of the Electoral Act, be eligible to be an MLA. Paragraph 103(2)(b) provides that a person is not eligible to be an MLA if the person holds an office, appointment or employment under a law of the Territory, the Commonwealth or a state or another territory and is eligible for certain remuneration or allowance in relation to the office, appointment or employment (see Chapter 4: Membership of the Assembly).

26 *Electoral Act 1992*, Schedule 4, Part 4.3.

Selection by the Legislative Assembly

3.22 Should the Electoral Commissioner not be satisfied that it is practicable to fill a casual vacancy using this method—for example, if no candidates from the previous election come forward wishing to contest the vacancy—the Commissioner must inform the Speaker accordingly.²⁷ The Legislative Assembly then chooses a person to fill the vacancy for the remainder of the term of the former MLA. The Speaker must notify the Commissioner that the Assembly has chosen a person to hold the vacant office as an MLA for the remainder of the term of the former MLA and the Commissioner must declare elected the person chosen.²⁸

3.23 As far as is practicable, a person chosen by the Assembly to fill a casual vacancy must be of the same political affiliation as the Member they are replacing.²⁹ Where the name of the outgoing Member appeared on the ballot paper for the last election as a party candidate, the person chosen to hold the vacant office must be a member of that party who is nominated by the party. If there is no member of the relevant party available to be chosen, or if the vacating Member was elected as an independent, the person chosen to fill the vacancy cannot be a person who has been a member of a registered political party within the 12 months preceding the filling of the vacancy.³⁰

3.24 The term of office of a Member declared elected to fill a casual vacancy begins at the end of the day when the election of the MLA is declared and, unless sooner ended by resignation or disqualification or by dissolution of the Assembly, ends on the polling day for the next election.³¹

3.25 The Commissioner may not take any action (or any further action) under part 13 of the Electoral Act in relation to a casual vacancy after the Assembly is dissolved or a pre-election period begins in relation to the electorate in which the casual vacancy has occurred.³² 'Pre-election period' means the period of 37 days ending on the end of polling day for an election.³³

DISPUTED ELECTIONS

3.26 The Supreme Court, as the Court of Disputed Elections, has jurisdiction to hear and determine:

- applications disputing the validity of elections; and
- questions referred to the Court by the Assembly relating to the eligibility of persons declared elected to be Members of the Assembly or vacancies in the membership of the Assembly.

²⁷ *Electoral Act 1992*, section 193.

²⁸ *Electoral Act 1992*, section 195.

²⁹ *Electoral Act 1992*, section 195. Should the person chosen cease to be a member of the party before the Assembly next meets after the Speaker has notified the Commissioner that the Assembly has chosen the person to hold the office vacated, the person shall be taken not to have been chosen. A person shall not be taken to have ceased to be a member of the party merely because the party has ceased to exist or has been removed from the register of political parties.

³⁰ *Electoral Act 1992*, section 195. Should the person chosen become a member of a registered party before the Assembly next meets after the Speaker has notified the Commissioner that the Assembly has chosen the person to hold the office vacated, the person shall be taken not to have been chosen.

³¹ *Electoral Act 1992*, section 196.

³² *Electoral Act 1992*, subsection 191(4) and section 197.

³³ *Electoral Act 1992*, dictionary. For example, on 14 September 2004 Ms Tucker resigned her office as a Member of the Legislative Assembly and the Speaker, pursuant to the provisions of subsection 191(1) of the Electoral Act, notified the Electoral Commissioner of the vacancy that day (see copies of correspondence presented on 7 December 2004—MoP 2004-08/16-7). As Ms Tucker had resigned within the 37 days of the pre-election period (polling day was 16 October 2004) and the pre-election period having commenced on 10 September the Electoral Commissioner took no action in relation to the vacancy pursuant to the provisions of section 197 of the Electoral Act.

In exercising this jurisdiction, the Supreme Court has the same powers as it has in exercising its original jurisdiction; any decision of the Court is final and conclusive, is not subject to appeal and shall not be called into question.³⁴

3.27 The validity of an election can be disputed only by application to the Court of Disputed Elections after the result of the election is declared and, without limiting the grounds upon which an election can be challenged, section 256 of the Act sets out certain matters which cannot be questioned in a court except by application to the Court of Disputed Elections. The Act also sets out the persons entitled to dispute elections, the requirements in relation to an application and matters in relation to declarations and orders by the Court.

3.28 After an application is filed the Registrar of the Supreme Court is required to serve a sealed copy of the application on the Speaker.³⁵ If the Court finds any illegal practice in connection with the election, the Registrar is to report the findings to the Speaker³⁶ as well as any declarations and orders of the Court.

3.29 Where the Assembly resolves to refer to the Court a question relating to the eligibility of a person who has been declared elected to be a Member or a vacancy in the membership of the Assembly, the Speaker gives the Registrar a statement setting out the question referred together with any documents in the possession of the Assembly that relate to that question. The Court is required to hear and determine a question referred to it. It may determine that a person who is declared elected is not eligible to be an MLA; declare a vacancy in the membership of the Assembly or refuse to make a declaration; and make the orders in relation to the referral that it considers appropriate. The Registrar must serve a copy of the declaration and any orders on the Speaker and each party to the referral.³⁷

3.30 Where the Court declares a vacancy in the membership of the Assembly or declares that a person elected to the Assembly is not eligible to be a Member, a vacancy in the membership of the Assembly arises at the conclusion of the day on which the declaration is made. The vacancy is to be filled in accordance with Part 13 of the Electoral Act (Casual vacancies).

3.31 It must be noted that section 16 of the *Referendum (Machinery Provisions) Act 1994* provides that Part 16 (Disputed elections, eligibility and vacancies) applies to ensure that, as far as is practicable, the validity of a referendum may be disputed in the same way as the validity of an election and not otherwise.

ENTRENCHMENT OF HARE-CLARK VOTING SYSTEM

3.32 Section 26 of the Self-Government Act provides that the Assembly may pass an entrenching law prescribing restrictions on the manner and form of making particular enactments; the entrenching law is then submitted to referendum and, if approved by a majority of electors, it takes effect (see Chapter 11: Legislation). The Proportional Representation (Hare-Clark) Entrenchment Bill 1994 was introduced in the Assembly on 30 November 1994 as a private Member's bill, its long title being 'A Bill for An Act to entrench the principles of the proportional representation (Hare-Clark) electoral system'.

³⁴ *Electoral Act 1992*, sections 252-5.

³⁵ As well as the person whose election is being disputed and the Commissioner (if he or she is not an applicant); see *Electoral Act 1992*, section 261. The Act (section 251) also makes provision for the unavailability of the Speaker and Deputy Speaker should he or she be absent from duty, should there be a vacancy in the office or should he or she be the subject of a proceeding.

³⁶ As well as the Minister, the Commissioner and the Director of Public Prosecutions; see *Electoral Act 1992*, section 266.

³⁷ *Electoral Act 1992*, sections 276-9.

3.33 The bill, as amended by the Assembly, was enacted as the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.³⁸ Section 4 provides that the Act applies to any law that is inconsistent with the principles of the proportional representation (Hare-Clark) electoral system, including:

- an odd number of Members of the Legislative Assembly shall be elected from each electorate;
- at least five Members of the Legislative Assembly shall be elected from each electorate;
- voting in an election shall be compulsory;
- each voter has the right to a fully preferential vote;
- votes can only be cast for individual candidates;
- ballot papers shall be prepared and collated in accordance with the method known as the Robson Rotation;
- a candidate whose total votes equal or exceed a relevant quota shall be declared elected;
- transfer of votes surplus to a quota;
- if there are no surpluses to be distributed, the candidate with the least total votes shall be excluded and votes cast for them shall be transferred to continuing candidates;
- casual vacancies shall be filled by a re-count of the ballot papers at the last election before the vacancy occurred (see paragraphs 3.19 to 3.25).

3.34 In addition, during its consideration of the bill, the Assembly added paragraph 2 to clause 4. The paragraph states:

This Act applies to any law made pursuant to a power at any time vested in the Legislative Assembly to make a law with respect to the number of members of the Legislative Assembly.³⁹

3.35 Section 5 of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* provides that that Act, or any amendment or repeal of that Act, has no effect unless it is passed by at least a two-thirds majority of the Members of the Assembly and a majority of the electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*. Significantly, this section also provides that a law to which the Act applies has no effect unless it is passed by:

- the Assembly and a majority of the electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*; or
- at least a two-thirds majority of the Members of the Assembly (see paragraph 3.46).

NUMBER OF MEMBERS

3.36 There are 17 Members of the Assembly. Regulations made by the Commonwealth pursuant to the Self-Government Act may fix a different number of Members. Regulations may not be made for this purpose unless in accordance with a resolution of the Assembly.⁴⁰

³⁸ Act No. 1 of 1995.

³⁹ Paragraph 4(1)(b) (Voting in an election shall be compulsory) and subclause 4(2) were inserted on the initiative of the then government; see Assembly Debates (8.12.1994) 4833-8. And see paragraph 3.46.

⁴⁰ Self-Government Act, section 8. Section 74 of the Self-Government Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act (or adding further matters to Schedule 4 of the Act). The Governor-General does not perform executive acts alone, but does so 'in Council' (that is, acting on the advice of the Federal Executive Council (effectively the Commonwealth Government) as required by section 63 of the Constitution); see *House of Representatives Practice*, p. 13.

3.37 Over the years the Assembly has considered the issues of the need to vest the Assembly with the power to determine its own size and the need to alter the number of Members.

3.38 In April 1990 the Assembly's Select Committee on Self-Government recommended that there be an increase in the number of Assembly Members (but only in proportion to an increase in the number of electors) and that the Chief Minister request the responsible Commonwealth Minister to take action to transfer the ultimate power concerning the number of ACT Legislative Assembly Members from the Commonwealth to the Assembly.⁴¹ The government supported the recommendation.⁴²

3.39 In 1993 the Commonwealth Minister introduced the Arts, Environment and Territories Legislation Amendment Bill 1993 into the Senate. It included amendments to the Self-Government Act that emerged from a review of that Act by the ACT Administration and the relevant Commonwealth department. The amendments included giving the Assembly the power to decide the number of its own Members. That provision was omitted during Senate consideration.⁴³

3.40 In April 1998 a joint Commonwealth-Territory review of the governance of the Territory (the Pettit Review) recommended that as the population of the ACT grows, the ratio of representatives to electors should be maintained at or above the very modest level that existed in 1989 (1:10,000) when self-government was introduced.⁴⁴ In addressing the established constraints on altering the number of Members of the Assembly, the Pettit Review argued that as the ACT was a body politic of nearly 10 years standing there was every reason why the Assembly should be able to amend these arrangements as it saw fit, without having to persuade the Commonwealth Parliament or the executive of the wisdom of doing so. It saw no Commonwealth interest involved in maintaining the constraints; it strongly believed that they should be removed and it so recommended.⁴⁵

3.41 The Assembly immediately established a select committee to examine the recommendations of the Pettit Review and related matters.⁴⁶ Whilst the select committee accepted that strong arguments could be made for an increase in the number of Members, the majority view was that the arguments against an increase outweighed those in support. The committee accordingly recommended that the number of seats in the Fifth Assembly remain at 17.⁴⁷

3.42 The select committee supported the Pettit Review's recommendation that the Self-Government Act be amended to give the Assembly power over such matters as the size of the Assembly and the number of Ministers. The committee recommended that the executive, in consultation with the Assembly and the community, undertake a detailed review of the Self-Government Act.⁴⁸ The executive agreed in principle to the recommendation regarding a detailed review of the Self-Government Act, undertaking to conduct a detailed review of

41 Report of the Select Committee on Self-Government, April 1990, page xiii.

42 Assembly Debates (18.10.1990) 3779.

43 Sen. Deb. (6.9.1993) 975-81 and Sen. Deb. (28.9.93) 1317-9.

44 The review estimated that this would require an increase in the number of Members for the 2001 election to 21; see Review of the Governance of the Australian Capital Territory, April 1998, p. 39. The report was presented in the Assembly on 28 April 1998; see MoP 1998-2001/17.

45 *Review of the Governance of the Australian Capital Territory*, April 1998, p. 36. The recommendation was: 'The Self-Government Act should assign to the Legislative Assembly the power to alter arrangements having to do with the normal processes of government; in this respect the Assembly should have the same powers as those enjoyed by a State parliament.'

46 MoP 1998-2001/17, 33.

47 *Report of the Select Committee on the Report of the Review of Governance*, 21 June 1999, pp. 12-3.

48 *Report of the Select Committee on the Report of the Review of Governance*, 21 June 1999, p. 7.

the Act with a view to identifying those provisions of the Act that may be repatriated to the Territory, but did not agree that the number of seats in the Fifth Assembly remain at 17.⁴⁹

3.43 The issue was further considered at the commencement of the Fifth Assembly on 12 December 2001 when the Assembly resolved to request the Chief Minister to undertake discussions with the Commonwealth Minister for Territories on the possibility of amending the Self-Government Act to devolve to the Assembly the power to determine the number of Members (with the aim of commencing any change to the Assembly at the election scheduled for 2004) and to refer to the Assembly's Standing Committee on Legal Affairs for inquiry and report the appropriateness of the size of the Assembly and options for changing the number of Members, electorates and any other related matter.⁵⁰

3.44 The committee reported on 27 June 2002, making a series of recommendations including that:

- in addition to undertaking discussions with the Commonwealth Government in relation to amending the *Australian Capital Territory (Self-Government) Act 1988* to devolve to the Assembly the power to determine the number of Members, the Chief Minister seek an amendment of the Self-Government Act to remove the power of the Commonwealth to fix the number of Ministers that make up the ACT executive;
- the number of Members in the Legislative Assembly for the ACT be increased to 21 Members based on three electorates of seven Members each;
- a decision about increasing the number of Members be made before October 2002 so that the Electoral Commission could take the decision into account as it conducts the 2002-03 redistribution required by the Electoral Act; and
- in the event that a decision is not made by October 2002, the Assembly amend the Electoral Act to provide for the 2002-03 redistribution to be delayed until a final decision is made on increasing the number of Members.⁵¹

3.45 The Assembly noted the report⁵² and the government presented its response on 26 September 2002.⁵³ The day prior to the presentation of the government's response, the Chief Minister also gave notice of a motion noting the steps necessary to fix a different number of Members, resolving that the number of Members be increased from 17 to 25 and calling on the Chief Minister to communicate the resolution to the Commonwealth Government with a request that the necessary regulations be made. The notice was never called on and lapsed at the expiration of the Fifth Assembly.⁵⁴

3.46 It should be remembered that, in the event of the Commonwealth Parliament at any time devolving to the Assembly the power to fix a different number of Members, subsection 4(2) of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* provides that that Act applies to any law made pursuant to a power at any time vested in the Legislative Assembly to make a law with respect to the number of Members of the Assembly.⁵⁵ Thus, should the

49 Noting that, 'While legally the Assembly could, by a simple majority, pass a resolution for the purposes of section 8 of the Self-Government Act requesting that the Commonwealth make a regulation to increase the number of Members of the Assembly, this would not be within the spirit of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*'; see ACT Government response to the report of the Select Committee on the Report of the Review of Governance, October 1999, p. 4.

50 MoP 2001-04/24-5.

51 *Appropriateness of the size of the Legislative Assembly for the ACT and options for changing the numbers of Members, electorates and any other related matter*, Report No. 4 of the Standing Committee on Legal Affairs, dated 26 June 2004.

52 MoP 2001-04/225.

53 MoP 2001-04/341.

54 NP (26.9.2002) 476 and NP (26.8.2004) 2631.

55 See paragraph 3.34.

Assembly gain the power to fix the number of its Members and seek to vary the number of Members, such a law would have no effect unless it was passed by the Assembly and a majority of the electors at a referendum or passed by at least a two-thirds majority of the Members of the Assembly.⁵⁶

⁵⁶ And see comments at Assembly Debates (8.12.1994) 4837.

QUALIFICATION AND DISQUALIFICATION

4.1 The Self-Government Act provides that the qualification of a person to be elected and to take a seat as a Member of the Assembly shall be as provided by an enactment made by the Legislative Assembly.¹ In addition, it provides, at section 14, disqualification provisions where a Member vacates his or her office as a Member. These are general provisions relating to absence from the Assembly or the acceptance of remuneration for services rendered in the Assembly. The *Electoral Act 1992* contains a range of provisions relating to the eligibility of persons to nominate for election to the Assembly and eligibility (together with ineligibility) provisions for Members.

4.2 Apart from the provision that a Member must make and subscribe an oath or affirmation before taking his or her seat as a Member,² there are now no provisions specifically setting down the qualifications required of a person before 'taking his or her seat as a Member'.³

NOMINATION

4.3 A person is not eligible to be nominated for election to be a Member of the Assembly unless, at the hour of nomination, the person is eligible to be a Member or would, apart from certain disqualification provisions relating to paid office under the Crown (as set out in paragraph 103(2)(b) of the *Electoral Act*; see also paragraph 4.8), be eligible to be a Member.⁴ These provisions relating to paid office under the Crown do not prevent a person from nominating for election as a Member but do preclude the person from being eligible to be an MLA.

4.4 In the event of a casual vacancy, the *Electoral Act* sets out conditions for candidature for a seat in relation to which a casual vacancy has occurred. In addition to the requirement that a person was a candidate at the last election for the electorate in question and was not elected, the person must be an 'eligible person'—that is, a person who is eligible to be an MLA or who would, apart from the provisions relating to paid office under the Crown, be eligible to be an MLA.⁵

ELIGIBILITY FOR MEMBERSHIP

4.5 To be eligible to be a Member of the Assembly a person must be:

- an Australian citizen;
- at least 18 years old; and
- an elector or entitled to be an elector.⁶

1 Self-Government Act, section 67. Subsections 67(2) to (5) of the Act set out qualification and disqualification provisions on an interim basis.

2 Self-Government Act, section 9.

3 Subsection 67(4) of the Self-Government Act, as originally enacted, set out provisions whereby a person was not qualified to take a seat as a Member.

4 *Electoral Act 1992*, section 104. A person must also be nominated in accordance with the provisions of section 105 of the Act.

5 *Electoral Act 1992*, section 192.

6 *Electoral Act 1992*, subsection 103(1).

4.6 The Self-Government Act, at section 67C, sets out the qualifications of electors;⁷ in addition, the *Electoral Act 1992* makes provision for enrolment of electors.⁸

4.7 A person is entitled to be enrolled for an electorate in the Territory if the person is entitled to be enrolled on the Commonwealth electoral roll (otherwise than as a person who has made a claim for age 17 enrolment) and the person's address is within the electorate.⁹ Subject to certain provisos, all persons who have attained 18 years of age and who are Australian citizens or British subjects who were on a Commonwealth of Australia electoral roll before 26 January 1984 are entitled to enrolment.¹⁰

INELIGIBILITY PROVISIONS

4.8 A person is not eligible to be a Member of the Assembly if that person is a Member of the Parliament of the Commonwealth or the legislature of another state or territory.¹¹ In addition, he or she is ineligible to be a Member if he or she:

- holds an office or appointment (other than a prescribed office)¹² under the law of the Territory, the Commonwealth, a state or another territory; or
- is employed by the Territory, the Commonwealth, a state or another territory or by a Territory authority or a body (whether corporate or not) established by a law of the Commonwealth, a state or another territory; and
- is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in relation to the office, appointment or employment.¹³

4.9 In addition, a person is not eligible to be a Member of the Assembly for a disqualification period of two years after a conviction or finding in the following circumstances:¹⁴

- if the person is convicted of an offence against:
 - section 285 of the *Electoral Act 1992*, for the electoral offences of offering, soliciting or accepting an electoral bribe or section 288 of the Act dealing with the offence of hindering or interfering with the free exercise of a right or the free performance of a duty under the Electoral Act by violence and intimidation; or
 - section 28 of the *Crimes Act 1914* (Cwlth), which deals with the offence of hindering or interfering with a person's free exercise or performance of any political right or duty by violence or by threats or intimidation of any kind; or
 - Part 2.4 of the Criminal Code (Cwlth), which relates to the extensions of criminal responsibility¹⁵ relating to an offence against section 28 of the Crimes Act referred to above; or

7 Persons who are entitled to vote at a general election (of Members of the Assembly); see Self-Government Act, section 3.

8 The Electoral Act defines an elector as a person who is enrolled or is taken to be enrolled for an electorate. See *Electoral Act 1992*, dictionary.

9 *Electoral Act 1992*, subsection 72(1); *Commonwealth Electoral Act 1918*, section 100.

10 *Commonwealth Electoral Act 1918*, section 93. The provisos relate to persons who are not entitled to enrolment due to holding a temporary visa within the meaning of the Migration Act or being an unlawful non-citizen under that Act, persons of unsound mind, persons serving a sentence of three years or longer for offences against Commonwealth, state or territory law, and persons convicted of treason or treachery who have not been pardoned. Also of direct relevance is Part VIII of the Commonwealth Electoral Act, which deals in detail with enrolment procedures.

11 *Electoral Act 1992*, paragraph 103(2)(a).

12 'Prescribed office' means an office of Speaker, Deputy Speaker, Chief Minister, Deputy Chief Minister, Minister or MLA; see *Electoral Act 1992*, paragraph 103(2)(b)(i).

13 *Electoral Act 1992*, paragraph 103(2)(b).

14 *Electoral Act 1992*, subsection 103(5).

15 Dealing with the offences of attempting to commit a criminal offence, complicity and common purpose, procuring the conduct of an innocent agency, incitement, conspiracy and references in Acts to offences.

- if the person is found by the Court of Disputed Elections to have contravened, within the meaning of Part 16 of the *Electoral Act 1992* (Disputed elections, eligibility and vacancies), section 285 or section 288 of the *Electoral Act 1992*, as referred to above.¹⁶

DISQUALIFICATION PROVISIONS

4.10 Section 14 of the Self-Government Act provides that a Member vacates his or her office as a Member if he or she:

- is not qualified to take a seat as a Member at any time after the beginning of the first meeting of the Assembly after a general election;¹⁷
- is absent without permission of the Assembly from four consecutive meetings of the Assembly;¹⁸ or
- takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73 of the Self-Government Act, which makes provision for the payment of remuneration and allowances in respect of services in certain offices, including the offices of Member of the Assembly, Presiding Officer (Speaker) and Deputy Presiding Officer (Deputy Speaker) of the Assembly, Minister, Chief Minister and Deputy Chief Minister.¹⁹

A person who has vacated an office of Member may be re-elected.²⁰

4.11 The Assembly does not possess the power to expel one of its Members.²¹ The Supreme Court, as the Court of Disputed Elections, has jurisdiction to hear and determine questions referred to the Court by resolution of the Assembly relating to the eligibility of persons who have been declared elected to be Members of the Assembly or vacancies in the membership of the Assembly.²² Where such a resolution is adopted, the Speaker is required to give the Registrar of the Supreme Court a statement of the question and any supporting documentation in the possession of the Assembly.²³

¹⁶ *Electoral Act 1992*, section 103.

¹⁷ Thus, whilst a person who held paid office under the Crown as set out in paragraph 103(2)(b) of the *Electoral Act* (see paragraph 4.8) would be eligible to be nominated for election as a Member (*Electoral Act 1992*, section 104), he or she would be disqualified if they held such an office and were entitled to remuneration or allowance in relation to the office, appointment or employment at any time after the beginning of the first meeting of the Assembly after a general election.

¹⁸ Or such number of consecutive meetings as is specified by enactment for the purposes of paragraph 14(1)(b)(i) of the Self-Government Act. No such specification has been made.

¹⁹ Self-Government Act, section 73. In the section, 'office' includes an office declared by an enactment to be an office to which the section applies. The provision (Self-Government Act, paragraph 14(1)(c)) does not apply to a superannuation scheme that is established by or under an enactment and under which certain prescribed benefits are provided. The *Superannuation (Legislative Assembly Members) Act 1991* makes provision for superannuation benefits for Members of the Assembly and, in accordance with the provisions of paragraph 73(2)(a) of the Self-Government Act, the Assembly has enacted the *Remuneration Tribunal Act 1995* which has established a tribunal to determine the remuneration and allowances to be paid, and the entitlements to be granted, to the holders of certain offices including the office of Member.

²⁰ Self-Government Act, subsection 14(2).

²¹ As outlined above (see paragraph 2.5), section 24 of the Self-Government Act provides that, until it makes a law with respect to its powers, the Assembly and its Members and committees have the same powers as the powers for the time being of the House of Representatives, its Members and Committees. Section 8 of the *Parliamentary Privileges Act 1987* (Cwlth) provides that a House of the Commonwealth Parliament does not have the power to expel a Member from its membership.

²² *Electoral Act 1992*, section 252.

²³ *Electoral Act 1992*, section 276.

OATH OR AFFIRMATION OF ALLEGIANCE

4.12 Section 9 of the Self-Government Act requires Members to make and subscribe an oath or affirmation before the Chief Justice of the Supreme Court of the Australian Capital Territory or some person authorised by the Chief Justice ‘before taking his or her seat’ in the Assembly.²⁴

4.13 The wording of the oath and affirmation is set out in Schedule 1 to the Self-Government Act and is the same as in Schedule 1A, Part 1A.1, of the Oaths and Affirmations Act quoted in footnote 25. Subsection 9(3) of the Self-Government Act provides, however, that section 9 has effect subject to any amendment made by an enactment of the Legislative Assembly.

4.14 Section 6A of the *Oaths and Affirmations Act 1984* (ACT) provides:

Notwithstanding subsection 9(1) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth, a Member of the Legislative Assembly, before taking his or her seat, shall make and subscribe—

- (a) an oath or affirmation in accordance with the form specified in Part 1A.1 of Schedule 1A; and/or
- (b) an oath or affirmation in accordance with the form specified in Part 1A.2 of Schedule 1A.²⁵

4.15 This was inserted into the Oaths and Affirmations Act in 1995. The Assembly considered the Oaths and Affirmations (Amendment) Bill 1995 which sought to remove from the oath or affirmation any reference to the Queen and her heirs and successors, and replace it with an oath or declaration to serve the people of the Australian Capital Territory.²⁶ During consideration of the bill an amendment was proposed that would require Members to make and subscribe an oath or affirmation in the form set out in Part 1A.1 of the current Act and an oath or affirmation set out in Part 1A.2 (see footnote 25). The proposed amendment was itself amended by the Assembly by inserting ‘/or’ after ‘and’. The amendment, as amended, was agreed to, as was the bill, as amended.²⁷

4.16 A further change made by the 1995 amendments is that all Members must now make and subscribe an oath and/or affirmation before the Chief Justice of the Supreme Court or a judge of the court authorised by the Chief Justice.²⁸

24 The practice of requiring an oath from Members of parliament in England arose during the politico-religious conflicts of the 16th century. There is no record of a particular oath being required of Members of the House of Commons in the Middle Ages. The original oath required Members to subscribe to the religious settlement of the English Reformation; it was supplemented by a specifically anti-Roman Catholic oath in the early 17th century, repudiating any claims of Papal authority. Various forms of the oath used by the Commons continued to exclude Roman Catholics (until 1829), Jews (until 1866), freethinkers and those with a religious objection to swearing an oath. In 1888, after an extended campaign in support of the English secularist Charles Bradlaugh, who was elected to the House of Commons on a number of occasions but did not take the oath, the Oaths Act (UK) permitted Members to make an affirmation, finally removing any religious test. See *Redlich*, Vol II, pp. 62-4.

25 Schedule 1A of the Oaths and Affirmations Act specifies the following wording: Part 1A.1—‘I, A.B., solemnly affirm [swear] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law. [So help me God]’; Part 1A.2—‘I, A.B. solemnly affirm [swear] that I will faithfully serve the people of the Australian Capital Territory as a Member of the Legislative Assembly and discharge my responsibilities according to law. [So help me God]’.

26 Assembly Debates (21.6.1995) 969-71.

27 MoP 1995-97/159; Assembly Debates (18.10.1995) 1779-93. The Bible usually made available for Members wishing to make an oath is the new revised standard version, though other texts may be used.

28 Oaths and Affirmations Act 1984, section 10A. Prior to the commencement of the *Oaths and Affirmations (Amendment) Act 1995* it was the practice that once Members made their oath or affirmation after being elected at a general election the Chief Justice authorised the Speaker, pursuant to the provisions of subsection 9(2) of the Self-Government Act, to administer the oath or affirmation to Members elected to fill casual vacancies. See MoP 1992-94/663.

4.17 The term of office of a Member of the Legislative Assembly commences at the end of the day on which the polls are declared.²⁹ The phrase 'before taking his or her seat' used in the Self-Government Act is interpreted to mean that a Member, duly elected, cannot participate fully in the Assembly—for example, take part in debate, vote, be appointed to committees³⁰—until they have taken the oath or affirmation.³¹

TITLES

4.18 Various questions have arisen with regard to the mode of address of Members of the Assembly. In the House of Representatives Chamber, Members are referred to by the names of their electorates—for example, 'the Member for Woolloomooloo'. Members of the Senate are referred to by adding the prefix 'Senator' to their surnames—for example, 'Senator Smith'. Where a Member has an official title such as Prime Minister, that can also be used. In the ACT, because Members are elected from multi-Member electorates, the electorate name is not a useful identifier and the practice in the Chamber is to refer to Members by name or, if appropriate, official title. Other titles, such as professional designations or military ranks, may be used if appropriate.³²

4.19 The use of the designation 'Member of Parliament (MP)' rather than 'Member of the Legislative Assembly (MLA)' was considered in discussions with the Clerk in early Assemblies. The advice received was that state and territory Members used a variety of appellations, usually MLA. In Victoria, New South Wales and South Australia, MP, is used, largely on the basis of practice established in the 19th century. Members of the ACT Legislative Assembly use the postnominal 'MLA'.

4.20 The use of the title 'Honourable', either by Ministers or by all Members of the Assembly, has been raised with successive Clerks of the Assembly. The title 'Honourable' can be used by a range of public office holders: Commonwealth and state Ministers; the Presiding Officers of the Commonwealth and state parliaments; Members of the Legislative Councils of state parliaments; and judges of various federal and state courts. The title 'Honourable' has never been used by ACT Government Ministers or the Speaker³³ of the Legislative Assembly.

4.21 The traditional justification for the use of the title by Ministers is that Commonwealth, state and Northern Territory Ministers are appointed by the Monarch's representative in their respective jurisdictions and are members of an executive council. This is not the case in the ACT where Ministers are appointed from among the Members of the Assembly by a Chief Minister elected by the Assembly. Nor does the ACT have a 'head of state' analogous to the Governor-General, state Governors or the Territory's Administrator. Thus, with regard to Ministers, the case for use of the title is not strong.

29 Self-Government Act, section 196.

30 For an alternative view, see *Odgers*, p. 133: '... the Senate appoints senators to committees, and senators may participate in the proceedings of those committees before they have been sworn in.' *May* (p. 286, n. 5 and p. 740 n. 5), notes that, on three occasions on which there were 'special circumstances', Members have been appointed to committees without having taken the oath.

31 In the House of Commons there are examples of Members, particularly members of Irish nationalist parties, being duly elected but refusing to make an oath or affirmation. In 2001 the House of Commons reaffirmed the practice (which had been temporarily abandoned) whereby Members who had not taken their seats nevertheless had access to the services of the parliamentary departments and 'support for their costs'. See *May*, p. 286.

Note that a Member, duly elected to the Legislative Assembly, may be appointed as a Minister prior to taking an oath or affirmation; for example, a Member was appointed to fill a casual vacancy on 5 April 2006 and was appointed a Minister on 6 April but did not make the oath or affirmation until 2 May 2006.

32 Assembly Debates (22.11.1989), Statement by Speaker Prowse.

33 The use of the term 'Speaker' for the Presiding Officer was adopted in the First Assembly and formally confirmed by the resolution of the Assembly of 27 March 1992, pursuant to subsection 11(2) of the Self-Government Act.

4.22 It is probable that the Speaker of the Assembly would have a stronger case for seeking to adopt the title, with the Presiding Officers of the Northern Territory and Norfolk Island providing precedents. In both these cases the title could only be adopted after a decision by the Governor-General. Advice suggests that if Ministers wished to use the title, the appropriate course would be for the Chief Minister to raise the matter with the Prime Minister, who would then provide advice to the Governor-General. Should a Speaker of the Assembly, who is independent of the ACT executive, wish to raise the matter, he or she could, presumably, deal with the Governor-General directly.

4.23 A further question that has been asked but is contingent on the right to use the title being granted is under what terms would former Ministers and Presiding Officers be entitled to retain the title after they ceased to hold office. There are various rules applying to this matter in the different Australian jurisdictions. Some office holders retain the title for life; others have to apply to the Monarch's representative for permission to do so.

ATTENDANCE AND LEAVE OF ABSENCE

4.24 In addition to keeping a Members' roll (see paragraph 7.20), the Clerk is obliged to record the attendance of Members at each sitting of the Assembly in the *Minutes of Proceedings*.³⁴ Members' attendance is recorded in the *Minutes of Proceedings* just above the printed signature of the Clerk. The entry usually states that 'All Members were present at some time during the sitting except', with the names of those absent then being recorded. Where a Member has been granted leave, it is so indicated.

4.25 The Assembly, on motion without notice, may give leave of absence to any Member and such a motion has priority over all other business. A Member who has leave of absence is excused from service in the Assembly or any committee and the leave is forfeited should the Member attend the service of the Assembly before the expiration of the leave granted.³⁵

4.26 The Self-Government Act provides that a Member vacates his or her office if he or she is absent without permission of the Assembly from four consecutive meetings of the Assembly.³⁶ To date, this rule has not been invoked. The number of meetings required to trigger this clause could be varied by an enactment of the Assembly but no such enactment has been made.

4.27 It is the practice that Members who anticipate being absent from the Assembly move a motion seeking leave of absence for a specified period. Until 2008 Members were not compelled to state the reasons for leave of absence being sought. On one occasion the grounds were omitted from the motion by way of amendment.³⁷ In 2008 a new standing order was inserted requiring Members to state the reason for leave.³⁸

4.28 Should a Member be inadvertently absent—for example, through illness—a colleague will often move that he or she be granted leave of absence.³⁹ When the Assembly has resolved that it not meet for a long period (usually the Christmas and winter breaks) it is

34 Standing orders 21 and 25.

35 Standing orders 23 and 24.

36 Self-Government Act, paragraph 14(1)(b).

37 MoP 1989-91/212-3; Assembly Debates (29.3.1990) 1123-33. The Member seeking leave had given reasons which precipitated a long debate on the need to seek leave at all in the particular circumstances. The debate also canvassed whether the Member needed to participate in the activity for which he was seeking leave.

38 MoP 2004-08/1388-9.

39 MoP 2001-04/319; Assembly Debates (24.9.2002) 319.

Common practice for the Manager of Government Business to move that leave of absence (for the period of the break agreed to in the resolution setting the days of meeting) be given to all Members.⁴⁰ Thus, Members who are absent from the Territory or Australia retain leave should the Assembly be recalled at short notice.

MEMBERS' INTERESTS

4.29 There are a number of statutory provisions and orders of the Assembly that regulate the propriety of Members' behaviour in relation to their pecuniary and other interests. The Assembly has also adopted a code of conduct⁴¹ for Members which complements the statutory and other requirements (see paragraphs 4.47 to 4.58).

4.30 As discussed above with regard to qualifications of Members, Members may not be Members of other Australian legislatures, nor may they hold certain offices or appointments or be employed by the Crown if there is any remuneration or allowance involved. In addition, penalties apply if Members neglect their Assembly duties or accept payment or benefits for advocacy or services rendered in the Assembly. A Member vacates his or her office should he or she, with stipulated exceptions, take or agree to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly.⁴²

4.31 Should a Member render himself or herself ineligible for membership, their seat in the Assembly would automatically become vacant. However, were there to be a dispute over whether the circumstances fell within the terms of the legislation, the matter would have to be referred by resolution of the Assembly for decision by the Court of Disputed Elections.

4.32 The Assembly has ordered that Members declare the private interests⁴³ of themselves and their immediate families and has also addressed the issue in the code of conduct for Members. The code of conduct states that 'Members' actions and decisions should be transparent ... In accordance with this transparency, Members are required to disclose their pecuniary interests pursuant to the resolution of the Assembly'.⁴⁴

Conflict of interest

4.33 The Self-Government Act requires that a Member who is party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. The Assembly must decide any question concerning the application of this provision and any contravention of the provision does not invalidate anything done by the Assembly.⁴⁵

40 MoP 2004-08/45.

41 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', Resolution agreed to by the Assembly, 25 August 2005 (as amended).

42 Self-Government Act, section 14. During Senate consideration of the self-government legislation in 1988 an amendment seeking to disqualify from taking a seat as a Member of the Assembly persons who were undischarged bankrupts, had taken or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, were in the course of compounding with creditors or making an assignment of remuneration for the benefit of creditors. The amendment was negated; see Sen. Deb. (24.11.1988) 2819-22.

43 'Declaration of Private Interests of Members', Resolution agreed by the Assembly, 7 April 1992, (as amended).

44 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', Resolution agreed to by the Assembly, 25 August 2005 (as amended), pp. 1-2.

45 Self-Government Act, section 15. During consideration of the Australian Capital Territory (Self-Government) Bill the Senate agreed to an amendment to ensure that this provision would stand as a separate section (it was originally a subclause of the preceding clause of the bill (now section 14 of the Self-Government Act)), the proposer of the amendment emphasising the importance of dealing with conflict of interest separately in the legislation and stating that the clauses were so important to probity in government operations that they should be separated out in their own right. See Sen. Deb. (24.11.1988) 2738.

4.34 The terms of standing order 156 are almost identical to those of section 15 of the Self-Government Act. Standing order 156 provides that:

A Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. Any question concerning the application of this standing order shall be decided by the Assembly.

4.35 In relation to participation in committee proceedings, standing order 224 states:
A Member may not sit on a committee if that Member has any direct pecuniary interest in the inquiry before such committee.

4.36 The terms of standing order 156 are similar to those of House of Representatives standing order 134, though the Assembly provision is broader in its application. Critical differences are that the House of Representatives restriction is limited to 'a particular direct pecuniary interest' and, perhaps more importantly, that it does not apply to questions of public policy.⁴⁶

4.37 The Members' code of conduct states that 'Members are individually responsible for preventing personal conflicts of interest or the perception of a conflict of interest' and that they should arrange their affairs to prevent a conflict arising or to resolve a conflict should one arise.⁴⁷

4.38 There have been two motions in the Assembly challenging the right of Members to propose matters or participate in deliberations on matters on the ground of conflict of interest. On each occasion the motion was negated. On the first occasion on 17 June 1992, a point of order was taken concerning a Member's sponsorship of a bill (seeking to allow pharmacists to prescribe methadone) when the Member was President of the Pharmacy Guild in the Territory and it was understood that the sponsor conducted a pharmacy business.

4.39 The Speaker ruled that either the Member could withdraw the bill of her own accord or the Assembly, once it had seen the bill, could decide whether its presentation was a contravention of standing order 156 (and section 15 of the Self-Government Act). After the presentation of the bill and the sponsor's agreement in principle speech, the Assembly considered a motion (moved by leave) to discharge the bill. Following debate, the motion was negated.⁴⁸

4.40 On the second occasion on 9 April 1997, a motion was moved urging certain named Members to abstain from any Assembly proceedings related to the gambling industry, which included the operation of gaming machines. The preamble to the proposition noted that

46 For background on the evolution of the rule, see *House of Representatives Practice*, pp. 142-3; 'Declaration of Interests', *Report of the Joint Committee on Pecuniary Interests of Members of Parliament*, AGPS, 1975, pp. 9-10; and Dr Robert Kaye, *Regulating Bribery, Conflict of Interest and Corruption in Westminster*, ESRC Centre for Analysis of Risk and Regulation, London School of Economics and Political Science, <www.polisci.berkeley.edu/courses/coursepages/ps277/Regulating%20Bribery.Conflict%20Of%20Interest.Kaye.doc>. The rule was based on a 1666 resolution of the House of Commons and an 1811 ruling by Speaker Abbot which applied to private bills. The Assembly, like the House of Representatives, has no provision for private bills in its current practices and procedure.

47 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', Resolution agreed to by the Assembly, 25 August 2005 (as amended), p. 1.

48 During discussion of the initial point of order and debate on the motion, issues raised included whether a contract was yet in place (it being stated that there was no direct contract but what was occurring was in effect an attempt to set up the circumstances where a contract could be made between the Territory and pharmacists) and whether the sponsor should consider her participation on the drugs committee when it considered these matters. See MoP 1992-94/61; Assembly Debates (17.06.1992) 914-5, 919-28.

one Member received a substantial remuneration primarily derived from gaming machines and six Members (as members of a particular party) received a substantial financial benefit primarily derived from gaming machines. Following extensive debate covering a range of issues, the motion was negated.⁴⁹

4.41 There are other precedents relating to conflicts of interest:

- Following presentation of the Second-Hand Dealers and Collectors (Amendment) Bill 1995 a Member advised the Assembly, in accordance with standing order 156, that he was a licensed general auctioneer in the Territory.⁵⁰
- Following the presentation of two bills addressing issues dealing with rural leases in the Territory, a Member informed the Assembly that he would not be taking part in the debate or voting on the bills as he was a rural lessee.⁵¹
- On the resumption of consideration of a bill to restrict times for gaming machine operations, a Member, identifying himself as a director of a licensed club and noting the provisions of standing order 156, stated that he intended to participate in the debate and vote on the question. He sought the guidance of the Assembly as to whether he was 'in conflict'. The Chair, stating that he would allow the House 'to sort it out', took the unusual course of seeking the views of Members present and, there being support for the Member participating in the proceedings, called upon the Member to carry on.⁵²
- During consideration of the Long Service Leave (Cleaning, Building and Property Services) Amendment Bill 2001 (which provided for a portable long service scheme for employees in the contract cleaning industry), a Member advised the Assembly that, though she was closely related to a person who had a business 'of this nature', she proposed to participate in debate and vote on the question.⁵³
- A Member having declared an interest in a bill that had been already considered by the Assembly,⁵⁴ the Assembly (on the following sitting day) noted the declaration and its timing and resolved that her participation in the debate was a failure to comply with subsection 15(1) of the Self-Government Act but noted that her participation was in the public interest.⁵⁵ On two later occasions the Assembly resolved that, notwithstanding the fact that the Member had a residential tenancy agreement with the ACT Government, it was in the public interest to allow her to participate in any future discussion or vote on a question related to specific orders of the day,⁵⁶ though, immediately prior to the second occasion, the Assembly had negated a motion that had proposed that, notwithstanding her residential tenancy agreement, it was in the public interest to allow her to participate in any future discussion of a matter, or vote on a question, in relation to public housing issues.⁵⁷
- Prior to consideration of a notice of a motion proposing to amend the resolution notwithstanding an employment contract a Member had with a family member, it was in the public interest to allow the Member to participate in any future discussion of a matter, or vote on a question, in relation to the code of conduct for Members.⁵⁸

49 MoP 1995-97/625, 627; Assembly Debates (9.4.1997) 756-67, 808-24. See also Chapter 16: Committees, where a similar issue is discussed.

50 The Member did not participate in debate on the bill. See MoP 1995-97/65; Assembly Debates (1.6.1995) 692-3, Assembly Debates (22.6.1995) 1136-7.

51 MoP 1998-2001/537; Assembly Debates (2.9.1999) 2777.

52 MoP 2001-04/1659; Assembly Debates (22.8.2001) 3174.

53 MoP 2001-04/1856; Assembly Debates (30.8.2001) 3868.

54 MoP 2004-08/277.

55 MoP 2004-08/291.

56 MoP 2004-08/324, 452.

57 MoP 2004-08/451-2.

58 MoP 2004-08/772-3.

4.42 In 1994 the Assembly also considered a motion proposing that it endorse the principles that Members are elected to serve the Assembly in a full-time capacity and that Members so elected should not engage in the activities of any business, trade or profession in the course of their term in the Assembly. This motion was negated.⁵⁹

4.43 Following concerns raised in the Assembly regarding the participation in a government auction of taxi licence plates of a family company linked to a Member of the Assembly,⁶⁰ the Chief Minister wrote to the Auditor-General seeking advice on guidelines to assist MLAs and government officials in making decisions on matters which may affect or be influenced by members of their families, her specific query being 'what should the guidelines be for commercial dealings with companies, partnerships or individuals who are partners of family members of MLAs?'⁶¹ In his report *1995 Taxi Plates Auction*,⁶² the Auditor-General found that the selection of the auctioneer in question was fair and unbiased and that there was no evidence the selection process was influenced by the Member or the responsible Minister.

Declaration of interests

4.44 The Assembly, by order, also requires Members to disclose certain of their interests by providing to the Clerk declarations of their private interests of themselves and those of their immediate families. These declarations are open to inspection by the public.

4.45 The order of the Assembly setting out the requirement was first adopted on 24 May 1989,⁶³ adopted on a continuing basis (unless amended or repealed) on 7 April 1992⁶⁴ and amended on 27 August 1998⁶⁵ and 17 March 2005.⁶⁶

4.46 The order of the Assembly now reads:

That—

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly on 17 March 2005 and shall notify any alteration of those interests to the Clerk within 28 days of that alteration occurring;
- (2) under the general direction of the Speaker, the Clerk shall store the declarations of private interests made by each Member in a secure manner and shall include all declarations made by each Member. When a Member vacates his or her seat and is not re-elected at the next general election for the Assembly, the Clerk shall destroy all declarations made by that Member in his/her custody;

59 MoP 1992-94/809; Assembly Debates (7.12.1994) 4654-9.

60 MoP 1995-97/181-2; Assembly Debates (26.10.1995) 2064-98, 2102, 2105, 2114, 2115-24.

61 The company concerned was established by the father of a serving Member and included the name of the Member though the Member no longer held any shares in the company. See *Review of Auditor-General's Report No. 2 1966*, Standing Committee on Public Accounts, Report No. 18, August 1996, p. 3.

62 Report No. 2 of 1996, dated 26 March 1996.

63 MoP 1989-91/15; Assembly Debates (24.5.1989) 114-8.

64 MoP 1992-94/13.

65 MoP 1998-2001/134; Assembly Debates (27.8.1998) 1514.

66 MoP 2004-08/122, 124; Assembly Debates (17.3.2005) 1145.

- (3) any declaration stored by the Clerk be made available for perusal to any person on request subject to the Member concerned being advised by the Speaker of the name of the person to whom the information is made available and the reasons why it has been requested, in each case; and
- (4) that this resolution has effect from the commencement of the Second Assembly and continue in force unless and until amended or repealed by this or a subsequent Assembly.

CODE OF CONDUCT

4.47 Questions about the regulation of the behaviour of Members of the Assembly, and specifically whether the Assembly should adopt a code of conduct for Members, were debated almost from the beginning of self-government in the ACT.⁶⁷ The Standing Committee on Administration and Procedure first considered a code of conduct in an inquiry initiated in September 1990.⁶⁸ The committee's report recommended the adoption of a code and included a draft.⁶⁹ The recommendation was not taken up. Resolutions of the Assembly on freedom of speech and citizen's right of reply in May 1995 also reflected a concern that Members not abuse their powers and privileges.

4.48 The Auditor-General, in his report *1995 Taxi Plates Auction* (see paragraph 4.43), also addressed the issue of conflicts of interest and potential conflicts of interest. He reviewed codes of conduct in various Australian jurisdictions, finding that Queensland's draft codes for elected Members and public officials provided a useful guide and cited examples of activities and relationships which required specific attention by Members as they could give rise to conflicts of interest.⁷⁰

4.49 The Auditor-General also concluded that the prominent positions enjoyed by Members (and senior public officials) by virtue of their status and/or influential role in public sector activities and their access to the community at large should not be used to advance the interests of any person related to the Member or official or any group, company, association, etc, in which the Member or official may have a pecuniary or personal interest.⁷¹

4.50 On 28 August 1996 the Standing Committee on Public Accounts presented report No. 18, which reviewed the Auditor-General's Report No. 2 of 1996.⁷² The committee recommended, inter alia, that the government develop a draft code of conduct for Members when dealing with matters that may affect or be influenced by family connections and commercial relations with companies and individuals that are partners or family members of MLAs and guidelines for government officials in dealing with businesses associated with Members of the Assembly. Though the government supported the development of a code of conduct, it expressed concern with the recommendation, being of the view that this was a role for the legislature,⁷³ not the executive, to develop and institute a code of conduct.

67 A resolution providing for a register of Members' interests was adopted by the Assembly in May 1989. A similar resolution of continuing effect was agreed in April 1992 and continues in force, as amended in August 1998 and March 2005.

68 MoP 1989-91/305-6; Assembly Debates (19.9.1990) 3413-45.

69 *Inquiry into the Proposed Ethics Committee/Code of Conduct*, Report of the Standing Committee on Administration and Procedures (May 1991).

70 The draft codes provided, inter alia, that official powers or positions are not used improperly for personal advantage; conflict between personal interests and public duty are resolved in favour of the public interest; and the potential for conflict between public interests and the requirement of public duty are minimised.

71 *1995 Taxi Plates Auction*, Auditor-General, Report No. 2 of 1996, dated 26 March 1996, pp. 30-1.

72 MoP 1995-97/422, 754; Assembly Deb (28.8.1996) 2731-2.

73 *Government Response to Standing Committee on Public Accounts Report No. 18—Review of Auditor General's Report No. 2 1996—Taxi Plates Auction*, MoP 1995-97/543; Assembly Debates (11.12.1996) 4707. A corrigendum was presented on 10 April 1997; see MoP 1995-97/636.

4.51 In September 1996 the Assembly referred the development of a code of conduct for all Members of the Legislative Assembly to the Standing Committee on Administration and Procedure for inquiry and report with particular reference to parliamentary and personal conduct, conflict of interest (including a Member's affiliation or membership of any organisation or association that could potentially constitute a conflict of interest), gifts, use of public office, the application of section 14 of the Self-Government Act and a complaints and investigation procedure.⁷⁴ The committee did not report in the Third Assembly.⁷⁵

4.52 The report of the Select Committee on the Report of the Review of Governance supported the adoption of a code of conduct and the appointment of an ethics commissioner.⁷⁶

4.53 The matter was again referred to the Standing Committee on Administration and Procedure in the following (Fourth) Assembly⁷⁷ together with a discussion paper entitled *A Parliamentary Ethics Adviser for the ACT Legislative Assembly*.⁷⁸ The draft code of conduct appended to the committee's report included provisions related to conflicts of interest, disclosure of pecuniary interests, receipt of gifts, payments and rewards, and advocacy/bribery.⁷⁹

4.54 A further inquiry of the Standing Committee on Administration and Procedure,⁸⁰ arising out of a privilege matter, reported in August 2004 and again recommended the adoption of a code of conduct based on its earlier report on the subject (see paragraph 4.53) with inclusions relating to Members' conduct as employers and appropriate conduct for Members' staff.⁸¹ With a general election due in a matter of weeks, the Fifth Assembly took no further action on the report. The code of conduct recommended in this report was adopted by the Sixth Assembly, on the motion of the Speaker, with minor amendments, on 25 August 2005.

4.55 The code of conduct (see Appendix 20) supplements the statutory obligations placed on Members and the provisions of standing orders and resolutions of the Assembly. It reminds Members of their general obligations to act in the interests of the electorate and to ensure that their actions do not diminish the reputation of the Assembly. Specific requirements with regard to conflict of interest, pecuniary interests, receipt of gifts, advocacy and the use of confidential information consolidate various existing statutory and other requirements.

4.56 The code also sets standards for the conduct of Members as employers. For example, it reminds them of the need to conform to community standards with regard to terms and conditions of employment and treatment of staff and to avoid any appearance of nepotism in the appointment of staff. Members are also reminded of the need to 'extend professional courtesy and respect to all staff of the Assembly'. Lastly, Members are reminded that the entitlements, services and other resources that they receive in their public capacities must be used appropriately and for legitimate purposes.

74 MoP 1995-97/470; Assembly Debates (26.9.1996) 3426-46.

75 On 4 December 1997 the Speaker, as Presiding Member, made a statement concerning the inquiry. In the statement the Speaker outlined the progress of the inquiry and the matters that the committee had considered and indicated that one of the catalysts for the inquiry had been the Auditor-General's report on the taxi plates auction. See MoP 1995-97/930; Assembly Debates (4.12.1997) 4613-4.

76 Report of the Select Committee on the Report of the Review of Governance, June 1999.

77 MoP 1998-2001/129-30; Assembly Debates (27.8.1998) 1429-30.

78 MoP 1998-2001/462; Assembly Debates (1.7.1999) 2024-5.

79 Report of the Standing Committee on Administration and Procedure, August 2001.

80 MoP 2001-04/490; Assembly Debates (12.12.2002) 4386-9. The reference was one of three made in the aftermath of the report of the Select Committee on Privileges *Unauthorised diversion and receipt of a Member's e-mails*.

81 MoP 2001-04/1599; Assembly Debates (5.8.2004) 3557-8.

4.57 Ministerial codes of conduct have been in existence and have been presented in the Assembly in May 1995,⁸² August 1998⁸³ and February 2004.⁸⁴ These codes have not been instituted or endorsed by the Assembly.

4.58 A motion requesting that the Speaker appoint an Ethics and Integrity Adviser for Members of the Legislative Assembly was agreed to by the Assembly on 10 April 2008 and an Adviser was appointed late in the life of the Sixth Assembly.⁸⁵

Other provisions impacting on the conduct of Members

4.59 It should be noted that the Assembly could treat misconduct by a Member as a contempt of the Assembly and that, should a Member commit any offence whilst a Member, he or she is subject to the laws in force in the Territory as are all other residents of the Territory. Also, Chapter 3 of the *Criminal Code 2002* includes Members and Ministers in its definition of 'territory public official' and 'public official' together with provisions relating to offences such as abuse of public office by public officials, conspiracy to defraud and intention to dishonestly influence a public official in the exercise of his or her duty as a public official.⁸⁶

TERM OF OFFICE

4.60 The current term of office of Members elected at a general election of the Assembly is approximately four years.⁸⁷ This was the term originally proposed when the self-government legislation was introduced into the Commonwealth Parliament in 1988.⁸⁸ At self-government the term was three years,⁸⁹ being extended to three years and eight months as a result of the amendment to the Electoral Act which deferred the date of the election for the Fifth Assembly from February to October 2001. The current term of four years was set by the *Electoral Amendment Act 2003*.⁹⁰

4.61 Section 10 of the Self-Government Act provides:

The term of office of a member duly elected begins at the end of the day on which the election of the member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.

'Ends on the polling day' is interpreted to mean the end of that day.⁹¹

82 MoP 1995-97/14; Assembly Debates (2.5.1995) 52-60.

83 MoP 1998-2001/124; Assembly Debates (26.8.1998) 1370-1.

84 MoP 2001-04/1 122; Assembly Debates (12.2.2004) 308-9.

85 MoP 2004-08/1445-7. See also MoP 2004-08/1548.

86 *Criminal Code 2002*, Chapter 3.

87 In fact, it is usually slightly less than four years as it commences on the day the election of Members is declared. It can be more or less than four years in the event of:

- an ordinary election being deferred due to an election of Senators or a general election of Members of the House of Representatives being held on the day set out in the Electoral Act (the third Saturday in October in the fourth year after the year in which the last ordinary election was held); or
- an extraordinary general election occurring should (a) a general election be required (i) following a dissolution of the Assembly (pursuant to section 16 of the Self-Government Act); (ii) pursuant to the provisions of section 48 of the Self-Government Act, or (b) the Court of Disputed Elections declares an election void (section 275 of the Electoral Act); or (c) a supplementary election being required pursuant to section 126 of the Electoral Act.

88 See H.R. Deb. (19.10.1988) 1922. The provision was amended in the Senate to provide for three year terms; see Sen. Deb. (24.11.1988) 2824.

89 Though the term of office of Members of the First Assembly was less, being from 8 May 1989 to 15 February 1992.

90 Act No. 54 of 2003. The amendments applied from each ordinary election after the ordinary election held on 16 October 2004. For a summary of proposals to alter the term see *Changing the term of Assembly Members from three years to four years*, Report 7 of the Standing Committee on Legal Affairs, 14 October 2003.

91 Advice of the Deputy Law Officer, Constitutional and Law Reform Branch, Attorney-General's Department, 10 October 1991.

4.62 Members of the Assembly who are officeholders—the Speaker,⁹² Chief Minister or Ministers—retain those offices until the newly elected Legislative Assembly elects a Speaker and, in the case of the Chief Minister and Ministers, a Chief Minister⁹³ unless they vacate those offices at an earlier date by resignation, disqualification as a Member or pursuant to a vote of the Assembly.

4.63 Where the term of office of a Member ends on the polling day for a general election and the Member is re-elected, for the purposes of section 73 (remuneration and allowances) of the Self-Government Act, the person is taken to have continued to serve as a Member until the day on which the election of the Member is declared.⁹⁴

RESIGNATION

4.64 A Member may resign his or her office as a Member and do so by written notice delivered to the Speaker or, during the absence of the Speaker from the Territory or from duty, to the Deputy Speaker.⁹⁵ The person receiving a notice of resignation must arrange for it to be presented to the Assembly as soon as practicable after its receipt.

4.65 Section 13 of the Self-Government Act merely provides that a Member resigns by giving written notice to the person designated by the Assembly to receive it. The practice in the Assembly has been to follow that of the House of Representatives and consider that a Member's resignation takes effect and his or her seat becomes vacant from the time of its receipt. However, it must be noted that the terms of section 37 of the Constitution, which deals with resignations of Members of the Commonwealth Parliament, differ from those of section 13 of the Self-Government Act, the former providing that 'A member may by writing ... resign his place, which thereupon shall become vacant'.⁹⁶

DEATH WHILE IN OFFICE

4.66 To date, no Member has died whilst in office. Should that occur it would be expected that the Speaker would write to inform the Electoral Commissioner that a seat was vacant.⁹⁷

DISSOLUTION OF THE ASSEMBLY

4.67 In the event of dissolution of the Assembly by the Governor-General, the term of office of all Members would end at the time and date specified in the proclamation of dissolution.

92 Self-Government Act, section 12.

93 Self-Government Act, section 46.

94 Self-Government Act, section 73.

95 Self-Government Act, section 13. See also resolution of the Assembly of 27 March 1992: MoP 1992-94/5; standing order 24A.

96 Oral advice of 16 March 1989 from the Commonwealth Department of Territories (ACT Government Unit) was 'Unless specifically stated to be otherwise in the written advice of resignation a Member's resignation takes effect at the commencement of the delivery process whether that is the physical act of handing the notice to the person authorised to receive it; or posting the notice or using some other means of delivery'.

97 And see footnote 24 in Chapter 3: Elections and the electoral system.

REMUNERATION AND ENTITLEMENTS

4.68 Section 73 of the Self-Government Act makes provision for the payment of remuneration and allowances to persons holding the office of Member of the Assembly and a range of other offices including those of the Presiding Officer (Speaker), Deputy Presiding Officer (Deputy Speaker), Chief Minister, Deputy Chief Minister, Minister and any office declared by enactment to be an office to which section 73 applies.⁹⁸ Persons holding these offices are to be paid such remuneration and allowances as determined or specified by or under an enactment or, in any other case, as determined by the Remuneration Tribunal (Cwlth). These tasks are now performed by the ACT Remuneration Tribunal.⁹⁹

4.69 Section 9 of the *Remuneration Tribunal Act 1995* requires the tribunal to inquire into and determine the remuneration and allowances to be paid to and the entitlements to be granted to the Chief Minister, the Deputy Chief Minister and Ministers and the remuneration and allowances to be paid to and other entitlements to be granted to Members other than Ministers by reason of their membership of the Assembly or by reason of their holding particular offices or performing particular functions in relation to the Assembly. Currently these offices are:

- Leader of the Opposition in the Assembly;
- Deputy Leader of the Opposition in the Assembly;
- Government Whip in the Assembly;
- Opposition Whip in the Assembly; and
- the Presiding Member (however designated) of a committee of the Assembly.¹⁰⁰

4.70 The Tribunal is required to make determinations under sections 9 and 10 of the Act each year.¹⁰¹ Determinations must be in writing and presented to the Chief Minister. The Chief Minister must cause the determination to be laid before the Assembly within six sitting days after the day he or she receives it.¹⁰²

4.71 In addition to the basic rate of salary for Members and additional salaries for certain offices, the Remuneration Tribunal determines the payment of travelling allowance, accompanied travel entitlement, motor vehicle entitlement (or a supplementary general allowance in lieu) and travel for the purposes of studies or investigations.

4.72 There is a Legislative Assembly Members' superannuation scheme. The scheme is compulsory and Members pay 5% of their salary (including additional salary but not including allowances) into the Territory bank account in respect of superannuation benefits. The administration of the *Superannuation (Legislative Assembly Members) Act 1991* is the responsibility of the Australian Capital Territory Legislative Assembly Superannuation Board. It is constituted by the Speaker (chairperson), a government Member and an opposition Member elected

⁹⁸ Self-Government Act, paragraph 73(1)(g).

⁹⁹ The ACT Remuneration Tribunal was established by the *Remuneration Tribunal Act 1995*, which commenced on 21 December 1995. In exercising its powers and obligations under the Act, the Tribunal is independent of the government, and its determinations are not subject to disallowance by the Legislative Assembly. Prior to its establishment the responsibilities now undertaken by the ACT Tribunal were discharged by the Commonwealth Remuneration Tribunal. The Remuneration Tribunal Amendment Bill 1999 proposed to place restrictions on persons who could be appointed as members of the Tribunal and to make determinations of the Tribunal disallowable instruments. The question that the bill be agreed to in principle was negatived. See MoP 1998-2001/403, 1360-1; Assembly Debates (5.05.1999) 1327-8. Assembly Debates (2.05.2001) 1381-7.

¹⁰⁰ *Remuneration Tribunal Act 1995*, subsection 9(3).

¹⁰¹ *Remuneration Tribunal Act 1995*, section 9 relates to inquiries in relation to certain Members of the Assembly and section 10 relates to inquiries in relation to holders of certain [other] offices. Section 13 as amended requires the Tribunal to make the Determinations within one year of 21 December 1996 and at subsequent intervals of not more than one year.

¹⁰² *Remuneration Tribunal Act 1995*, section 12.

in accordance with specified procedures and the chief executive of the administrative unit responsible for the *Financial Management Act 1996*, who performs the role of Secretary.¹⁰³

4.73 The *Legislative Assembly (Members' Staff) Act 1989* makes provision for Members and officeholders to employ staff in accordance with arrangements made by the Chief Minister and subject to determinations and directions made by the Chief Minister. The arrangements for employment and the conditions determined by the Chief Minister for the staff of both officeholders and Members are disallowable instruments.¹⁰⁴

4.74 Furnished and equipped office suites are provided within the Assembly building to Members for their use and the use of their staff for parliamentary and electoral purposes.

¹⁰³ The scheme operates pursuant to the provisions of the *Superannuation (Legislative Assembly Members) Act 1991*.

¹⁰⁴ As such, they must be notified and presented to the Assembly pursuant to the provisions of the *Legislation Act 2001*.

SPEAKER

5.1 The Speaker of the Assembly presides at meetings of the Assembly, is responsible for the maintenance of order and rulings on questions of order in the Assembly, and speaks for and represents the Assembly in dealings with outside bodies and personages. In addition, the position is analogous to that of a Minister in relation to the Assembly Secretariat.¹

5.2 Before the Assembly undertakes any other business after a general election, or whenever there is a vacancy in the office of Presiding Officer, the Members present must elect one of their number to be the Presiding Officer of the Assembly.² The Self-Government Act provides that neither the Presiding Officer nor the Deputy Presiding Officer is eligible to be a Minister,³ which ensures that there is always a Member responsible for the conduct of the proceedings of the Assembly who is independent of the executive.

Title

5.3 The Self-Government Act left to the Assembly the decision on the title of the Presiding Officer.⁴ In one of its first decisions at its first meeting on 11 May 1989, the Assembly resolved that the title of the Presiding Officer be 'Speaker'.⁵ At the commencement of the Second Assembly, it again resolved that the title of the Presiding Officer be 'Speaker' and that the resolution continue in force unless and until amended or repealed by that Assembly or by a subsequent Assembly.⁶

5.4 Presiding Officers of other Australian parliamentary chambers use the title 'Honourable'. No Speaker of the Legislative Assembly has applied to the Governor-General to use the title, nor has any Speaker used the title during or following his or her period in office.⁷ In the Table of Precedence for the Territory, the Speaker ranks fifth behind the Governor-General, the Chief Minister, the Prime Minister and State Premiers (according to the population of their respective states and then the Chief Minister of the Northern Territory).

1 See *Financial Management Act 1996*: section 4 states that, for the purposes of those parts of the Act dealing with budget management, financial reporting and banking and investment, reference to a department is to be read to include a reference to the Assembly Secretariat; reference to a responsible Minister of a department to include the Speaker; and reference to a chief executive to include the Clerk of the Assembly, 'unless the contrary intention appears'; section 20 describes the Speaker's role in preparation of the Assembly Secretariat's budget.

2 Self-Government Act, subsections 11(1) and (3). Should the vacancy occur when the Assembly is not meeting, the election must take place at the next meeting of the Assembly. These provisions do not apply if the vacancy occurs due to a dissolution of the Assembly.

3 Self-Government Act, section 42.

4 Self-Government Act, subsection 11(2).

5 MoP 1989-91/3; Assembly Debates (11.5.1989) 5.

6 MoP 1992-94/5; Assembly Debates (27.3.1992) 15. 'Title of Presiding Officer'—resolution agreed by the Assembly, 27 March 1992.

7 See Chapter 4: Membership of the Assembly, for a discussion of this matter.

Election

5.5 At the first meeting after a general election the Assembly must, having completed the notification of the election of Members and the Members having taken an oath or affirmation, proceed to elect one of its Members to be the Speaker. No other business may be conducted until the election of Speaker has occurred. Likewise, if there is a vacancy in the office of Speaker (unless due to a dissolution of the Assembly), the Assembly must elect one of its Members to be the Speaker before it proceeds with any other business.⁸

5.6 It is not obligatory that all Members are present for the election of Speaker of the Assembly, the Self-Government Act providing that 'the members present' shall elect one of their number to the position. Members who are candidates for the position must be present⁹ and it is necessary that a quorum be formed as is the case at any meeting of the Assembly. The details of the process for the election of Speaker are set out in standing order 2.

5.7 The election of the Speaker is conducted by the Clerk of the Assembly, who for the purposes of the election chairs the Assembly. A Member proposes to the Assembly a Member who is present for Speaker. When proposed, the Member nominated must inform the Assembly whether the nomination is accepted. The proposer then moves: 'That [the Member] do take the Chair of the Assembly as Speaker.'¹⁰ On one occasion, a Member proposed declined to accept the nomination.¹¹

5.8 The Clerk then asks if there is any further proposal; if there is not, the Clerk states that the time for proposals has expired and no other name may be put forward. Where there is only one proposal for the office of Speaker, there can be no debate and the Assembly is not invited to proceed to a ballot on the matter. The Clerk declares the Member proposed to have been elected and the Member takes the Chair as Speaker.¹² At the commencement of each of the Second, Fifth and Sixth Assemblies, there was only one candidate for the position of Speaker.

5.9 Where more than one Member is proposed as Speaker, debate may then ensue.¹³ It must be relevant to the election and a Member may not speak for more than five minutes.¹⁴ There is no limitation on the length of the debate. There is no provision in the standing orders for a right of reply by the movers of the respective motions, or for the closure to be moved (no question having been proposed from the Chair). In fact, should a Member seek to exercise the right of reply or move a closure motion, the validity of this action would be problematic, there having been more than one motion moved.¹⁵

5.10 When there are two or more candidates proposed, standing orders provide for a decision to be by ballot. Before the ballot takes place the bells are rung, as for an ordinary vote. If it is apparent that all Members who can be present are in the Chamber this requirement

8 Self-Government Act, subsection 11(3). If the vacancy happens at a meeting, the election must proceed before the Assembly proceeds with any other business. If the vacancy occurs at any other time, at the next meeting the Members present must elect one of their number to be Speaker before proceeding to any other business.

9 They must be present when proposed and must inform the Assembly whether the nomination is accepted (standing order 2(a)) and, when elected, must follow the set procedures in taking the Chair (standing order 2(m)).

10 Standing order 2(a).

11 MoP 1998-2001/2; Assembly Debates (19.3.1998) 3-4.

12 Standing order 2(b).

13 Standing order 2(c).

14 Standing order 2(d) and standing orders 2(e) and 69(a).

15 Elections of the Speaker in the Assembly have been straightforward. However, were debate to be acrimonious and the Clerk be called upon to make a ruling or call the chamber to order, the potential exists for difficulties to arise. See *House of Representatives Practice*, pp. 168. '... the Clerk would probably have to appeal to the House to act to preserve order and its own dignity'.

may be dispensed with.¹⁶ The Clerk distributes ballot papers and each Member is required to return a ballot paper in writing, giving the name of the candidate for whom that Member votes.¹⁷ The votes are counted by the Clerk.

5.11 Where there are only two candidates, the candidate with the greater number of votes is chosen provided that he or she has a majority of the votes of the Members present and voting. In the event of a tie, a fresh ballot must take place.¹⁸ If the matter remains unresolved, the sitting is suspended for 30 minutes. When the Assembly reassembles the votes shall be taken again unless this is unnecessary due to a candidate withdrawing from the election.¹⁹

5.12 At any time after the result of a first ballot is declared, but before the commencement of the second or subsequent ballots, a candidate may withdraw from the election, which then proceeds as if the candidate had not been proposed.²⁰

5.13 If more than two candidates are proposed, the ballot proceeds in the same way. If no candidate has the required majorities, the name of the candidate with the smallest number of votes is excluded and a fresh ballot takes place. This process is repeated until one candidate has the required majority and is elected.²¹ At the first meeting of the First Assembly, three candidates were proposed and two ballots took place.²²

5.14 Standing orders 2(j) and (k) provide for exceptional circumstances where tied votes make it impossible to exclude a candidate for the office. A special ballot to exclude one candidate may be held and, as with a tie between two candidates, provision is made for a suspension of the sitting to allow any impasse to be resolved by negotiation.²³ At any stage should a withdrawal leave only one candidate remaining, that candidate is declared elected as Speaker and takes the Chair.²⁴

Role and duties

5.15 The Self-Government Act provides that the Speaker of the previous Assembly convenes the first meeting of the Assembly after the result of a general election is declared²⁵ and that,

¹⁶ Standing orders 2(f), 158 and 159.

¹⁷ Standing order 2 is quite explicit, '... each Member shall deliver to the Clerk a ballot-paper ... containing the name of the candidate for whom that Member votes'. A ballot paper that did not conform would not be a vote and therefore the Member would not be included among 'members present and voting'. To persist in submitting a ballot paper that did not conform could be considered disorderly.

¹⁸ The only occasion when the votes have been equal in an election ballot has been a ballot for the position of Leader of the Opposition on 21 June 1991; see MoP 1989-91/473.

¹⁹ Standing order 2(g).

²⁰ Standing order 2(i).

²¹ Standing order 2(h).

²² MoP 1989-91/2. Standing orders were not adopted by the Assembly until after the election of the Presiding Officer and Chief Minister.

²³ Standing order 2(j).

²⁴ Standing orders 2(l) and 2(m). Acknowledgments have been made by Speakers following their election; see MoP 1989-91/2; Assembly Debates (27.3.1992) 3, (9.3.1995) 4, (19.3.1998) 4, (12.11.2001) 3, (4.11.2004) 3. Speakers, traditionally, should feign unwillingness to accept, and unworthiness to fill, the office. They need not go quite as far as Speaker Compton of the House of Commons on being presented to King George I: 'It must be very surprizing to Your Majesty, that, from amongst so many honourable, learned, and worthy Persons, ... any Thing could induce Your Commons to present me for Your Majesty's Approbation, who have none of those Endowments necessary for the Execution of this important Charge: I have neither Memory to retain, Judgement to collect, nor Skill to guide, their Debates; nor can I boast of any Thing that could entitle me to the Favour of the Commons, but an unshaken Fidelity to the Protestant Succession.' From: 'House of Lords Journal Vol 20: 21 March 1715', Journal of the House of Lords: Vol 20: 1714-1717, pp. 23-30. URL: <http://www.british-history.ac.uk/report.asp?compid=38387>

²⁵ Self-Government Act, section 17. He or she must do so by notice published in the *Territory Gazette*. A Speaker's term ends immediately before the election of a new Speaker after a general election.

subject to the conflict of interest provisions contained in the Act²⁶ and to the standing rules and orders, the Speaker presides at all meetings of the Assembly at which he or she is present.

5.16 The Speaker, and any other Member presiding at a meeting of the Assembly, does not have a casting vote, the Self-Government Act stipulating that the Presiding Officer has a deliberative vote only.²⁷ The Speaker is authorised by the Assembly to receive written notice of resignation of Members as set out in section 13 of the Self-Government Act and also written notice of resignation of a Chief Minister.²⁸ The Speaker must convene a meeting of the Assembly when requested to do so by an absolute majority of Members or on some occasions the Chief Minister.²⁹

5.17 The Self-Government Act also makes provision for the payment of remuneration and allowances to the person holding the office of Speaker³⁰ and provides that the validity of actions of the Speaker and Deputy Speaker or of a person purporting to act in those offices is not to be questioned on the ground that the appointment or election of the person was defective.³¹ The Speaker continues to be paid his or her allowance after polling day even though the Speaker may not have stood for re-election as a Member.³²

5.18 Territory enactments give the Speaker a wide range of functions and duties. The Speaker, subject to any direction by the Assembly, is responsible for the control and management of the Assembly precincts and may take any action considered necessary for those purposes.³³ Pursuant to the provisions of section 6 of the *Legislative Assembly (Broadcasting) Act 2001*, the Assembly has delegated to the Speaker the power to arrange the broadcasting or recording for broadcast of the proceedings of the Assembly.³⁴

5.19 The Speaker must ask parliamentary counsel to notify the making of a law when it has been passed by the Assembly³⁵ or the disallowance of or amendment to a subordinate law or disallowable instrument.³⁶ A range of legislative reporting and consultation requirements is imposed on the executive requiring the executive to lodge documents with the Speaker (should the Assembly not be meeting).³⁷ Where legislation requires the executive to advise, report to or consult a committee of the Assembly, the Speaker nominates the appropriate committee.³⁸ The Auditor-General is required to lodge his or her reports with the Speaker for presentation to the Assembly. If the Assembly is not sitting, the Speaker must arrange for copies of such reports to be given to each Member (and must present them on the next sitting day) and may give directions for their printing and circulation and in relation to their publication.³⁹ The resolutions appointing standing or select committees may contain similar provisions with regard to those committees' reports.

26 Self-Government Act, subsection 18(4). The conflict of interest provisions are contained in subsection 15(1) of the Act.

27 Self-Government Act, subsection 18(3).

28 Self-Government Act, section 45.

29 This process is subject to an order of the Assembly and is discussed at paragraph 5.20 and in Chapter 7: Sitings and adjournment of the Assembly, paragraphs 7.25 to 7.27.

30 Self-Government Act, section 73. The Act (section 37) also provides that the executive has the responsibility of governing the Territory with respect to, inter alia, remuneration, allowances and other entitlements in respect of services of the Speaker and Deputy Speaker.

31 Self-Government Act, section 70.

32 See advice to the Clerk of the Assembly from the Attorney-General's Department, dated 17 November 1991.

33 *Legislative Assembly Precincts Act 2001*, section 7.

34 MoP 2001-04/93-5.

35 *Legislation Act 2001*, subsection 28(1). In the absence of a head of state—a Governor or Administrator, this process replaces assent procedures in other jurisdictions.

36 *Legislation Act 2001*, subsections 65A(1) and 69(1).

37 For example, *Annual Reports (Government Agencies) Act 2004*, subsections 13(4) and 15(4).

38 For example, see *Government Procurement Act 2001*, subsection 39(6).

39 *Auditor-General Act 1996*, subsections 17(5) and 17(6).

5.20 The standing orders invest the Speaker with a wide range of duties and powers. The Speaker maintains order and rules on questions of order. Members must address the Speaker during debate and the Speaker must intervene and make a ruling when words that may be considered offensive or disorderly are used. The standing orders give the Speaker other discretions. For example, the Speaker nominates Assistant Speakers,⁴⁰ calls on Members to speak and determines whether a motion is an abuse of the orders or forms of the Assembly or is obstructing business. The Speaker also determines whether a matter of privilege merits precedence, gives authority for clerical or typographical amendments to bills and decides whether to put the question on the closure of debate. It has been the practice, once the Assembly has determined its sitting pattern, to delegate to the Speaker the power to call the Assembly together if requested to do so by an absolute majority of Members.⁴¹

Absence of Speaker

5.21 The Self-Government Act provides that the Assembly may make provision for the election of a Deputy Presiding Officer (Deputy Speaker) and may confer on the deputy such powers as are specified in the rules and orders, including the powers of the Speaker.⁴² Whenever the Assembly is informed by the Clerk of the absence of the Speaker, the Deputy Speaker, as Acting Speaker, performs the duties of the Speaker during the absence.⁴³ On occasions the Assembly is so advised prior to an impending absence.⁴⁴ In 2008 the Assembly amended standing order 6 to clarify when the Deputy Speaker is Acting Speaker during periods when the Assembly is not sitting.⁴⁵

5.22 Should the Assembly be informed by the Clerk of the absence of both the Speaker and the Deputy Speaker, Members present in the Chamber may at once proceed to elect a Member (as provided in standing order 2) who must, subject to any other order of the Assembly, perform the duties of Speaker during that absence. Otherwise, the Assembly is adjourned until the next sitting day.⁴⁶ On 22 October 1992, the Assembly having been informed that the Speaker was temporarily absent and the Deputy Speaker not being present, a motion (moved by leave) that a nominated Member take the Chair as Acting Speaker was agreed to and that Member took the Chair.⁴⁷

5.23 The Speaker or Deputy Speaker may call on one of the Assistant Speakers to take the Chair.⁴⁸ When the Speaker is present in the Assembly but the Deputy Speaker or an Assistant Speaker is in the Chair, the Speaker may participate in debate as an ordinary Member and always has a deliberative vote.⁴⁹

Term of office and vacancy in office

5.24 The person holding the office of Speaker vacates the office:

- immediately before a Speaker is elected at the first meeting of an Assembly following a general election;

⁴⁰ Prior to 2008 they were called Temporary Deputy Speakers.

⁴¹ MoP 2001-04/36-7.

⁴² Self-Government Act, subsection 21(2). Standing orders 4 and 5 provide for the office of Deputy Speaker and that he or she shall be elected in the same manner as the Speaker.

⁴³ Standing orders 6 and 6A.

⁴⁴ MoP 1998-2001/108, 286, 486, 707, 993, 1371; 2002-04/307.

⁴⁵ MoP 2004-08/1388-9.

⁴⁶ Standing order 9.

⁴⁷ MoP 1992-94/181.

⁴⁸ Standing order 10.

⁴⁹ The Speaker of the House of Representatives has a casting vote only.

- when the person resigns office as Speaker;⁵⁰
- when the person ceases to be a Member of the Assembly (though not because of a general election); or
- when an absolute majority of the Members of the Assembly vote in favour of the person's removal from office.⁵¹

5.25 The Self-Government Act provides that if there is a vacancy in the office of Speaker (other than as a consequence of a dissolution of the Assembly), the Members must, before any further business, elect a Member to be Speaker.⁵² Standing orders provide that the Clerk must report a vacancy to the Assembly as soon as possible and the Assembly must immediately proceed to the election of a Speaker.⁵³ In 2008 the Assembly adopted a new standing order 11A which provides for the Speaker to resign in writing to the Clerk.⁵⁴ A person who has vacated the office of Speaker may be re-elected.⁵⁵

Rulings of the Chair

5.26 The Speaker has the responsibility of maintaining order in the Assembly,⁵⁶ upon any question of order being raised and being stated to the Speaker, the Speaker must make a ruling on the matter.⁵⁷ A ruling is a decision or determination made by the Speaker on a matter to do with the business or operation of the Assembly.⁵⁸ Matters upon which the Speaker is called upon to rule may not necessarily be addressed in the standing orders. Citing practice in the House of Representatives, the Chair has declined to give a decision on or interpret a question of law, including on the Self-Government Act.⁵⁹

5.27 In making a ruling the Speaker takes into consideration the practices, rules and orders of the Assembly. In accordance with standing order 275, where any question relating to the procedure or the conduct of the business of the Assembly is not provided for in the standing orders or practices of the Assembly, the practice prevailing in the House of Representatives in the Commonwealth Parliament is used as a guide. This does not mean that House of Representatives' procedures can be utilised in an eclectic manner.⁶⁰

5.28 A Member may at any time raise a point of order which shall, until disposed of, suspend the consideration and decision of every question.⁶¹ Upon a question of order being raised, the Member speaking is obliged to resume his or her seat and the substance of the question of order is put to the Speaker by the Member raising it. The Speaker then rules on the matter.⁶²

5.29 Not all rulings are made in the Chamber during the course of debate. Speakers often rule on the admissibility of notices of motions, notices of questions and matters of public importance outside the Chamber. The Speaker sometimes has the opportunity to consider matters before giving a ruling in the Chamber. Examples of this are when the Speaker examines

50 The Assembly has authorised the Clerk, on behalf of the Assembly, to receive the written notice of resignation of the Speaker. See resolution agreed to by the Assembly on 27 March 1992.

51 Self-Government Act, subsection 12(1). An absolute majority of Members is nine Members, see paragraphs 7.43 to 7.44.

52 Self-Government Act, subsection 11(3).

53 Standing orders 2 and 11.

54 MoP 2004-08/1388-9.

55 Self-Government Act, subsection 12(2).

56 Standing order 37.

57 Standing orders 72 and 73.

58 *House of Representatives Practice*, p. 187.

59 MoP 1989-91/338; Assembly Debates (25.10.1990) 4194, 4200. See *House of Representatives Practice*, pp. 190-1.

60 See comments by Acting Speaker Stefaniak, Assembly Debates (8.8.1990) 2566-7.

61 Standing order 72.

62 Standing order 73.

proposed amendments to bills and motions that have been circulated to Members or when a Member has given the Speaker notice of a matter. The Speaker may also decide to defer ruling on a matter and return to the Chamber with a ruling later in the proceedings or upon a later day.⁶³

5.30 Unlike the Australian Senate, the Assembly does not treat a ruling as a binding precedent,⁶⁴ the situation being more akin to that in the House of Representatives:

The question sometimes arises as to whether rulings are 'binding' and, in a literal sense, the answer is 'no', but the question is more complex than it may appear. There have been many rulings given over the years which are consistent with one another, consistent with the standing orders and conventions of the House, and which are supported, implicitly or explicitly, by the House. Such rulings form part of the body of practice which continues to govern the operations of the House and rulings with that status are, in effect, regarded as binding, although even then Speakers are able to give rulings which take account of new factors or considerations. In this way rulings and interpretations may be developed and adapted over time. From time to time rulings may be given which are inconsistent with previous rulings and interpretations, and which may be made in circumstances which do not allow sufficient opportunity for reflection. Even though such rulings may go unchallenged at the time, it would be incorrect to say that they are binding on future occupants of the Chair.⁶⁵

5.31 Though the Speaker has taken the view that it is not the duty of the Chair to give a decision on or interpret the law or the Self-Government Act, where there are particular legislative requirements that impact on Assembly procedures the Chair has brought these to the attention of the Assembly.⁶⁶ The Speaker has on one occasion withdrawn a ruling to enable him to seek further advice on the interpretation of section 65 of the Self-Government Act (as it then provided) relating to the introduction of legislation proposing the appropriation of public money.⁶⁷

5.32 There is no provision in Assembly standing orders for a Member to move a motion of dissent from a ruling of the Speaker. Early in the First Assembly the Speaker ruled that should a Member wish to move dissent from the Speaker's ruling, the Member would need to place a notice of motion on the *Notice Paper*.⁶⁸ Leave of the Assembly having been received, such motions have been moved forthwith and notice has been given of motions of dissent.⁶⁹ On one occasion, notice having been foreshadowed, the Speaker expressed the preference that the Member move the motion immediately to 'get the matter out of the way'.⁷⁰ Standing orders having been suspended, such a motion was moved.⁷¹

63 See, for example, the ruling given by Speaker Prowse re sub judice on 14 February 1991: Assembly Debates (14.2.1991) 329.

64 In the Australian Senate a President's ruling that has not been dissented from is considered a binding precedent; see *Odgers*, p. 116.

65 *House of Representatives Practice*, p. 187.

66 For example, at the conclusion of consideration of the Proportional Representation (Hare-Clark) Entrenchment Bill 1994, the question—that the bill, as amended, be agreed to—was put and declared in favour of the 'Ayes'. As no vote was called for, the Speaker drew the attention of the Assembly to the requirement that the bill must be passed by a special majority of Members and directed that a vote be taken. See MoP 1992-94/825.

67 See Assembly Debates (13.9.1990) 3206-27. For an extended discussion of the provisions of legislation appropriating public money, see paragraphs 11.147 to 11.220 on money bills.

68 Assembly Debates (29.6.1989) 551. This ruling has been reiterated. See, for example, Assembly Debates (7.6.1990) 2336; MoP 1995-97/205.

69 In March 2003 a Member sought leave to move a motion to remove such a motion from the Notice Paper, MoP 2001-04/637; Assembly Debates (13.3.2003) 1054-6. In this instance the notice of motion had been on the Notice Paper for three weeks without any action having ensued. See MoP 2001-04/637; Assembly Debates (13.3.2003) 1054-6.

70 Assembly Debates (8.5.2003) 1801-2. Leave was granted to the Member to move the motion.

71 MoP 1995-97/205; Assembly Debates (23.11.1995) 2505-7.

5.33 The Speaker, having made a ruling, has indicated it was up to the Assembly to decide on a matter by way of a motion of dissent. The motion was moved, by leave.⁷²

5.34 A motion has been moved proposing that the Assembly, in the interests of the community, override a decision of the Speaker (the Speaker having confirmed an earlier ruling that certain documents were not to be tabled or their contents disclosed in the Assembly as they were sub judice).⁷³

5.35 A motion of dissent from a ruling has been agreed to by the Assembly⁷⁴ and the Assembly has dissented from a decision by the Speaker to not authorise a debate as a landmark debate for broadcasting purposes.⁷⁵

Voting and participation in debate

5.36 Up until 2008 the Speaker's participation in debate is a relatively rare occurrence.⁷⁶ On one occasion the Speaker presented a petition.⁷⁷ Speakers have also presented legislation from the floor of the Chamber. On 20 November 2002 Speaker Berry, speaking from the floor of the Chamber, presented the Legislative Assembly (Broadcasting) Amendment Bill 2002 and the Legislative Assembly Precincts Amendment Bill 2002.⁷⁸ On occasion, Speakers, in their capacity as Members, have presented legislation in pursuit of a particular issue of concern to them. During the Fourth Assembly (1998-2001) when the governing party only had six members, the Speaker was appointed a member of a standing committee and two select committees.⁷⁹

5.37 Given the importance of being seen to be politically neutral, it may be considered undesirable for the Speaker to take part in debate. However, it must be seen as one of the compromises to be made in a very small legislature where non-participation of a Member may effectively disenfranchise a significant part of the electorate. Speakers have also distanced themselves from party political activity, for example, by not attending party meetings at which political tactics are discussed. Significantly, there has never been a successful want of confidence motion in a Speaker in the Assembly.

5.38 The Speaker has a deliberative vote only⁸⁰ and, as with all Members present, must vote once a call of the Assembly has commenced.⁸¹ The Speaker does not have a casting vote. If the votes on a question are equal, the question is resolved in the negative.⁸²

72 MoP 1995-96/463; Assembly Debates (25.9.1996) 3344-5. The motion was negatived.

73 MoP 1989-91/205; Assembly Debates (14.2.1991) 324-5. Leave was granted to the Member to move the motion. Debate on the matter was adjourned and the matter was not again considered by the Assembly (the contents of the documents in question having been published elsewhere) until the order of the day for the consideration of the motion was discharged sometime later. MoP 1989-91/467-8.

74 MoP 1989-91/460; Assembly Debates (2.5.1991) 1901-7. The motion revolved around the meaning of the word 'furfury' and whether it was unparliamentary or not.

75 MoP 1998-2001/119; Assembly Debates (25.8.1998) 1305-9.

76 See, for example, Assembly Debates (22.11.1990) 4550-2; (23.10.1991) 4121-5; (24.10.1991) 4284-6; (10.12.1991) 5844-5, 5851-2—Speaker Prowse; (98.11.1994) 3803-5—Speaker McRae; (1.6.1995) 696; (22.11.1995) 2293—Speaker Cornwell; (16.5.2002) 1759-60; (6.6.2002) 2082; (21.8.2002) 2563-8, 2603-6, 2609, 2611, 2619; (11.12.2002) 4225-8—Speaker Berry.

77 MoP 2001-04/1151.

78 MoP 2001-04/413-4.

79 MoP 1998-2001/38, 75-6, 423.

80 Self-Government Act, subsection 18(3).

81 Standing order 161.

82 Standing order 162.

Criticism of actions and conduct

5.39 In the House of Representatives the Speaker's actions can be criticised only by way of a substantive motion. This may be by a motion of dissent (where comment must be limited to the specifics of the ruling in question) with wider criticism usually in the form of a censure or no confidence motion.⁸³ Reflections on the character of the Speaker or accusations of partiality in the conduct of his duties in the United Kingdom House of Commons have attracted the penal powers of the Commons and the Speaker's actions cannot be criticised inadvertently in debate or upon any form of proceeding except a substantive motion.⁸⁴

5.40 There has been one substantive motion considered: 'That this Assembly expresses a lack of confidence in the Speaker.'⁸⁵ The opposition party, in moving the motion, argued that the Speaker was biased towards the government party (of which the Speaker was a Member) and influenced by the Chief Minister in discharging his office. After extensive debate, the motion was defeated by 11 votes to five.

5.41 The Speaker has addressed comments made outside the Chamber concerning his or her rulings. In February 1993 the Speaker drew attention to comments made by a Member in relation to the Speaker's rulings and, having considered that the statement contained an accusation of partiality in the discharge of her duties as Speaker, asked that the reflection be withdrawn. The Member withdrew the reflection.⁸⁶

5.42 In 1993 the Speaker made a statement concerning comments made by a Member in a radio broadcast calling into question her impartiality in the discharge of her duties as Speaker and criticising the management of question time. In her statement the Speaker expressed the view that comments of the kind broadcast publicly lowered the standing of the Assembly in the public esteem and that an apology or a withdrawal of the comments, in so far as they reflected on the Chair, would be proper. She also drew attention to procedures available to alter the rules and practices of the Assembly and expressed the belief that it would be in the best interests of the Assembly if these avenues were followed and an apology offered. Standing orders having been suspended, the Member made a detailed statement on the issues which included an apology for his comments that related to the Speaker.⁸⁷

5.43 On 30 March 2000 the Speaker made a statement concerning media comment critical of his performance and conduct and, in effect, questioning his impartiality in the performance of his duties as Speaker. The Speaker advised the Assembly that the proper way to criticise his conduct of the office was by way of a substantive motion in the Assembly. He advised that he did not propose to take the matter any further, except to remind Members that such comments reflected badly on the speakership and therefore on the Assembly. He reminded Members of, and asked them to note, the comments of his predecessor that criticising in the media the actions of the Chair did nothing for the standing of the Assembly and tended to lower it in public esteem.⁸⁸

5.44 There have been other occasions when criticism of the conduct of the Speaker has been raised:

- After making a statement to the Assembly concerning the appropriateness of a notice of a motion placed upon the *Notice Paper* (calling for the clarification of comments made by

83 *House of Representatives Practice*, p. 191.

84 *May*, pp. 145-220.

85 MoP 1995-97/921-2; *Assembly Debates* (3.12.1997) 4459-83.

86 MoP 1992-94/283; *Assembly Debates* (18.2.1993) 197.

87 MoP 1992-94/307; *Assembly Deb* (23.3.1993) 682-5.

88 MoP 1998-2001/803; *Assembly Debates* (30.3.2000) 1136.

Mr Prowse from the floor when participating in an earlier debate) Speaker Prowse directed that the notice be removed from the *Notice Paper*.⁸⁹

- When the Assembly discussed, as a matter of public importance, 'The failure of the Government and the Speaker to maintain the dignity of the Assembly,'⁹⁰ The practice now would be that such matters, insofar as they related to the Speaker's performance of his or her duties, would need to be raised by way of a substantive motion which expressed a decision or opinion of the Assembly.

DEPUTY SPEAKER

Role and duties

5.45 Section 21 of the Self-Government Act provides that the Assembly may provide for the election of a Deputy Presiding Officer (Deputy Speaker) and confer on that deputy such powers as are specified in the rules and orders, including the powers of the Presiding Officer under the Self-Government Act. A person holding the office of Deputy Presiding Officer is not eligible to be a Minister⁹¹ and the office is recognised in section 73 of the Self-Government Act for the payment of remuneration and allowances (set by the Remuneration Tribunal) in addition to the Member's ordinary salary.

5.46 A Deputy Speaker must be chosen on the first sitting day after an election or whenever the office becomes vacant. The election of Deputy Speaker is conducted by the Speaker in a similar manner to the election of Speaker.⁹² Whenever the Assembly is informed by the Clerk of the absence of the Speaker, the Deputy Speaker, as Acting Speaker, performs the duties of Speaker.⁹³ The Deputy Speaker is also required to take the Chair whenever requested by the Speaker during a sitting of the Assembly.⁹⁴

5.47 Other specific duties are set down in standing or other orders of the Assembly. For example, in the absence of the Speaker, the Deputy Speaker could be called on to name a time for the reconvening of a committee (when adjourned by the Presiding Member due to grave disorder) on the receipt of a request in writing from an absolute majority of members of the committee.⁹⁵ During the absence of the Speaker from the Territory or from duty, the Deputy Speaker could also receive the written notice of resignation of a Member of the Assembly.⁹⁶ In statutes and in resolutions establishing standing and select committees, it is common practice to assign certain duties to the Speaker or, in the absence of the Speaker, to the Deputy Speaker.

Resignation and vacancy in office

5.48 Up until 2008 neither the Self-Government Act nor standing or any other orders of the Assembly contained any specific provisions regarding the resignation of the Deputy Speaker. This was a similar situation to that which still prevails in the House of

89 MoP 1989-91/293; Assembly Deb (12.9.1990) 3092-4. A point of order having been taken as to whether the Speaker was making the statement as the Speaker or an MLA, the Speaker vacated the Chair and made a statement, by leave, before resuming the Chair and making a statement concerning the appropriateness of notices of motion.

90 MoP 1989-91/366; Assembly Debates (11.12.1990) 4933-53.

91 Self-Government Act, section 42.

92 Standing order 5.

93 Standing order 6.

94 Standing order 7.

95 Standing order 229A.

96 Resolution of the Assembly of 27 March 1992.

Representatives and the Senate. Should the Deputy Speaker wish to resign from office in the House of Representatives, current practice is that he or she may do so by means of a personal announcement or by notifying the Speaker in writing.⁹⁷ In 2008 the Assembly amended the relevant standing order to provide that the Deputy Speaker could resign the office by writing to the Speaker.⁹⁸

5.49 In the Senate resignations in writing have been directed to the President. *Odgers'* notes that there is no reason for a resignation not being made orally in the Senate, but in some past cases the Senators concerned have been appointed as Ministers and it is obviously undesirable that a Deputy President should also hold ministerial office for a period until the Senate next meets.⁹⁹ As the Deputy Speaker of the Legislative Assembly is not eligible to be a Minister in the Territory, a person would have to vacate the office prior to accepting appointment as a Minister.

5.50 Should a vacancy occur in the office of Deputy Speaker, the Speaker must report the vacancy to the Assembly as soon as possible and the Assembly must forthwith proceed to the election of a new replacement Deputy Speaker.¹⁰⁰

ABSENCE OF SPEAKER AND DEPUTY SPEAKER

5.51 If the Assembly is informed by the Clerk of the absence of both the Speaker and Deputy Speaker, the Members present may proceed to elect one of their number who shall perform the duties of Speaker during the absence, subject to any other order of the Assembly. Otherwise the Assembly stands adjourned until the next day of sitting.¹⁰¹

5.52 On an occasion when, at the commencement of a meeting, both the Speaker and Deputy Speaker were absent, the Assembly, on motion moved by leave, ordered that one of the Temporary Deputy Speakers take the Chair as Acting Speaker. The Member took the Chair and read the prayer.¹⁰²

5.53 In 1994, the Assembly having granted leave of absence to both the Speaker and Deputy Speaker for an overlapping period, the Speaker apprised the Assembly of the fact and it ordered that one of the Assistant Speakers (or, in her absence, another of the Assistant Speakers) perform the duties of Speaker for the period of absence of both the Speaker and the Deputy Speaker.¹⁰³ The Assembly took similar action in 1996 when it was expected that both the Speaker and Deputy Speaker would be absent simultaneously. Again, the motion was moved by leave.¹⁰⁴

97 *House of Representatives Practice*, pp. 200-1. Earlier practice was that a motion be moved 'That the resignation be accepted, and that the House proceed forthwith to appoint a Chairman of Committees'.

98 MoP 2004-08/1388-9.

99 *Odgers'*, p. 115.

100 Standing order 13.

101 Standing order 9.

102 MoP 1992-94/181. See also paragraph 5.22.

103 The motion was moved by leave on this occasion as well. See MoP 1992-94/734; Assembly Debates (23.9.1994) 3325. This course was proposed by the Speaker from the Chair.

104 MoP 1995-97/573.

ASSISTANT SPEAKERS

5.54 At the commencement of every Assembly the Speaker nominates no more than three Members who are not Ministers to act as Assistant Speaker.¹⁰⁵ The Speaker may revoke a nomination.¹⁰⁶ An Assistant Speaker may be called upon by the Speaker or Deputy Speaker to take the place of the occupant of the Chair during Assembly proceedings.¹⁰⁷

5.55 In 1998 the Assembly adopted a recommendation of the Standing Committee on Administration and Procedure to amend the standing order to increase the number of Assistant Speakers from two to the current three.¹⁰⁸ In making the recommendation, the committee noted that having a representative from the crossbenches¹⁰⁹ serving in the position would enhance the perception of the impartiality of the Chair. The role could then be undertaken by Members from all sections of the Chamber. Increasing the number of Assistant Speakers had another benefit. In past Assemblies, particularly during lengthy sittings, Members who were Assistant Speakers had had difficulty participating in debate while also fulfilling the responsibility of acting in the Chair.¹¹⁰

5.56 Appointments have been revoked. For example, in the Sixth Assembly the Speaker revoked the appointments of certain Members when they had been appointed Opposition Whip on the basis that it would be difficult to perform both roles effectively.¹¹¹

LEADER OF THE OPPOSITION

Appointment/election

5.57 The Self-Government Act and the standing orders prepared for the first Legislative Assembly did not mention the position of Leader of the Opposition, though that office is common to the Commonwealth and Australian state parliaments. It has been suggested that there was an assumption that such a position would not be appropriate in a very small legislature as the electoral system seemed likely to produce an Assembly whose membership would comprise a number of parties, groups and individuals.¹¹²

5.58 The standing orders governing the choice of a Leader of the Opposition were adopted on the first sitting day of the First Assembly as amendments to the standing orders prepared by officials prior to the Assembly meeting. In their original form these standing orders provided for the Leader of the Opposition to be elected by all Members of the Assembly. In practice, government Members refrained from participation in a ballot for the position.¹¹³

5.59 In the First Assembly there were two non-government parties of equal size in the Assembly. Following the adoption of standing orders 5A and 5B, a ballot was conducted and the Leader of the Liberal Party in the Assembly was declared elected as Leader of the

¹⁰⁵ Prior to 2008 these were called Temporary Deputy Speakers.

¹⁰⁶ Standing order 8.

¹⁰⁷ Standing order 10.

¹⁰⁸ MoP 1998-2001/36.

¹⁰⁹ Since self-government, the positions had generally been filled from the ranks of government or opposition parties although a crossbench Member was appointed in the Fourth Assembly, see MoP 1998-2001/35.

¹¹⁰ *Standing Order 8, Temporary Deputy Speakers*, report by the Standing Committee on Administration and Procedure, April 1998.

¹¹¹ See MoP 2004-08/86, 417, 718, 869.

¹¹² See, for example, Mr Collaery MLA, *Assembly Debates* (21.6 1991) 2259.

¹¹³ See *Assembly Debates* (11.5.1989) 7-11, where some Members protested against the precipitate adoption of the new standing orders, particularly the possible involvement of the government party in the choice of Leader of the Opposition.

Opposition.¹¹⁴ Concern was expressed about the legality of the Assembly's action and legal advice was sought.¹¹⁵ The advice, from Professor J Richardson, confirmed the propriety and legality of the actions taken by the Assembly on 11 May. The opinion was that the decisions were correct in law and in accordance with parliamentary conventions.¹¹⁶

5.60 Standing order 5A, as amended in June 1991, provides that the leader of the largest non-government party in the Assembly will be Leader of the Opposition.¹¹⁷ Current practice is that, either at the first meeting of an Assembly following a general election,¹¹⁸ or at the first opportunity following a change in leadership of the major opposition party,¹¹⁹ the Speaker recognises that Member as Leader of the Opposition.

5.61 In the event that the two largest non-government parties are of equal size, the Assembly elects a Leader of the Opposition and the election is conducted in a similar manner to the election of the Speaker and Chief Minister.¹²⁰ Since the adoption of the current provisions there has not been a ballot for the position. There is no provision in the standing orders for the election to take precedence of other business. On 21 June 1991, for example, the Speaker ascertained whether it was the wish of the Assembly to proceed and there was no objection.¹²¹

5.62 On that day, following the resignation of the then Leader of the Opposition, who had been replaced as leader of his party,¹²² and ballots having taken place, a Member representing a minor group in the Assembly was declared elected as Leader of the Opposition.¹²³

5.63 The newly elected Leader of the Opposition then advised the Assembly that he considered that the:

... concept of the office of Leader of the Opposition in this Assembly is, in my view, a foolish one. There are 12 non-government members in this Assembly, and it is clear that in those 12 there are five groups. It clearly is ludicrous for any one Member on this side of the Assembly to speak on behalf of all non-government Members as Leader of the Opposition. Accordingly, I shall eschew that title ...¹²⁴

¹¹⁴ MoP 1989-91/3-4; Assembly Debates (11.5.1989) 7-11. At the time two non-government parties had four representatives in the Assembly. Members of the governing party did not participate in the ballot. Assembly Debates (11.5.1989) 9.

¹¹⁵ MoP 1989-91/7; Assembly Debates (23.5.1989) 19. Later that day the Assembly discussed as a matter of public importance 'The actions of the Executive in relation to the election of the Leader of the Opposition'; See Assembly Debates (23.5.1989) 34-53.

¹¹⁶ MoP 1989-91/65; Assembly Debates (22.8.1989) 1139. The opinion also suggested that the Assembly should consider a formal amendment to the standing orders to provide that the members of the parties in government be excluded from the election of Leader of the Opposition. The Speaker later made a statement to the Assembly and presented a correction to the advice; see MoP 1989-91/79. There was an earlier advice from the ACT Government Law Office that confirmed the validity of the standing orders.

¹¹⁷ Standing order 5A. The Member must consent to being Leader of the Opposition.

¹¹⁸ MoP 1992-94/4; 1995-97/5; 1998-2001/4; 2001-04/3; 2004-08/3.

¹¹⁹ MoP 1989-91/483; 1992-94/331; 1995-97/284.

¹²⁰ Standing order 5B (adopted 21 June 1991).

¹²¹ See Assembly Debates (21.6.1991) 2255.

¹²² MoP 1989-91/469-70, 473, 479-81; Assembly Debates (21.6.1991) 2337-76; MoP 1989-91/483; Assembly Debates (6.8.1991) 2379.

¹²³ MoP 1989-91/473. The result of the first ballot was six votes for Mr Humphries, six votes for Mr Duby. That of the second was five votes for Mr Humphries, six votes for Mr Duby. The lists of Members of the Assembly show Mr Duby's and one other Member's party affiliation as Independents Group, with five Members, including Mr Humphries, listed as members of the Liberal Party. Later that evening, in an unusual procedure, the Assembly ordered that the ballot papers for the second ballot for the election of the Leader of the Opposition earlier that day be laid on the table by the Clerk and this was done; see MoP 1989-91/476. The motion was moved by leave.

¹²⁴ Assembly Debates (21.6.1991) 2256-7.

5.64 Later that evening, the Assembly amended standing orders 5A and 5B, adopting the current recognition provisions.¹²⁵ Following the Assembly's agreement to the amendment, the new leader of the Liberal Party gave his consent to his appointment as Leader of the Opposition. The actions of the Assembly on 21 June 1991, in adopting and applying amended standing orders 5A and 5B, were also called into question and further legal advice was sought. That advice, later tabled, stated that the recognition of the position in the standing orders did not contravene the provisions of the Self-Government Act and upheld the validity of the actions of the Assembly on 21 June 1991.¹²⁶

5.65 The office of Leader of the Opposition has statutory recognition and attracts a special allowance.¹²⁷ Other than in standing orders 5A and B, the position receives no special recognition in standing and other orders of the Assembly. It is the practice of the Assembly for the Leader of the Opposition to receive the first call from the Chair in question time. In June 1994 the Commonwealth Remuneration Tribunal determined an additional salary for the Deputy Leader of the Opposition.¹²⁸

ADMINISTRATION OF THE ASSEMBLY

5.66 The Speaker, within the bounds of any orders of or directions by the Assembly or any legislative provisions to the contrary, has control of the Assembly precincts and the provision of building services to all Members, including Ministers, and administrative support services to non-executive Members. This control is provided for in the *Legislative Assembly Precincts Act 2001*.

5.67 The Assembly has established, pursuant to standing order 16, a Standing Committee on Administration and Procedure. Its role is to consider the Assembly's annual estimates of expenditure, the practices and procedures of the legislature and changes to standing orders. The committee also has an advisory role to the Speaker on Members' entitlements, including facilities and services, the operation of the Hansard service, the availability of Assembly documents to the public and the operation of the Assembly Library.¹²⁹

5.68 The Assembly Secretariat, under the direction of the statutory office of Clerk, provides procedural, policy and administrative support for the Speaker and the Assembly and, in particular, administrative support for non-executive Members and their offices.

CLERK

5.69 The office of Clerk has a long history in Australian legislatures and in the United Kingdom.¹³⁰ The Clerk of the Legislative Assembly has a range of responsibilities, key ones being as principal adviser to the Speaker and Members on procedural matters and chief executive of the Legislative Assembly Secretariat. The *Public Sector Management Act 1994* confirms the independence of the Clerk by stating that 'the clerk is not subject to direction by the Executive in the discharge of the clerk's functions'.¹³¹

125 MoP 1989-91/479-81; Assembly Debates (21.6.1991) 2337-76.

126 MoP 1989-91/483; Assembly Debates (6.8.1991) 2379. There were two opinions from the Deputy Law Officer, Constitutional and Law Reform Branch, Attorney-General's Department, dated 3 and 24 July 1991.

127 For the purposes of remuneration and allowances, the office of Leader of the Opposition is declared to be an office to which section 73 of the Self-Government Act applies; see *Remuneration Tribunal Act 1995*, subsection 9(3).

128 See Remuneration Tribunal Determination No. 13 of 1994, dated 30 June 1994.

129 The committee also has the duty of arranging the order of private Members' and Assembly business.

130 See *House of Representatives Practice*, p. 203.

131 *Public Sector Management Act 1994* (ACT), section 46.

5.70 The Clerk reads the instrument convening the first meeting of an Assembly following a general election, presents the official notification of the election of each Member and, until a Speaker is elected, chairs the Assembly. After the Members have been sworn in at the first meeting of an Assembly or whenever there is a vacancy in the office, the Clerk conducts the election of a Speaker.

5.71 The Clerk has the duty of producing the *Minutes of Proceedings* of the Assembly, has the custody of the Minutes and keeps a record of all documents laid before the Assembly. The Clerk is also responsible for maintaining the Members' roll and the record of attendance of Members, for the production of the *Notice Paper*, and for the provision of the requisite documentation, advice and services necessary for the smooth running of the Chamber. A particularly important responsibility of the Clerk is the certification of bills agreed to by the Assembly.

5.72 In addition to his or her administrative duties as chief executive of the Legislative Assembly Secretariat, the Clerk has duties in relation to the Legislative Assembly Precincts Act, the Legislative Assembly (Broadcasting) Act and the Legislative Assembly (Members' Staff) Act as well as duties in relation to the receipt of reports and documents for tabling.¹³²

5.73 During any vacancy in the office of Clerk or while the Clerk is absent from duty for any reason, all the powers, functions and duties of the Clerk are exercised by the Deputy Clerk.¹³³

5.74 The Speaker appoints the Clerk on behalf of the Territory and does so:

- on the advice of the appropriate standing committee of the Assembly;
- in consultation with the Leader of the Opposition and the executive; and
- in accordance with the merit principles set out in section 65 of the *Public Sector Management Act 1994* that relate to the appointment.¹³⁴

5.75 The Public Sector Management Act also establishes:

- that the Clerk holds office on the terms and conditions (if any) in relation to matters that are not provided for in the Act but which are prescribed;
- requirements for the lodgement of a statement of interests by the Clerk and his or her resignation;
- that the Speaker can retire a Clerk on the ground of physical or mental incapacity, suspend him or her from duty and terminate the appointment on the ground of misbehaviour or physical or mental incapacity;¹³⁵
- that the Clerk's remuneration, allowances and other entitlements are determined by the Remuneration Tribunal;¹³⁶
- that the Speaker may grant leave of absence to the Clerk in accordance with prescribed terms and conditions and may appoint the Deputy Clerk or, in the absence of the Deputy Clerk, any other member of the staff of the Secretariat, to act as the Clerk.¹³⁷

¹³² Usually in the absence of the Speaker and Deputy Speaker. See for example *Auditor-General Act 1996*, section 4; *Annual Reports (Government Agencies) Act 2004*, section 13.

¹³³ Standing orders 14 and 15.

¹³⁴ *Public Sector Management Act 1994*, section 46.

¹³⁵ *Public Sector Management Act 1994*, sections 48, 50, 51 and 52.

¹³⁶ *Remuneration Tribunal Act 1995*, section 10.

¹³⁷ *Remuneration Tribunal Act 1995*, sections 47 and 53.

6.1 The responsibility for governing the Australian Capital Territory rests with the executive, established by the Self-Government Act as the executive arm of the body politic. The initial allocation of responsibilities to the executive in the Australian Capital Territory reflected the approach adopted in the *Northern Territory (Self-Government) Act 1978*.¹ The executive's areas of responsibility are set out in schedule 4 of the Act and cover a wide range of 'state-type' and local functions, which distinguishes the ACT from the Northern Territory.² Schedule 4 lists over 60 matters which the executive has power to govern the Territory.

6.2 The Act also gives general authority to the ACT executive for the:

- execution and maintenance of enactments and subordinate laws;
- exercising of such other powers as are vested in the executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a state or another territory; and
- exercising of prerogatives of the Crown so far as they relate to these responsibilities.³

6.3 Section 74 of the Self-Government Act allows the Governor-General to add further responsibilities by regulation. This occurred in 1989 when law and order, legal practitioners, the magistrates court, the coroner's court and courts other than the magistrates court and the coroner's court were added to schedule 4.⁴

6.4 The structure of government is not dissimilar to other Australian jurisdictions and those elsewhere that are derived from the system of government in the United Kingdom, with an executive government chosen from, and responsible to, a democratically elected legislature. What is unusual in the Australian context is that, unlike the Commonwealth, the states and the Northern Territory, there is no office equivalent to the Governor-General, state Governors or Administrator of the Northern Territory.

6.5 In the Northern Territory, for example, the Administrator is charged with the duty of administering the Territory, but in doing so is advised by an Executive Council consisting of persons for the time being holding ministerial office who are appointed by the Administrator.⁵ The ACT has no comparable office.

6.6 In the ACT the Chief Minister is elected by the Assembly from among its Members and the Chief Minister appoints up to five Ministers,⁶ who must also be Members of the Assembly.⁷ The Chief Minister and the Ministers he or she appoints constitute the ACT executive. Ministers, once appointed, retain their office until they resign, vacate their office as a

1 Australian Capital Territory (Self-Government) Bill 1988, Explanatory Memorandum, p. 3.

2 See comments by the Minister for the Arts and Territories in introducing the Self-Government Bill, H.R. Deb. (19.10.1988) 1922.

3 Self-Government Act, sections 37, 38 and 38A.

4 Statutory Rules 1989, No. 86 (Cwlth).

5 Northern Territory (Self-Government) Act 1978, Part IV. The Governor-General has the power to dissolve the ACT Assembly in extraordinary circumstances (see paragraphs 1.42 to 1.44) and also has the power to disallow and recommend amendments to enactments (see paragraphs 1.19 to 1.36).

6 Self-Government Act, section 39. Subsection 39(2) provides that '... the exercise of the powers of the Executive is not affected merely because of a vacancy or vacancies in the membership of the Executive'.

7 Self-Government Act, subsections 41(1) and (2A). The Speaker and Deputy Speaker are ineligible for appointment.

Member, are dismissed by the Chief Minister, or until immediately before a new Chief Minister is elected.

6.7 The Assembly must meet within seven days after the result of a general election is declared. At its first meeting the Members present must, after electing a Speaker and before any other business, elect a Chief Minister. Similarly, the Assembly must elect a Member to be Chief Minister whenever the office falls vacant for whatever reason, apart from a dissolution of the Assembly. Procedures are in place to ensure that a Chief Minister is elected at the earliest opportunity.⁸

6.8 Should the Assembly be unable to elect a Chief Minister when required to do so (in the event of a vacancy in the office or following a no confidence resolution), there are constitutional mechanisms in place to ensure that the responsibilities of the executive continue to be exercised:

- in the event of the Assembly passing a resolution of no confidence in the Chief Minister, the Chief Minister does not vacate his or her office until immediately before another Chief Minister is elected;
- should the Assembly not elect a Chief Minister within a period of 30 days after passing a resolution of no confidence in a Chief Minister (and the Assembly has not been dissolved in that period), there is provision for a general election to be held on a day specified by the Commonwealth Minister;⁹
- should the Chief Minister vacate his or her office by resignation or by ceasing to be a Member of the Assembly (other than because of a general election),¹⁰ the Deputy Chief Minister acts as Chief Minister;¹¹ and
- in the event of vacancies in all ministerial offices (including that of Chief Minister) where there is a necessity to exercise the powers of the executive for the purpose of maintaining the provision and control of essential services, the Commonwealth Minister may exercise those powers until a Chief Minister is elected.¹²

EXECUTIVE IN THE ASSEMBLY

6.9 The Australian Capital Territory as a body politic consists of the executive exercising the executive power and the Legislative Assembly exercising the legislative power. The Assembly has the powers to make the laws for the peace, order and good government of the Territory and that power extends to the power to make laws with respect to the exercise of powers by the executive. In addition, the receipt, spending and control of the public money of the Territory must be regulated as provided by enactment and no public money may be issued or spent except as authorised by enactment.¹³

6.10 Membership of the executive is usually drawn from the political party or coalition of parties and Members that support the Chief Minister. It is not necessary that the governing party or parties comprise a majority of the Members of the Assembly; in fact, for most of the period since self-government the Territory has been governed by minority governments.

⁸ Self-Government Act, section 40; standing order 12. Section 45 of the Self-Government Act provides that the Chief Minister resigns office by written notice to the Speaker. See paragraph 6.52.

⁹ Self-Government Act, section 48.

¹⁰ See paragraph 6.51.

¹¹ Self-Government Act, subsections 44(2) and 44(3). And see footnote 10.

¹² Self-Government Act, section 47. Inability to agree on the election of a Chief Minister might also trigger section 16 of the Self-Government Act, which allows the Governor-General to dissolve the Assembly and appoint a commissioner to govern the ACT where the Assembly is considered to be incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.

¹³ Self-Government Act, sections 22, 57 and 58.

6.11 It is critical that the executive retains the confidence of the Assembly. However, defeat on particular measures is not treated as a loss of the confidence of the Assembly. The prevalence of minority governments in the first five Assemblies has meant that failure to pass significant pieces of legislation is not uncommon.

6.12 On one occasion the motion that the annual appropriation bill (the budget) be agreed to was defeated. The bill provided funds for a highly controversial supervised heroin injecting facility. The Assembly adjourned to the next scheduled sitting day and the government restructured both the appropriation bill and the injection room proposal. At its next meeting the Assembly rescinded the vote on the appropriation bill, agreed to government amendments and passed the amended bill.¹⁴ Generally the passage of a motion of no confidence is necessary to unseat a Chief Minister.¹⁵

CABINET

6.13 By convention, the executive determines its policies and makes its decisions through a cabinet system of decision making, with cabinet decisions seen as binding on all Ministers as government policy. This convention of collective responsibility is supported by the convention of cabinet confidentiality, whereby strict confidentiality is attached to cabinet documents and cabinet discussions. As stated in the current *Cabinet Handbook*:

Cabinet is the forum in which Ministers are able to discuss proposals and express their views with complete freedom while working towards a collective position. The openness and frankness of discussions in the Cabinet Room are protected by the strict observance of this confidentiality.¹⁶

6.14 The current code of conduct for the executive¹⁷ not only addresses ministerial obligations to the Assembly but also addresses collective responsibility:

All Ministers who make up the executive of the Government acknowledge that the collective decisions of Cabinet are binding on them individually. If a Minister is unable to publicly support a Cabinet decision, the proper course is to resign from Cabinet. This convention is based on the proceedings of Cabinet ordinarily being private and with the decisions of Cabinet being collective in nature.

6.15 The Assembly has seen fit to enact provisions reinforcing Ministers' individual responsibility for the administration of departments and other administrative units mainly through amendments to the *Public Sector Management Act 1994*. On another occasion, the Assembly recognised an arrangement whereby the convention of collective responsibility was waived.

6.16 In December 1995 the Assembly considered significant amendments to the Public Sector Management Act which introduced new employment arrangements for chief executives and executives (senior public servants). During detail stage consideration of the bill a provision was inserted to ensure that nothing in a contract between the Territory and a person

¹⁴ See Assembly Debates. (29.6.2000) 2209-30, 2265-367 and (10.7.2000) 2427-41. Because of the way Territory finances are structured, the defeat of the appropriation bill did not precipitate any immediate financial crisis for the government. This does not diminish the seriousness of such a setback to a government and the precarious position it would be in should it be unable to obtain the Assembly's agreement to an appropriation proposal within a reasonable time. There is no legal requirement or convention that guarantees a government supply. For a full discussion of this matter, see paragraphs 11.185 to 11.195.

¹⁵ See Assembly Debates (5.12.1989) 2987-3046.

¹⁶ *Directions on Cabinet Procedure: ACT Government Cabinet Handbook*, January 2007, p. 2.

¹⁷ *Code of Conduct for Ministers*, Australian Capital Territory Government, February 2004. Presented in the Assembly on 12 February 2004; see MoP 2001-04/1122.

engaged to perform the duties of an office of chief executive could be taken to derogate from the responsibility of a Minister administering an administrative unit for the policies developed or applied by the administrative unit and the financial and other performance of the administrative unit. The issue had been canvassed in a report on the bill by the Standing Committee on Public Accounts.¹⁸

6.17 By arrangement, the convention of collective responsibility (or cabinet solidarity) was not followed during the Fourth Assembly. This resulted in moves from the floor of the Assembly (ultimately successful) to enact legislation to ensure that the convention operated in regard to the making of subordinate legislation.

6.18 In April 1998 Chief Minister Carnell appointed an independent Member, Mr Moore, as a Minister pursuant to certain conditions that had been recommended in a report entitled *Review of Governance of the Australian Capital Territory*.¹⁹ The review investigated the basis upon which a non-government Member could become a Minister. This included identifying areas in which the new Minister would not necessarily be bound by cabinet solidarity.²⁰

6.19 The Chief Minister presented letters that had been exchanged between Mr Moore and herself with regard to his appointment as a Minister. The letters indicated Mr Moore's acceptance to become part of the government and his agreement to the three conditions set out in the review. These conditions were that:

- the crossbench Member be willing to give prior notice of the sorts of issues on which he reserved the right to dissent in public and in the Assembly;
- as a Minister, he should be willing, where it falls within his brief, to act in the implementation of a decision from which he dissents; and
- as a Minister he should be prepared to renounce the use of the threat to resign in cabinet negotiations.

6.20 Additionally, Mr Moore saw it as appropriate for him to step aside from cabinet when it was considering issues that he had identified beforehand as issues where he might have a different approach (having first attempted to see if there was a compromise that could be reached). A 'list of issues which may require standing aside from Cabinet discussion and debate on individual issues while retaining normal Assembly debating and voting rights' was attached.²¹

6.21 The Chief Minister offered Mr Moore a ministerial position based upon the framework outlined in the review's report, while accepting that there were a number of issues on which Mr Moore would continue to dissent from in relation to stated government policy. On all other matters, particularly with regard to the budget and his portfolio responsibilities, Mr Moore would be a full member of cabinet and be bound by collective cabinet responsibility and confidentiality.

6.22 This arrangement led to a proposed amendment to the [then] Subordinate Laws Act to ensure collective and individual responsibility by the executive for the making and signing of regulations. The amendment proposed that the approval of the whole executive be required for any subordinate law proposed by a Minister and that the Minister responsible for administering the subordinate law be one of the Ministers signing the subordinate law. The requirement applying at that time was that any two Ministers who were Members of the

18 MoP 1995-97/228-9, 237; Assembly Debates (12.12.1995) 2865-6.

19 The Pettit Review.

20 MoP 1998-2001/7; Assembly Debates (28.4.1998) 19-21.

21 The list of topics was general in nature.

executive could sign a regulation into effect. The Member sponsoring the bill viewed the then existing provision (whereby any two Ministers who were members of the executive could sign a regulation into effect) as being used to breach the clear intention that any two Ministers signing regulations were clearly interpreting the will of the executive.

6.23 In addition, it was argued that the Westminster convention of collective and personal ministerial responsibility was being undermined by the practice.²² Although the bill lapsed at the expiration of the Fourth Assembly, the substantive provisions were inserted in the Legislation Act in May 2002.²³

6.24 Arising out of this arrangement, standing orders 77 and 78 were amended by temporary order to make provision for a new category of business—'Executive Members' business'.²⁴

Standing and other orders of the Assembly pertaining to the executive

6.25 The standing rules and orders of the Assembly allocate to the executive and Ministers certain prerogatives as well as imposing upon them essentially the same duties and responsibilities as those imposed upon other Members, though Ministers are rarely called upon to sit upon Assembly committees.²⁵

6.26 Only Ministers may propose any enactment, vote or resolution for the appropriation of the public money of the Territory, and non-executive Members are precluded from moving an amendment to such a proposal if it would increase the amount of public money to be appropriated.²⁶ In November 1995 the Assembly, by resolution, further limited the ability of non-executive Members to move amendments to appropriation bills other than those to reduce items of proposed expenditure²⁷ (see paragraphs 11.178 to 11.190).

6.27 Standing orders also provide that only a Minister may require that the question on the (automatic) adjournment be put forthwith without debate,²⁸ move a motion without notice to fix the next meeting of the Assembly,²⁹ move a motion pursuant to standing order 214³⁰ and (together with the Speaker) present papers.³¹

6.28 The Assembly grants precedence to executive business over private Members' business and Assembly business, except for sitting Wednesdays and a period of 45 minutes on

22 See Assembly Debates (25.8.1999) 2362-3. The background to this matter was that the Attorney-General had stated that (a) he intended, with the assistance of the Minister for Urban Services, to introduce regulations concerning abortion pursuant to an Act administered by the Minister for Health, Mr Moore and (b) that he (the Attorney) had no intention of seeking the approval of the executive in order to make the regulations. Mr Moore had publicly stated that he would not make any such regulations and that if they were made he would vote against them. The Leader of the Opposition argued that the Attorney-General was promoting a fiction—that any two Ministers were, for the purposes of exercising the regulation making power, the executive.

23 On the motion of a non-executive Member and with the support of the executive; see MoP 2001-04/151, 156-7. The provisions are now included in sections 41 and 253 of the Legislation Act.

24 MoP 1998-2001/186-7, and see Chapter 8: Conduct of the business of the Assembly.

25 During the course of the Fifth Assembly the Deputy Chief Minister, Mr Quinlan, was appointed to a Select Committee on Privileges to inquire into the possible unauthorised dissemination of committee material and other matters (MoP 2001-04/802-3). On other occasions, Ministers have remained as members of select and standing committees for short periods following their appointment as Ministers.

26 Self-Government Act, section 65; standing orders 200, 201 and 201A.

27 MoP 1995-97/201-02.

28 Standing order 34.

29 Standing order 36.

30 Standing order 214: 'On any paper being presented to the Assembly ... a Minister may move without notice ...' either that the Assembly take note of the paper or that it be referred to a committee.

31 Standing order 211.

sitting Thursdays.³² Ministers are not given any special prerogatives in the allocation of speaking times;³³ one prerogative, that of having the exclusive ability to move a motion without notice to suspend the standing and temporary orders, has been removed by the Assembly.³⁴

6.29 Although the executive is in a strong position, the reality in the Assembly has been that non-executive Members enjoy significant opportunities to sponsor legislative proposals and raise issues in the Assembly. Over the years there have been significant initiatives to enhance the Assembly's ability to test and appraise the executive's performance. Two indications of the important role performed by non-executive Members are that, since self-government, an average of fewer than six motions to close debate have been agreed to each year³⁵ and 21%³⁶ of the bills introduced have been sponsored by them.

6.30 In addition, since the adoption of its standing orders in May 1989, the Assembly has adopted a range of initiatives to enhance its scrutiny of the executive. It has done this by way of orders or by exercising its power to make laws with respect to the exercise of powers by the executive. The initiatives include:

- appointing and reappointing standing committees to scrutinise the administration of the executive together with standing committees undertaking the duties of a public accounts committee and a standing committee on the scrutiny of bills and subordinate legislation;
- appointing committees to examine the annual estimates of expenditure for, and annual reports of, executive agencies;
- strengthening the standing orders governing questions seeking information by ensuring that each non-executive Member has the opportunity to ask a question each sitting;³⁷
- adopting procedures whereby, should a Minister not answer a question on notice (or a question taken on notice) within a given time, an explanation may be sought and further action taken³⁸ and the imposition of a time limit on answers;³⁹
- enhancing the Assembly's powers with respect to subordinate legislation by, inter alia, ensuring that if a disallowance motion is not considered and negatived within a set time, the subordinate instrument is automatically disallowed;⁴⁰
- permitting the Assembly to amend a subordinate law that has been laid before it,⁴¹ and requiring regulatory impact statements to accompany subordinate legislation in circumstances where there may be appreciable costs placed on the community or part of the community;⁴²
- enacting, and later strengthening, provisions whereby a Minister must consult a standing committee of the Assembly (nominated by the Speaker) concerning appointments to statutory offices and making such instruments of appointment disallowable instruments;⁴³
- imposing upon Ministers the duty to inform and consult with other Members in regard to matters being negotiated between governments so as to protect the freedom of the

32 Standing order 77.

33 With the exception of standing order 69(c).

34 MoP 1995-97/16. The prerogative had been removed by temporary order for some time.

35 The closure, or the 'gag', is the motion 'That the question be now put'. Of the 112 agreed to up until the end of the Sixth Assembly, 55 occurred during the course of the First Assembly.

36 As at 31 December 2006.

37 Standing order 113A.

38 Standing order 118A.

39 Standing order 118(c).

40 *Subordinate Laws (Amendment) Act 1991*. These provisions are now contained in the Legislation Act.

41 *Subordinate Laws (Amendment) Act 1994*. These provisions are now contained in the Legislation Act.

42 *Subordinate Laws (Amendment) Act 2000*. These provisions are now contained in the Legislation Act.

43 *Statutory Appointments Act 1994* and *Statutory Appointments (Amendment) Act 1996*. These provisions are now contained in the Legislation Act.

Assembly to carry out its legislative deliberations without being subject to necessity and compulsion arising from the actions of the executive;⁴⁴

- enacting the *Public Access to Government Contracts Act 2000* requiring government agencies, within 21 days of a contract, to prepare and publish a public text of the contract, setting out grounds for any confidentiality of information, requiring that relevant Assembly committees be informed of confidentiality clauses on a regular basis and obliging agencies to provide certain information required by committees;⁴⁵ and
- the order of the Assembly (10 April 2002) calling upon the Chief Minister to include in any relevant instrument relating to the information to be included in annual reports made pursuant to the provisions of the *Annual Reports (Government Agencies) Act 1995* directions to include a schedule outlining action that has been achieved and in progress on the implementation of recommendations of Assembly standing and select committees that have been accepted by the government of the day.⁴⁶

6.31 In addition, the Assembly has from time to time, by order, forced the executive to present papers or make them available for Members to scrutinise, and there has been enactment of a range of legislative provisions obliging Ministers to present copies of reports and documents to the Assembly or nominated committees.⁴⁷

Respective roles of the Assembly and the executive

6.32 Over the Assembly's brief history there have been proposals for a more consensual approach to policy making and government administration. The view has been expressed that the traditional and confrontational government-versus-opposition model is inappropriate in a small polity such as the ACT in that it militates against the involvement of all shades of opinion in government.⁴⁸ Concerns were also expressed that if this model were adopted, the distinction between the roles of the executive and the Assembly may become blurred.

6.33 Examples where there have been concerns expressed that the distinction between the executive and the Assembly have become blurred in a manner detrimental to both have been:

- repeated concerns expressed regarding the role of Executive Deputies in the First Assembly;⁴⁹
- the reaction to the 1998 proposal to move towards a more cooperative approach to government in the Territory by the establishment of executive committees chaired by crossbench Members;⁵⁰ and

44 *Administration (Interstate Agreements) Act 1997*. This Act has, however, since been repealed. The executive gave the Assembly an understanding that a list of current negotiations will be tabled in the Assembly every six months, and that Ministers will table the full text of any intergovernmental agreements as soon as practicable after they have been signed. See Assembly Debates (20.10.2005) 3909-10.

45 These provisions are now included in the *Government Procurement Act 2001*.

46 The Act also imposes a range of obligations upon Ministers regarding the presentation of annual reports, instruments and directions.

47 These include statements, statements of reasons, statements of interest, reviews, directions and guidelines, reasons for suspension, notice of decisions, instruments, declarations, notices of suspension, plans and variations and certificates. See paragraph 14.14 to 14.15.

48 See, for example, *Governing Canberra—A Report to the ACT Chief Minister from the Government Reform Advisory Group*, Australian Capital Territory Government, December 1995, MoP 1995-97/259; Assembly Debates (21.2.1996) 125-31; Assembly Debates (26.3.1996) 605-13.

49 Assembly Debates (14.12.1989) 3133-4; (13.2.1990) 2-5; (20.3.1990) 538-9; (2.5.1991) 1940.

50 See *Advice concerning proposed executive committees* (Paper prepared by the Clerk of the Assembly), MoP 1998-2001/8-12; Assembly Debates (30.04.1998) 269-79.

- the resistance to an executive proposal (described by the sponsoring Minister as ‘quite revolutionary’) to involve the broader community, in particular Assembly committees, in the process of drafting budgets.⁵¹

6.34 The executive has, on occasion, expressed serious concern that the Assembly is encroaching upon its role. For example, in December 1999 the executive reluctantly agreed to appoint a board of inquiry pursuant to the Inquiries Act to inquire into services for people with disabilities in the Territory in residential care,⁵² the Assembly having first called upon and then directed the executive to appoint the board.⁵³

6.35 In 2000, during consideration of a bill proposing to insert into the Inquiries Act a provision whereby the executive was obliged to appoint a board of inquiry should the Assembly pass a resolution (pursuant to specific conditions) calling on it to do so, the issue of the respective roles and responsibilities of the executive and the legislature and the separation of powers was debated. The bill was negated and during the debate Members expressed a view that the enactment of the legislation would have diminished the responsibility of the executive and undermined the Assembly’s ability to hold it responsible and accountable.⁵⁴

6.36 How real are these concerns? Very few of the more radical proposals have been accepted. Successive Assemblies have adopted quite conservative views on the appropriate structures and relationships between the executive and legislature. Perhaps only the appointment of a Minister from the crossbenches (see paragraphs 6.17 to 6.24) who was not wholly bound by collective cabinet responsibility and who reserved the right to speak and vote against the government represented a significant break with established practice.

6.37 In reality, the Legislative Assembly has put in place a formidable collection of mechanisms to ensure that government is accountable—an active committee system and a powerful Auditor-General foremost among them—and, as outlined above at paragraph 6.30, a range of orders and procedures to require a high degree of transparency of government.

6.38 It is sometimes claimed that, where the Assembly imposes a particular policy or approach on an unwilling executive, this somehow diminishes executive responsibility for the outcomes. However, in a situation where an executive accepts significant changes to its policy proposals as the price for getting some part of its program through the Assembly, it accepts full responsibility for the modified program. If the executive believes that a policy imposed on it is unworkable and declines to accept responsibility for it, it should resign. To date, no executive in the Assembly has chosen to follow that course. It is up to the executive to decide how to react to a defeat in the Assembly or to a particular resolution or decision of the Assembly. That reaction will be determined by the issues of the day; it may decide to take action to assuage the Assembly⁵⁵ or choose to take an alternative course.

6.39 Questions have also been raised in the Assembly about the possible effect of resolutions that seek to impose a particular policy or action upon the executive, including whether certain motions were in breach of the provisions of standing order 200. In June 1997, during consideration of a motion (sponsored by a non-executive Member) calling upon the government to take certain alternative action in relation to proposed building demolitions,⁵⁶

51 MoP 1998-2001/1018-9.

52 In his statement the Chief Minister stated that the government did so with regret and in circumstances it wished were otherwise but was aware that it was a clear requirement of the Assembly; see Assembly Debates (5.12.2000) 3644-5.

53 MoP 1998-2001/1024, 1052-3.

54 Assembly Debates (14.6.2001) 1708-23.

55 See, for example, the response of the Chief Minister to a resolution expressing lack of confidence in a Minister at paragraph 6.45.

56 The motion called upon the government to demolish certain buildings on Acton Peninsula by a method other than that proposed and to take certain action in relation to the demolition materials remaining.

issues were raised as to the extra expense imposed on the Territory if the motion were agreed to and whether the government would be in contempt of the Assembly should it ignore such a resolution. The Speaker ruled the motion in order but sought advice on whether:

- motions calling upon or even directing the executive to take action that would have the effect of increasing expenditure (or transferring funds) contravene the provisions of the standing orders or the practices of the Assembly; and
- the executive would be in contempt of the Assembly if it ignored or in other ways did not comply with resolutions of the Assembly.⁵⁷

The advice, later tabled in the Assembly, addressed the questions raised in detail and concluded:

- motions such as those proposed were not contrary to the standing orders or practices of the Assembly;⁵⁸
- as the Assembly's contempt powers were limited to matters that would amount to an improper interference with the Assembly, its Members or committees, the executive's action in ignoring or rejecting such a resolution would not imply such interference and could not therefore be regarded as a contempt.⁵⁹

6.40 In practice, where parties forming government have not commanded majority support in the Assembly, executives have shown a willingness to accept defeat on issues or accept significant changes to their legislative proposals and continue to govern rather than test the confidence of the Assembly or offer their resignation. This willingness to accept significant change extends even to appropriation bills.⁶⁰ Thus, what appeared to be emerging prior to the majority government in the Sixth Assembly was a model where the largest single party was allowed to continue in office even though it did not have an outright majority in the Assembly. The price extracted by the Assembly is either the abandonment of more controversial policies or acceptance of some of the priorities of the non-government parties or groupings.

NO CONFIDENCE AND CENSURE MOTIONS

6.41 The responsibility of the executive to the Assembly is most dramatically evident when the Assembly considers a motion of no confidence in the Chief Minister in accordance with standing order 81. Successive Assemblies have shown a willingness to move motions of no confidence in and censure of the executive and individual Ministers, and a range of motions critical of Ministers in other terms has also been moved. Two governments have been replaced after losing votes of confidence; a Chief Minister resigned rather than contest a no-confidence motion; and one Minister has also resigned after passage of a motion of no confidence.

6.42 Until December 2007, eight notices of motions expressing no confidence in the Chief Minister have been lodged and announced by the Clerk. On two occasions the motions were resolved in the affirmative by an absolute majority of Members after consideration by

⁵⁷ Assembly Debates (7.5.1997) 1091-7.

⁵⁸ The advice concluded that the motion did not offend standing orders as it was not a proposed enactment, vote or resolution in the terms of standing orders 200 and 201 and, with the exception of the practice in relation to amendments to appropriation bills and the limitation on amendments that may be moved to subordinate laws, the Assembly had not imposed any further limitations on non-executive Members in relation to putting proposals to the Assembly in relation to the revenue of the Territory or expenditure of funds. See also the ruling by Speaker Berry, Assembly Debates (23.9.2003) 3510.

⁵⁹ Motion calling on government to take certain action concerning demolition of buildings on Acton Peninsula—*Standing Order 200—Possible contravention—Possible contempt of the Assembly, Advice of the Clerk of the Assembly*, 24 June 1997. MoP 1995-97/724; Assembly Debates (26.6.1997) 2196.

⁶⁰ As noted above, paragraphs 6.11 to 6.12, on one occasion a government had its appropriation bill defeated and responded by coming back to the Assembly with a modified proposal addressing the key criticisms of the non-government parties.

the Assembly, and the Assembly proceeded to elect another Member as Chief Minister. On one occasion the motion was negated, the votes for the ayes and noes being equal;⁶¹ on another, the Chief Minister tendered her resignation as Chief Minister after the notice had been lodged and announced, but before it was debated.⁶² A motion of no confidence in the Chief Minister has been amended to one of censure for her failure to ensure that certain legislative requirements were met in relation to the funding of a sports stadium redevelopment⁶³ and on a further occasion such a motion has been amended to one expressing grave concern at the Chief Minister's conduct in misleading the Assembly on a specified matter.⁶⁴

6.43 In March 1996 the Assembly censured the Chief Minister, who was also Minister for Health and Community Care, for recklessly misleading the Assembly on a matter and her inability to meet her own financial standards as demonstrated by her failure to control the health budget.⁶⁵

6.44 In August 2003 a motion was moved proposing, inter alia, to censure the government for administrative failings and misleading the Assembly in relation to bushfire education. After the question was divided, that part relating to the censure was negated.⁶⁶

6.45 The Assembly has also considered motions expressing lack of confidence in or censure of Ministers. In April 1994 the Assembly agreed to a resolution expressing lack of confidence in a Minister 'for reason of his deliberate or reckless misleading of the Assembly' concerning matters related to his portfolio responsibilities. The Chief Minister advised the Assembly of the Minister's resignation the next day, stating that although she had complete confidence in the Minister, her confidence had not been shared by the Assembly and, consistent with the traditions of Westminster government, the Minister had now offered, and she had accepted, his resignation.⁶⁷

6.46 Motions expressing lack of confidence in Ministers over various issues have been negated or amended. Examples include motions expressing lack of confidence for administrative action taken in contempt of the clear resolution and intention of the Assembly;⁶⁸ for various matters relating to the Minister's administration of his portfolio;⁶⁹ for proposed cuts to teacher positions in government schools;⁷⁰ for misleading the Assembly;⁷¹ for expressed administrative failures or failure in meeting responsibilities;⁷² for being found to be in contempt of the Assembly by a Select Committee on Privileges;⁷³ for persistently and wilfully misleading the Assembly on a number of issues;⁷⁴ and for just expressing lack of confidence in particular Ministers.⁷⁵

61 MoP 1998-2001/614.

62 The notice of motion was eventually withdrawn in accordance with standing order 128, having been called upon following the election of a new Chief Minister; see MoP 1998-2001/1014.

63 MoP 1998-2001/427, 433-5.

64 MoP 2001-04/1323, 1327-9.

65 The motion was moved by leave; see MoP 1995-97/295-6.

66 MoP 2001-04/856-8.

67 MoP 1992-94/549-551, 553; Assembly Debates (13.4.1994) 755.

68 MoP 1992-94/363-4. The motion as moved also required that 'in line with long established and numerous precedents in the Westminster parliamentary system' the Minister resign forthwith.

69 MoP 1992-94/254-5.

70 MoP 1992-94/473-4. The motion was amended to one of censure of the Minister.

71 MoP 1992-94/798. The motion was negated.

72 MoP 1995-97/481-2. The Minister was also the Chief Minister. The motion was negated. MoP 1995-97/736-7. The motion was negated. MoP 1998-2001/416-7. The motion was negated.

73 MoP 2001-04/996. The motion was amended to an expression of grave concern.

74 MoP 2001-04/1455, 1467-8. The motion was amended to one of censure.

75 MoP 2004-08/33 (negated) and 140 (negated).

6.47 Motions have also been moved expressing condemnation of a Minister for aspects of his administration of his portfolio;⁷⁶ calling upon the Attorney-General to stand aside (until a coronial inquest and other related court action was concluded);⁷⁷ urging the Chief Minister to stand a Minister aside until sexual harassment allegations against him were resolved;⁷⁸ and calling on the Chief Minister to remove certain administrative responsibilities from a Minister and to allocate them to another nominated Minister pending the presentation of a report by an Assembly committee.⁷⁹

6.48 Ministers have been censured by the Assembly for proposed cuts to teacher positions in government schools;⁸⁰ for continued defiance of the will of the majority of the Assembly by failing to act upon the unanimous recommendation of the estimates committee and for the failure of the government to live up to a specific promise;⁸¹ for failure to act in accordance with the Assembly's wishes as expressed in a resolution of the Assembly;⁸² for recklessly misleading the Assembly;⁸³ and for failure to take certain action as directed by the Assembly.⁸⁴

6.49 Motions expressing censure of Ministers have been negated,⁸⁵ withdrawn by leave⁸⁶ or amended to motions:

- admonishing the Minister for an unwarranted personal attack on another Member, misleading the Assembly and failure to discharge ministerial obligations;⁸⁷
- admonishing the Minister for answers given in question time;⁸⁸
- expressing criticism or censure of another Member⁸⁹ or the opposition;⁹⁰
- calling on the Minister to be more responsive to the Assembly and its committees and obliging him to provide monthly reports to the Assembly;⁹¹
- expressing grave concern regarding a claim made in the Assembly;⁹²
- calling on the Minister to provide a report to the Assembly on a matter and take further administrative action;⁹³ and
- drawing the attention of the Auditor-General to an issue and asking him to conduct a performance audit on the matter.⁹⁴

76 MoP 2001-04/112-3. The particular paragraph expressing condemnation was negated. MoP 2004-08/313-4. The motion was amended to one censuring the Shadow Attorney-General.

77 MoP 2004-08/62-3 (negated).

78 MoP 1995-97/51; Assembly Debates (30.05.95) 510-31 (negated).

79 MoP 1998-2001/501, 531-2.

80 MoP 1992-94/473-4. The resolution censured both the Treasurer and the Minister for Education and Training.

81 MoP 1995-97/200, 208.

82 MoP 1995-97/216.

83 MoP 1995-97/295-6 (the resolution censured the Chief Minister and Minister for Health and Community Care).

84 MoP 2001-04/925.

85 MoP 1989-91/239, 451-2; 1992-94/105-6; 1992-94/186 (this motion expressed censure of the Chief Minister and Minister for Education and Training); 1992-94/320, 329, 753; 1995-97/249-51 (this motion expressed censure of the Chief Minister and Minister for Industrial Relations); 1995-97/667, 818-9 (this motion expressed censure of the Chief Minister and the Minister for Industrial Relations); 1998-2001/109-11, 118 (this motion expressed censure of the Chief Minister and the Deputy Chief Minister); 2004-08/113-5 (this motion proposed to censure the Minister for his comprehensive mishandling of the health portfolio); 2004-08/247-8 (this motion proposed to censure the Attorney-General).

86 MoP 1998-2001/174.

87 MoP 1989-91/69-70. The motion was amended from one of censure.

88 MoP 1989-91/554.

89 MoP 1989-91/200-1; 2004-08/313-5.

90 MoP 1989-91/287-8, 416-7.

91 MoP 1989-91/575.

92 MoP 1998-2001/332.

93 MoP 1998-2001/543-5.

94 MoP 1998-2001/1324-6.

CHIEF MINISTER

Election

6.50 The Assembly must elect a Chief Minister at its first meeting after a general election. It must also do so following the announcement by the Speaker of a vacancy in the office or following the passing of a resolution of no confidence in a Chief Minister.⁹⁵ The procedures for the election of the Chief Minister are similar to those for the election of Speaker, though there are differences in the nomination process. A Member proposed as Chief Minister is not required to be present and, prior to 2008, nor was he or she required to inform the Assembly whether the nomination is accepted. In 2008⁹⁶ the Assembly amended the standing order to bring it into line with the election of the Speaker,⁹⁷ which requires that the nomination be accepted.⁹⁸

6.51 It is not necessary for all Members to be present; the election is initiated by a Member proposing a Member who is present, other than the Speaker and Deputy Speaker, and moving that he or she be elected as Chief Minister of the Territory. Should there be no further proposal, the Speaker declares that Member to have been elected as Chief Minister. Should there be two or more Members proposed, limited debate is allowed and a decision is made by ballot as in the election of the Speaker. A Member has proposed herself as Chief Minister and moved that she be elected as Chief Minister of the Territory.⁹⁹

Vacancy

6.52 The Chief Minister vacates the office:

- when he or she resigns the office;
- when the person ceases to be a Member of the Assembly, other than because of a general election—for example, by resignation, disqualification or due to a dissolution of the Assembly; or
- immediately before a Chief Minister is elected after:
 - the next general election; or
 - the passing of a resolution of no confidence in the Chief Minister.¹⁰⁰

Although the terms of office of Members cease on the polling day of a general election, the executive continues in office until immediately before the election of a Chief Minister after the declaration of the poll.¹⁰¹

6.53 The Chief Minister may resign office as Chief Minister by written notice delivered to the Speaker.¹⁰² If a vacancy occurs during a sitting of the Assembly, the election of a new Chief Minister takes place immediately. At any other time, the Speaker must convene

95 Self-Government Act, section 40; standing orders 1, 3(a) and 12. Assembly standing orders do not reflect the provisions of subsection 40(3) of the Self-Government Act in that they make no specific provision for an election to take place following a resolution of no confidence in a Chief Minister. The practice of the Assembly has been for an election to be conducted immediately.

96 MoP 2004-08/1388-9.

97 MoP 2004-08/1388-9.

98 Standing order 3. As with the election of the Speaker, at any time after the result of the first ballot is declared, but before the commencement of the second or subsequent ballot, a candidate for Chief Minister may withdraw from the election.

99 MoP 1998-2001/2-3.

100 Self-Government Act, subsection 46(1).

101 Self-Government Act, subsection 46(1A)(d).

102 Self-Government Act, subsection 45(1). Neither the Self-Government Act nor the standing orders offer any guidance as to exactly when a resignation takes effect. For practical purposes it is assumed to be from the moment of receipt of the letter of resignation by the Speaker.

a meeting of the Assembly (by notice published in the *Territory Gazette*) as soon as practicable and, at that meeting, must report the vacancy to the Assembly as soon as possible and the Members present must forthwith proceed to the election of one of their number to be the Chief Minister.¹⁰³ A person who has vacated the office of Chief Minister may be re-elected.¹⁰⁴

6.54 On the resignation of the Chief Minister on 17 October 2000 (which was a day when the Assembly was not meeting), the Speaker, in accordance with the requirements of paragraph 40(2)(b) of the Self-Government Act, convened by notice published in the *Territory Gazette* a meeting of the Assembly for Wednesday, 18 October 2000 at 10.30 am. even though that meeting time and date had already been set for the Assembly.¹⁰⁵

6.55 It should also be noted that the offices of Chief Minister and Ministers would become vacant in the event of a dissolution of the Assembly by the Governor-General pursuant to section 16 of the Self-Government Act. In that event, the executive's powers would be exercised by a Commissioner who would exercise those powers in accordance with any directions given by the Governor-General. Acting on the authority of the Governor-General, the Commissioner may spend public money of the Territory without the authority of an enactment of the Assembly. The term of office of the Commissioner would cease at the beginning of the first meeting of the Assembly held after the next general election (unless terminated earlier by the Governor-General).¹⁰⁶

Deputy Chief Minister

6.56 The Chief Minister is required to appoint one of the Ministers to be Deputy Chief Minister of the Territory. The Deputy Chief Minister acts as Chief Minister at any time when there is a vacancy in the office of Chief Minister or the Chief Minister is absent from duty or from Australia or, for any other reason, unable to exercise the powers of Chief Minister.¹⁰⁷

6.57 While the Deputy Chief Minister is acting as Chief Minister, he or she exercises all the powers of the Chief Minister other than those applying to the dismissal of a Minister. The Chief Minister is not prevented from exercising his or her powers whilst absent from Australia.¹⁰⁸

Resolution of no confidence

6.58 The resolution must affirm a motion of no confidence in the Chief Minister of which at least one week's notice has been given in accordance with the standing orders.¹⁰⁹ This motion takes precedence of all other business. The resolution must be passed by an absolute majority (nine Members).¹¹⁰ The provisions concerning notice and the majority required must accord with section 19 of the Self-Government Act.¹¹¹

¹⁰³ Self-Government Act, paragraph 40(2)(b); standing order 12.

¹⁰⁴ Self-Government Act, subsection 46(2).

¹⁰⁵ *Gazette* S62, 17 October 2000; MoP 1998-2001/1013. The Assembly had in fact already set that time and date for its next meeting, though that was subject to alteration should an absolute majority of Members so request (MoP 1998-2001/1011).

¹⁰⁶ Self-Government Act, subsections 16(2), (4), (6). Section 16 contains other provisions relating to the exercise of powers by the Governor-General and the appointment of a Commissioner. A new election for the Members of the Assembly must be held within not less than 36 days and not more than 90 days.

¹⁰⁷ Self-Government Act, section 44.

¹⁰⁸ Self-Government Act, section 44.

¹⁰⁹ The practice in the Assembly is that the time of the giving of a notice of motion is the time that it is delivered to the Clerk in accordance with standing order 101. Pursuant to section 36 of the *Acts Interpretation Act 1901* (Cwth) the seven days would be counted starting from the day following the giving of notice in the Assembly.

¹¹⁰ Self-Government Act, section 19.

¹¹¹ Standing order 81. It should be noted that, in regard to the notices lodged on 22 June and 16 November 1999 and 10 October 2000 (see Table 7.1), though at least a week's notice was given on each occasion it was not in accordance with the standing orders as no day was set down for moving the motion.

6.59 A notice of a motion of no confidence in the Chief Minister must be in accordance with the standing and other orders.¹¹² After its delivery to the Clerk, it must be reported to the Assembly at the first convenient opportunity and may not be entered on the *Notice Paper* by the Clerk until so reported.¹¹³

6.60 The delivery and reporting of a notice of a motion of no confidence has not precluded the Assembly from considering other business, either on the day that the notice of no confidence was delivered and reported or on the days intervening before the motion was considered, though the usual practice has been for the Assembly to adjourn for the intervening period.¹¹⁴

6.61 It has been the practice that, in the routine of ordinary business as set down in standing order 74, the prayer or reflection (since 1 June 1995) and the formal recognition that the Assembly was meeting on the lands of the traditional custodians had taken precedence over a motion of no confidence in the Chief Minister.¹¹⁵

6.62 The Member who had held the office of Chief Minister actually vacates his or her office not on the passing of the resolution but immediately before a new Chief Minister is elected following the passing of the resolution.¹¹⁶ Thus, the effect of the resolution is to express the Assembly's lack of confidence in the Chief Minister and trigger an election process for a replacement. This provision enables an outgoing Chief Minister and his or her Ministers to act in a caretaker mode.

6.63 This could become necessary were the Assembly, having agreed to a resolution of no confidence in the Chief Minister, is unable, within a period of 30 days, to elect a new Chief Minister. In those circumstances section 48 of the Self-Government Act would come into play, requiring a general election to be held, assuming that the Governor-General did not dissolve the Assembly pursuant to section 16 of the Act.¹¹⁷

6.64 As at December 2007 there had been eight motions of no confidence in Chief Ministers lodged but only seven motions moved pursuant to standing order 81 (see Table 6.1). One motion was withdrawn from the *Notice Paper* in accordance with standing order 128.¹¹⁸ Two of the motions were passed by the requisite majority and on each occasion the Assembly immediately proceeded to elect a new Chief Minister.

¹¹² Standing orders, Chapter 9, particularly standing order 101.

¹¹³ Standing order 103.

¹¹⁴ The Assembly met and considered business on three days between the reporting of a notice of motion of no confidence in the Chief Minister on 30 May 1990 and the notice being called upon and considered on 7 June 1990. See also *Motions of want of confidence, censure, admonishment and grave concern*, Paper presented to the 35th Presiding Officers and Clerks Conference, July 2007.

¹¹⁵ On 18 October 2000 Chief Minister Carnell pre-empted a no confidence motion, of which notice had been given, by resigning. On the next sitting day the election of a new Chief Minister took precedence over that notice, which had been listed to take precedence on the Notice Paper. The now redundant notice was called on following the election and, the Member failing to move the motion, the Speaker advised the Assembly that, pursuant to standing order 128, it would be removed from the *Notice Paper*. See MoP 1998-2001/1014.

¹¹⁶ Self-Government Act, paragraph 46(1)(c).

¹¹⁷ The words of the Explanatory Memorandum to the Australian Capital Territory (Self-Government) Bill 1988 being (at p. 14) 'Where a general election is to be held this provision enables a "caretaker" government until a new government is formed'.

¹¹⁸ MoP 1998-2001/1014—see footnote 63.

Table 6.1: Motions of No Confidence in the Chief Minister — 1989-2008

Date notice was lodged	Who lodged notice	Terms of notice	Date motion was moved	Results
23 November 1989 ¹¹⁹	Mr Collaery—to move on Tuesday, 5 December 1989 (<i>announcement made by Clerk—standing order 103</i>)	That this Assembly no longer has confidence in the Chief Minister of the ACT and the minority Labor Government and has confidence in the ability of Mr Kaine to form a government.	5 December 1989 ¹²⁰ (11 clear days after notice given)	Motion resolved in the affirmative by an absolute majority (Ayes 10, Noes 7) Mr Kaine was elected Chief Minister on 5 December 1989
30 May 1990 ¹²¹	Mr Stevenson—to move on the first day of sitting following Wednesday, 6 June 1990 (<i>announcement made by Clerk—standing order 103</i>)	That this Assembly has no confidence in the Chief Minister of the ACT in view of his lack of integrity, lack of credibility and extreme hypocrisy as demonstrated by his intention to have the Alliance “Government” introduce a Bill to tax X-rated videos, in absolute contradiction of his statements in this House on 21 November 1989, in total condemnation of such a tax.	7 June 1990 ¹²² (7 clear days after notice given)	Motion negatived (Ayes 5, Noes 11)
29 May 1991 ¹²³	Ms Follett—to move on Thursday, 6 June 1991 (<i>announcement made by Clerk—standing order 103</i>)	That this Assembly has no confidence in the Chief Minister, Mr Kaine, and his minority Government.	6 June 1991 ¹²⁴ (7 clear days after notice given)	Motion resolved in the affirmative by an absolute majority (Ayes 9, Noes 7) Ms Follett was elected Chief Minister on 6 June 1991

119 MoP 1989-91/155. Assembly did not sit again until 5 December 1989.

120 MoP 1989-91/157-8.

121 MoP 1989-91/242. Assembly sat on 31 May 1990, 5 and 6 June 1990.

122 MoP 1989-91/261

123 MoP 1989-91/467. Assembly did not sit again until 6 June 1991.

124 MoP 1989-91/469.

Date notice was lodged	Who lodged notice	Terms of notice	Date motion was moved	Results
22 June 1999 ¹²⁵	Mr Stanhope—to move in seven days hence (<i>announcement by Clerk—standing order 103</i>)	That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA.	30 June 1999 ¹²⁶ (7 clear days after notice given)	Motion amended to read— That this Assembly censures the Chief Minister, Ms Carnell, MLA for her failure to ensure the requirements of the <i>Financial Management Act 1996</i> were met in relation to the funding of the redevelopment of the Bruce Stadium (Ayes 10, Noes 7)
16 November 1999 ¹²⁷	Mr Stanhope—to move in seven days hence (<i>announcement made by Clerk—standing order 103</i>)	That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA.	24 November 1999 ¹²⁸ (7 clear days after notice given)	Motion negatived in accordance with standing order 162 (Ayes 8, Noes 8) ¹²⁹
10 October 2000 ¹³⁰	Mr Stanhope—to move in seven days hence (announcement by Clerk—standing order 103)	That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA.		The Member failing to move the motion, the notice was removed from <i>Notice Paper</i> — Speaker having announced that in accordance with section 45 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> he had received a letter from Ms Carnell MLA, Chief Minister, dated 17 October 2000, in which she tendered her resignation as Chief Minister.

¹²⁵ MoP 1998-2001/427. Assembly did not sit again until 30 June 1999.

¹²⁶ MoP 1998-2001/433.

¹²⁷ MoP 1998-2001/607. Assembly did not sit again until 24 November 1999.

¹²⁸ MoP 1998-2001/613-4.

¹²⁹ One Member had been granted leave by the Assembly for that day.

¹³⁰ MoP 1998-2001/1011. Assembly did not sit again until 18 October 2000.

Date notice was lodged	Who lodged notice	Terms of notice	Date motion was moved	Results
5 May 2004 ¹³¹	Mr Smyth, in accordance with standing order 81 (<i>announcement by Clerk—standing order 103</i>)	That, since the Chief Minister has repeatedly misled the Legislative Assembly on the question of advice given to him and contact made with him during the period 17–18 January 2003 regarding the 2003 bushfires, this Assembly no longer has confidence in the Chief Minister, Mr Jon Stanhope, MLA.	13 May 2004 ¹³² (7 clear days after notice given)	Motion amended to read— That, since the Chief Minister has misled the Legislative Assembly on the question of advice given to him and contact made with him during the period 17–18 January 2003 regarding the 2003 bushfires, this Assembly expresses its grave concern at the conduct of the Chief Minister, Mr Jon Stanhope, MLA. (Ayes 9, Noes 8)
20 February 2007 ¹³³	Mr Stefaniak, in accordance with standing order 81 (<i>announcement by Clerk—standing order 103</i>)	That this Assembly no longer has confidence in the Chief Minister, Mr Jon Stanhope, MLA, particularly in view of his and his Government's handling of the 2003 bushfires.	28 February 2007 ¹³⁴ (7 clear days after notice given)	Motion negatived (Ayes 7, Noes 10)

131 MoP 2001-04/1323. Assembly did not sit again until 13 May 2004.

132 MoP 2001-04/1327-9.

133 MoP 2004-08/928.

134 MoP 2004-08/935.

Date notice was lodged	Who lodged notice	Terms of notice	Date motion was moved	Results
17 June 2008 ¹³⁵	Mr Seselja, in accordance with standing order 81 (<i>announcement by Clerk—standing order 103</i>)	<p>That this Assembly no longer has confidence in the Chief Minister due to his:</p> <ul style="list-style-type: none"> (a) repeatedly giving inconsistent testimony and testimony that is inconsistent with the written record of events relating to the data centre and gas fired power plant at Tuggeranong and, therefore, misleading the Estimates Committee and consequently the Assembly; (b) mismanaging the process associated with the data centre and gas fired power plant at Tuggeranong, jeopardising an important project for the Australian Capital Territory and, as a consequence, costing the Territory around \$1 billion in investment; (c) selectively releasing materials to the media which were withheld from the Assembly and withholding the substantial part of the records, showing contempt for the people and Parliament of the Australian Capital Territory; and (d) failing to properly consider the impact on residents of the data centre and gas fired power plant, and failing to adequately notify or consult with residents, which jeopardised the entire project. 	25 June 2008 ¹³⁶ (7 clear days after notice given)	Motion negatived (Ayes 6, Noes 11)

135 MoP 2004-08/1538.

136 MoP 2004-08/1543.

MINISTERS

Appointment to office and number

6.65 The Chief Minister must appoint his or her Ministers from among the Members of the Assembly. The Speaker or Deputy Speaker are not eligible to be Ministers.¹³⁷ The Self-Government Act provides that the Assembly may legislate to set the number of Ministers but until it does so the number is not to exceed five.¹³⁸ The maximum number of Ministers appointed by the Chief Minister at any one time has been four.

6.66 As the term of office of a Member duly elected commences at the end of the day on which the election of a Member is declared,¹³⁹ the Chief Minister is not precluded from appointing a Member as a Minister before the Member takes his or her seat. In the Sixth Assembly, Mr Barr filled a casual vacancy, his term commencing on 5 April 2006. He was appointed a Minister the following day but did not formally take his seat in the Assembly until 2 May 2006.¹⁴⁰

Role and duties

6.67 The Chief Minister allocates responsibilities to the members of the executive. Typically ministerial portfolios cover a range of departments and agencies. The Chief Minister may also authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister and must publish particulars of these arrangements in the *Territory Gazette*.¹⁴¹ It is usual practice for a Minister to undertake the duties of Manager of Government Business in the Assembly.¹⁴²

6.68 *The Administrative Arrangements* made pursuant to section 43 of the Self-Government Act and sections 13 and 14 of the *Public Sector Management Act 1994*¹⁴³ list the ministerial portfolios and set out details of ministerial responsibility showing:

- the areas of responsibility of each Minister;
- the Territory enactments, the subordinate laws made under those enactments and the Commonwealth laws administered by each Minister;
- the administrative units (departments and agencies) that are the responsibility of each Minister; and

¹³⁷ Self-Government Act, subsection 41(1) and section 42. The instrument of appointment is usually presented in the Assembly (MoP 2004-08/630) and is entered on the ACT Legislation Register and numbered as a Notifiable Instrument even though the instrument is not taken to be a notifiable instrument under section 10 of the *Legislation Act 2001*.

¹³⁸ Self-Government Act, subsections 41(2) and 41(2A). Originally the Self-Government Act provided that the Chief Minister could appoint three Ministers for the Territory and that the regulations might fix a different number, but only in accordance with a resolution of the Assembly. In its April 1990 report the Select Committee on Self-Government recommended that the Commonwealth be requested to transfer the power to determine the number of Ministers to the Assembly. Steps were taken to seek the Commonwealth's agreement to concur in amending the number by regulation (see MoP 1989-91/286, 289) and in February 1991 the Chief Minister advised the Assembly that the Federal government had agreed to introduce legislation to enact the provisions that currently stand (Assembly Debates (12.02.1991) 15-6). The provision was amended by the *Australian Capital Territory Self-Government Legislation Amendment Act 1992* (Cwlth, No. 10 of 1992).

¹³⁹ Self-Government Act, section 10.

¹⁴⁰ MoP 2004-08/627-8.

¹⁴¹ Self-Government Act, section 43.

¹⁴² Although the duties have not always been undertaken by a Minister; see MoP 1992-94/553. Mr Berry resigned as Minister but remained as Manager of Government Business.

¹⁴³ Sections 13 and 14 of the *Public Sector Management Act 1994* make provision for the Chief Minister from time to time to constitute administrative units and place chief executives in control thereof and to allocate ministerial responsibility for administrative units and allocate to administrative units responsibility for all or any of the enactments and matters for which the relevant Minister is responsible.

- the chief executives responsible to the Minister for the administration of these units.¹⁴⁴

The practice is that the *Administrative Arrangements* are tabled in the Assembly.

6.69 The current *Administrative Arrangements* also set down an authorisation (subject to section 41 of the *Legislation Act 2001*) for Ministers to act on the Chief Minister's behalf or on behalf of another Minister (for the purposes of subsection 43(2) of the *Self-Government Act*).¹⁴⁵

Duration of appointment (including resignation and vacation of office)

6.70 A Minister vacates his or her office:

- when he or she resigns the office;
- when he or she ceases to be a Member of the Assembly (not because of a general election);
- when he or she is dismissed from office by the Chief Minister; or
- immediately before another Chief Minister is elected after
 - the next general election; or
 - the passing of a resolution of no confidence in the Chief Minister.¹⁴⁶

6.71 A Minister may resign office as a Minister by written notice delivered to the Chief Minister.¹⁴⁷ It is considered that, in resigning as Members of the Assembly, Mr De Domenico¹⁴⁸ (on 30 January 1997) and Mrs Carnell¹⁴⁹ (on 13 December 2000), automatically vacated the ministerial offices they held at the time. On 29 May 1991 Chief Minister Kaine dismissed the Deputy Chief Minister, Mr Collaery, pursuant to the provisions of subsection 41(3) of the *Self-Government Act*.¹⁵⁰

6.72 On 17 October 2000 Mrs Carnell resigned as Chief Minister by written notice delivered to the Speaker. On the following day Mr Humphries was elected Chief Minister. In response to a request for advice as to when the Ministers appointed by Mrs Carnell when she was Chief Minister ceased to be Ministers, the Government Solicitor advised that the Ministers previously appointed by Mrs Carnell ceased to be Ministers immediately before the election of Mr Humphries as Chief Minister. In the advice the Government Solicitor stated that the fact that section 46 did not specifically cover the situation could not result in the former Ministers continuing to hold office as Ministers beyond the appointment of a new Chief Minister. Such an outcome was seen as being contrary to the structure of government provided for in the *Self-Government Act*.¹⁵¹

¹⁴⁴ For the current *Administrative Arrangements* see <<http://www.legislation.act.gov.au/ni/2008-526/current/pdf/2008-526.pdf>.

¹⁴⁵ Section 41 of the *Legislation Act 2001* (Making of certain statutory instruments by the executive) provides a restriction on the powers of Ministers to act on each others' behalf in that a subordinate law or disallowable instrument is taken to be made by the executive if it is signed by two or more Ministers who are members of the executive, one of whom must be the responsible Minister (the Minister for the time being administering the Act). See also paragraphs 7.22 to 7.23.

¹⁴⁶ *Self-Government Act*, subsection 46(1A).

¹⁴⁷ *Self-Government Act*, subsection 45(2).

¹⁴⁸ MoP 1995-97/575.

¹⁴⁹ MoP 1998-2001/1145.

¹⁵⁰ See *Assembly Debates* (29.5.1991) 2125. The actual letter of dismissal was tabled (MoP 1989-91/473) and the terms read into *Hansard*. See *Assembly Debates* (21.6.1991) 2270. The dismissal as a Minister was 'from the time of your receipt of this letter'.

¹⁵¹ Advice of Government Solicitor to the Director, Corporate Services, Chief Minister's Department, 19 October 2000. Section 46(1A) quoted in paragraph 7.69 refers to Ministers vacating office immediately before a Chief Minister is elected after a general election or the passage of a no confidence motion in the previous Chief Minister. It does not mention specifically the resignation of a Chief Minister.

7.1 The constitutional framework that determines the calendar of meetings of the Assembly, the commencement and termination of Members' terms of office and the provisions for a dissolution of the Assembly is set down in the Self-Government Act. The actual timing of elections, and hence the term of each Assembly, is in the hands of the Assembly, being set by section 100 of the *Electoral Act 1992* (ACT).

7.2 The provisions of the standing orders complement those of the Self-Government Act to ensure that the Assembly meets on a regular basis and a quorum of Members is available to conduct the business of the Assembly.

TERM OF THE ASSEMBLY

7.3 The Self-Government Act does not specifically set down the term of an Assembly. What it does is specify that:

- there shall be a Legislative Assembly for the Australian Capital Territory which shall consist of 17 Members;¹ and
- the term of office of a Member duly elected begins at the end of the day on which the election of the Member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.²

7.4 In fact, to date the Assembly has never been dissolved³ and there is no provision for its prorogation and hence no provision for sessions of the Assembly. It could therefore be argued that the Assembly is a continuing institution, albeit with its seventh complement of Members.⁴ An alternative view is that, as there are no Members of the Assembly between polling day for a general election and the end of the day on which the election of the newly elected Members is declared, there is no Assembly during that period.⁵

7.5 The practice has been to regard an Assembly as commencing with its first meeting after a general election as convened by notice pursuant to section 17 of the Self-Government Act. Unless the Assembly is dissolved earlier by the Governor-General, the term of an Assembly continues until the Assembly expires on polling day for the subsequent general election, currently a period of slightly less than four years.

7.6 The key to determining the actual term or duration of an Assembly is, therefore, the actual date of the next general election for Members of the Assembly. In the *Electoral Act 1992*

1 Self-Government Act, section 8. Subsection 8(3) makes provision for varying the number of Members. (See also Chapter 1: The Legislative Assembly, its establishment, role and membership, paragraphs 1.38 to 1.39)

2 Self-Government Act, section 10.

3 Section 16 of the Self-Government Act makes provision for the Assembly to be dissolved by the Governor-General if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner. On the last sitting day prior to a general election the Assembly adjourns '... to a day and hour to be fixed by the Speaker ...'.

4 See concluding comments in advice of the Government Solicitor of 15 January 1998 to the Clerk.

5 Advice of the Acting Director, Constitutional and Machinery of Government, Government Law Office, to the Acting Assistant Secretary, Cabinet and Policy Co-ordination Branch, Chief Minister's Department, 29 April 1991.

as amended, a general election was required to be held in February of the third year after the preceding ordinary election. However, after debate over a number of years⁶ the Act was amended again to require general elections to be held in the fourth year after the year when the last ordinary election was held in October.⁷

7.7 The *Legislation Act 2001* refers to the expiry of the Assembly,⁸ the dictionary to the Act (Meaning of commonly-used terms) providing: 'expire includes lapse or otherwise cease to have effect'.

DISSOLUTION PROVISIONS

7.8 The Governor-General may, by proclamation,⁹ dissolve the Assembly in certain extreme circumstances. Section 16 of the Self-Government Act gives the Governor-General this power if he or she considers that the Assembly is 'incapable of effectively performing its functions' or is 'conducting its affairs in a grossly improper manner'.¹⁰

7.9 In the event of a dissolution of the Assembly:

- the term of office of each Member ends¹¹ (though those who are candidates at the subsequent general election are entitled to be paid ongoing remuneration and allowances);¹²
- the Speaker vacates the office of Speaker;¹³
- the Chief Minister vacates the office of Chief Minister;¹⁴ and
- Ministers vacate their offices as Ministers.¹⁵

6 See, for example, *Review of Governance of the Australian Capital Territory* (April 1998); Legislative Assembly Standing Committee on Legal Affairs, *Changing the Term of Assembly Members from three years to four years*, (October 2003). The arguments for and against a longer term set claims that a longer term would provide for better medium term decision making, less influenced by partisan electoral imperatives against the view that a shorter term meant that the Assembly was more regularly accountable to the electorate for the discharge of its responsibilities.

7 Section 100 of the *Electoral Act 1992* provides that a general election must be held on the third Saturday in October in the fourth year after the year when the last ordinary election was held. There are provisions for alternative dates in the event of an election for Senators or Members of the House of Representatives being held on that day and for extraordinary general elections occurring (see Part 8 of the *Electoral Act 1992* and paragraph 1.219) Though it was originally proposed that Members would be elected for a fixed term of four years and hence the term of each Assembly would be approximately four years, the term of office of Members for the first three Assemblies was approximately three years (with the exception of the First Assembly), that for the Fourth Assembly was three years and eight months and it has been four years since the commencement of the application of amendments made by the *Electoral Amendment Act 2003*. See paragraph 1.219. The amendments apply to each ordinary election after the general election held on 16 October 2004.

8 *Legislation Act 2001*, section 71—Effect of dissolution or expiry of Assembly on notice of motion.

9 The proclamation would be one made pursuant to a Commonwealth Act, not the Constitution. Paragraph 17(j) of the *Acts Interpretation Act 1901* (Cwth) provides that 'Proclamation' shall mean Proclamation by the Governor-General that is published in the *Gazette* or entered on the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003* (Cwth).

10 Section 16A of the *Acts Interpretation Act 1901* (Cwth) provides, inter alia, that where, in a Commonwealth Act, the Governor-General is referred to, the reference shall, unless the contrary intention appears, be read as referring to the Governor-General, or a person so deemed to be included in the reference, acting with the advice of the Federal Executive Council.

11 Self-Government Act, section 10.

12 Self-Government Act, subsection 73(5). For the purposes of section 73 of the Self-Government Act (Remuneration and Allowances), if the person is a candidate at the next general election the person shall be taken to have continued in the office of Member until the polling day for the next general election of Members for the Assembly or, if the person is re-elected, until the day on which the election of the person is declared. It would be expected that the remuneration and allowances received would be restricted to those the person received as a Member.

13 Self-Government Act, paragraph 12(1)(c).

14 Self-Government Act, paragraph 46(1)(b).

15 Self-Government Act, paragraph 46(1A)(b).

7.10 In addition, as there are no Members and therefore there is no Assembly, all proceedings pending come to an end—all business on the *Notice Paper* lapses, any temporary or other non-ongoing orders or resolutions cease to have effect and all committees cease to exist.

7.11 In relation to the notification of enactments, the making of all laws passed by the Assembly should be notified on the ACT Legislation Register or in the Territory Gazette before the date and time specified in the dissolution proclamation.¹⁶ Even if a bill had been passed by the Assembly and had been so certified by the Clerk in accordance with standing order 193, if the Speaker had not asked parliamentary counsel to notify the making of the proposed law¹⁷ when the Assembly was dissolved, the proposed law could not be regarded as having taken effect and its future would be problematical.¹⁸

7.12 In the event of a dissolution, the powers of the executive are vested temporarily in a Commissioner appointed by the Governor-General and a general election of Members of the Assembly must be held on a day specified by the Commonwealth Minister by notice published in the Commonwealth Gazette. The day specified cannot be earlier than 36 days nor later than 90 days after the dissolution of the Assembly.¹⁹

7.13 The Commonwealth Minister administering the Self-Government Act is required to cause a statement of reasons for the dissolution to be:

- (a) published in the *Commonwealth Gazette* as soon as practicable after the day of the dissolution; and
- (b) laid before each House of the Commonwealth Parliament within 15 sitting days of that House after the day of the dissolution.²⁰

FIRST MEETING

7.14 Paragraph 17(1)(a) of the Self-Government Act requires the Assembly to meet within seven days (or, in certain exceptional circumstances, 14 days)²¹ of the declaration of the result of a general election.²² For the First Assembly, the time was set by the Minister for the Arts and Territories. Since the Second Assembly, the Speaker has, by a notice published in the *Territory Gazette*, set the time, date and place for the first meeting of a new Assembly. Should there not be a Speaker, or the Speaker fails to convene the first meeting, the Commonwealth Minister with responsibility for the Territory is required to do so.²³

7.15 It should be remembered that a Speaker vacates office not on polling day, but immediately before the new Speaker is elected at the first meeting of the Assembly after a general election.²⁴

16 With the possible exception of a bill for an entrenching law or an enactment to which an entrenching law requiring a referendum applied. These bills could not become law until they had been passed at a referendum.

17 In accordance with standing order 193 and section 28 of the *Legislation Act 2001*.

18 And see *House of Representatives Practice*, p. 221.

19 Self-Government Act, paragraph 16(2)(b) and subsection 16(3).

20 Self-Government Act, subsection 16(8). The statement of reasons is not subject to disallowance.

21 Subject to subsection 17(3) of the Self-Government Act where, if the office of Speaker is vacant or the Speaker is unable or refuses or fails to convene a meeting within a prescribed period, the Commonwealth Minister is obliged to convene the meeting.

22 Self-Government Act, section 17.

23 Self-Government Act, subsection 17(3).

24 Self-Government Act, section 12.

Proceedings at the first meeting

7.16 The Self-Government Act and the standing orders set out the procedures to be followed at the first meeting of an Assembly after an election.

7.17 The Clerk chairs the Assembly until a Speaker is elected.²⁵ Standing order 1(b) requires that the Clerk read the notice convening the meeting and, after the Chief Justice of the ACT has entered the Chamber, that the new Members make the oath or affirmation.²⁶ The Clerk also tables the notification of candidates elected to the Assembly.²⁷

7.18 The Self-Government Act provides that, before taking his or her seat, a Member must make and subscribe an oath or affirmation before the Chief Justice of the Supreme Court of the Australian Capital Territory (or a justice of the court authorised by the Chief Justice for the purpose).²⁸ The *Oaths and Affirmations Act 1984* sets out the form of the oath or affirmation to be taken by Members.²⁹

7.19 At the first meeting of the First Assembly, the authority to conduct the swearing in of Members was delegated to Mr Justice Kelly, a Judge of the Supreme Court of the Australian Capital Territory. After Mr Justice Kelly was conducted to his seat, the authority was handed to the Acting Clerk, who read it to the Assembly.³⁰

7.20 The practice in the Territory is that Members make and subscribe their oaths or affirmations of allegiance in the Chamber. The Members also sign the Members' Roll, maintained by the Clerk in accordance with standing order 20.³¹

7.21 The Chief Justice having left the Chamber, the Assembly proceeds immediately to elect a Speaker³² and, the Speaker having taken the Chair, the Chief Minister³³ and the Deputy Speaker.³⁴ The leader of the largest non-Government party then gives his or her consent to being Leader of the Opposition or, in the event of the two largest non-Government parties being of equal size, the Assembly may proceed to choose a Leader of the Opposition.³⁵

7.22 Following the election of the Chief Minister and the announcement of the leadership of the opposition respectively, those officeholders usually seek the leave of the Assembly to make statements. It is customary for Members who occupy the crossbenches to seek the leave of the Assembly to make statements informing the Assembly of their party or independent status.

7.23 The Assembly is not precluded from proceeding with other business in the ordinary routine of business although, as there is no *Notice Paper* on the first day of meeting after a general election, there are no notices nor orders of the day to be considered; and since the initiation of business generally requires that notice be given, little ordinary business is undertaken. It is not the practice for petitions to be presented on the first day.

25 Standing order 1(f).

26 Standing order 1(c).

27 Standing order 1(d).

28 Self-Government Act, section 9.

29 *Oaths and Affirmations Act 1984*, sections 6A and 10A, and see Chapter 4: Membership of the Assembly, paragraphs 4.12 to 4.17.

30 MoP 1989-91/1-2, Assembly Debates (11 May 1989) 2.

31 Standing order 20 stipulates that the Clerk must maintain a Members' Roll showing the names of the Members elected, the dates of election, the date the Member made an oath or affirmation, and the date of ceasing to be a Member and the cause of their ceasing to be a Member.

32 Self-Government Act, section 11; standing order 1(e).

33 Self-Government Act, section 40; standing order 1(g).

34 Standing order 4. At that stage of the first meeting, it would not be expected that the Chief Minister had appointed Ministers; it would be expected that a Member likely to be appointed a Minister would not be nominated.

35 Standing orders 5A and 5B.

7.24 Papers have been presented by the Speaker³⁶ and by the Chief Minister.³⁷ It is usual for a motion to be moved by the Chief Minister, of which notice is not required, to set the next day of meeting.³⁸ Standing orders have been adopted, amendments moved;³⁹ motions have been moved authorising broadcasting of proceedings;⁴⁰ ministerial arrangements have been announced;⁴¹ and ministerial statements have been made.⁴² It is usual for subordinate legislation to be tabled.⁴³ Committees have been established⁴⁴ and committee members appointed.⁴⁵

DAYS AND HOURS OF MEETING

Fixing of meetings of the Assembly

7.25 The Self-Government Act provides that the Assembly must meet:

- within a period of seven days after the result of a general election is declared; or
- within seven days of a written request for a meeting signed by such number of Members as is fixed by enactment is delivered to the Speaker⁴⁶ (the Assembly having yet to make any such provision by enactment, this provision is currently dormant); or
- as soon as practicable after a vacancy in the office of Chief Minister occurring whilst the Assembly is not meeting.⁴⁷

7.26 Standing order 27 provides that, unless otherwise ordered, the Assembly shall meet at 10 am. The Assembly usually resolves to meet on certain days (normally Tuesdays, Wednesdays and Thursdays) for between 12 and 15 weeks per year.⁴⁸

7.27 It is usual practice that these orders of the Assembly contain a provision that:

- the Speaker (or in his or her absence, the Deputy Speaker) can fix an alternative day or hour of meeting on receipt of a request in writing from an absolute majority of Members;⁴⁹ or
- the Assembly can otherwise order different sitting dates.

7.28 On 12 December 2002 a further provision was included in the order fixing the sitting days for 2003. It provided for an alternative day or hour to be fixed by the Speaker 'having consulted with Members following receipt of advice from the Chief Minister that a place

36 MoP 1989-91/3; 2001-04/4; 2004-08/3.

37 MoP 2004-08/4.

38 Standing order 36.

39 MoP 1989-91/3-4.

40 MoP 1989-91/3; 1992-94/4; 1995-97/3-4; 1998-2001/4.

41 MoP 1989-91/4. The amount of business conducted on the first sitting day of the First Assembly reflected the number of 'housekeeping' decisions that had to be taken.

42 MoP 1989-91/5.

43 MoP 1992-94/3-5; 1995-97/4-7; 1998-2001/4-6; 2001-04/4-9; 2004-08/4-9.

44 MoP 1992-94/7-11; 1995-97/7-10;

45 MoP 1992-94/11-3; 1995-97/10-12;

46 Self-Government Act, paragraph 17(1)(b).

47 Self-Government Act, paragraph 40(2)(b). The Speaker is required to convene the meeting by notice published in the *Territory Gazette* as soon as practicable. Prior to 1994 the Self-Government Act also provided that the Assembly meet at least once every two months. The provision was omitted in amendments contained in the *Arts, Environment and Territories Legislation Amendment Act 1993* (No. 6 of 1994) (Cwlth). Thus there is no statutory requirement for the Assembly to meet for any number of days in a year or in any specified period.

48 MoP 2004-08/523.

49 Thus almost replicating the dormant provision in paragraph 17(1)(b) of the Self-Government Act.

of a Senator for the Australian Capital Territory had become vacant before the expiration of his or her term of service'.⁵⁰

7.29 Standing order 36 provides that a motion for the purpose of fixing the next meeting of the Assembly may be moved by a Minister at any time without notice. It is not uncommon for the Assembly to amend the sitting pattern by way of order. Also, in the past, following the election of Chief Ministers, the practice has been for the Assembly to agree to adjourn to a date to be fixed by the Speaker either at the request of the Chief Minister or on receipt of a request in writing of an absolute majority of Members (and requiring the Speaker to notify Members in writing of the date and time of meeting).⁵¹

WHAT CONSTITUTES A SITTING OF THE ASSEMBLY?

7.30 A sitting of the Assembly commences when the Assembly meets, the bells having been rung for five minutes, usually when the Speaker takes the Chair pursuant to standing order 27 or other order of the Assembly⁵² and it concludes when the Assembly adjourns, either by resolution or pursuant to standing order.

7.31 Even if a quorum of Members is not present at the time fixed for the meeting of the Assembly and the Speaker is obliged to adjourn the Assembly until the next sitting day pursuant to the provisions of standing order 28, the implication of the wording of standing order 28 is that a sitting has occurred.⁵³

7.32 The term 'sitting day' is not defined in the standing orders although it is referred to on a number of occasions.⁵⁴ The practice of the House of Representatives is that a sitting day is a day on which the House commences a sitting following an adjournment, and continues until a motion for its adjournment is carried. It is defined 'in other words' as taken to mean a day on which the house meets to begin a sitting and not any day on which the House sits. Thus, a sitting day may continue for one or more days.⁵⁵

7.33 The term 'sitting day' has special legal significance as there are certain statutory requirements for the notification of the making of laws,⁵⁶ the presentation of regulatory impact statements,⁵⁷ and the timing of motions to amend or disallow subordinate laws and disallowable instruments.⁵⁸ The dictionary to the *Legislation Act 2001* provides that a 'sitting day' of the Legislative Assembly 'means a day when the Assembly meets'.⁵⁹

50 MoP 2001-04/496. In the following year the Assembly did meet earlier than scheduled following receipt by the Speaker of a request in writing from an absolute majority of Members to discuss the bushfire emergency in the Territory.

51 MoP 1989-91/470; 1992-94/8 (the date and time the Assembly next met was in accordance with the request of the Chief Minister); 1995-97/12; 1998-2001/6.

52 Or when it meets for the first time following a general election pursuant to the provisions of paragraph 17(1)(a) of the Self-Government Act or when it meets pursuant to the provisions of paragraph 40(2)(b) of the Self-Government Act (there being a vacancy in the office of Chief Minister). A meeting may proceed should the Speaker be absent (see standing order 6).

53 See also the provisions of standing order 9 (Absence of Speaker and Deputy Speaker) and *House of Representatives Practice*, p. 237.

54 Standing orders 9, 28, 31, 32, 125, 151.

55 *House of Representatives Practice*, p. 237. No new *Notice Paper* would be issued in such circumstances, the plenum would continue working through the business as listed on the original *Notice Paper*. However, the unusual circumstances may mean that issues concerning the precedence to be allocated to various categories of business (as listed) at various times may, on occasion, need an order of the Assembly should the sitting continue over a number of days. See, for example, MoP 1998-2001/1157 where, the Speaker having left the Chair the preceding evening (there having been a power failure), the Chair was resumed the following morning (Wednesday) and the Speaker advised the Assembly that, as the sitting of the preceding day had not been adjourned, Tuesday's program was still before the Assembly. Having then ascertained that it was the wish of the Assembly to do so, the Speaker directed that the Assembly follow the routine of business that would normally apply on a Wednesday.

56 *Legislation Act 2001*, subsection 28(9).

57 *Legislation Act 2001*, subsection 34(6).

58 *Legislation Act 2001*, subsection 65(1).

59 *Legislation Act 2001*, dictionary.

7.34 The shortest sitting of the Assembly was on 10 October 2000 when the sitting lasted three minutes⁶⁰ (a notice of motion of no confidence in the Chief Minister having been delivered to the Acting Clerk and reported to the Assembly) and the longest on 24 and 25 August 2006 (18 hours and 30 minutes).⁶¹

SUSPENSION OF SITTING

7.35 Suspension of a sitting, as distinct from an adjournment, allows for a temporary break in the proceedings. This allows business to be restarted where it left off prior to the suspension.⁶² A sitting is suspended by the Speaker leaving the Chair, usually having ascertained that it was the will of the Assembly that the sitting be suspended.⁶³ The most common occurrence of a suspension is for a meal break to be taken.

7.36 Standing orders provide for a sitting to be suspended in the case of special circumstances arising in the event of an equality of votes in the ballot for the election of Speaker and Chief Minister.⁶⁴ It is also provided in the standing orders that, if it has been established that a quorum of Members is not present but the Speaker is satisfied that there is likely to be a quorum within a reasonable time, the Speaker shall announce that the Chair will be taken at a stated time.⁶⁵ The sitting is then suspended until the Speaker resumes the Chair.

7.37 Should grave disorder arise in the Assembly, the Speaker may also suspend the sitting until a time to be named by him or her.⁶⁶ This has occurred on occasions for short periods following grave disorder in the gallery⁶⁷ and on two occasions due to disorderly conduct in the Assembly.⁶⁸ Sittings have often been suspended pursuant to order of the Assembly when the agreement of all Members on an issue could not be reached.⁶⁹

7.38 Sittings have been suspended for a variety of reasons on other occasions including:

- power failures in the Assembly;⁷⁰
- fire alarms sounding;⁷¹
- to enable Members to consider proposed amendments to bills;⁷²
- to enable Members to consult on proceedings;⁷³
- the running of the Melbourne Cup;⁷⁴
- as a mark of respect following a motion of condolence;⁷⁵

60 MoP 1998-2001/1011.

61 MoP 1995-97/197-208.

62 An adjournment requires the Assembly to follow the routine of business set out in standing order 74 at its next meeting.

63 A dissenting voice would mean that the sitting continued.

64 Standing orders 2(g) and (k), 3(g) and (k). Suspension is for a period of 30 minutes. The provision would also apply to the election of Deputy Speaker and Leader of the Opposition (should there be a ballot).

65 Standing orders 28, 31 and 32.

66 Standing order 207.

67 See, for example, MoP 1995-97/258 (2), 267-8 (2).

68 MoP 1989-91/264 (10 minutes) and MoP 1992-94/120 (53 minutes).

69 See, for example, MoP 1989-91/50; MoP 1992-94/475; MoP 1995-97/784; MoP 1998-2001/870.

70 See, for example MoP 1998-2001/1157 (Speaker resumed the Chair the following day); MoP 2001-04/37; MoP 2004-08/467.

71 MoP 1998-2001/835.

72 See, for example, MoP 1992-94/490, Assembly Debates (25.11.1993) 4178-9; MoP 1998-2001/1586, Assembly Debates (9.8.2001) 2799.

73 See, for example, MoP 1989-91/30, 150; Assembly Debates (22.11.89) 2847; MoP 1992-94/566; Assembly Debates (19.4.1994) 994.

74 MoP 1995-97/830.

75 MoP 2004-08/1221.

- to enable cameras to be brought into the Chamber and while photographs were taken;⁷⁶ and
- on special ceremonial occasions (for example, following the swearing in of a new Member).⁷⁷

7.39 Suspensions of sittings have been used in other parliaments to enable them to expedite consideration of particularly complex or contentious government legislation. In Australia perhaps the best known recent example is the Senate's consideration of native title legislation in 1993. The Senate sat on 16, 17, 18, 20 and 21 December of that year to consider the legislation. There were regular suspensions but no adjournments.⁷⁸

SPECIAL RE-CONVENING OF THE ASSEMBLY

7.40 The Speaker has fixed an alternative day or hour of meeting on the request of an absolute majority of Members for the presentation and consideration of the Supervised Injecting Place Trial Amendment Bill 2000 and the reconsideration of the schedule to the Appropriation Bill 2000-2001;⁷⁹ for the purpose of the tabling of the reports of the Auditor-General on matters concerning the Bruce Stadium;⁸⁰ to discuss the bushfire emergency in the Territory;⁸¹ and to facilitate the progress of the Gungahlin Drive extension.⁸²

7.41 The Speaker has also fixed the day and hour of meeting pursuant to the provisions of paragraph 40(2)(b) of the Self-Government Act, there being a vacancy in the office of Chief Minister whilst the Assembly was not meeting.⁸³

QUORUMS

Forming a quorum

7.42 A quorum of the Assembly is formed by an absolute majority of Members,⁸⁴ not merely a majority of those present in the Chamber and voting on any given occasion.⁸⁵ An absolute majority of the Assembly (nine Members) is not only the number of Members necessary to constitute a quorum. It is also the majority required to carry a motion of no confidence in a Chief Minister;⁸⁶ to carry a vote in favour of a Speaker's removal from office⁸⁷ and to carry a motion moved without notice to suspend a standing order or standing orders.⁸⁸

76 MoP 1992-94/547.

77 See, for example, MoP 1995-97/576.

78 *Odgers*, pp. 152-3. *Odgers*' comments that 'If used excessively ... the procedure could be severely restrictive of the rights of individual senators', but notes that '... the Senate was not originally scheduled to sit on the extra days, so that no scheduled sitting days were lost as far as other business was concerned'.

79 MoP 1998-2001/935-940 (the request specified a date). At the preceding sitting the government had lost the vote on the question that the appropriation bill, as amended, be agreed to. MoP 1998-2001/934.

80 MoP 1998-2001/1009-10 (the request specified a date).

81 MoP 2001-04/523-5 (the requests specified a date).

82 MoP 2001-04/1393, 1394-7 (the request specified a date).

83 MoP 1998-2001/1013. The day and hour was not in fact an alternative day and hour.

84 Self-Government Act, subsection 18(1); standing order 28. Clause 17 of the Australian Capital Territory (Self-Government) Bill 1988, as introduced, provided that at a meeting of the Assembly, nine Members were a quorum and that the regulations (made pursuant to the parent Act but in accordance with a resolution of the Assembly) may fix a different number. The provision was omitted from the bill in the Senate and the current provision was inserted. See *Sen. Deb.* (24.11.1988) 2730. This is a high proportion of the membership. By comparison one-fifth of the membership of the House of Representatives constitutes a quorum.

85 Usually it is taken to mean more than one half of the total votes eligible. If the total is an uneven one, 'it is perhaps better expressed as a total vote which could not be exceeded if every other eligible vote were adverse'. See advice of the Attorney-General quoted at *House of Representatives Practice*, p. 333.

86 Self-Government Act, section 19; standing order 81.

87 Self-Government Act, paragraph 12(1)(d).

88 Standing order 272.

7.43 The question may arise as to what would constitute an absolute majority should there be more than one concurrent vacancy in the membership of the Assembly (thus there being only 15 actual Members at any one time). It has not arisen so far,⁸⁹ though the prudent course would be to insist on an absolute majority of at least nine Members for the purpose of establishing and maintaining a quorum and for the purposes of standing order 81 to ensure that the proceedings were, and were seen to be, in accordance with the rules.⁹⁰

Quorum at time of meeting

7.44 Prior to a scheduled meeting of the Assembly the bells are rung and the Speaker takes the Chair at the appointed time. If a quorum is not present the bells are rung for a further five minutes or until a quorum is formed. If, after five minutes, a quorum is still not present, the Speaker must adjourn the Assembly. However, a significant proviso contained in the standing orders is that, where the Speaker believes that a quorum will be formed, he or she can announce that the Chair shall be taken at a stated (later) time. If, at that time, there is not a quorum, the Speaker must adjourn the Assembly until the next sitting day.⁹¹

7.45 Members are not permitted to withdraw from the Chamber within five minutes after the time appointed for the meeting of the Assembly unless a quorum is obtained.⁹²

7.46 It is not unusual for the Speaker to order the bells to be rung at the commencement of a meeting of the Assembly because a quorum is not present, and for a quorum to be formed within five minutes.⁹³ The Speaker has not yet declared the Assembly adjourned because a quorum could not be formed at the commencement of a sitting. However, on 20 February 2002 (in unusual circumstances), a quorum of Members not being present, the Speaker, having earlier advised Members of his intentions, directed that the bells not be rung for the full five minutes and announced that the Chair would be resumed at the ringing of the bells. The sitting having been resumed later in the day, a quorum being present, the Speaker made a statement to the Assembly outlining the reasons for the actions he had taken in relation to the meeting of the Assembly earlier in the day.⁹⁴

Vote indicating lack of quorum

7.47 The Speaker must adjourn the Assembly when the counting of a vote in the Assembly indicates that a quorum is not present. In these circumstances no decision is considered to have been arrived at by the vote. The same proviso that applies to the lack of a quorum at the scheduled commencement of a sitting applies here; if the Speaker is satisfied there is likely to be a quorum within a reasonable time, he or she must state a time at which the Chair will be taken. If there is not a quorum at that time, the Assembly is adjourned to the next sitting day.⁹⁵

89 This was almost the case for a short period in January 1997, two vacancies occurring during the summer adjournment (though not concurrently). When the Assembly met on 18 February 1997 the vacancies had been filled pursuant to the provisions of the Electoral Act (the terms of office of the new Members had therefore commenced), though the new Members had not taken their seats as Members. See MoP 1995-97/575. The question would not arise in the event of there being one vacancy as an absolute majority would still clearly be nine Members.

90 The quorum of the House of Representatives is not reduced by any vacancy in the membership of the House, though the *House of Representatives (Quorum) Act 1989* (Cwth) provides for the quorum of that House to be a set fraction of the 'whole number of the members of the House'. See *House of Representatives Practice*, p. 266.

91 Standing order 28.

92 Standing order 29.

93 MoP 2004-08/595.

94 MoP 2001-04/55. Members of the Assembly were meeting with the ATSIC Board. See the comments by Speaker Berry at Assembly Debates (20.2.2002) 379.

95 Standing order 31.

Quorum during sitting

7.48 Though it is necessary for a quorum to be present when the Assembly meets and to record a vote of the Assembly, it is not necessary to maintain a quorum continuously whilst the Assembly meets. However, if any Member takes notice that a quorum is not present the Speaker is obliged to count the Assembly; and, the bells having been rung, if a quorum is not present within four minutes, the Assembly must be adjourned. Again, there is a proviso: if the Speaker is satisfied there is likely to be a quorum within a reasonable time, he or she must announce that the Chair will be taken at a stated time; if there is not a quorum at that time the Assembly must adjourn.⁹⁶

7.49 When the attention of the Speaker has been called to the fact that there is not a quorum present, no Member may leave the area within the seats allotted to Members until a quorum is present or four minutes have elapsed.⁹⁷

7.50 On 7 June 1990, during debate on the question 'That the Assembly do now adjourn,' the Speaker's attention was drawn to the fact that a quorum of Members was not present. The bells having been rung and a quorum not having been obtained within the required time, the Speaker adjourned the Assembly.⁹⁸

7.51 Where proceedings are interrupted for lack of a quorum and the Assembly adjourns to a later hour on the same day, standing order 68 states the Speaker shall fix the time for the resumption of the debate or any business under discussion and not disposed of at the time of interruption.

ADJOURNMENT OF THE ASSEMBLY

7.52 The termination of a sitting of the Assembly is known as an adjournment. An adjournment usually occurs when:

- the Assembly agrees to the motion 'That the Assembly do now adjourn'; or
- there is an 'automatic' adjournment at 6 pm on sitting days.

7.53 There are other provisions in the standing orders whereby the Assembly may be adjourned. In the absence of both the Speaker and Deputy Speaker, should the Assembly fail to elect a Member to perform the duties of Speaker, the Assembly stands adjourned until the next sitting day.⁹⁹ The Speaker is required to adjourn the Assembly in the absence of a quorum.¹⁰⁰ The Speaker may adjourn the Assembly without putting the question in the case of grave disorder.¹⁰¹

Adjournment motion moved by a Minister

7.54 A motion for the adjournment of the Assembly, other than the 'automatic' adjournment (see paragraphs 7.55 to 7.61), can only be moved by a Minister and no amendment may be moved to the motion.¹⁰² Such a motion can be moved at any time, though the practice is that the motion cannot be moved whilst another question is before the Chair.¹⁰³

⁹⁶ Standing order 32.

⁹⁷ Standing order 33. The 'floor' of the Assembly is that area contained within the 'horseshoe' of Members' seats and excludes the Public Gallery. A Member sitting in the gallery would not be counted towards a quorum.

⁹⁸ MoP 1989-91/266.

⁹⁹ Standing order 9.

¹⁰⁰ Standing orders 28, 31, and 32. See paragraphs 7.44 to 7.51.

¹⁰¹ Standing order 207.

¹⁰² Standing order 35.

¹⁰³ See *House of Representatives Practice*, p. 262.

Automatic adjournment

7.55 Standing order 34 requires that, at 6 pm on each sitting day, the Speaker must propose the question 'That the Assembly do now adjourn.' There may be debate on the question but no amendment may be moved. The standing order provides that:

- (a) if a vote is in progress at the set time, that vote, and any consequential votes, will be taken and the results announced;
- (b) if, on the question being proposed, a Minister requires the question to be put without debate, it must be put;
- (c) any business under discussion that is not disposed of before the adjournment is included in the *Notice Paper* for the next sitting; and
- (d) if the question is negatived, Assembly proceedings are resumed at the point at which they had been interrupted.¹⁰⁴

The Assembly rarely agrees to the question on the automatic adjournment when the Speaker first proposes it.¹⁰⁵

7.56 Questions may arise as to whether leave of the Assembly overrides the provisions of standing order 34 and what constitutes 'any business under discussion and not disposed of at the time of the adjournment' for setting down on the *Notice Paper* for the next sitting.

7.57 Leave of the Assembly would not normally transcend the provisions of standing order 34. Should a Member be making a statement by leave, the Speaker would interrupt the proceedings in accordance with the standing order. The same may not necessarily apply if standing orders have been suspended—for example, to enable a Member to make a statement or move a motion. It would depend on the terms of the order of the Assembly suspending the standing orders.¹⁰⁶

7.58 Generally speaking, the application of the suspension of standing orders is taken to be limited to what is necessary to enable the Member to proceed at that time, notwithstanding the order of business set down for that day. Thus, for example, a Member making a statement by leave is still subject to Chapter 6 of the standing orders setting out the rules of debate. It would be expected therefore that the Chair would propose the question on the adjournment at the time specified in standing order 34, unless the Assembly had specifically and clearly ordered or agreed otherwise.

7.59 Should the question on the automatic adjournment be negatived (as is often the case), then, even if there had been no question before the Assembly, as set down in standing order 34 the proceedings would resume at the point at which they were interrupted. For example, discussion of a matter of public importance would resume, a Member would resume making his or her statement by leave or a Member would resume addressing his or her point of order (if given the call by the Chair).

7.60 If debate were interrupted pursuant to standing order 34 whilst the Assembly was discussing a matter of public importance or a Member was making a statement by leave or speaking to a point of order, and the Assembly agreed to the motion to adjourn, the issue that arises is the status of that interrupted business in the context of the next day's proceedings.

¹⁰⁴ Standing order 34.

¹⁰⁵ It has occurred: see MoP 1992-94/325.

¹⁰⁶ See the practice of the House of Representatives (where it is regarded that the terms of such an order would need to specifically suspend House of Representatives' (standing order 48A))—*House of Representatives Practice*, p. 263.

7.61 The key to the matter is whether there is a question before the Assembly (see Chapter 9: Motions). If the Chair has proposed a question (eg 'That the motion be agreed to') the motion is in possession of the Assembly; if not, the matter would be dropped and would not appear on the *Notice Paper*. The making of a statement by leave, discussion of a matter of public importance or a Member addressing a point of order is not 'business' in the terms of the standing orders as it is not in the possession of the Assembly and could not be set down on the *Notice Paper* for the next sitting.

Adjournment debate

7.62 Each Member speaking to the question 'That the Assembly do now adjourn' has a time limit of five minutes and there is an overall time limit on the debate of no more than 30 minutes.¹⁰⁷ The practice of the Assembly is that Members may speak only once to the question. The standing order has been suspended to enable the debate to continue until completion¹⁰⁸ and to continue beyond the time set for its completion.¹⁰⁹

7.63 The relevancy rule is relaxed for debate on a motion to adjourn the Assembly, standing order 58(a) providing that irrelevant matters may be debated.

7.64 The reply of the mover of the motion closes the debate, though Members have addressed the Assembly, by leave, after the Minister who moved the motion had replied.¹¹⁰ The practice is that the Chair will give the call to another Member rising in preference to the Minister who moved the motion.

7.65 When the Assembly agrees to the motion 'That the Assembly do now adjourn' or when the time fixed for the debate by standing order 69(b) has expired, the sitting concludes and the Speaker adjourns the Assembly until the time fixed for its next meeting, either pursuant to standing order 27 or as fixed by order of the Assembly.

Adjournment for special reasons

7.66 The Legislative Assembly may adjourn for special reasons, for example, to mark a significant event in the life of the Territory or the nation at large or to mark the death of an important citizen. It has not yet done so. The House of Representatives has adjourned to mark the death of a Prime Minister and former Prime Minister, a reigning Monarch, a Queen, a Governor-General and others.¹¹¹ It has also adjourned 'one minute after it met to enable Members to attend functions in honour of the eminent aviator, Captain Hinkler'.¹¹²

¹⁰⁷ Standing order 69(b).

¹⁰⁸ MoP 1992-94/351.

¹⁰⁹ MoP 2001-04/255.

¹¹⁰ MoP 1992-94/112.

¹¹¹ *House of Representatives Practice*, p. 264.

¹¹² *House of Representatives Practice*, p. 238.

8.1 The introductory section of this chapter will focus on the internal rules and practices by which the Assembly conducts its business, their source and their operation. This chapter and subsequent chapters will examine the Assembly's organisation of its program of business each day and address the methods by which the Assembly reaches its decisions, the maintenance of order, the rules of debate and related matters.

8.2 The source of the Assembly's power to make rules to govern the conduct of its business is the Self-Government Act. Subsection 21(1) provides that, subject to the provisions of the Self-Government Act itself, the Assembly may make standing rules and orders for the carrying on of business. The Assembly also inherits the House of Representatives' 'power to regulate its proceedings by standing rules and orders having the force of law' through subsection 24(3). This is one of the principal powers, privileges and immunities of the House of Representatives drawn from the law and custom of the House of Commons in 1901.¹

8.3 In addition to the Self-Government Act and custom, the conduct of the business of the Assembly is governed by certain Territory legislative provisions and, perhaps most importantly, the standing orders and other orders and rules adopted by the Assembly.

8.4 In addition to providing the source of the Assembly's power to regulate its own proceedings, the Self-Government Act contains a number of provisions directly related to the conduct of the business of the Assembly (many of which are also incorporated in the standing orders). Examples of matters set out in the Self-Government Act are the requirement that Members must make and subscribe to an oath or affirmation before taking their seats; the election of a Speaker and a Chief Minister at the first meeting of an Assembly; the role and powers of the Speaker; provisions relating to conflict of interest, times of meetings and quorums; and the determination of questions arising in the Assembly.

8.5 Certain provisions in Territory and even Commonwealth legislation also impact in some way upon and authorise Assembly procedures. Perhaps most importantly, given the core function of the Assembly as a legislature, the *Legislation Act 2001* (ACT) contains a significant range of such provisions, including those for the presentation, amendment and disallowance of subordinate laws and disallowable instruments.² At the Commonwealth level, the *Electoral Act 1918* sets down requirements for the Assembly to fill casual vacancies for Senators for the Territory.

8.6 Custom and practice are also important. Certain practices of the Assembly not set down in any standing or other order are inherited from the House of Representatives and, on occasion, the United Kingdom House of Commons.³ These include the custom of the government sitting to the Speaker's right in the Chamber (not always followed in the

¹ *Quick and Garran*, pp. 507-8.

² Further examples include: the *Oaths and Affirmations Act 1984* for the form of oath and/or affirmation made by Members; the process for making enactments on electoral matters in the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*; the *Legislative Assembly Precincts Act 2001* on management of the Assembly precincts; and the *Electoral Act 1992* on the filling of casual vacancies, the determination of questions relating to the eligibility of a person declared elected to be an MLA and vacancies in the membership of the Assembly.

³ And certain rules derived from the Commons are mirrored in many standing orders of the Assembly.

Assembly);⁴ the alternation of the call during questions without notice and debate;⁵ the sub judice convention; and the practice that a charge against a Member must be made by way of a substantive motion, which requires a distinct vote of the House.⁶ The contribution of custom and practice at this stage in the Assembly's history, however, is not as pervasive as in legislatures of longer standing.⁷

8.7 The Assembly has often turned to the Australian Senate when needing to adopt or adapt practices from other legislatures to meet new or evolving circumstances. On privilege matters, for example, in establishing the criteria to be taken into account by the Speaker when determining whether a motion arising from a matter of privilege should be given precedence, reference is made regularly to Senate procedures. The Assembly has also turned to the Senate to improve its practices—for example, with the creation of a committee for the scrutiny of bills and subordinate legislation or when it has required models to adapt to the expectations of contemporary society through the adoption of procedures for citizens' right of reply or to permit electronic participation in committee meetings.

8.8 The Assembly is developing its own practices, often based on rulings of the Chair but also determined by other precedents and decisions of the Assembly and even, in part at least, by the architecture of the Chamber and the precincts.⁸ The Assembly has also regularly referred matters to the Standing Committee on Administration and Procedure to assist it to develop practices and procedures appropriate to its needs.

8.9 As a new legislature, the Assembly has found itself less constrained by the inertia imposed by established practice or tradition in responding to contemporary demands. For example, the adoption of a 'prayer or reflection' was possibly unique in legislatures derived from Westminster when adopted by the Assembly in 1995. In the consideration of bills, the Assembly has never used the sequence of first and second readings, followed by the committee of the whole stage and a third reading. Instead, the formal reading of the title of a bill by the Clerk is followed by a motion 'That this bill be agreed to in principle' and, if the question is resolved in the affirmative, then consideration of the bill in detail. At the completion of the detail stage, the motion 'That this bill (as amended) be agreed to' is moved and is not open to debate.

8.10 The standing orders adopted in May 1989 do not contain a provision for dissent from a ruling of the Chair,⁹ yet the Assembly has considered such motions from time to time (usually moved by leave of the Assembly). The small number of Members and reduced pressure on time has meant that, compared to other Australian legislatures, a significant proportion of time is allocated to private Members' business (it currently has precedence over executive business on sitting Wednesdays).

8.11 While the key set of rules governing the business of the Assembly is its standing orders, certain resolutions and orders of the Assembly clearly have an ongoing effect, either

4 For periods during the First and Second Assemblies the party in government sat to the left of the Speaker (a meeting room being located behind the left side of the Chamber). However, in the Chamber currently in use, the practice that the government sits on the Speaker's right has been followed.

5 Not adopted in its entirety from practice of the House of Representatives.

6 See *House of Representatives Practice*, p. 186.

7 The greater part of the existing practice of the United Kingdom House of Commons is not to be found in its standing orders but is derived from occasional resolutions (some centuries old) that have acquired permanence, and the authority of many of its old, established forms and rules of practice is unrecorded. For an overview of the development of the procedure of the House of Commons see the Introduction to the 23rd edn of *May* at pp. 3-11 and the Introduction to the 22nd edn at pp. 3-8.

8 In fact, the layout of the temporary Chamber in the first and part of the second Assemblies meant that Members had to contravene the provisions of standing order 41 in moving about the Chamber.

9 It is thought that such a provision was deliberately omitted from the draft standing orders circulated for discussion and presented on the first sitting day of the Assembly.

by virtue of their actual provisions or because they are made pursuant to or in accordance with legislative provisions. The Assembly has made orders of ongoing effect pursuant to or in accordance with provisions of the Self-Government Act¹⁰ and other Commonwealth¹¹ and Territory¹² legislation as well as directly relating to its own proceedings.¹³

8.12 Even if no duration is fixed, certain orders, until revoked or varied by the Assembly, are recognised as having ongoing validity.¹⁴ The November 1995 order of the Assembly regarding amendments to appropriation bills and that of August 1998 in relation to the ordering of private Members' business are regarded in this way.¹⁵

Explanation of the term 'order'

In the context of the arrangement of the business of the Assembly the word *order* is used in two key senses:

- it may mean a concrete direction as to what is to be done in a particular case (for example, the Assembly may order that consideration of a clause in a bill be postponed or order that consideration of a committee report be made an order of the day for a later hour that day or a future sitting); or
- it may describe an abstract formulation of a rule as to the business of a House.

In the first sense, an order is the most common act of the Assembly—the motive power of all its actual positive work.¹⁶ Over the course of an Assembly, a myriad of such orders would be made; it is how the Assembly conducts its business.

In the second sense, it sets down general rules for the conduct of business which, if adopted as 'standing' orders or orders of continuing effect, are expressly meant to bind future Assemblies.¹⁷

In addition, the word is used to denote the actual sequence of business (the 'order as listed on the *Notice Paper*') and as a principle of decorum and the rules of procedure ('Order shall be maintained in the Assembly by the Speaker').

STANDING ORDERS

8.13 At its first meeting on 11 May 1989 the Assembly adopted its standing orders. They were based on a set of proposed standing orders presented by the Presiding Officer. The proposed standing orders had been prepared in consultation with officers of the Territory Administration, the Department of the House of Representatives and the Assembly Secretariat. Whilst they reflected the practice that had evolved in the former House of Assembly and were originally derived from the House of Representatives standing orders (and further proposals being considered for a possible revision of the standing orders of the House of Representatives), they also took into account experience gained in other small legislatures such as those of the Northern Territory and Norfolk Island.¹⁸

10 'Authority to receive resignations of Members and Speaker' (Self-Government Act, section 13): see MoP 1992-94/7; 'Title of Presiding Officer' (Self-Government Act, subsection 11(2)), MoP 1992-94/7.

11 'Senator for the Australian Capital Territory, Procedures for election' (*Commonwealth Electoral Act 1918*, section 44), MoP 2001-04/528-9.

12 'Broadcasting guidelines' (*Legislative Assembly (Broadcasting) Act 2001*, subsection 5(2)); MoP 2001-04/93-5; 2004-08/122-3, 204.

13 'Authority to publish *Hansard*', MoP 1992-94/7; 'Citizen's right of reply', MoP 1995-97/39-43.

14 See Josef Redlich, *The procedure of the House of Commons, A Study of its History and Present Form*, London, Archibald Constable & Co. Ltd., 1908, Vol II, pp. 5-6 and *May*, 22nd edn, p. 6.

15 MoP 1995-97/201-3; 1998-2001/136.

16 The term 'order' and 'resolution' are almost interchangeable. They both express a decision of the Assembly. However, an order might best be understood as a decision of the Assembly requiring or foreshadowing action while a resolution can be merely an expression of the views of the Assembly.

17 See Josef Redlich, *The procedure of the House of Commons: A Study of its History and Present Form*, London, Archibald Constable & Co. Ltd., 1908, Vol II, pp.5-6.

18 MoP 1989-91/3; Assembly Debates (11.5.1989) 4-6. The standing orders were amended later that day.

8.14 There are approximately 280 standing orders.¹⁹ Together with a range of resolutions of ongoing effect, they provide a comprehensive set of rules governing the conduct of the business of the Assembly. In addition, standing order 275 (General rule for conduct of business) provides that any question relating to procedure or the conduct of business of the Assembly not provided for in the standing orders or practices of the Assembly shall be decided according to the practice at the time prevailing in the House of Representatives.

8.15 The operation of standing orders is ongoing, standing order 274 providing that they continue in force 'until altered, amended or repealed'. They are taken to be binding, though apart from the basic rule of notice being required, they are not protected by any rules or barriers preventing their suspension, amendment or repeal. Certain standing orders or other orders of the Assembly have arrangements for their suspension or the variance of their provisions,²⁰ and standing order 82 itself gives authority to the many occasions when leave of the Assembly (which must be granted without any dissenting voice) is granted for a course of action to be taken that is contrary to the provisions of the standing orders.

8.16 Where necessary, the standing or other orders of the Assembly can be suspended on the passage of a motion moved without notice. Such a motion must be carried by an absolute majority of Members and the suspension is limited to the particular purpose for which the suspension is sought.²¹ Standing order 272 has itself been suspended for a sitting.²² Should such a motion be moved pursuant to notice, or by leave of the Assembly, the motion would not need to be carried by an absolute majority of Members; a simple majority would be adequate. A Member moving such a motion would need to have received the call of the Chair. The practice in the House of Representatives is that such a motion may be moved only if the substance of the motion is relevant to the item of business before the House or, alternatively, between items of business.²³

8.17 From time to time the Assembly may put aside the operation of a standing order or orders by, in effect, suspending them indirectly. It does this by making 'a concrete order prescribing a course of procedure inconsistent with the standing orders, and thus by implication cancel[ing] their operation upon a particular occasion'.²⁴ In such cases, the Assembly includes in an order words such as 'notwithstanding the provisions of'.²⁵

8.18 In addition to the standing orders, the Assembly often adopts temporary orders to effect changes to its standing orders. These temporary orders are operational until the date or event set down in their provisions or until the expiration of an Assembly.²⁶ For example,

19 When standing orders are omitted or inserted, the whole compilation is not necessarily re-numbered. For example, standing orders 17 to 19 were omitted in 1995 and the numbers have not been re-allocated.

20 Standing and other orders which include provisions for the Assembly to 'otherwise order' are 9 (absence of Speaker and Deputy Speaker), 27 (days and hours of meeting), 76 (eleven o'clock rule), 69 (time limits for debates and speeches), 180 (consideration of the schedule of an appropriation bill for the ordinary annual services of the executive), 196 (bills—amendments by the Governor-General), 220 (committees—membership) and the order of the Assembly for the procedures for election of Senators for the Australian Capital Territory.

21 Standing orders 272 and 273. Standing order 272 originally provided that only a Minister could move a motion without notice to suspend any standing orders or orders. This requirement was omitted by temporary order for a number of years before being omitted from standing order 272 (see *Assembly Debates* (29.6.1989) 550-1; MoP 1989-91/38). Should a majority, but not an absolute majority, of Members vote in favour of a motion without notice to suspend standing orders, the Speaker declares that the vote has not been carried (see MoP 1995-97/365).

22 MoP 1989-91/163.

23 *House of Representatives Practice*, p. 259.

24 Josef Redlich, *The procedure of the House of Commons, A Study of its History and Present Form*, London, Archibald Constable & Co. Ltd., 1908, Vol II, p. 8.

25 See, for example, MoP 2004-08/69: reference of an appropriation bill to a standing committee before the completion of the debate on the motion 'that this bill be agreed to in principle', 'notwithstanding the provisions of standing order 174 ...'.

26 MoP 2001-04/296. The Assembly adopted an order permitting committees to authorise members of the committee to participate in deliberative meetings by electronic means.

the practice of each Assembly has been to establish general purpose standing committees by resolution at the commencement of an Assembly, the order having effect until the expiration of the Assembly unless amended or repealed earlier than that.

ROUTINE OF BUSINESS

8.19 Although, with its limited membership of 17, the pressures on the time of the Assembly are not as great as those of most other legislatures, rules still need to be set down for the introduction, consideration and disposal of the various categories of its business and the allocation of time for the executive (which has priority), private Members (non-Ministers) and the corporate business of the Assembly (Assembly business). This is addressed by the standing and other orders of the Assembly. They establish procedures which endeavour not only to give each competing interest 'a proper share of parliamentary opportunity' but also to subordinate the element of chance to that of stability in the despatch of business and the necessity to act upon a pre-arranged program.²⁷

8.20 Subject to any order, the Assembly met to conduct its business on Tuesdays, Wednesdays and Thursdays at 10.30 am up until late 2008. In the Seventh Assembly the meeting time changed to 10 am. Following any formal recognition of the traditional custodians (the indigenous people of the ACT region, see paragraph 8.24) the ordinary routine of business for consideration each day as set by standing order 74 is followed:

- Prayer or reflection²⁸
- Presentation of petitions
- Notices and orders of the day
- Questions without notice
- Presentation of papers
- Ministerial statements, by leave
- Matter of public importance
- Notices and orders of the day.

8.21 This routine is subject to certain provisos and modifications, both in relation to the ordinary routine each day (the 2 pm interruption for questions and certain matters accorded precedence, for example) and in relation to the apportionment of business (consideration of notices and orders of the day, for example) throughout the week.

8.22 The routine each day is set out in a tabular format on the following page. The *Daily Program* (colloquially known as the 'Blue') lists the items of business as set out in standing order 74 together with other matters that are expected to arise.

8.23 Should the Assembly meet on a Monday, Friday, Saturday or Sunday, the routine would be that of a Tuesday unless the Assembly were to order otherwise.

27 See comments regarding the UK House of Commons by Josef Redlich, in *The Procedure of the House of Commons, A Study of its History and Present Form*, London, Archibald Constable & Co. Ltd., 1908, Vol. III, p. 10.

28 Unlike the practice in many other legislatures, the prayer [or reflection] is actually included in the routine of business in the Assembly.

Legislative Assembly for the Australian Capital Territory Routine of Business

	Tuesday		Wednesday		Thursday
10 am	Prayers Petitions Executive business	10 am	Prayers Petitions Private Members' business (Notices and orders of the day)	10 am	Prayers Petitions Executive business— Notices for presentation of bills
				approx 11 am	Assembly business
				approx 11.45 am	Executive business
approx 12.30 pm	Lunch break	approx 12.30 pm	Lunch break	approx 12.30 pm	Lunch break
2 pm	Question Time	2 pm	Question Time	2 pm	Question Time
approx 3 pm	Presentation of papers Ministerial statements, by leave	approx 3 pm	Presentation of papers Ministerial statements, by leave	approx 3 pm	Presentation of papers Ministerial statements, by leave
approx 3.30 pm	Matter of public importance	approx 3.30 pm	Private Members' business	approx 3.30 pm	Matter of public importance
approx 4.30 pm	Executive business			approx 4.30 pm	Executive business
6 pm	Adjournment debate	6 pm	Adjournment debate	6 pm	Adjournment debate



Daily Program

This program of proposed business is issued for the general guidance of Members. It is not a formal document and business listed is subject to change.

Tuesday, 26 August 2008
10.30 am

Prayer or Reflection

Petition and response

ASSEMBLY BUSINESS

- No. 1 Select Committee on Privileges—Mr Mulcahy (Chair) to present the report entitled *Examination of alleged misuse of position by a Committee Chair and unauthorised dissemination of committee proceedings*, pursuant to order of the Assembly of 1 July 2008 and move—That the report be noted.
- No. 2 Standing Committee on Health and Disability—Ms MacDonald (Chair) to present Report No. 9 entitled *Closure of the Wanniasa Medical Centre*, pursuant to order of the Assembly of 7 August 2008 and move—That the report be noted.

COMMITTEE REPORTS

Standing Committee on Legal Affairs—Scrutiny Report 59

Mr Stefaniak (Chair) to present Scrutiny Report 59 and, by leave, make a statement.

Standing Committee on Education, Training and Young People—Report 8

Ms Porter (Chair) to present Report 8 entitled *Vocational Education and Training to address Skills Shortages* and move—That the report be noted.

Standing Committee on Legal Affairs—Report 8

Mr Stefaniak (Chair) to present Report 8 entitled *ACT Fire and Emergency Services Arrangements* and move—That the report be noted.

EXECUTIVE BUSINESS

Orders of the day

- No. 1 Crimes Legislation Amendment Bill 2008—Resumption of debate (Mr Stefaniak) on agreement in principle; detail stage; agreement to Bill.
- No. 2 Domestic Violence and Protection Orders Bill 2008—Resumption of debate (Mr Stefaniak) on agreement in principle; detail stage; agreement to Bill.

At 2.30 pm

Questions without notice

Presentation of papers

- Speaker
- Mr Stanhope (Chief Minister)
- Ms Gallagher (Minister for Health)
- Mr Corbell (Attorney-General)
- Mr Barr (Minister for Education and Training)
- **Subordinate legislation** (Manager of Government Business)

Discussion of Matter of Public Importance—Dr Foskey

“The benefits to the Canberra community of a more thoughtful approach to Canberra Airport development, including the imposition of a curfew.”

Time Limits: Discussion 1 hour, Proposer and Member next speaking 15 minutes, any other Member 10 minutes.

EXECUTIVE BUSINESS—continued

Orders of the day—continued

- No. 3 Guardianship and Management of Property Amendment Bill 2008—Resumption of debate (Mr Stefaniak) on agreement in principle; detail stage; agreement to Bill.
- No. 4 Corrections Management Amendment Bill 2008—Resumption of debate (Mr Seselja) on agreement in principle; detail stage; agreement to Bill.
- No. 5 Unit Titles Amendment Bill 2008—Resumption of debate (Mr Seselja) on agreement in principle; detail stage; agreement to Bill.
- No. 6 Tobacco Amendment Bill 2008—Resumption of debate (Mrs Burke) on agreement in principle; detail stage; agreement to Bill.

Adjournment

T Duncan
Clerk of the Legislative Assembly

ORDINARY ROUTINE OF BUSINESS

Formal recognition of traditional custodians and invitation to pray or reflect

8.24 The Assembly practice is that, on the first meeting day following an adjournment for more than a week, prior to inviting Members to pray or reflect on their responsibilities to the people of the Territory, the Speaker, having taken the Chair, makes a formal recognition that the Assembly is meeting on the lands of the traditional custodians.²⁹ In 2008 this practice was adopted as a standing order.³⁰

8.25 Standing order 30 provides that at the commencement of each day's proceedings the Chair is taken by the Speaker and, a quorum being present, the Speaker addresses the Assembly in the following terms:

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.³¹

Members then stand in silence for a brief period.

Presentation of petitions

8.26 Following the invitation to pray or reflect, the Clerk announces the particulars of the petitions that have been lodged for presentation and indicates, for each petition lodged for presentation: the Member who lodged it, the number of the petitioners and the subject matter of the petition. Any ministerial responses to petitions previously presented are also announced.

8.27 No discussion upon the subject matter of a petition is allowed at the time of presentation. The only question that may be entertained by the Assembly is that a particular petition be referred to a committee.³²

Notices and orders of the day

8.28 The bulk of the substantive business of the Assembly is taken up with the consideration of notices and orders of the day, whether as part of executive business, private Members' business or Assembly business. Executive business is business initiated by a Minister, mainly government bills. Private Members' business is any matter initiated by an individual Member who is not a minister.

8.29 Notices relate to matters that Members seek to bring before the Assembly. A notice is a statement of intent by a Member to initiate an item of business in the Assembly—for example, to move a motion or to introduce a bill.³³ As a general rule, no proposal can be put to the Assembly unless notice has been given of it. This protects the Assembly against surprise and enables Members and the community to keep abreast of the program of business before

²⁹ The practice has been followed since 4 June 2002. In 2009 it was amended to use the word custodians instead of owners.

³⁰ MoP 2004-08/1388-9.

³¹ The current provisions were adopted on 1 June 1995 following earlier consideration of the issue by the Standing Committee on Administration and Procedure. See *Standing Orders and Citizen's Right of Reply*, Report of the Standing Committee on Administration and Procedure, May 1995, pp. 3-4; *Assembly Debates* (1.06.1995) 695-714. The original prayer was actually included in the draft standing orders presented by the Presiding Officer at the first sitting on 11 May 1989.

³² See Chapter 14: Petitions, for a full outline of petitions procedures.

³³ Standing orders also make provision for Members to give notice of questions.

the Chamber. The requirement for notice to be given also helps to ensure that the rules governing content and form are adhered to. However, there are exceptions, and these are provided for in the standing orders.³⁴ For example, sometimes items of business are initiated with the leave of the Assembly (the unanimous consent of Members present).³⁵

8.30 Notice of a motion is given by delivering its terms in writing to the Clerk in the Chamber during a sitting. It must be signed by the proposing Member.³⁶ A notice of intention to present a bill must specify the long title³⁷ of the bill and shall be signed by the Member.³⁸ The Clerk is required to enter notices on the *Notice Paper* at the first available opportunity.³⁹

8.31 A notice of motion or intention to present a bill becomes effective only when it appears on the *Notice Paper*.⁴⁰

8.32 A Member who gives notice of intent to initiate an item of business retains rights over that notice as to its withdrawal or amendment.⁴¹ However, once the Assembly has commenced consideration of the matter, the notice has been taken out of the hands of its proposer⁴² and becomes the property of the Assembly.

8.33 The Assembly may decide the question so raised there and then. If it does so, it will be taken off the *Notice Paper*. Should the Assembly, deal with the matter formally⁴³ or adjourn debate and order the resumption of the consideration of the matter for some future time, by virtue of the decision of the Assembly and the order giving expression to it, it becomes an order of the day. An order of the day refers to any bill, motion or other item of business⁴⁴ that the Assembly has ordered to be considered or further considered on a particular day or at a particular time. More often than not, the order is for 'the next day of sitting', though from time to time orders are set down for a particular day.⁴⁵ It is through consideration of orders of the day that the Assembly conducts the substantive portion of its business.

Determination of precedence

8.34 The notices and orders of the day listed for consideration are published in the *Notice Paper* prior to each sitting of the Assembly.⁴⁶ They have precedence in accordance with the order in which they are listed.⁴⁷ That order is determined by the standing orders, which

34 Motions for leave of absence for Members, votes of thanks or condolence (standing order 126), bills initiated by leave (standing order 167) and money proposals (standing order 200), for example (see paragraphs 8.75 and 8.77).

35 Standing order 123.

36 Standing order 101.

37 The title by which bills are commonly known is the short title. The long title gives a more complete statement of the purpose of the bill. This is important particularly because it defines and limits the scope of the bill and acceptable amendments. Australian legislatures generally prohibit the practice of 'tacking', that is, adding provisions to a bill which are unrelated to its purpose as a means of getting those provisions made law without adequate scrutiny. For example, the long title of the Medical Treatment (Health Directions) Bill 2006 was 'A Bill for an Act to provide for directions about the withholding or withdrawal of medical treatment and related purposes'.

38 Standing order 168.

39 Standing orders 102 and 168. A notice of a motion of no confidence in the Chief Minister must be reported to the Assembly by the Clerk at the first convenient opportunity and shall not be entered by the Clerk on the *Notice Paper* until so reported (standing order 103).

40 Standing orders 112 and 168(d).

41 Members may do so by notifying the Clerk in writing in accordance with standing orders 110 and 111.

42 Though as 'the Member in charge' he or she retains some limited prerogatives (standing order 152).

43 Should, for example, the Assembly take a course similar to that set down by standing order 254(c), ie moving that a report be adopted.

44 The presentation of or consideration of a report or other paper, for example.

45 For example, where a committee has a precise reporting date, the tabling of the committee's report may be made an order of the day for that day. See NP (28.02.2007) 1489, Assembly Business, Orders of the day 2 and 3.

46 With the exception of the first sitting following a general election.

47 Standing orders 124 and 149.

set out specific provisions for the allocation of precedence to, and the ordering of, executive business, private Members' business and Assembly business (see paragraphs 8.62 to 8.68). Subject to these specific arrangements, the basic rules for the ordering of business are as follows:

- notices are entered by the Clerk on the *Notice Paper* and given priority over orders of the day, in the order in which they are given;⁴⁸
- should a notice be given 'for the next day of sitting'⁴⁹ it is allotted precedence below notices previously given for that day but, if not called on on that day, it then drops below all notices previously given, the sitting day for which it had precedence having passed;⁵⁰
- orders of the day are listed on the *Notice Paper* in the order in which the Assembly has ordered them to be taken into consideration and have precedence in the order set down; and
- should the Assembly order that consideration of a matter be set down as an order of the day for a particular day, it appears in the *Notice Paper* under a heading for that day and the priority of orders of the day for that day is determined by the order in which they were made. If not called on, it appears on the *Notice Paper* for the next sitting day at the end of the orders of the day for that day.⁵¹

Progress of business in the Assembly

8.35 As the Speaker calls on the business of the day (eg, Assembly business, executive business or private Members' business), the Clerk calls on the notices or reads out the orders of the day in the order as listed on the *Notice Paper*. In the case of a notice, the Member who gave the notice then moves the motion or presents the bill.

8.36 In the case of a motion of which notice has been given, debate may then ensue after the Speaker proposes the question 'That the motion be agreed to'. Debate can proceed to its conclusion or until adjourned by the Assembly determining that the resumption of the debate will be made an order of the day for a future time, either pursuant to motion or pursuant to the provisions in the standing orders.⁵²

8.37 A Member presenting a bill must move 'That this Bill be agreed to in principle' and after the presentation speech the debate on the question must be adjourned to a future day on the motion of another Member. Standing orders require that the question on the agreement in principle may not be determined by the Assembly during the sitting at which the bill is introduced.⁵³

This procedure ensures that Members have adequate time to consider the content of a bill before being asked to vote on it.

48 Standing order 105.

49 Standing order 109 allowed Members to specify a day for the moving of a notice. In 2008 that standing order was omitted.

50 Standing order 125.

51 Standing order 151; May, p. 373; *House of Representatives Practice*, p. 253.

52 Should the Assembly not so determine, the matter would be dropped from the *Notice Paper*. See Chapter 10: Rules of debate and the maintenance of order, for a full account of this procedure.

53 Standing orders 171 and 172. See paragraphs 11.147 to 11.220 for a full account of this procedure. In exceptional circumstances a bill may be declared urgent by the Member in charge of the bill and the question decided by a simple majority of Members and the Bill dealt with immediately or later that day (see paragraph 11.34). It is rare for a bill to be declared urgent in the Assembly.

Postponement, withdrawal or discharge of business

8.38 A notice of a motion or intention to present a bill may be postponed. The Member who gave the original notice⁵⁴ has the option of moving a motion without notice to defer consideration. A Member who has given notice of a motion or intention to present a bill may also withdraw the notice by notifying the Clerk in writing at any time prior to that proposed for moving the motion.⁵⁵

8.39 In addition, if a Member is not present in the Chamber when a notice given by that Member is called on, it must be withdrawn from the *Notice Paper* unless another Member fixes a future time for moving the motion or presenting the bill.⁵⁶ Likewise, when a notice given by a Member is called on and the Member fails to move the motion or present his or her bill, it must be removed from the *Notice Paper* unless the Member fixes a future time for moving the motion or presenting the bill.⁵⁷ In the case of government business, a Minister may act for another Minister with regard to any matter before the Assembly that is the responsibility of that Minister.⁵⁸

8.40 When an order of the day is called on by the Clerk, it may be postponed on motion moved without notice by any Member.⁵⁹ Similarly, when an order of the day is called on, it may, on motion moved without notice by the Member who originally moved the motion or who presented the bill, be discharged.⁶⁰ An order of the day may be referred to a committee for inquiry and report.⁶¹

8.41 Should a Member vacate his or her seat, any notices standing in his or her name are removed from the *Notice Paper* (as are notices of questions). Orders of the day of which that Member has charge remain on the *Notice Paper*, being the property of the Assembly.

8.42 It is common practice at regular intervals (often after each winter and summer adjournment period), following consultation with all Members, for the Manager of Government Business to seek and be granted leave by the Assembly to move a motion to discharge orders of the day which the originating Members do not wish to proceed with.⁶²

Questions without notice

2 pm interruption

8.43 At 2 pm on each sitting day the Speaker is required to interrupt the business before the Assembly in order that questions without notice may be called on. In the normal course of events, this occurs when proceedings are resumed following the suspension of the sitting for the lunch break. However, should a vote be in progress at 2 pm, that vote and any vote consequent upon it, must be completed and the results announced.

8.44 In relation to any business that is before the Assembly at the time of interruption but that has not been disposed of, the Speaker is required to fix a time for the resumption of

54 Standing orders 124 and 168(d).

55 Standing orders 111 and 168(d).

56 Standing orders 127 and 168(d); see also MoP 1998-2001/457.

57 Standing orders 128 and 168(d); see also MoP 1998-2001/459 (Member fixed a later hour for moving the motion) and 801 (notice withdrawn from the *Notice Paper*).

58 Standing order 80.

59 Standing order 150.

60 Standing order 152. See MoP 2001-04/1457; MoP 1992-94/459. On the second precedent on that page the motion to discharge was moved by leave as the matter had not been reached on the *Notice Paper*.

61 MoP 2001-04/712.

62 MoP 1998-2001/1177; MoP 2001-04/566.

the debate on the question.⁶³ Should the notice or order of the day under consideration at the time of interruption be an item of private Members' business, there are special procedures in place relating to the resumption of consideration of that business (see paragraph 8.54).

8.45 All non-executive Members of the Assembly have the right to ask at least one question without notice and a supplementary question on each sitting day.⁶⁴ Accordingly, the duration of question time is not fixed; it varies according to the number of questions and supplementary questions asked.

8.46 Giving each non-executive Member the opportunity to ask a question every sitting day is possible because of the small number of Members but it also represents a significant change from the practice in the early years of the Assembly. Originally, the Assembly accepted the practice of the House of Representatives and other Australian parliaments where the duration of question time is determined by the government of the day.⁶⁵ Standing order 113A, which provides for the current practice, was adopted in 1994.

8.47 At the conclusion of questions without notice, a non-executive Member may seek an explanation from the relevant Minister concerning an unanswered question on notice (a question that has been placed on the *Notice Paper* for written reply) or a question that the Minister has taken on notice during an earlier question time.⁶⁶ At the conclusion of the Minister's explanation, the Member may move 'That the Assembly takes note of the explanation' or, in the event that the Minister does not provide an explanation, the Member may, without notice, move a motion with regard to 'the Minister's failure to provide either an answer or an explanation'.⁶⁷

Presentation of papers

8.48 The next item in the routine of business is the presentation of papers (papers and reports of Assembly committees may also be presented at other times when other business is not before the Assembly (see paragraph 8.80)). Papers may be presented by the Speaker or a Minister.⁶⁸

8.49 There may be other business arising from the presentation of papers. It is not uncommon for a Minister to seek leave to make a statement following the presentation of a paper and, on the presentation of any paper by the Speaker or a Minister,⁶⁹ a Minister may move without notice either:

- that the Assembly takes note of the paper; or
- that the paper be referred to a committee for inquiry and report.⁷⁰

⁶³ Standing order 74.

⁶⁴ Standing orders 113A and 113B. A supplementary question can be asked immediately after the original question and must be relevant to, or arise directly out of, the answer to that question.

⁶⁵ Assembly Debates (29.6.1989) 548; Statement by the Speaker. The first Chief Minister of the ACT had indicated that her government would allow approximately 30 minutes for questions without notice.

⁶⁶ If a Minister does not answer a question on notice (or a question taken on notice) within 30 days of the asking of the question and does not, within that period, provide to the Member who asked the question an explanation satisfactory to that Member as to why an answer has not been provided, the Member may ask the relevant Minister for such an explanation at the conclusion of questions without notice on any day after that period. See Chapter 12: Questions seeking information.

⁶⁷ Standing order 118A

⁶⁸ Standing order 211.

⁶⁹ Or, for that matter, by a Member who has been ordered to present a document 'quoted from', pursuant to standing order 213.

⁷⁰ Standing order 214. If such a motion is not moved at the time of the presentation of the paper, it may be moved subsequently, either pursuant to notice or by leave.

Ministerial statements

8.50 Ministers may seek to make statements, by leave, concerning matters of administration or policy for which they are responsible. The usual practice is that prior notice is given to the opposition and the crossbench Members and the name and portfolio responsibility of the Minister seeking leave to make the statement are listed on the *Daily Program*.

8.51 Again, other business may arise. The Minister may present a copy of his or her statement and move 'That the Assembly takes note of the paper' in accordance with standing order 214 or, if the motion is not moved, an opposition Member and Members of the crossbenches may seek leave to make statements on the matter.

Matters of public importance

8.52 Standing order 79 provides that any Member may put forward a matter of public importance for discussion (it is not a debate as there is no question before the Assembly). A letter proposing the matter must be delivered to the Speaker one and a half hours before the sitting of the Assembly and, where there is more than one proposal, the Speaker determines, by the drawing of lots, which one will be submitted to the Assembly. Matters of public importance are considered after question time, presentation of papers and any ministerial statements. The Member who proposed the matter must open the discussion, which is limited to one hour.⁷¹ A matter that has been submitted for discussion can be withdrawn at the request of the Member who put it forward.⁷²

Notices and orders of the day

8.53 The Speaker next calls upon the business of the day and the Clerk calls upon the notices and orders of the day in the order listed on the *Notice Paper*. However, regard must be had to the status of business that was under consideration prior to questions without notice (in effect, prior to the lunch suspension). Determining the precedence of business that was either adjourned until a later hour that day or interrupted at 2 pm for questions (and in relation to which the Speaker fixed resumption of debate 'at a later hour this day') is subject to a variety of considerations.

8.54 Should the matter be an item of executive business, on all but sitting Wednesdays (see paragraph 8.67) the Manager of Government Business would determine when (in the order of business) the item was called on in accordance with standing order 78.⁷³ On a sitting Wednesday, when the order of the day is an item of private Members' business, the order of the day would have precedence over all other private Members' business in accordance with the resolution of the Assembly of 27 August 1998.⁷⁴

8.55 In the unlikely event that the matter was an item of Assembly business, the time for precedence for Assembly business on a sitting Thursday not having expired, it would be expected that the matter would have precedence at the resumption of consideration of notices and orders of the day⁷⁵ (see paragraph 8.66).

71 Standing order 69(g). See also MoP 2001-04/153—for the Speaker's ruling on who may initiate discussion of a matter of public importance.

72 MoP 1995-97/764; 1998-2001/880.

73 Or, in the absence of the Manager of Government Business, a Minister acting on his or her behalf in accordance with standing order 80.

74 MoP 1998-2001/134.

75 The precedence that Assembly business enjoys pursuant to standing order 77(b) is precedence of executive business on sitting Thursdays; it does not override the 2 pm interruption pursuant to standing order 74.

Eleven o'clock rule

8.56 Standing order 76 provides that new business may not be taken after 11 pm unless the Assembly orders otherwise prior to 11 pm. *House of Representatives Practice*⁷⁶ sets out the background to the rule in that Chamber (now called the 'new business rule'), including the following considerations:

- in 1913 the Speaker of the House of Representatives defined 'new business' as a proposal relating to a matter not before the House;
- as a general rule, the only business which the House should proceed with after the time nominated is the matter which is immediately before the House or business of a formal nature;⁷⁷
- the rule has a purpose in protecting the minorities in the House from the introduction, perhaps by surprise later in a sitting, of new business upon which a vote may be taken;
- the following business, on which the House does not have to make a decision of substance, may be transacted after 11 pm without infringing the rule:
 - a Minister may provide information, or additional information, in response to a question; and
 - a statement may be made by the Speaker.

8.57 The practice in the House of Representatives is that when a cognate debate is before the House at the new business time nominated in that Chamber, bills in respect of which questions have not yet been put from the Chair—that is, the second or subsequent bills of the group—have been treated as constituting new business for the purpose of the standing order (even though debate on them may have already occurred) and the new business rule has been suspended.⁷⁸

Notices and orders not called upon

8.58 As outlined above, any notices not called upon at the adjournment of the Assembly are set down on the *Notice Paper* for the next sitting day after the notices for that day have been given.⁷⁹ Any orders of the day not called upon are set down on the *Notice Paper* for the next sitting day at the end of the orders set down for that day.⁸⁰

MATTERS ACCORDED PRECEDENCE

8.59 Individual notices and orders have precedence over each other (see paragraph 8.34).⁸¹ In addition, certain matters are accorded precedence in the ordinary routine of business. Assembly business, executive business and private Members' business each have precedence at certain times. Standing order 77 gives executive business precedence over private Members' business and Assembly business except at specified times.⁸² In addition,

⁷⁶ At pp. 260-2, Fifth edn.

⁷⁷ Though the practice is not followed in the Assembly, in the House of Representatives formal business might loosely be described as 'housekeeping' matters—such things as varying the membership of committees which require a decision of the House but are not controversial and are passed without debate or amendment. A matter cannot be dealt with as 'formal' if any Member objects.

⁷⁸ Though *House of Representatives Practice* adds 'This may not be strictly necessary, having regard to Speaker Johnson's view [the 1913 ruling referred to above] and bearing in mind that the House has agreed that debate on the second reading of such bills should be taken together, although this is considered the better course.'

⁷⁹ Standing orders 125 and 168(d).

⁸⁰ Standing order 151; May, p. 373; *House of Representatives Practice*, p. 253.

⁸¹ Standing orders 124 and 149.

⁸² Standing order 77—see paragraph 8.67.

certain matters are accorded precedence by the standing orders and the Self-Government Act.⁸³

8.60 While not strictly qualifying as matters of precedence, committee reports and other papers may be presented to the Assembly at any time between items of other business provided only that the Member presenting the report on behalf of the committee gets the call from the Speaker. Debate on the report may take place immediately after tabling.⁸⁴

Assembly, executive and private Members' business

8.61 Assembly standing orders allocate the bulk of the Assembly's time to the consideration of executive notices and orders of the day, executive business having precedence over Assembly and private Members' business on sitting Tuesdays and Thursdays (except for that time allotted to Assembly business). Were the Assembly to sit on a Monday, Friday, Saturday or Sunday, executive notices and orders of the day would have precedence unless the Assembly was to order otherwise.

8.62 Assembly business is:

- any notice or order relating to the establishment or membership of a committee or the reference of a matter to a committee;
- any order of the day for the consideration of a motion moved upon the presentation of a committee discussion paper, committee report or the government response to a committee report;
- any notice of motion to amend, disallow, disapprove or declare void any statutory instrument which is subject to disallowance by the Assembly; and
- any notice of motion or order of the day which deals with the administration of the Assembly or the manner in which the Assembly conducts its business.⁸⁵

8.63 Executive business is any motion or bill sponsored by a Member of the executive and any ministerial statement, excluding items of Assembly business. It includes orders of the day for the consideration of any such matters.

8.64 Private Members' business is any motion or bill sponsored by a non-executive Member, again excluding items of Assembly business. This would include any motion or bill sponsored by the Speaker subject to standing order 77 and the definition of administration of the Assembly matters.

8.65 In relation to the apportionment of business throughout the sitting week, executive business has precedence over private Members' and Assembly business each sitting day with the exception that:

- private Members' business has precedence over executive business on sitting Wednesdays; and
- Assembly business has precedence over executive business on sitting Thursdays for 45 minutes from the conclusion of any executive notices of intention to present bills.⁸⁶

83 For example, election of the Presiding Officer and Chief Minister; see *Australian Capital Territory (Self-Government) Act 1988*, sections 11(1) and 40(1).

84 Standing order 75—see paragraph 8.79.

85 Standing order 77(g)–(j). The standing orders were amended in 2008 to include matters relating to the administration of the Assembly; see MoP 2004-08/1388-9.

86 Standing order 77(a) and (b).

8.66 There are provisos set down in standing order 77:

- if a vote is in progress at the time precedence expires, that vote and any consequent vote must be completed and the result announced;
- between items of private Members' business and at any time during Assembly business, any Member may move 'That executive business be called on' and the Speaker must immediately put the question on the motion, which is not open to amendment or debate;
- the time allotted to Assembly business may be extended by 30 minutes at the expiration of the initial period of precedence if a Member moves 'That the time allotted to Assembly business be extended by 30 minutes.' Again, the question on the motion must be put immediately without amendment or debate; and
- the Speaker must fix the next sitting Thursday for the resumption of the debate on any business under discussion and not disposed of at the expiration or interruption of the time allotted to Assembly business.⁸⁷

8.67 In addition to allocating specific periods when executive, private Members' and Assembly business have precedence, standing orders 77, 78 and 16 provide that:

- the Manager of Government Business may arrange the order of executive business, notices and orders of the day on the *Notice Paper* subject to the limitations imposed by standing order 77;
- the order of private Members' and Assembly business is as determined by the Standing Committee on Administration and Procedure.

8.68 The Standing Committee on Administration and Procedure, having regard to the composition of the membership of the Assembly, seeks to allocate time in private Members' business reasonably equitably to ensure that all non-executive Members in the Assembly have an opportunity to introduce business.

Executive Members' business

For a period during the Fourth Assembly the Assembly created, by temporary order, a fourth category of business—'Executive Members' business'. Executive Members' business was defined in the temporary order as 'business which has been introduced by an executive Member and has been so determined by the Manager of Government Business'.⁸⁸ In moving the motion for the adoption of the temporary order, the Manager of Government Business expressed his appreciation that the concept was one 'which may appear a little strange to some Members'—it being promoted as 'a device to allow a Member of the Government to act as a private Member in order to be able to introduce business into the House for the consideration of the House, and to have matters debated'.⁸⁹ This procedure arose out of the unusual circumstance of a Minister being appointed who was not a member of the governing party and who was bound by Cabinet responsibility only with regard to matters relevant to his own portfolio but, by agreement, could act as an independent Member with regard to a range of other issues.

Precedence for specific matters

Election of Speaker and Chief Minister

8.69 The election of a Speaker takes precedence over all ordinary business either at the first meeting of the Assembly after an election or after a vacancy in the office occurring for any other reason.⁹⁰ Similarly in the event of both the Speaker and Deputy Speaker being absent, the Members present must elect a Member (not being a Minister) to perform the duties of Speaker or the Assembly must adjourn.⁹¹

87 Standing order 77(f) also contains a vestigial provision relating to the fixing of the resumption of the debate on any private Members' business interrupted should the time allotted to that category of business expire.

88 MoP 1998-2001/186-7

89 Assembly Debates (24.9.1998) 2214.

90 Self-Government Act, section 11.

91 Standing order 9.

8.70 The election of a Chief Minister must take place immediately after the election of a Speaker, and 'before any other business', in a 'new' Assembly.⁹² A motion of no confidence in the Chief Minister of which at least one week's notice has been given takes precedence of all other business until it has been resolved.⁹³ In all cases where such notices have been called upon in the Assembly at least seven days have elapsed between the reporting of the notice and its consideration, exclusive of the day of giving the notice and the day of its consideration.

8.71 Where there has been a vacancy in the office of Chief Minister or the Chief Minister has lost a motion of no confidence, a new Chief Minister is elected at the first opportunity.⁹⁴ Vacancies in the office of Chief Minister have, so far, been predictable and the candidates for the office have been obvious. However, were a vacancy to occur unexpectedly there may be good reasons to defer an election for the office, for example, to allow parties to select their candidates or to ensure that all Members of the Assembly were present.

8.72 In October 2000, the announcement of the resignation of the Chief Minister and the election of a new Chief Minister took precedence over the notice of no confidence in the Member as Chief Minister that had been given seven days earlier and had been listed to take precedence on the *Notice Paper*. The notice was called on following the election of a Member as Chief Minister and, the Member failing to move the no confidence motion, the Speaker advised the Assembly that, pursuant to standing order 128, it would be removed from the *Notice Paper*.⁹⁵

Resignation of a Member, announcement of a new Member to fill a casual vacancy and swearing in of a new Member

8.73 The announcement by the Speaker of the resignation of a Member (and presentation of letter of resignation)⁹⁶ and the announcement of a new Member to fill a casual vacancy are ordinarily given precedence in the order of business, as is the subsequent admission of the Chief Justice (or nominated Judge of the Supreme Court) to administer the oath or affirmation of allegiance to the new Member.⁹⁷ In recent years it has been the practice that the new Member is granted leave to make his or her inaugural speech soon thereafter.

Vote of thanks or condolence

8.74 Precedence is given by courtesy to a motion for a vote of thanks of the Assembly or of condolence. Such motions may be moved without notice in accordance with the provisions of standing order 126.

Motions to refer matters of privilege to a select committee

8.75 Should the Speaker determine, and inform the Assembly accordingly, that a matter raised as a matter of privilege in accordance with standing order 276 merits precedence, the Member who raised the matter may move a motion without notice forthwith to refer the matter to a select committee.⁹⁸

92 The executive from the 'old' Assembly continues in office until immediately before the election of a new Chief Minister after a general election. Precedence for the election of a new Chief Minister and the choice of a new executive after an election is important because the outgoing executive may not be representative of the membership of the new Assembly.

93 Standing order 81. Such a motion is called on immediately after the prayer or reflection and, since June 2002, recognition of the traditional custodians.

94 Standing order 3(a)

95 MoP 1998-2001/1011, 1013-4; NP (18.10.2000) 1823.

96 MoP 2004-08/595; 1998-2001/1145.

97 MoP 1998-2001/1145-6; 2004-08/627-8.

98 For precedents, see Appendix 16.

Other matters that may interrupt the ordinary routine of business

8.76 There is a range of other items of business that can and do interrupt the ordinary routine of business. Members may seek leave of the Assembly or may seek to suspend standing orders to enable them to move motions without notice, usually on issues of the day, and the Assembly from time to time facilitates such courses of action. Certain legislation in relation to money proposals may be introduced without notice, though in the normal course of events advice of the proposed introduction of such proposals is given on the *Daily Program*.

8.77 Following the delivery and reporting of a notice of a motion of no confidence in a Chief Minister, the usual, though not invariable, practice has been for the Assembly to adjourn until the day set down for consideration of the motion (see paragraph 6.60).

Announcements and statements by Speaker

8.78 Over the course of the Assembly's proceedings, the Speaker may make a number of announcements dealing with the business of the Assembly, Assembly proceedings or matters of Assembly administration, including the acknowledgment of distinguished visitors. These announcements are usually made in the ordinary routine of business before the presentation of papers but, depending on circumstances, may also be made at other times.

Presentation of committee reports and papers

8.79 Papers and reports of standing and select committees may be presented at any time when other business is not before the Assembly.⁹⁹ The standing orders permit only the Speaker and Ministers to present papers¹⁰⁰ (other Members would require leave). Reports of committees (together with minutes of proceedings) and discussion papers¹⁰¹ may be presented by chairs¹⁰² whilst other business is not before the Assembly.

8.80 Current practice is that the presentation of committee reports and discussion papers are usually scheduled for presentation after Assembly business on a Thursday, together with statements made pursuant to standing order 246A. If a committee chair wishes to present a report or a discussion paper at another time, it is usually presented on a Tuesday (or Wednesday) morning after prayers and petitions in accordance with standing order 75.

8.81 Following the presentation of a paper by the Speaker or a Minister, a Minister may move a motion without notice in accordance with standing order 214. Similarly, a committee chair or deputy chair may move a motion in accordance with standing order 254 with regard to the presentation of a report.

Points of order and disorder

8.82 A Member may raise a point of order at any time. A point of order is essentially a claim that a procedure or practice of the Assembly is not being followed. Until the point of order has been dealt with, consideration of, and decision on, every other question is suspended.¹⁰³ The Member who has been called to order must cease speaking and resume his or her seat. The Member raising the point of order then explains the basis for the point of order and the Speaker is required to rule on the matter.¹⁰⁴ Until 2008 the practice in the Assembly was that whilst the point of order was

99 Standing order 75.

100 Standing order 211.

101 Standing order 246A.

102 Standing order 253.

103 Standing order 72.

104 Standing order 73.

being dealt with the speech clock continued to run. However in 2008 the Assembly amended its standing orders to allow the Speaker to direct the speech clock to be stopped during any point of order.¹⁰⁵

8.83 If the Assembly becomes disorderly the Speaker can take action in accordance with Chapter 17 of the standing orders, including naming a Member or ordering a Member to withdraw from the Chamber. The Assembly may as a consequence take action to suspend a Member, which temporarily supersedes the business before the Assembly.

Personal explanations

8.84 Having obtained leave from the Chair, a Member may make a personal explanation in accordance with standing order 46 although there is no question before the Assembly (see paragraphs 10.25 to 10.28)

¹⁰⁵ MoP 2004-08/1388-9. Standing order 73.



9 MOTIONS

9.1 Motions are a fundamental form of parliamentary activity. They are, in a sense, the building blocks upon which the legislature conducts its business. In undertaking its key functions, the Assembly must consider propositions put to it and reach decisions on those propositions, not by consensus, but by way of the agreement of the majority of Members present and voting.

9.2 Within the framework of its standing orders, almost every matter requiring a decision of the Assembly is determined by a motion being moved, the Chair proposing the question (for instance, 'That the motion be agreed to' or 'That the bill be agreed to in principle'), the question being put and the Assembly determining the matter on the voices or by a vote¹ and the will of the Assembly being expressed by way of a resolution or order.

9.3 With certain exceptions, consideration of motions dominates the proceedings of the Assembly.² It is by way of motion and resolution that the Assembly conducts its business and reaches its decisions, whether it is expressing an opinion on a matter, making an order in relation to its own procedures, ordering that a document be presented or that a committee consider a matter. The Assembly's consideration of legislation, for instance, is composed of its consideration of a series of motions (albeit with certain key questions being set by the standing orders rather than moved on the floor). A question is proposed and put on whether the bill be agreed to in principle and, should that question be agreed to, each of its component parts are made the subject matter of a resolution or a decision in turn with the final decision being made on the question that the bill (or the bill as amended) be agreed to.³

9.4 In certain limited circumstances, the standing orders make provision for the Chair to propose or put a question without a motion having been moved.⁴ The determination of committee membership where there are more nominations than places available (standing order 222) is not initiated by motion (and is determined by ballot rather than by a vote).⁵ On occasions, especially when making a decision regarding the order of its business or the application of a particular procedural rule or standing order (eg, the relaxation of the relevancy rule to facilitate a cognate debate), the Assembly will proceed by way of leave (unanimous consent, see standing order 82), with the Chair ascertaining whether it is the wish of the Assembly that a certain course be followed.

1 Or by ballot if so ordered (standing order 265).

2 Exceptions are the very important activity of questions (on notice and without notice), statements and the matters of public importance procedure. Though the Assembly may and does order that papers be presented (initiated by motion), the majority of papers are presented pursuant to stipulations the Assembly has inserted in the laws of the Territory. And see footnote 4 below.

3 See *Redlich*, Vol II, p. 215.

4 As referred to above, in consideration of the components of bills at the detail stage and the final question on agreement on a bill the standing orders set down key questions to be proposed and put by the Chair. In a similar vein, standing orders make limited provision for the Speaker to propose or put forthwith a question without a motion being moved following (a) the Assembly resolving that a debate be adjourned (the question to fix the time for the resumption of the debate—standing order 65), (b) a declaration of urgency (standing order 192), (c) the naming of a Member (standing order 203) and (d) at 6 pm on each sitting day (the 'automatic adjournment'—standing order 34). In one instance the standing orders even provide for an 'automatic' order of the Assembly authorising the publication of a committee report upon its presentation to the Assembly (standing orders 212 and 212A).

5 In the election of Speaker, Deputy Speaker and Chief Minister (and Leader of the Opposition), Members vote by delivering to the Clerk a ballot paper in writing containing the name of the candidate for whom the Member votes.

9.5 *House of Representatives Practice* defines a motion as, in its widest sense: ... any proposal made for the purpose of eliciting a decision of the House. It may take the form of a proposal made to the House by a Member that the House do something, order something to be done or express an opinion with regard to some matter.⁶

9.6 Not all motions lead to a decision of the Assembly. Motions are often defeated, not receiving the support of the majority of Members voting or of a special majority if so required by the standing orders. In addition, and as will be set out below, a motion not called upon is removed from the *Notice Paper* after eight weeks and a motion may be otherwise dropped, withdrawn, deferred, or superseded (usually by way of amendment).

9.7 The House of Representatives divides motions into two classes—substantive motions and subsidiary motions. The former are described as ‘self-contained proposals drafted in a form capable of expressing a decision or opinion of the House’ whereas subsidiary orders are described as ‘largely procedural in character’ relating directly to the conduct of business in the House or arising in the course of it.⁷ Generally, though not definitively, substantive motions require notice to be given while subsidiary motions do not. The Legislative Assembly acknowledges this division⁸ and, to a certain extent at least, the practice of the Assembly is based upon it.⁹

9.8 This chapter will examine the general procedure for dealing with motions in the Assembly, the procedures for giving notice, the rules regarding their subject matter, their progress in the Assembly, the determination of the question on motions, the procedure on amendments, and orders and resolutions of the Assembly.

REQUIREMENT FOR NOTICE TO BE PROVIDED

9.9 Generally, motions that put before the Assembly any question of substance (substantive motions) require notice of at least one sitting day. Standing order 123 stipulates that a Member may not, except by leave of the Assembly or as otherwise provided for by the standing orders, move any motion except pursuant to notice appearing on the *Notice Paper*. The importance of the requirement for notice to be provided is not to be underestimated. It allows Members to prepare for the consideration of important issues, permits time for community scrutiny and input (the *Notice Paper* is published widely), and protects against ambush, the misuse of a majority on the floor of the Assembly and matters being considered in haste. Generally, the minimum period of notice required is one sitting day, though more would be expected for many matters and in certain circumstances a longer period is required. To be effective a motion of no confidence in a Chief Minister requires at least one week’s notice;¹⁰ a motion to rescind a resolution or a vote of the Assembly ordinarily requires at least three days notice;¹¹ and the Assembly itself has imposed extraordinary restrictions on the manner in which a Member may raise a matter that relates, or may relate, to the behaviour or physical or mental capacity of a judicial officer.¹²

6 *House of Representatives Practice*, p. 285.

7 *House of Representatives Practice*, p. 285.

8 See standing orders 48 and 117(d).

9 A Member being only permitted to make a charge against another Member or reflect upon his or her character or conduct upon a substantive motion which admits of a distinct vote of the Assembly.

10 Self-Government Act, subsection 19(b) and standing order 81.

11 If moved within the same calendar year: Standing order 137.

12 See paragraphs 1.61 to 1.64.

9.10 Notice, however, is not required to be given for all motions. The Assembly can waive the requirement for notice by granting a Member leave to move a motion (though in the United Kingdom House of Commons the sanction of the Chair is also necessary).¹³ As the Assembly could not proceed in the day-to-day consideration of its business without some degree of procedural flexibility, standing orders provide that the following motions may be moved without notice:

- a motion to grant a Member or Members leave of absence from the Assembly;¹⁴
- a motion for the adjournment of the Assembly (which may only be moved by a Minister)¹⁵ and a motion moved to fix the next meeting of the Assembly (when moved by a Minister);¹⁶
- a motion for the adjournment of a debate;¹⁷
- the closure motion;¹⁸
- motions to call upon executive business during consideration of Assembly business or private Members' business;
- a motion to extend the time allotted to Assembly business;¹⁹
- a motion to refer a petition to a committee;²⁰
- a motion to take note of an explanation by a Minister concerning an unanswered question;²¹
- a motion to postpone consideration of a notice of motion moved by the Member who gave the notice;²²
- a motion to postpone an order of the day or (when moved by the Member in charge thereof when an order of the day is reached) a motion to discharge an order of the day;²³
- a motion to refer a bill to a standing or select committee;²⁴
- motions to postpone clauses and (at the conclusion of the detail stage) a motion to reconsider a bill in whole or in part;²⁵
- a motion for the allotment of time for an urgent bill (should the Assembly agree to the declaration of a bill as an urgent bill);²⁶
- a motion to fix the time for consideration of amendments to a bill recommended by the Governor-General or a motion to postpone their consideration;²⁷
- a motion ordering the presentation of a document quoted from (if moved immediately upon the conclusion of the relevant speech);²⁸
- (on any paper being presented to the Assembly) a motion moved by a Minister to take note of the paper or to refer the paper to a committee for inquiry and report;²⁹

13 See *May*, p. 331.

14 Standing order 22.

15 Standing order 35.

16 Standing order 36.

17 Standing order 65.

18 Standing order 70.

19 Standing orders 77 (d) and 77 (e).

20 Standing order 99.

21 Standing order 118A(b).

22 Standing order 124.

23 Standing orders 150 and 152.

24 Standing order 174.

25 Standing orders 185 and 187.

26 Standing order 192.

27 Standing orders 196 and 197.

28 Standing order 213.

29 Standing order 214.

- a motion by a Minister to appoint Members of a committee pursuant to standing order 222;
- a motion moved pursuant to standing order 254 by the chair of a committee (or in his or her absence, the deputy chair) upon the presentation of a report of a committee to the Assembly;
- in a case of necessity, a motion to suspend standing orders;³⁰ and
- should the Speaker inform the Assembly that a matter of privilege (or contempt) merited precedence, a motion to refer the matter to a select committee.³¹

9.11 In addition, money proposals may be submitted by a Minister without notice³² and standing order 126 provides that, as a courtesy, the Assembly will ordinarily grant precedence to a motion moved without notice for a vote of condolence or thanks of the Assembly.

9.12 For obvious reasons, the practice of the Assembly is that the Chair will accept a motion without notice to divide a question moved pursuant to standing order 133. There may be other occasions when, though the standing orders do not provide a specific exemption from the requirement for notice, depending on the circumstances the Chair may wish to ascertain whether it was the wish of the Assembly to proceed forthwith to the resolution of a matter and, should there be no dissentient voice, allow that course to proceed. Such occasions would include resolving a question concerning the application of standing order 156 (conflict of interest); determining the terms of a message to be sent to the Governor-General after consideration of amendments recommended by the Governor-General;³³ the resolution of a course of action arising out of a witness's objection to a question;³⁴ and deciding whether a ballot should be taken and the manner of so taking.³⁵ Other occasions could be for a motion that a petition not be received or for a motion arising out of a matter of privilege, motions in respect of the privileges and immunities of the Assembly, or motions arising out of matters of order.

GIVING NOTICE

9.13 A Member gives notice of a motion by delivering a copy of its terms to the Clerk in the Chamber during a sitting. The notice must be signed by the Member.³⁶ There is no provision in Assembly standing orders for a notice to be given orally though this has occurred with the leave of the Assembly.³⁷

9.14 Should a Member be absent, another Member may give a notice of motion for him or her at his or her request. The Member giving the notice must put the name of the absent Member on the notice and must also sign the notice.³⁸

9.15 The terms of standing order 101 preclude a notice being lodged whilst the Assembly is not sitting and a Member who has been suspended from the service of the Assembly is specifically precluded from lodging notices during the period of suspension.³⁹

30 Standing order 272.

31 Standing order 276(e).

32 Standing order 200.

33 Standing order 199.

34 Or other matter arising, standing order 263.

35 Standing orders 265 and 267.

36 Standing order 101. The requirement that the notice should indicate the day proposed for moving the motion was dropped from standing order 101 in the amendments of March 2008.

37 MoP 1992-94/254. The motion was a motion of censure of a Minister.

38 Standing order 104.

39 Standing order 206.

9.16 For a motion of no confidence in the Chief Minister given in accordance with standing order 81 to be effective, at least one week's notice must be given.⁴⁰ The notice of such a motion must be reported to the Assembly by the Clerk at the first convenient opportunity and the Clerk may not enter the notice on the *Notice Paper* until it is so reported.⁴¹

9.17 A motion for the purpose of rescinding a resolution or other vote of the Assembly during the same calendar year requires three days notice if it is to be moved in the same calendar year⁴² and the *Judicial Commissions Act 1994* contains particular procedures for the lodgement of notices of motion that relate to the behaviour or physical or mental capacity of judicial officers.⁴³

9.18 Standing order 108 prohibits the giving of a contingent notice of motion.

ENTRY OF NOTICE ON THE *NOTICE PAPER*

9.19 As a general rule, notices are listed on the *Notice Paper* ahead of orders of the day and in the order in which they are provided to the Clerk.⁴⁴ However, the standing orders contain two significant provisos which, in fact, determine the order in which notices (and orders of the day) are listed on the *Notice Paper*. These are:

- the determination of the days and times precedence is allocated to the three categories of business (executive, private Members' and Assembly business) as set by standing order 77; and
- the responsibility for arranging the order of both Assembly and private Members' business lies with the Standing Committee on Administration and Procedure and standing order 78 gives the Manager of Government Business the option of arranging the order of executive business.

The orders so determined, subject to any specific order of the Assembly and the provisos referred to in paragraphs 9.16 and 9.17, are those that appear on the *Notice Paper* (see paragraph 8.35).

9.20 A notice of motion becomes effective only when it appears on the *Notice Paper*.⁴⁵

RULES REGARDING CONTENT OF NOTICES

9.21 Standing order 107 places upon the Speaker an obligation to amend the content of a notice of motion that is too long, contains unbecoming expressions or offends against any standing order.

9.22 Notices of motions have been ruled out of order and withdrawn from the *Notice Paper* because they infringed standing order 130 (the anticipation rule). For example, in 2000 a notice was ruled out of order because it anticipated debate on an order of the day for the resumption of debate on a bill.⁴⁶ In 2003 another was disallowed for anticipating debate

40 Self-Government Act, subsection 19(b) and standing order 81.

41 Standing order 103. See also Chapter 6: Executive.

42 Standing order 137. The standing order also provides that one day's notice is sufficient to correct irregularities or mistakes or the corrections may be made at once by leave of the Assembly.

43 See paragraphs 1.61 to 1.64.

44 Standing order 125.

45 Standing order 112.

46 MoP 1998-2001/11 | 19 Assembly Debates (6.12.2000) 3721.

on an order of the day for the consideration of a report of an Assembly committee which was scheduled for debate the following day.⁴⁷ The Speaker has also directed that a notice be removed from the *Notice Paper* because it infringed the same question rule (standing order 136).⁴⁸

9.23 The Assembly has taken the unusual step of ordering that a notice relating to the conduct of a senior public servant be removed from the *Notice Paper* and it prohibited the placement on the *Notice Paper* of a notice relating to the allegations contained therein for the remainder of that year.⁴⁹ The Speaker has also directed that a notice containing inappropriate material be removed from the *Notice Paper*.⁵⁰

9.24 The provisions of standing order 276 would preclude a Member raising a matter of privilege by way of a notice of motion, but would not necessarily preclude a Member from lodging a notice of motion on a matter if the Speaker was of the opinion that the matter did not merit precedence.⁵¹

9.25 The Speaker may also direct that a notice that offended against the sub judice convention be amended or removed and, as referred to above, the provisions incorporated by the Assembly in the Judicial Commissions Act contain particular restrictions on Members wishing to raise matters in the Assembly relating to the behaviour or capacity of judicial officers.

9.26 Should the Speaker amend an unbecoming notice, the Member who lodged the notice must be notified of the revision.⁵² It would be expected that the same provision would apply should the Speaker prevent the inclusion of a notice that offended against the standing orders or practice of the Assembly. The Speaker has advised the Assembly when he or she has ordered the withdrawal of a notice from the *Notice Paper*.⁵³

NOTICE DIVIDED

9.27 Should a notice of motion contain matters that are not relevant to each other, the Speaker may instruct the Clerk to divide the notice into two or more notices. The Member who lodged the notice must be notified of the revision.⁵⁴

TERMS OF NOTICE ALTERED BY MEMBER

9.28 A Member may alter the terms of a notice he or she has given by notifying the Clerk in writing within time for the alteration to be made on the *Notice Paper*.⁵⁵ The amended notice may not exceed the scope of the original notice, nor may it otherwise offend against the standing orders or practices of the Assembly. The fact that a notice has been amended is indicated on the *Notice Paper* together with the date the amendment was made.⁵⁶

⁴⁷ MoP 2001-04/853; Assembly Debates (20.8.2003) 2881.

⁴⁸ MoP 1989-91/666; Assembly Debates (11.12.1991) 5886; A motion that has been withdrawn by leave of the Assembly may be moved again (standing order 131) as the matter would not have been resolved either in the negative or in the affirmative.

⁴⁹ MoP 1992-94/344-5; Assembly Debates (13.5.1993) 1463-4.

⁵⁰ The Speaker having made an explanation concerning the issues raised, (the terms of the motion were critical of the Speaker's conduct and did not relate to his responsibilities as a Member). MoP 1989-91/293; Assembly Debates (12.9.1990) 3092-4.

⁵¹ Or, for that matter, if the Speaker was of the opinion that the matter merited precedence and the Member did not at that stage wish to move a motion referring the matter to a select committee.

⁵² Standing order 107.

⁵³ See paragraph 9.22.

⁵⁴ Standing order 106.

⁵⁵ Standing order 110.

⁵⁶ NP (31.5.2007) 1711.

9.29 It is not unusual in the Assembly for Members to be granted leave to amend notices of motion immediately prior to moving the motion.⁵⁷

CONSIDERATION POSTPONED OR MOTION WITHDRAWN

9.30 Consideration of a motion may be postponed before it is moved and motions may also be removed or withdrawn from the *Notice Paper*.

9.31 Postponement of consideration may occur when:

- the Member who gave notice of the motion moves to postpone it and the Assembly so orders;⁵⁸
- a Member is absent from the Chamber when his or her notice is called upon, and another Member, at the request of the proposer, fixes a future time for moving the motion (otherwise the motion must be withdrawn from the *Notice Paper*);⁵⁹ and
- a Member fails to move his or her notice when it is called upon, he or she may fix a future time for moving the motion (otherwise the motion must be withdrawn from the *Notice Paper*).⁶⁰

The provision whereby a Member may fix a future day for moving a motion by notifying the Clerk in writing was removed from the standing orders in March 2008.

9.32 Motions are removed or withdrawn from the *Notice Paper* when:

- a Member, who has given notice of a motion, withdraws the notice by notifying the Clerk in writing at any time prior to that proposed for moving the motion;⁶¹
- the Clerk, after notifying the Member who gave notice, removes from the *Notice Paper* a notice which has not been called upon for eight sitting weeks;⁶²
- a Member is absent from the Chamber when his or her notice is called upon and no other Member, at his or her request, fixes a future time for moving the motion;⁶³ and
- a Member fails to move his or her notice when it is called upon and he or she does not fix a future time for moving the motion.⁶⁴

PROGRESS IN THE ASSEMBLY

9.33 There is a particular logic in the rules that apply to the Assembly's consideration of motions: a Member moves a motion, the Speaker proposes the question on the motion and, at the conclusion of the debate, the Speaker puts the question and elicits the will of the Assembly. The process can be more complicated, however, and prior to examining the detail of the progress of a motion it is worth considering the distinction between the Speaker 'proposing' the question and 'putting' the question.

9.34 There are two stages where the Speaker lays the question before the Assembly. By way of explanation and taking as an example a motion which undergoes no change (and

57 MoP 2001-04/1012; MoP 2004-08/116, 229.

58 Standing order 124. MoP 2001-04/168 (consideration was postponed until after consideration of a specified item of business).

59 Standing order 127. MoP 1995-97/235; MoP 1998-2001/793; Assembly Debates (29.3.2000) 1003. And see paragraph 8.39.

60 Standing order 128. MoP 1995-97/613; Assembly Debates (27.2.1997) 610. MoP 1998-2001/676. MoP 2001-04/337.

61 Standing order 111. MoP 2001-04/142; Assembly Debates (9.5.2002) 1393.

62 Standing order 125A.

63 Standing order 127. MoP 2001-04/113. And see paragraph 10.31.

64 Standing order 128. MoP 1992-94/342; Assembly Debates (13.5.93) 1406-7. And see MoP 1992-94/789; Assembly Debates (30.11.1994) 4315. MoP 1998-2001/621; Assembly Debates (25.11.1999) 3682. MoP 1998-2001/767.

its consideration is not interrupted), it is first 'proposed' by the Speaker and debate may then ensue. The Speaker may propose the question a number of times during the course of the debate when each Member concludes his or her speech and the debate will conclude when no Member rises to speak (or the mover has spoken in reply, the time allotted to a debate expires or when a closure motion is proposed and carried). The Speaker then finally lays the question before the Assembly by 'putting' the question—stating that 'The question is that ...' (stating the exact words of the motion) or 'The question is that the motion standing in Ms X's name be agreed to'. The Assembly makes its decision known, either by the voices or by a vote.⁶⁵

Motion moved and question proposed

9.35 Motions have precedence over each other according to the order in which they are listed on the *Notice Paper*⁶⁶ although, as outlined above, standing orders make provision for certain motions to be moved without notice and for motions to be moved with the leave of the Assembly.

9.36 Once a notice is called upon by the Clerk, or the Speaker calls upon a Member to move his or her motion,⁶⁷ the practice is for the Member to then move the motion by proposing its terms or by stating that he or she moves the motion standing in his or her name on the *Notice Paper* or 'in the terms as circulated in the Chamber'. The practice now is that the Member speaks to the motion after the question is proposed from the Chair.⁶⁸ A Minister may move a motion on behalf of another Minister who is absent from the Chamber.⁶⁹

9.37 Immediately after the Member has moved his or her motion (there is no provision for motions to be seconded in the Assembly),⁷⁰ the Speaker must 'propose' the question on the motion to the Assembly for the purpose of eliciting the will of the Assembly.⁷¹ The Speaker does so by either proposing the full terms of the motion (especially if the motion does not appear on the *Notice Paper* or the terms have not been circulated in the Chamber) or by proposing 'That the motion be agreed to' or 'That Ms X's motion be agreed to.' Once the question has been proposed by the Speaker, the motion is in possession of the Assembly. It is no longer the property of the mover and cannot be withdrawn without the leave (unanimous consent) of the Assembly.⁷² The mover then speaks to the motion, unless the motion is one that must be moved 'without argument or opinion offered'.⁷³

9.38 Debate may then ensue, though certain motions are not open to debate.⁷⁴ If the terms of the question under consideration have not been circulated, during the course of the debate any Member may require the question on the matter under discussion to be read by the Speaker, but not so as to interrupt a Member speaking.⁷⁵ In the normal course of events, at the conclusion of the debate the Speaker will 'put' the question and the will of the Assembly will be determined (and the motion disposed of).

⁶⁵ See paragraph 9.54. And see *Redlich*, Vol II, pp. 221-2.

⁶⁶ Standing order 124. See paragraph 9.18.

⁶⁷ Should the motion not require notice or it is moved by leave of the Assembly.

⁶⁸ In the past, where a motion appeared on the *Notice Paper* or its terms had been circulated in the Chamber (and it was open to debate) Members were occasionally permitted to speak before actually moving the motion, but he or she was required to move the motion at the conclusion of his or her speech. This is not current practice.

⁶⁹ Standing order 80.

⁷⁰ Though by custom, condolence motions are sometimes seconded.

⁷¹ Standing order 129.

⁷² Standing order 129.

⁷³ Standing order 63.

⁷⁴ See paragraphs 11.14 to 11.17.

⁷⁵ Standing order 60.

9.39 Should proceedings be interrupted before the Speaker proposes the question (and before the motion is in the possession of the Assembly) by the Assembly adjourning in accordance with the 'automatic adjournment' at 6 pm, standing order 34(d) makes provision for 'any business under discussion and not disposed of' to be set down on the *Notice Paper* for the next sitting. Things are more problematical, however, should proceedings be interrupted by (a) the failure to obtain a quorum, (b) the 2 pm interruption of business or (c) the expiration of the time allotted to private Members business or Assembly business. In each of these circumstances the relevant standing orders⁷⁶ make provision for the Speaker to fix the time for 'the resumption of the debate' on any business under discussion. As there is no debate (the question not being in the possession of the Assembly), the proceedings would be dropped from the *Notice Paper* unless the Speaker were to seek the guidance of the Assembly in the matter. Should the Speaker be required to adjourn the Assembly in the case of grave disorder,⁷⁷ the proceedings would also be dropped.

9.40 Consideration of a motion by the Assembly may be interrupted prior to its resolution by, say, a motion to suspend the standing orders, a motion arising out of a matter of order⁷⁸ or a motion on a matter of privilege allotted precedence by the Speaker. In the normal course of events, once the intervening matter had been determined or disposed of, the Assembly would return to consideration of the original question. A motion may, however, be withdrawn, its consideration deferred or superseded or the question may even be dropped.

Motion withdrawn

9.41 As outlined above, there are procedures whereby a notice may be withdrawn by a Member (see paragraph 9.32). However, once the question has been proposed by the Speaker, a motion may not be withdrawn by a Member without the leave of the Assembly.⁷⁹

9.42 A motion may only be withdrawn by the Member who moved it (though, in the absence of a Minister, another Minister may act on his or her behalf).⁸⁰ Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived. The question on the amendment stands before the main question.⁸¹

9.43 A motion that has been withdrawn by leave of the Assembly may be moved again.⁸²

Consideration of question deferred

9.44 Consideration of a question may be deferred by the Assembly adjourning the debate and fixing a future time for its resumption. During the course of a debate a Member (apart from a Member who has spoken to the question or has the right of reply) may move 'That the debate be now adjourned.' The Speaker is required to put the question forthwith and it must be determined without amendment or debate. If the motion is agreed to, the Speaker

76 Standing orders 68 and 77(f)

77 Standing order 207.

78 See, for example, MoP 1995-97/463.

79 Standing order 129.

80 Standing order 80.

81 *House of Representatives Practice*, pp. 298-9.

82 Standing order 131.

must propose to fix the time for the resumption of the debate.⁸³ Should that question be agreed to, consideration of the question is deferred. Should it be negatived, the business would be dropped from the *Notice Paper*.

9.45 In similar fashion, consideration of a question is deferred should:

- debate on a question be interrupted at 6 pm by the 'automatic adjournment' and the question 'That the Assembly do now adjourn' is agreed to or the Speaker adjourns the Assembly at the conclusion of the time allotted for the adjournment debate;⁸⁴
- debate on a question be interrupted at 2 pm and the Speaker fixes the time for the resumption of the debate;⁸⁵ and
- the Speaker fix the next sitting Wednesday for the resumption of the debate on any business under discussion and not disposed of at the expiration of any time allotted to private Members' business and the next sitting Thursday for the resumption of the debate on any business under discussion and not disposed of at the expiration of the time allotted to Assembly business or the time Assembly business is interrupted.⁸⁶

Question superseded

9.46 A question is temporarily superseded should a Member move an amendment to the question (see paragraphs 9.70 to 9.93). Once an amendment is moved, the question proposed is 'That the amendment be agreed to' and this question temporarily supersedes consideration of the original question. Should the amendment be negatived or, by leave, be withdrawn, the original question is again proposed and, at the conclusion of the debate, put.⁸⁷ If the amendment is agreed to, the original question is superseded and the question that is then proposed is 'That the motion, as amended, be agreed to'.

Question dropped

9.47 In the event of the Speaker adjourning the Assembly should grave disorder arise, any question before the Assembly would be dropped.

9.48 A question would also be dropped from the *Notice Paper* should the Assembly, having agreed to the question 'That the debate be now adjourned', negative the question to fix the time for the resumption of the debate put in accordance with standing order 65.

Question put

9.49 At the conclusion of debate on a question (no Member rising, the mover having spoken in reply, the closure having been agreed to, or the time allotted by the standing orders having expired) the Speaker must put the question to the Assembly.

83 Standing order 65. The standing order actually stipulates that, if the question on the adjournment is decided in the affirmative, the Speaker must 'put' a question to fix a time for the resumption of the debate. In fact, the Speaker proposes the question, which is open to debate and amendment.

84 Standing order 34. Any business under discussion and not disposed of at the time of the adjournment is set down on the *Notice Paper* for the next sitting. Also, should the question be negatived the proceedings are resumed at the point at which they had been interrupted.

85 Standing order 74.

86 Standing order 77(f). Currently, private Members' business has precedence over executive business on each sitting Wednesday. This was not always the case.

87 Standing order 147. A further amendment, or further amendments, may of course intervene.

Question divided

9.50 It is not unusual for the Assembly to order that a question be divided in accordance with standing order 133.⁸⁸ Care needs to be taken by the Chair because, as with amendments, there is a need to ensure that the question, if altered, is left in an intelligible and internally consistent form.

Determination of question

9.51 Unless a special majority is required (see paragraphs 9.62 to 9.65) all questions arising at a meeting of the Assembly must be decided by a majority of the votes of the Members present and voting. The Chair has a deliberative vote only and if the votes on a question are equal the question 'shall pass in the negative'.⁸⁹

9.52 A Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority is precluded from voting on a question where the matter or question relates directly or indirectly to that contract (see paragraphs 4.33 and 4.43).

9.53 The vast majority of votes in the Assembly are determined on the voices. Should the opinion of the Chair be challenged when he or she determines that the 'Ayes' or 'Noes' have it, standing orders provide for a vote, or a call, of the Assembly.⁹⁰

9.54 The practice is that the Speaker puts the question by stating that 'The question is that ...' (stating the exact words of the motion) or 'The question is that the motion standing in Ms X's name be agreed to' and calls upon all Members voting in favour of the question to say 'Aye' and then calls upon all Members against the question to say 'No'. The question is resolved in the affirmative or the negative by the majority of the voices.⁹¹ The Speaker then states whether (in the Chair's opinion) the 'Ayes' or the 'Noes' have it.

9.55 Should the Chair's opinion be challenged, the question must be decided by a vote—a call of the Assembly.⁹² Any Member may challenge the Chair's opinion by requesting a call of the Assembly. He or she must do so as soon as possible⁹³ and usually does so stating the contrary case.⁹⁴

9.56 Upon the Chair's opinion being challenged and a vote being called for the following procedures apply:

88 See, for example, MoP 1995-97/433-4.

89 Self-Government Act, subsections 18(2) and 18(3).

90 It is of note that the standing orders of the Assembly draw a distinction between a question being decided on the voices and a question being decided by a vote—equating a vote with a call of the Assembly as set out in Chapter 14 of the standing orders. That distinction is not included in section 18 of the Self-Government Act.

91 Standing order 134.

92 Standing orders 135 and 153.

93 Assembly Debates (24.5.1989) 65.

94 During the course of the Second Assembly a motion proposing to amend standing order 153 to require at least two Members to call for a vote was referred to the Standing Committee on Administration and Procedures. The committee, having stated that the proposed amendment raised significant issues in relation to the rights of independent Members, recommended that standing order 153 remain in its current form but also advised that it had resolved to monitor the operation of the standing order. The report was noted (MoP 1992-94/16, 32, 52, Assembly Debates (21.5.1992) 690-2). In a later report, having monitored the operation of the standing order, the committee recommended the adoption of temporary orders to facilitate the trial of a procedure whereby (a) at least 2 members would be needed to challenge the Chair's opinion before a vote could be called and (b) should only one member call for a vote, that member's dissent be recorded in the *Minutes of Proceedings and Hansard*. The report was adopted by the Assembly and the temporary orders operated for the remainder of the Second Assembly (standing order 153—*Calling for a vote*, Report of the Standing Committee on Administration and Procedures, August 1993, MoP 1992-94/411, Assembly Debates (26.8.1993) 2729-30, and see MoP 1992-94/706).

- the Chair directs that the bells be rung and the Deputy Clerk rings the bells and turns a four minute sand glass;⁹⁵
- any Member who called for the vote (challenged the opinion of the Chair) must remain seated until after the call of the Assembly and must vote with those who, in the opinion of the Chair, were in the minority when the voices were taken;⁹⁶
- a Member is not entitled to vote unless, when the call of the Assembly is taken, he or she is in his or her allotted seat;⁹⁷
- Members must vote in accordance with their voices (either 'Aye' or 'No');⁹⁸
- should a Member wish to abstain from voting, he or she must absent themselves from the Chamber;⁹⁹
- when all Members are in their places or after the lapse of four minutes as indicated by the sand glass, the Speaker requests that the doors be locked, states the question and directs the Clerk to call the Assembly;
- on the commencement of the call of the Assembly, every Member within the seats allotted to Members must vote and the Members may not move from their places until the result is announced;¹⁰⁰
- the Clerk calls the names of the Members in alphabetical order and each Member, on being called, must vote either in favour or against the question by signifying 'Aye' or 'No' accordingly, the Member presiding having a deliberative vote only;¹⁰¹ and
- the Clerk must then present the list to the Speaker who must declare the result.¹⁰²

9.57 On the declaration of the result, should the votes be equal, the question is resolved in the negative.¹⁰³

9.58 The time for which the bells are rung is determined by a sand glass mounted adjacent to the Deputy Clerk's seat in the Chamber. Upon the Speaker directing that the bells be rung, the Deputy Clerk rings the bells and turns the sand glass. The vote may not proceed until after the lapse of four minutes as indicated by the sand glass. If it is apparent to the Speaker that all Members who can be present are in the Chamber, he or she may dispense with this requirement.¹⁰⁴

9.59 Should a point of order arise during a vote (from the stating of the question after all Members are in their places, through the call of the Assembly until the declaration of the result), it must be decided by the Speaker.¹⁰⁵

9.60 Should there be confusion or error concerning the numbers reported, the Assembly must proceed to another vote on a question where the situation cannot be otherwise corrected.¹⁰⁶

95 Standing order 158.

96 Standing order 155.

97 Standing order 157.

98 Standing order 154.

99 Standing order 157. This requirement was inserted in the standing orders in the March 2008 amendments. For the background to the change see Standing Committee on Administration and Procedure, *Review of standing orders and other orders of the Assembly—Volume 1*, Report 2, December 2007, pp. 42-3.

100 Standing order 160.

101 Standing orders 160 and 161.

102 Standing order 162. The lists are also recorded in the *Assembly Debates*.

103 Standing order 162. MoP 1989-91/299; MoP 1998-2001/1309; MoP 2001-04/1248.

104 Standing order 159.

105 Standing order 163.

106 Standing order 165.

9.61 The lists of votes must be recorded in the *Minutes of Proceedings* and, should a complaint be made to the Assembly that a vote has been inaccurately recorded, the Speaker may cause the record to be corrected.¹⁰⁷

SPECIAL MAJORITIES

9.62 The Self-Government Act makes provision for a special majority to be required to decide a question at a meeting of the Assembly. The relevant paragraphs are:

- paragraph 12(d), which provides that the person holding office as Presiding Officer (Speaker) vacate the office when an absolute majority of the Members of the Assembly vote in favour of the person's removal from office;
- subsection 18(2), which provides that the standing rules and orders may include the requirement that a special majority is required to decide a question;
- paragraph 19(c), which provides that a resolution of no confidence in a Chief Minister has no effect unless it is passed by at least the number of Members necessary to be a quorum (a quorum being formed by an absolute majority of Members);¹⁰⁸ and
- section 26, which provides for entrenching laws to include requirements for enactments (and thus the entrenching law itself) to be passed by a special majority of Members.

9.63 In the precedents to date relating to entrenchment provisions, the special majority required for relevant bills considered by the Assembly has been 'at least' a two-third majority of Members—taken to be at least 12 Members. At the necessary stage the Speaker has directed that there be a call of the Assembly prior to the question requiring a special majority being put (see paragraphs 11.121 to 11.128).

9.64 Standing orders also require special majorities:

- for a motion of no confidence in the Chief Minister to be carried (an absolute majority of Members);¹⁰⁹ and
- for a motion moved without notice to suspend the standing orders to be carried (an absolute majority of Members).¹¹⁰

9.65 An absolute majority of Members of the Assembly is taken to be nine Members of the Assembly (see paragraph 7.42). The practice of the Assembly is that when the question on a motion without notice to suspend the standing orders is carried on the voices, it is taken to have been carried by an absolute majority of Members.

BALLOTING

9.66 Though no question has been determined in the Assembly by ballot (ballots have been used for the election of officeholders¹¹¹ and for the determination of committee membership), the Assembly may not necessarily be precluded from voting by way of ballot should circumstances so determine. In fact, standing order 265 provides for a ballot to be taken whenever the Assembly thinks fit. Any procedures adopted by way of ballot may need to state explicitly that Members voted in this way.¹¹²

¹⁰⁷ Standing orders 154, 164 and 166

¹⁰⁸ Self-Government Act, subsection 18(1).

¹⁰⁹ Standing order 81.

¹¹⁰ Standing order 272.

¹¹¹ Where, though there are motions moved, no question is proposed or put.

¹¹² Subsection 18(2) of the Self-Government Act providing that questions shall be decided at a meeting of the Assembly by a majority of the Members present and voting.

9.67 Standing orders include specific provision for the election of Speaker, Deputy Speaker and Chief Minister by ballot (when two or more Members are proposed for the respective positions). They also provide for the election of a Leader of the Opposition¹¹³ and the determination of committee membership¹¹⁴ by ballot.

9.68 Before the Assembly proceeds to any ballot, the bells must be rung for four minutes, as is the case when a vote is called for.¹¹⁵

9.69 The provisions set out in standing order 267 explicitly provide for the manner of taking a ballot.

AMENDMENTS

9.70 Another key form of parliamentary proceeding is an amendment. An amendment is a subsidiary motion—a motion for fundamental or partial change in, curtailment of or addition to a motion already before the House.¹¹⁶ The procedure of moving amendments has been used prolifically in the Assembly, and it is one that is of particular importance.

9.71 As McGee states:

Many Members may be totally opposed to [a motion that is before the House]. However, other Members may have some, but not entire, sympathy with the motion. Are they then to vote for the motion in its present form as being less than perfect but better than nothing, or are they to oppose it in the hope that they can support an improved motion later? The answer is that ultimately, when the question is put to the vote, they may well have to decide between these two alternatives, but meanwhile another course is open to them – they could seek to have the motion amended.¹¹⁷

9.72 Amendments may be moved after the main question has been proposed. They may be moved by any Member who has the call and, though it is not uncommon for Members to circulate the terms of proposed amendments prior to moving them, notice is not required. In certain circumstances, especially during the consideration of legislation, the Chair may urge Members to circulate proposed amendments as soon as possible to expedite its consideration. Debate may even be adjourned to give Members a chance to consider recently circulated amendments.

9.73 Not every motion is open to amendment. For example, it is not permissible to move amendments to some motions that are set out in standing order 63 (nor may Members debate those motions). And no amendment may be moved to the question 'That the Assembly do now adjourn'.¹¹⁸ Though there is no specific prohibition in the standing orders, it would not be permitted to move an amendment to a motion to appoint Members to a committee (pursuant to standing order 222). The correct procedure is for all nominations to be notified in writing and, in the event that there are more nominations than places, the Assembly proceeds to a ballot to decide the matter.

113 Should the two largest non-government parties be of equal size—standing order 5B, MoP 1989-91/4. Note the most unusual procedures adopted by the Assembly on that occasion for the examination of the ballot papers by Members.

114 Should there be more nominations for membership of a committee than there are places on the committee—standing order 222, MoP 1989-91/307.

115 Standing order 266.

116 *Redlich*, Vol II, p. 228.

117 *McGee*, p. 215.

118 Standing orders 34 and 35.

Form of amendments

9.74 A question, having been proposed, may be amended by:

- omitting certain words only;
- omitting certain words in order to substitute other words; or
- inserting or adding words.¹¹⁹

9.75 An amendment must, for the purposes of the record, be provided in writing and be signed by the mover. In the case of an amendment to a bill, it may be proposed only if copies are immediately available for circulation to Members.¹²⁰ An amendment must be legible and, further, every amendment must be drawn up so as to leave the question, if altered in accordance therewith, in an intelligible form and not a meaningless form of words.¹²¹

Content of amendments

9.76 Though the standing orders do not contain any reference to amendments that are a direct negative, an amendment is not in order if it is confined to the mere negation of the terms of a motion. The proper mode of expressing a completely contrary opinion is by voting against a motion without seeking to amend it.¹²² As in the House of Representatives, amendments may be moved which evade an expression of opinion on the main question by entirely altering its meaning and object. This is usually effected by moving for the omission of all or most words of the question after 'That' and proposing the substitution of an alternative proposition. Most importantly, the alternative proposal must be relevant to the subject of the original question.¹²³

9.77 The most important rule relating to amendments is that they must be relevant to the question upon which they are moved.¹²⁴ An amendment, whilst it may restrict the area of relevancy in a debate, may not expand it.¹²⁵ An amendment can be used to change the details of a proposition before the House but not the proposition itself. An amendment may not expand the area of relevancy in a debate, though it may temporarily restrict it whilst the House turns its exclusive attention to a narrower amendment.¹²⁶ This rule has not been strictly adhered to in the Assembly. For example, it has been permitted to widen the scope of a motion expressing lack of confidence in a Minister over a particular issue to also express lack of confidence in a second Minister, though over the same issue.¹²⁷ As Speaker Cornwell acknowledged in his November 1996 statement following his Canberra Lakes ruling (see paragraph 9.79), in following the practice of the House of Representatives many amendments have been moved in the Assembly, and accepted as being in order, that could be claimed to be expanded negatives in that they usually sought to put alternative propositions to the Assembly.

¹¹⁹ Standing order 138.

¹²⁰ Standing order 182.

¹²¹ Assembly debates (21.11.1996) 4204. *Redlich*, Vol II, p. 229.

¹²² Assembly Debates (21.11.1996) 4205-6. *House of Representatives Practice*, p. 305.

¹²³ MoP 2001-04/980-1; Assembly Debates (22.10.2003) 3930-1, and see *House of Representatives Practice*, pp. 306-7.

¹²⁴ Standing order 140. And see *Redlich*, Vol II, p. 229.

¹²⁵ Assembly Debates (21.11.1996) 4204-5.

¹²⁶ *McGee*, pp. 216-7. Though it should be noted that the practice in the Assembly, in somewhat similar vein to that of the House of Representatives, is that unless a Member clearly indicates otherwise (and so confines his or her remarks) a Member speaking to an amendment is taken to also be speaking to the main question.

¹²⁷ MoP 1992-94/473-4; Assembly Debates (23.11.93) 3953.

In other words, amendments have been allowed which evade an expression of opinion on the main questions by altering their meaning and object.¹²⁸

9.78 This issue has received some consideration on the floor of the Assembly. It has also been the subject of a number of rulings by Speakers.

9.79 A key ruling was made by Speaker Cornwell in 1996 in relation to the following motion:

That this Assembly require the Government to put before it any proposed use of Lake Burley Griffin, Lake Tuggeranong or Lake Ginninderra or their foreshores prior to granting any permission for a new use of these areas for any purpose.

An amendment was circulated that proposed to omit all words after 'That this Assembly require the Government to' and substitute the words 'undertake appropriate consultation in regard to significant public works development in the ACT'. The Speaker upheld a point of order that the foreshadowed amendment was not relevant to the motion. A motion of dissent from the ruling was then moved, by leave. Following debate, the motion of dissent was negatived. An amendment to insert the word 'significant' before the words 'proposed use' was ruled as being in order. Following the expression of concerns from the floor regarding consistency in practice, the Speaker later presented reasons for his rulings to the Assembly.¹²⁹ In rulings since, amendments that proposed to widen the scope of motions have consistently been ruled out of order.¹³⁰

9.80 It is forbidden to introduce by way of amendment a motion which by rule has to be brought forward as a substantive motion (after notice or by leave),¹³¹ nor would it be permissible to introduce a matter that relates to, or may relate to, the behaviour or physical or mental capacity of a judicial officer.¹³²

9.81 Standing orders impose certain restrictions on amendments to the question 'That this Bill be agreed to in principle',¹³³ amendments to bills¹³⁴ and amendments to money proposals.¹³⁵ In addition, an amendment may not anticipate a matter on the *Notice Paper*.¹³⁶ An amendment would be out of order were it to be substantially the same as a motion that had been negatived or agreed to¹³⁷ or if it were inconsistent with a previous decision on the question.¹³⁸

¹²⁸ Assembly Debates (21.11.1996) 4205-6. An example given was where, a Minister having moved a motion of censure of the Leader of the Opposition, the Leader of the Opposition moved an amendment which proposed to substantially change the nature of the motion in that it proposed to censure the Minister for Health on a related matter. And see comments at *May*, p. 398-401. At the time of the adoption of the March 2008 amendments to the standing orders a proposal to amend standing order 140 to declare amendments which omit a substantial part of a motion or offer an alternative proposition as unacceptable was negatived in the Assembly. See MoP 2004-08/1389.

¹²⁹ MoP 1995-97/463; Assembly Debates (25.9.1996) 3342-50. Assembly Debates (21.11.1996) 4203-6.

¹³⁰ See, for example, Assembly Debates (11.12.1996) 4718-9; (25.8.1999) 2430-1; MoP 2001-04/135; Assembly Debates (8.5.2002) 1298-9; MoP 2001-04/165, Assembly Debates (15.5.2002) 1684; MoP 2001-04/1284, Assembly Debates (31.3.2004) 1393-4. And see, in particular, Assembly Debates (19.11.2003) 4363-4.

¹³¹ *Redlich* Vol II, p. 230.

¹³² See paragraphs 1.61 to 1.64.

¹³³ Standing order 173. See paragraphs 11.59 to 11.61.

¹³⁴ Standing order 181. See paragraphs 11.89 to 11.91 and 11.93.

¹³⁵ Standing orders 201 and 201A. See paragraph 11.92.

¹³⁶ Standing order 130.

¹³⁷ Standing order 136. And see Assembly Debates (17.8.2005) 2837 and *May*, p. 388. The Speaker has a discretion in the application of the same question rule, for good reason. For example, it would be a nonsense to strictly apply the same question rule to amendments to the provisions of a bill that were substantively the same as an earlier amendment that had already been agreed to.

¹³⁸ Standing order 141.

Progress in the Assembly

9.82 As an amendment is strictly dependent on the main question, it cannot be moved until the Chair has proposed the main question. The Member may read out the terms of the amendment when moving it, but the usual practice is to move the amendment by using the words 'in the terms as circulated in the Chamber' or words to similar effect.

9.83 Once an amendment has been moved in the Assembly, the Chair proposes the question 'That Ms X's amendment [No....] be agreed to'.¹³⁹ The question on the amendment thus temporarily supersedes the question on the original motion.

9.84 Debate may then ensue on the amendment and it is Assembly practice that a Member speaking to an amendment, who is yet to speak to the main question, is taken to be also speaking to the main question.

9.85 There may, of course, be more than one amendment proposed to the main question. There are, therefore, certain key provisions which ensure that the business of the Assembly progresses in an orderly and logical manner and does not end in confusion and nonsensical and unintelligible proposals.

9.86 Firstly, and most importantly, any amendment proposed must be disposed of before another amendment to the original question may be moved.¹⁴⁰

9.87 Should several amendments be proposed to the same motion, they must be taken in the order in which the words of the original motion affected by them appear in that motion to ensure that the Assembly moves logically through the consideration of a question. Thus the Chair will usually encourage Members to circulate proposed amendments and try to ensure that the call is allocated in a manner that will enable amendments to be moved in order.¹⁴¹

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

9.89 Another key point is that an amendment may not be proposed which is inconsistent with a previous decision on a question.¹⁴³ Should the Assembly have, for example, agreed to substitute, insert or add words to a question, it would be out of order to propose an amendment to those words unless it were to add words.

9.90 During the course of a debate on an amendment a proposed amendment may, by leave, be withdrawn¹⁴⁴ and amendments may be moved to proposed amendments (see paragraph 9.92).

9.91 At the conclusion of the debate on the question 'That the amendment be agreed to' the Chair puts the question. If the question is resolved in the affirmative, the original question is superseded and the question is then proposed 'That the motion, as amended, be

¹³⁹ This has been Assembly practice. The practice utilised in the House of Representatives has not been adopted in the Assembly (though standing orders would not preclude it). See *House of Representatives Practice*, pp. 309-10, in particular, footnote 187, p. 310.

¹⁴⁰ Standing order 143.

¹⁴¹ Though prior circulation of an amendment could not be taken to confer on any Member the right to the call and any Member receiving the call must have the right to move an amendment. *House of Representatives Practice*, p. 308.

¹⁴² Standing order 142.

¹⁴³ Standing order 141.

¹⁴⁴ Standing order 144.

agreed to' (thus becoming the principal question). If the question is resolved in the negative, the question is proposed as originally proposed.¹⁴⁵ Both questions are open to debate.

Amendments moved to amendments

9.92 An amendment may be moved to a proposed amendment. It would be dealt with in the same procedural sequence as an amendment to a motion—ie, the question on the original proposed amendment is temporarily suspended by the question on the subsequent proposed amendment.¹⁴⁶ The Chair would require the Assembly to deal with the amendment to the original amendment before dealing with the amended (or unamended) amendment, and then the amended (or unamended) motion. This is by no means unusual in the Assembly. The Assembly has considered an amendment to an amendment to an amendment.¹⁴⁷

9.93 In the case of serial amendments, the Chair works back to the original motion, the question on each amendment being resolved by way of separate questions being put to the Assembly.

ORDERS AND RESOLUTIONS OF THE ASSEMBLY

9.94 Once agreed to, a motion becomes an order or a resolution of the Assembly. *Redlich* states:

The result of ascertaining the will of the House ... may be an expression of either command or wish, an order or a resolution. There is no third form of parliamentary action. The essential difference between the two is that resolutions are directed to the outer world, and orders to the internal affairs of the House.¹⁴⁸

9.95 By its orders, a House directs its committees, its Members, its staff, the order of its own proceedings and the acts of all persons whom they concern. By its resolutions, a House declares its own opinions and purposes.¹⁴⁹ However, as *House of Representatives Practice* points out, in practice the terms are often used synonymously, with (in that House) 'resolution' being the term most generally used.¹⁵⁰

9.96 The Assembly makes many orders on a day-to-day basis, almost exclusively as directions in the conduct of its proceedings. Over the course of an Assembly a myriad of such orders would be made; it is how the Assembly conducts its business. The term 'order' is also used to describe an abstract formulation of a rule as to the business of the Assembly and certain of its orders clearly have an ongoing effect or are recognised as having ongoing validity (see paragraphs 8.11 and 8.12).

9.97 In a limited way the Assembly's orders can have a bearing outside the Assembly. The Assembly's power to send for 'persons, papers and records' underpins its power to conduct inquiries and the Assembly has power to punish breaches of privilege or contempts (see paragraphs 2.79 to 2.87, 2.105 and 2.106).

¹⁴⁵ Standing orders 146 and 147.

¹⁴⁶ Standing order 145.

¹⁴⁷ MoP 2001-04/1685.

¹⁴⁸ *Redlich*, Vol. II, p. 222.

¹⁴⁹ *May*, p. 418.

¹⁵⁰ *House of Representatives Practice*, p. 311.

9.98 It is by no means unusual for the Assembly to order the production of papers or records,¹⁵¹ even ordering the executive to commission an independent audit to determine the assets and the public debt associated with those assets¹⁵² and to order that documents be tabled by a certain time.¹⁵³ This was particularly the case in the Third Assembly.

9.99 The Assembly has both expressed support for and dissociated itself from actions of the executive.¹⁵⁴ By way of resolution, it has purported to order or direct the executive to take certain action¹⁵⁵ (and the executive has complied).¹⁵⁶ Petitions have been received which have requested the Assembly to demand that a Minister reverse a decision¹⁵⁷ and requesting the Assembly to direct that a Minister undertake certain action.¹⁵⁸

9.100 At times concerns have been expressed that the Assembly has encroached upon the role of the executive (see paragraphs 6.32 to 6.40), but as a rule such resolutions cannot be said to have legal efficacy on the outside world. The Assembly is able to bring its power of direction into play only in the form of an Act of parliament.¹⁵⁹ Though it is common for the Assembly to legislate to ensure that its resolutions do have legal effect,¹⁶⁰ even without legislative power the Assembly does have considerable persuasive power. At the end of the day the fact is that the Assembly has paramount power in guiding the executive and may even withdraw its confidence in the executive. This should not be overlooked. Ministers have been

151 See, for example MoP 1989-91/573 (order requiring the Minister for Health to provide the monthly budgetary figures, in approximately the same form as provided to the Estimates Committee, within 48 hours of receiving them from the Board of Health); MoP 1995-97/138 (order requiring the government, inter alia, to provide a list of products purchased by them which were manufactured by French companies or were a product of France; and see MoP 1995-97/182 and MoP 1995-97/433 (order terminated)); MoP 1998-2001/403-5 (order of the Assembly regarding the presentation of documents in relation to the Bruce stadium redevelopment); and MoP 2001-04/1162 (Speaker tables letter reporting to the Assembly on action taken regarding community services accommodation in response to a resolution of the Assembly (MoP 2001-04/1069-70)).

152 MoP 1989-91/85; Assembly Debates (27.9.1989) 1565-8. MoP 1989-91/88; Assembly Debates (28.9.1989) 1597-9.

153 See, for example, MoP 1995-97/243 (order requiring the Chief Minister, by the end of the sitting, to table all details of certain expenses incurred regarding the appointment of the chief executive officer of her Department); MoP 1995-97/259 (order directing Minister to table certain records by close of business that day); MoP 1995-97/269 (order requiring Chief Minister to respond to a question on notice by the adjournment of the Assembly that day (and see MoP 1995-97/270)); MoP 1995-97/279, 281 (order requiring the Chief Minister to table a report before the Assembly rose that day).

154 MoP 1992-94/129 (resolution rejecting an announced decision of the government) and MoP 1998-2001/753 (resolution condemning and dissociating the Assembly from an ACT Government submission to a Senate committee inquiry).

155 See, for example, MoP 1989-91/88; MoP 1992-94/610, 625 (resolution instructing Minister to facilitate distribution of personal identification cards); MoP 1995-97/138 (resolution requiring government to provide a list of French products purchased by the government and implement a ban thereon, and see MoP 1995-97/433—order terminated); MoP 1995-97/725 (resolution requiring government to refrain from certain administrative action regarding the implementation of surveillance cameras that was not in accordance with an Assembly committee report); MoP 1998-2001/1024-5 (resolution calling on government to appoint a board of inquiry into disability services, and see MoP 1998-2001/1052-3); MoP 1998-2001/1303-4 (resolution directing that there be no involuntary redundancies among a nominated group of forestry workers without the approval of the Australian Industrial Relations Commission); MoP 1998-2001/1322-3 (resolution directing the government to set a nominated rate as a maximum rate as workers' compensation premium payable by certain companies and the operation of the rate be limited to a certain period); MoP 2001-04/935-8 (resolution directing, inter alia, the Chief Minister to write to the Premier of New South Wales and a Minister in his government advising them of the Assembly's views on the Canberra-Sydney rail link); and MoP 2001-04/1332-3 (resolution calling on the government to implement certain policies regarding youth music in the Territory and report back to the Assembly within a certain time—and see ministerial statement made in response MoP 2001-04/1596).

156 See, for example, MoP 2001-04/244 where the Speaker presented responses to resolutions of the Assembly regarding the East Timorese Parliament, the optional protocol to the Convention on the elimination of all forms of discrimination against women, elder abuse in the ACT and property matters in de facto relationships.

157 MoP 1998-2001/99.

158 MoP 1998-2001/109.

159 *House of Representatives Practice*, p. 313.

160 See, for example, *Commissioner for the Environment Act 1993*, section 9 (Suspension and removal of commissioner); *Judicial Commissions Act 1994*, section 5 (Removal of judicial officer) and section 18 (Resolution by Legislative Assembly); *Legislation Act 2001*, section 65 (Disallowance by resolution of Assembly) and section 68 (Amendment by resolution of Assembly); *Planning and Development Act 2007*, section 15 (Assembly may recommend directions to authority) and section 80 (Assembly may reject plan variations completely or partly) and *Territory-owned Corporations Act 1990*, subsections 13(8) and (9) (directions re the transfer on trust for the Territory) and see MoP 2001-04/1045. (Assembly approval of the disposal of undertakings of Totalcare Industries Limited in accordance with subsection 16(4) of the *Territory-owned Corporations Act 1990*).

censured for failing to take action in accordance with the Assembly's wishes as expressed in resolutions¹⁶¹ and for failing to take certain action as directed by the Assembly.¹⁶² A Member has also been censured for failing to comply with an order to present a document.¹⁶³

9.101 The *Standing Orders and continuing resolutions of the Assembly*, particularly the latter, give specific recognition to certain motions (and resolutions) of the Assembly, including motions of no confidence in the Chief Minister and votes of thanks or condolence.¹⁶⁴

RESOLUTION OR VOTE RESCINDED

9.102 A resolution or vote may be rescinded. Standing order 137 makes specific provision for a resolution or vote of the Assembly to be read and rescinded. A rescission of the same resolution or vote may not take place within the same calendar year unless three days notice is given. There is a proviso: to correct irregularities or mistakes, one day's notice suffices or the corrections may be made at once by leave of the Assembly.

9.103 As in the House of Representatives, the practice is rarely invoked in the Assembly.¹⁶⁵ It is almost exclusively utilised, following the suspension of standing and temporary orders, to facilitate the reconsideration of bills (and parts thereof or questions decided thereon).¹⁶⁶ In addition (again, following the suspension of standing orders), the procedure has been used to rescind an order fixing a future day for the consideration of an order of the day,¹⁶⁷ to rescind particular orders and to rescind a vote concerning the appointment of a select committee.¹⁶⁸

9.104 It is not uncommon for the Assembly to alter orders or resolutions by amending them, the practice usually being confined to the alteration of its own orders regarding the conduct of its proceedings or the appointment of its committees.¹⁶⁹ In addition, the Assembly from time to time puts aside the operation of its own standing orders by making a concrete order prescribing a course of procedure 'notwithstanding the provisions of' a particular order or particular orders (see paragraph 8.17).

CASUAL VACANCIES IN THE SENATE—RESOLUTION OF THE ASSEMBLY, 18 FEBRUARY 2003

9.105 The two Senators representing the ACT in the Commonwealth Parliament are elected at the same time as a general election for the House of Representatives. When a Senator vacates his or her seat before the expiry of his or her term, a casual vacancy occurs and that vacancy is filled by a person chosen by the ACT Legislative Assembly.¹⁷⁰

¹⁶¹ MoP 1995-97/216-7.

¹⁶² MoP 2001-04/925.

¹⁶³ MoP 1992-94/86.

¹⁶⁴ Standing orders 81 and 126. For examples of votes of thanks, see MoP 1995-97/816, MoP 1998-2001/233 and MoP 2001-04/725.

¹⁶⁵ See *House of Representatives Practice*, p. 314 for comment on the rarity of such motions.

¹⁶⁶ See, for example, MoP 1998-2001/336, 832, 937; MoP 2001-04/1646.

¹⁶⁷ MoP 2001-04/97-8.

¹⁶⁸ MoP 1998-2001/889-90.

¹⁶⁹ See, for example, MoP 2001-04/1331.

¹⁷⁰ The resolution places restrictions on the Assembly in making this choice. Apart from meeting the general requirements for eligibility to be a member of the Senate, the person selected must, as far as is possible, be of the same political allegiance as the outgoing Member.

9.106 This resolution, adopted in 2003, sets out the formal process for choosing a replacement. When advised by the President of the Senate, via the Chief Minister, that a vacancy exists, the Chief Minister shall move either:

That consideration of the choice of a person to hold the vacant place of a senator for the Australian Capital Territory shall proceed forthwith; or

That consideration of the choice of a person to hold the vacant place of a senator for the Australian Capital Territory shall be set down for a future day.

9.107 Where the latter motion is moved, consideration of the matter has precedence over all other Assembly business. The resolution also sets out the wording of the motion that is moved when proposing a person to fill the vacancy.¹⁷¹

¹⁷¹ MoP 2001-04/528-9. The Assembly adopted the resolution setting out the procedures to be followed when filling a casual vacancy and then proceeded immediately to apply them, appointing Senator Humphries to replace Senator Reid.



10 RULES OF DEBATE AND THE MAINTENANCE OF ORDER

INTRODUCTION

10.1 The proceedings in the Assembly that occur between the Chair proposing the question on a motion (and thus eliciting the will of the Assembly) and the decision of the Assembly on the question constitute debate. Debate concludes when the Chair puts the question and ascertains whether it is resolved in the affirmative or the negative.

10.2 The vast majority of the Assembly's time is spent debating questions before the Assembly and reaching decisions on those questions. Though there are other occasions when Members may address the Assembly which do not constitute debate, such as asking and answering questions and discussing matters of public importance (see paragraph 10.7 & 10.8), the debates in the Assembly are of prime importance to the governance of the Territory.

10.3 In performing its functions, the executive is obliged to present its proposals to the Assembly and must be ready to defend its conduct and actions. It is through debate in the plenum that proposed laws are examined and assessed, as are the executive's administration and its revenue and expenditure proposals. To paraphrase Redlich, the only constitutional form of ascertaining the will of the Territory as to legislation is that of going through a process of speech and reply in the Assembly so as to discover what most closely corresponds to the wishes of all.¹

10.4 The Assembly has in place a number of rules governing the conduct of debate, primarily set out in Chapter 6 of the standing orders, which, together with those set out in Chapter 17, give to the Assembly and the Speaker the power to enforce those rules.

10.5 The Speaker has the authority to preside at meetings of the Assembly² and the responsibility for maintaining order in the Assembly.³ Standing orders reinforce that authority with a range of provisions imposing rules on the manner in which Members address the Assembly, the occasions on which they may address the Assembly, and the form and content of their speeches. If the Speaker interrupts proceedings, he or she must be heard in silence and without interruption.⁴ The Speaker also determines whether words used are offensive or disorderly and rules on any question of order.⁵

OPPORTUNITIES FOR MEMBERS TO SPEAK

10.6 Standing order 45 defines the occasions on which Members may speak in the Assembly. Every Member has the right to speak to any question that is open to debate. Members may also speak when moving a motion that is open to debate; when moving an amendment; when asking or answering a question seeking information; when taking or speaking to a point of order; and on a matter submitted under standing orders.

1 See Redlich, Vol III, pp. 43-4.

2 Self-Government Act, subsection 18(4).

3 Standing order 37—Order shall be maintained in the Assembly by the Speaker.

4 Standing order 38—Whenever the Speaker rises during proceedings, Members shall be silent and be seated, so that the Speaker may be heard without interruption.

5 Standing orders 57 and 73.

10.7 Standing order 45 is not definitive. Other circumstances in which Members may address the Assembly are:

- when discussing a matter of public importance submitted pursuant to standing order 79, there being no question before the Assembly;
- when two or more candidates have been proposed as Speaker, Deputy Speaker, Chief Minister or Leader of the Opposition,⁶ again there being no question before the Assembly; and
- when leave has been obtained from the Chair to explain matters of a personal nature although there may be no question before the Assembly.⁷

10.8 Committee chairs may make statements to the Assembly⁸ and Ministers, by leave, may make ministerial statements after the presentation of papers.⁹ The Assembly has accepted the practice that other Members may also address the Assembly, by leave, to make statements following ministerial statements. The Assembly also grants leave to Members to make statements on other occasions, often following the presentation of papers or committee reports. In addition, the Assembly grants leave to Members to make their inaugural speeches¹⁰ and, on occasion, the Speaker may permit Members to speak with the indulgence of the Chair.¹¹

10.9 Generally, Members may speak only once on any question before the Assembly. However, again there are exceptions:

- no Member may speak to the question on a motion designated as one not open to debate (see paragraphs 10.13 - 10.16);
- a Member who has spoken to a question may again be heard under standing order 47 'to explain where some part of that Member's speech has been misquoted or misunderstood' subject to certain restrictions (see paragraphs 10.23 and 10.24);
- a Member who has moved a substantive motion or moved that a bill be agreed to in principle is allowed a reply (see paragraphs 10.29 to 10.33);
- during the consideration of the detail stage of a bill, Members may speak twice on any question and there is no limitation on the number of times the Minister in charge of an executive bill or the Member in charge of any other bill may speak; and
- a Minister in charge or a Minister responsible for a department or appropriation unit can speak for unlimited periods during the detail stage of the main appropriation bill.

10.10 During the course of a debate, a Member is not permitted to speak again after resuming his or her seat (subject to the exceptions outlined above), or to move an amendment, unless leave of the Assembly has been granted to enable the Member to do so.¹²

10.11 A Member who speaks for the first time in a debate after the question on an amendment has been proposed is taken to be addressing his or her remarks to both the original question and the question on the amendment. Should any further amendment(s) be moved, the Member would be permitted to speak again, but only on the new question proposed.

6 Pursuant to standing orders 2(c), 3(c), 5 and 5B.

7 Standing order 46.

8 In accordance with standing order 246A.

9 Standing order 74.

10 Inaugural (formerly termed 'maiden') speeches have been made in the course of debate (see Assembly Debates (1.5.90) 1439. For later practice see MoP 2001-04/11).

11 For example, Ministers adding to answers after the conclusion of questions without notice.

12 See, for example, MoP 2001-04/135.

10.12 No Member may speak to any question once the Chair puts the question and the voices have been declared in favour of the ayes or noes.¹³

Motions not open to debate

10.13 Some motions are not open to debate and may only be moved, under standing order 63, 'without argument or opinion offered'. The questions on such motions must be put forthwith from the Chair, without amendment. The motions are those:

- for the adjournment of the debate;
- to extend the time for debate and speech;
- that the question be now put (the closure);
- that the bill be agreed to or that the bill, as amended, be agreed to; and
- that a Member be suspended from the service of the Assembly.¹⁴

10.14 On the Speaker proposing the question 'That the Assembly do now adjourn' (the automatic adjournment), should a Minister require that the question be put forthwith and without debate, the Speaker is obliged to do so.¹⁵ Again, should the motion 'That executive business be called on' be moved pursuant to standing order 77(d) or 'That the time allotted to Assembly business be extended by 30 minutes' be moved pursuant to standing order 77(e), the Speaker is required to put the questions forthwith and without amendment or debate.

10.15 Though the motion for the adjournment of debate is not open to debate,¹⁶ should the question be resolved in the affirmative, debate may ensue on the subsequent question to fix the time for the resumption of the debate, which the Chair must propose pursuant to standing order 65. That question is also open to amendment.¹⁷

10.16 In addition, standing order 192 provides that, should a Member in charge of a bill, or a Member acting on behalf of that Member, declare that a bill is urgent, the question on the motion 'That this bill be considered an urgent bill' shall be put. However, standing orders also provide that debate on the motion shall 'not exceed 15 minutes'.¹⁸ The practice of the Assembly was initially that the motion was not debated,¹⁹ nor was it open to debate.²⁰ In February 1993, clarification having been sought on the contradictory provisions by way of a point of order, the Speaker ruled that the question on the motion to declare a bill urgent was open to debate.²¹

13 Standing order 50. See Assembly Debates (6.5.2003) 1556-7.

14 Standing order 63. In addition, standing order 64 provides that should any of the questions on these motions be negatived, no similar proposal shall be received by the Speaker if the Speaker is of the opinion that it is an abuse of the orders or forms of the Assembly or is moved for the purpose of obstructing business.

15 Standing order 34.

16 Standing order 65.

17 Assembly Debates (8.12.1998) 3178-9.

18 Standing order 69(f).

19 MoP 1989-91/97-8, 631, 647-8; MoP 1992-94/83-4.

20 See rulings at Assembly Debates (18.10.1989) 1771; Assembly Debates (5.12.1991) 5675.

21 MoP 1992-94/295; Assembly Debates (24.2.1993) 407-8.

Moving motions and amendments

10.17 A Member may speak 'when moving a motion that is open to debate'.²² The usual practice followed is that, upon a notice of motion being called upon by the Clerk, the Member in charge moves the motion immediately. Another option which does not often occur is when the Member speaks to the amendment and moves it during or at the conclusion of his or her speech. If the motion is moved when the Member rises to speak, the Speaker proposes the question and the Member then speaks to the motion. Should the Member move the motion during or at the completion of his or her remarks, the Speaker proposes the question once the motion is moved and debate may take place.²³

10.18 Similarly, when a bill has been presented and the title read by the Clerk, the Member presenting the bill usually moves 'That the bill be agreed to in principle' and he or she commences speaking immediately. However, there have been occasions when the Member speaks to the motion before actually moving it. In the former case, the Speaker should propose the question and the Member speaks to the motion.

10.19 When moving a motion for which notice is not required (see Chapter 9: Motions) and which is open to debate, it would be expected that the Speaker would require the motion to be moved at the outset. The question would then be proposed by the Speaker and the Member could proceed to address the Assembly on the merits of the motion. If the terms of the motion the Member was proposing to move were clear to all Members—having been circulated to them in the Chamber, for example—the Speaker could allow the Member to speak before moving the motion.

10.20 Should a Member moving a motion or presenting a bill not speak to that motion, it must be assumed that the only other occasion on which he or she could speak would be when exercising his or her right of reply pursuant to standing order 48.²⁴

10.21 Members may address the Assembly when moving an amendment; in principle, a Member may address the Assembly only once on each question. The exceptions are when legislation is considered at the detail stage, when a Member utilises the provisions of standing order 47 and when a Member speaks in reply.²⁵

Conflict of interest

10.22 The Self-Government Act and standing order 156 preclude a Member who is party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority from taking part in a discussion of a matter or vote on a question in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. It is the Assembly that must decide any question concerning the application of this provision, which is addressed in full in Chapter 4: Membership of the Assembly.

²² Standing order 45.

²³ Assembly Debates (13.8.1992) 1667-8. The motion for the closure cannot be moved until the Speaker proposes the question.

²⁴ The provisions of standing order 69(c), (d) and (i) contemplate the mover being the first to speak in a debate. Standing order 48 gives the mover of a motion a right of reply to finish a debate. See also *House of Representatives Practice*, pp. 480-1.

²⁵ However, during consideration of legislation at the detail stage, when a Member moves an amendment at the conclusion of his or her speech and the question on the amendment is proposed after the Member has concluded his or her remarks, the Member who moved the amendment has been permitted to later address the Assembly on the question 'That the amendment be agreed to'. See Assembly Debates (21.04.1999) 1046-8, 1056-9.

Explaining words

10.23 Standing order 47 provides that a Member who has already spoken to a question may be heard to explain where some material part of his or her speech had been misquoted or misunderstood, but:

- the Member is precluded from introducing any new matter;
- the Member may not interrupt a Member speaking;
- the Member may not bring forward any debatable matter; and
- no debate may arise upon the explanation.²⁶

10.24 The provisions of standing order 47 cannot be utilised after the relevant debate has concluded or there is another matter before the Assembly²⁷ and, clearly, may be used by a Member only in relation to a misquotation or misunderstanding of his or her speech on the question before the Assembly.²⁸

Personal explanations

10.25 Having obtained leave from the Chair, under standing order 46, a Member may explain matters of a personal nature, even though there is no question before the Assembly. Such matters may not be debated.²⁹

10.26 The matter must be of a personal nature (the Member may be directed to resume his or her seat if that is not the case)³⁰ and the leave granted cannot be used as an artifice to continue the debate on an issue.³¹

10.27 Should a Member believe that he or she has been misquoted or misunderstood in a debate, the proper course to follow is for the Member to avail himself or herself of the provisions of standing order 47 in the course of that debate.³² The Speaker has requested that Members desist from seeking to utilise the provisions of standing order 46 until the conclusion of a particular debate (but rather utilise the provisions of standing order 47) because of the fact that the personal explanations made under standing order 46 are usually lengthy and detract from the flow of the debate.³³

10.28 In September 1996, Speaker Cornwell was asked whether he had a particular interpretation of what constituted 'a matter of a personal nature'. In response, he made a considered statement on the practice in relation to personal explanations in the following terms:

Personal explanations are made pursuant to standing order 46. Provided that no other Member is addressing the Assembly, the Member wishing to make a personal explanation obtains the leave of the Chair, not the Assembly, to explain a matter of a personal nature. The Member must not debate the matter. ... *House of Representatives Practice* states:

In making a personal explanation, a Member must not debate the matter and may not deal with matters affecting his or her party or, in the case of a

²⁶ See Assembly Debates (5.05.2005) 1853.

²⁷ Assembly Debates (18.10.1995) 1794.

²⁸ Assembly Debates (26.6.2003) 2646; Assembly Debates (5.5.2005) 1853.

²⁹ Standing order 46.

³⁰ Assembly Debates (5.3.2002) 560-1.

³¹ Assembly Debates (18.8.2005) 2911-2; Assembly Debates (9.5.2000) 1238-9; Assembly Debates (5.3.2002) 560-1.

³² Assembly Debates (21.2.1996) 118-19.

³³ Assembly Debates (19.9.1990) 3455.

Minister, the affairs of the Minister's department; the explanation must be confined to matters affecting the Member personally. A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.

... It should also be remembered that Members may make use of other opportunities during proceedings, especially the adjournment debate, to raise issues of concern.

In responding to [the Member's] request as to whether I had a particular interpretation of what constitutes 'a matter of a personal nature', it is somewhat difficult to give an absolute definition. Having considered the practice here and elsewhere, I propose to use the following criteria, which all Members might like to listen to. The matter must be personal to the Member and the explanation confined to the matter that is personal to the Member and should not be debated or not be used to commence a debate. I would envisage that explanations would be made by Members in instances where they have discovered that they may have inadvertently misled the Assembly, or have been accused of improper practices or conduct either inside or outside the Assembly, or where a Member's word has been doubted or impugned. A Member could also use the procedure to explain where they had been misquoted or misunderstood, though I remind Members that during debate they should make use of the provisions of standing order 47, where leave of the Assembly or the Chair is not required.

I also remind Members that, should they wish to go beyond the terms of a personal explanation and enter into a debate on the matter or take issue with another Member, the leave of the Chair will be withdrawn, as is the case in the House of Representatives. If a Member proposes to go beyond the confines of standing order 46 it may be better for the Member to seek leave of the Assembly to make a statement or use other forms of the Assembly that may be available.

I intend to follow the practice of the House of Representatives in asking that Members inform the Speaker before seeking leave to make a personal explanation, which in fact happens now; not allowing personal explanations to be made during question time, usually allowing them to be made only at the conclusion of question time, although there may be other occasions between items of business where circumstances require them, which again is something which happens already; and, finally, if the Member uses the personal explanation to enter into a general debate the leave granted by the Chair will be withdrawn. If Members follow these guidelines I am sure it will lead to more orderly debate in the Assembly.³⁴

Speaking in reply

10.29 A Member who has moved a substantive motion (see paragraph 9.7) or moved that a bill be agreed to in principle is allowed a reply, though the reply must be confined to the matters raised during the debate,³⁵ and the reply closes the debate.³⁶

10.30 A substantive motion is a self-contained proposal submitted for the approval of the Assembly. It is drafted in a form capable of expressing a decision or opinion of the Assembly.³⁷ An amendment is not a substantive motion and there is no provision for a reply for the mover of an amendment.³⁸ A motion to take note of a paper which is moved as a vehicle to enable debate, rather than for putting a matter to the Assembly for decision, is not regarded as a substantive motion.³⁹

10.31 The practice in the Assembly has been that the Chair has declined to give the call to the mover of a substantive motion when any other Members who have not spoken in the debate seek the call.⁴⁰

10.32 The provisions of standing order 48 would most likely preclude a Member speaking in reply from moving an amendment (unless the amendment was in response to a matter raised in the debate).⁴¹ On occasions, debate having been closed by the reply of the mover of a substantive motion, debate has, by leave, continued.⁴² Should the mover of a substantive motion wish to speak again without closing the debate, he or she would need to obtain the leave of the Assembly to do so. Should the mover of the substantive motion seek the call to speak to an amendment without closing the debate, he or she may do so, but must confine his or her remarks to the amendment.⁴³

10.33 In unusual circumstances in February 1990, the provisions of standing orders 48 (right of reply) and 49 (reply closes a debate) were waived in respect of the debate on three executive business orders of the day, the Speaker having ascertained that it was the wish of the Assembly to do so.⁴⁴

Indulgence of Chair

10.34 By indulgence of the Chair, Ministers have been permitted to correct or add to answers given during questions without notice. The Minister does not seek leave in this case; it is an established practice of the Assembly that additions and corrections to questions may be made at the completion of question time. These additions and corrections need not necessarily

35 Standing order 48.

36 Standing order 49.

37 May, p. 316; *House of Representatives Practice*, p. 285.

38 See, for example, *Assembly Debates* (16.11.2005) 4186-87. The Speaker reminded the mover of an amendment that she should speak to that amendment immediately and that she would not get another opportunity in the debate (unless she sought and was granted leave).

39 *House of Representatives Practice*, p. 482.

40 See *Assembly Debates* (14.5.2004) 2091-2, (8.3.2007) 412.

41 In the House of Representatives a Member speaking in reply is precluded from proposing an amendment. See *House of Representatives Practice*, p. 482.

42 See, for example, MoP 2001-04/1 19.

43 See, for example, MoP 2004-08/1 103. A Member who had moved amendments to a government bill was given leave to address the Minister's comments on those proposed amendments.

44 The circumstances were that the orders of the day were for the consideration of the questions on the agreement in principle of three executive bills that had been introduced in the preceding year by an executive that had subsequently lost office and the bills were still being considered by the Assembly. Should the Member who had introduced the bills (now the Leader of the Opposition) have chosen to speak on the question before the Assembly at the resumption of the debate on each of the questions, she would have closed the debate. *Assembly Debates* (15.2.1990) 175.

relate to questions asked on the same day.⁴⁵ The exercise of indulgence is completely at the Chair's discretion; it may be withdrawn.⁴⁶

Manner of speech

10.35 Members wishing to speak must rise and address the Speaker⁴⁷ from the place allocated to them in the Chamber; should two or more Members rise, the Speaker must call upon the Member who, in his or her opinion, rose first.⁴⁸ However, the Speaker may have regard to the alternation of the call.

10.36 Remarks should be addressed through the Chair. It is considered that remarks directed at other Members across the Chamber could lead to disorderly behaviour.⁴⁹ It is also not in order for a Member to turn his or her back to the Chair to address party colleagues or to address the listening public, either in the galleries or whilst proceedings are being broadcast.⁵⁰ In November 1989 Speaker Prowse reminded Members of the provisions of standing order 42, adding:

Whilst in the cut and thrust of debate comments may occasionally be directed across the chamber, the proper form is that all remarks should be directed through the Chair.⁵¹

10.37 Speaker Prowse also advised the Assembly of the form in which Members may refer to another Member. Until the Assembly otherwise directs, Members should not use the Member's Christian name, given name or versions thereof when referring to another Member. A Member may refer to a Member by title, such as Minister, Chief Minister, or Leader of the Opposition, or may use the prefix Mr, Mrs or Ms. Where a Member is entitled to use a substantive military, academic or professional title, this title will be used if the Member so wishes.⁵² A Member may also be referred to as the Member for his or her electorate.

10.38 By indulgence of the Assembly, a Member unable to conveniently stand, by reason of sickness or infirmity, will be permitted to speak sitting.⁵³

10.39 Members may not interrupt another Member who is speaking other than:

- to call attention to a point of order;⁵⁴
- to call attention to the want of a quorum;⁵⁵
- to move a closure motion;⁵⁶ or
- to move 'That executive business be called on' during consideration of Assembly business.⁵⁷

45 See, for example, Assembly Debates (3.5.2007) 944. The Chief Minister provided additional information with regard to a question asked the previous day and the Minister for Education and Training corrected an answer given on that day and provided some additional information.

46 Assembly Debates (11.5.1995) 466; Assembly Debates (7.3.2007) 290-1. And see *House of Representatives Practice*, p. 484.

47 Standing order 42.

48 Standing order 44.

49 Assembly Debates (24.9.2003) 3591.

50 Assembly Debates (4.6.2002) 1892-3. The Speaker did add 'This is not to say ... that we have to have our gazes locked together for the entire debate.'

51 Assembly Debates (22.11.1989) 2835.

52 Assembly Debates (22.11.1989) 2835. And see Assembly Debates (16.11.2005) 4224.

53 Standing order 43. MoP 2004-08/916, 935.

54 Standing order 72.

55 Standing order 61(b).

56 Standing order 61 and standing order 70. A Member cannot interrupt another Member who is speaking to move a motion to suspend the standing orders—Assembly Debates (13.8.1992) 1668.

57 Standing order 77(d).

Reading speeches and presentation of documents quoted from

10.40 There is no prohibition on Members reading their speeches in the Assembly. However, should a Member quote from a document, he or she may be ordered to present the document. In accordance with standing order 213, a motion requiring the document to be presented may be moved without notice immediately upon the conclusion of the speech of the Member who quoted from the document.⁵⁸ The motion is open to debate and amendment. The implication of having to present a document is that it becomes available for perusal by all Members and the public.

10.41 The practice in the Assembly has been that the provisions of standing order 213 do not encompass documents that, though they may have been referred to in the course of a Member's speech or comments, are not directly quoted from.⁵⁹

10.42 In August 1995, a motion having been moved pursuant to standing order 213 'That the document the Minister quoted from be tabled', reference was made in debate to an informal agreement or convention that 'Members are entitled to read from briefs or speaking notes without having to table those notes'. It was disputed whether the document was a speaking note or a statement by the Minister.⁶⁰ The Speaker ruled that it was for the Assembly to decide whether the document should be tabled, whatever the document was, and the question was put.⁶¹

Display of articles to illustrate speeches

10.43 Speakers of the House of Representatives have accepted that Members may display material to illustrate speeches but 'hoped that Members would use some judgement and responsibility in their actions'.⁶² The Assembly has adopted a similar approach. On an occasion when a Member displayed electoral material to illustrate a point with regard to electoral legislation that was before the Assembly, a point of order was taken suggesting that the display was in breach of standing orders. The Speaker ruled that, since the Member had not 'displayed any irresponsibility in his action', there could be no objection to his action.⁶³

Incorporation of unread material into the Assembly Hansard

10.44 In certain circumstances, leave has been granted to Members to incorporate unread material in *Hansard*. However, it is a practice that the Assembly does not encourage. In July 1989 Speaker Prowse stressed the need for Members to remember that the *Hansard* reports of the Assembly debates are the reports of the speeches made by Members in the Assembly. The Speaker referred to the practice in the House of Representatives where the consistent aim is to keep the *Hansard* as a true record of what is said in the House, and he

58 Standing order 213. See also MoP 1998-2001/1466-7.

59 Assembly Debates (21.6.1991) 2357-8; Assembly Debates (25.11.1993) 4165-6. And see Assembly Debates (17.10.1995) 1746. However, the basis of the rule was that the full text of a document quoted from had to be tabled, the rule being founded upon the analogy between the houses of parliament and the courts of justice—the principle that no document must be quoted in court without being produced being held to apply to parliament as well as to an ordinary judicial tribunal. See *Redlich*, Vol III, pp. 59-60.

60 See also Chapter 13: Papers, records and publications of the Assembly, paragraph 13.16.

61 MoP 1995-97/125; Assembly Debates (23.8.1995) 1388-9. The question was resolved in the affirmative. For earlier discussion on the convention see Assembly Debates (9.5.1995) 315-7.

62 *House of Representatives Practice*, p. 493.

63 Assembly Debates (17.10.1995) 1746.

outlined the reasons for discouraging the practice of incorporating printed material as follows:

- unread material may offend the rules requiring relevance and decorum of expression;
- unread matter may contain offensive or libellous statements to which a Member may have taken objection had the words been spoken;
- a Member could, in effect, make a longer speech than the time limit allows for;
- delays, technical problems and increased costs of production of *Hansard* could result; and
- the practice was unnecessary because printed material and public documents may be tabled and included in the papers of the Assembly for Members to view.⁶⁴

10.45 In establishing guidelines for the incorporation of unread material into the Assembly debates, Speaker Prowse in 1989 indicated that he would not allow the incorporation of printed material other than petitions, answers to questions on notice or other matters, such as tables and graphs, which need to be seen in visual form for comprehension. As is the case in the Commonwealth Parliament, the Speaker stated that he would exercise final authority over the incorporation of unread matter. He asked all Members to consider carefully before seeking to incorporate material in *Hansard*, believing that the practice generally was unsatisfactory and to be avoided.⁶⁵ Speaker Prowse's guidelines have been followed by subsequent Speakers. In fact, the current practice, given that *Hansard* is now principally an electronic publication, is that all material incorporated in the record, with the exception of petitions, must be provided in an electronic form suitable for electronic and hard copy publication.⁶⁶

10.46 Should leave be granted to incorporate unread material it must be provided to *Hansard* as soon as possible in an electronic form suitable for publication. The incorporated material is not reproduced in the uncorrected proof transcript but is published at the end of the proof daily *Hansard* and the official weekly *Hansard*.

10.47 It is out of order to incorporate material at the end of a speech given that it would, in effect, extend a Member's speaking time.⁶⁷

Question may be required to be read

10.48 Except for occasions where the terms of a question or matter have been circulated to Members, any Member may require that the question or matter under discussion be read by the Speaker at any time during a debate, but not so as to interrupt the Member speaking.⁶⁸

Allocation of the call

10.49 Standing order 44 provides that when two or more Members rise to speak, the Speaker shall call on the Member who, in his or her opinion, rose first. The Chair, however, will often alternate the call between Members in favour of the question and those against it.

64 Assembly Debates (4.7.1989) 622-30.

65 Assembly Debates (4.7.1989) 622-3.

66 Assembly Debates (9.12.2004) 215.

67 Assembly Debates (1.5.1990) 1467.

68 Standing order 60.

RULES OF DEBATE

Relevancy

10.50 The fundamental rule on the content of speeches, and that which underpins many of the rules of debate, is the relevancy rule.

10.51 Standing order 58 provides that a Member may not digress from the subject matter of any question under discussion, subject to two provisos:

- irrelevant matters may be debated on the motion to adjourn the Assembly;⁶⁹ and
- matters related to public affairs may be debated on the motion for the agreement in principle to appropriation bills (the budget).

10.52 When a bill for an Act 'to appropriate additional money for the purposes of the Territory' has been considered by the Assembly at the in-principle stage, the Speaker has permitted discussion of matters not covered by the bill despite a Member taking a point of order that the bill was not a budget bill but for certain select appropriations.⁷⁰ It has also been ruled permissible, in debate on a motion to establish an estimates committee, to raise almost anything with which the estimates committee may concern itself.⁷¹

10.53 It can be difficult for the Chair to monitor the relevancy rule, especially if there is a gap of several sitting days or weeks in a particular debate.⁷² Should the Chair permit irrelevant matters to be raised, the subsequent debate can be distorted. Where a Member was inadvertently allowed to discuss irrelevant matter, the Speaker has felt obliged to permit other Members the opportunity to do likewise,⁷³ undermining the relevancy rule. This was demonstrated when a Minister who was the subject of a censure motion which was expressed in quite specific terms with regard to a particular administrative matter, having already addressed the Assembly, believed that matters that were not the subject of the censure were being introduced into the subsequent debate.⁷⁴

Irrelevance or tedious repetition

10.54 The Speaker, having called the attention of the Assembly to the conduct of a Member who persists in irrelevance or tedious repetition of the Member's own arguments or those of other Members, may direct the Member to cease speaking.⁷⁵

Cognate debates

10.55 It is common practice that, when two or more related orders of the day (usually relating to bills) are listed on the *Notice Paper*, the Chair ascertains whether it is the wish of the Assembly that Members, in addressing their remarks to the first order of the day, may make reference to the related orders of the day.⁷⁶ If there is no objection, the Chair allows that

69 This does not mean that other standing orders can be transgressed; see, for example, Assembly Debates (10.4.2002) 967-8; Assembly Debates (16.11.1989) 2697.

70 Assembly Debates (3.5.2001) 1425-6.

71 Assembly Debates (4.5.2006) 1196.

72 Assembly Debates (17.11.98) 2571.

73 Assembly Debates (5.7.1989) 664. And see Assembly Debates (23.9.2003) 3521-2.

74 Assembly Debates (23.9.2003) 3521-2.

75 Standing order 62. See MoP 1989-91/160 for an example.

76 Though it would be uncommon, the procedure can also be utilised in the consideration of notices and orders of the day.

course to be followed and a cognate debate ensues.⁷⁷ When it is proposed that a cognate debate take place, this is indicated on the *Daily Program* as part of the programming process, after consultation with party and crossbench representatives and the Member in charge of the order of the day.

10.56 At the conclusion of the debate, separate questions on each order of the day are proposed as required. Though the rationale for a cognate debate is to have one debate on the issues covered by the orders of the day, the fact that a cognate debate has occurred does not preclude Members from addressing any question proposed that is open to debate or to debate an amendment.

Allusion to previous debates or proceedings

10.57 A Member may not allude to any debate or proceedings in the same calendar year unless such allusion is relevant to the matter under discussion.⁷⁸ The basis of the rule is that it prevents the revival of a debate which has been brought to an end.⁷⁹

Anticipation of discussion

10.58 Standing order 59 prohibits a Member from anticipating the discussion of any subject that appears on the *Notice Paper*. In applying this standing order, the Speaker can consider whether the matter anticipated is likely to be brought before the Assembly within a reasonable time.

10.59 The rule is designed to ensure that matters which are scheduled for consideration and decision by the Assembly at a future date are not pre-empted by unscheduled debate.⁸⁰ As is the practice in the House of Representatives, the words 'subject which appears on the *Notice Paper*' are taken to apply only to the business section of the *Notice Paper* and not to 'matters listed elsewhere'—for example, under questions in writing or as subjects of committee inquiry.⁸¹

10.60 The rule is reiterated elsewhere in the standing orders. Standing order 130 provides that a matter on the *Notice Paper* may not be anticipated by a matter of public importance, an amendment or other less effective form of proceeding.

10.61 Having ascertained that it was the wish of the Assembly, the Speaker has permitted discussion of a matter of public importance to proceed even though the discussion anticipated debate on an executive business order of the day.⁸² The fact that the Assembly is debating the question 'That the Assembly do now adjourn' does not permit anticipation of the debate on legislation listed for consideration on the *Notice Paper*.⁸³

77 Leave is not invariably granted. See, for example, Assembly Debates (8.12.1998) 3178.

78 Standing order 51.

79 *Redlich*, Vol III, p. 58.

80 *House of Representatives Practice*, p. 497 but see comment where it is stated that the origin of the rule is unclear in the introduction to May at p. 4.

81 *House of Representatives Practice*, p. 497.

82 Assembly Debates (18.11.1992) 3209.

83 Assembly Debates (16.11.1989) 2697; Assembly Debates (10.4.2002) 967-8.

Reference to committee proceedings

10.62 With certain exceptions, standing order 241 effectively prohibits reference in the Assembly to the evidence taken by any committee, the documents presented to a committee and the proceedings and reports of a committee until its report has been presented to the Assembly. These proceedings must remain strictly confidential to the committee and not be published or divulged by any Member of the committee (or any other person) until the presentation of the report.⁸⁴

10.63 The provisions of standing order 241 do not apply to:

- proceedings of a committee that are public;
- any press release or public statement made by the Chair of a committee relating to an inquiry; and
- submissions, exhibits or oral evidence received by a committee that have been authorised for publication by that committee.

10.64 In practice, committees generally seek to conduct their hearings in public as far as possible and to publish written submissions and other evidence received at the earliest possible occasion. Thus, standing order 241 in effect applies only to the deliberative meetings of committees, draft reports, documents received on condition that they remain confidential to the committee and evidence taken in camera. The publication or divulging of any evidence taken or documents received in camera or on a confidential basis by a committee must be authorised by a resolution of the committee or the Assembly.

10.65 Should the Standing Committee on Administration and Procedure not present to the Assembly all or part of a submission received pursuant to the procedures adopted by the Assembly for *Citizen's right of reply* (see Chapter 2: Immunities and powers of the Assembly (Privilege), paragraphs 2.107 to 2.129), Members are constrained in any references they can make to that submission in the Assembly.⁸⁵

10.66 In December 2002 the Speaker made a statement concerning the subject matter of a matter of public importance proposed for discussion which covered matters raised in a report of the Auditor-General presented the preceding day. The Speaker advised Members that, though the report stood referred to the Standing Committee on Public Accounts for inquiry, to prohibit reference to its contents until the committee reported, especially in relation to a report of that particular nature,⁸⁶ could unnecessarily stifle comments on matters in the public interest. He asked Members to bear in mind the fact that the committee would be inquiring into the report and not to refer to proceedings of the committee which had not been reported to the Assembly.⁸⁷

Reflections upon votes

10.67 Standing order 52 prohibits the reflection upon any vote of the Assembly except upon a motion to rescind the vote. The practice of the Assembly, up until 2008 when the standing order was clarified,⁸⁸ is that 'reflect' is taken to apply as reflecting adversely. The basis

84 See Assembly Debates (12.5.1992) 277.

85 Assembly Debates (19.8.2004) 3907-8.

86 Auditor-General Act, Auditor-General's Report No. 7 of 2002—*Financial Audits with Years Ending to 30 June 2002*, dated 10 December 2002. The MPI in question was 'The legality of the Treasurer's advance of \$10 million to ACT Housing in June 2002.'

87 MoP 2001-04/491-2; Assembly Debates (12.12.2002) 4397-8.

88 MoP 2004-08/1388-9.

of the rule, as with that relating to allusion to previous votes or proceedings, is to prevent the revival of a debate which has been brought to an end.⁸⁹

10.68 Ruling on a matter in 1992, Speaker McRae stated that the basis of the rule was that reflections not only would revive discussion upon questions already decided, but also were irregular inasmuch as every Member could be considered to be included in and bound by a vote agreed to by a majority. She did not believe, however, that the rule should be interpreted in such a way as to prevent a reasonable expression of views on matters of public concern.⁹⁰

10.69 A Member has been asked to withdraw a description of action taken by the Assembly by way of a vote as 'an appalling situation'⁹¹ and a Member referring to two earlier motions as 'unnecessary' and a 'waste of Assembly time' has been asked by the Chair not to mention the previous vote or the previous matter.⁹² Upon a Member introducing a bill the same in substance as one that had been negated by the Assembly during the preceding year, the Chair declined to uphold points of order that the Member sponsoring the bill was reflecting upon a vote of the Assembly.⁹³

10.70 In August 1996, Speaker Cornwell, referring to points of order taken in accordance with standing order 52 over the preceding months, referred to the practice of the House of Representatives where the rule was not interpreted in such a way as to prevent a reasonable expression of views on matters of public concern and the practice of other parliaments where the standing order is interpreted more loosely. The Speaker advised the Assembly that he intended—subject to any direction of the Assembly—to allow references in debates and questions to previous votes of the Assembly, provided that they were clearly not critical of the vote or decision taken. He considered that to interpret the standing orders otherwise would simply invite points of order every time a Member made reference to a point of view which was contrary to that of a previous decision of the Assembly. He also advised that he intended to follow the House of Representatives practice and allow debate to proceed in such a way as to enable a reasonable expression of views on matters of public concern.⁹⁴

Use of the name of the Queen, the Governor-General or a Governor

10.71 Members are prohibited from using the name of the Sovereign or the names of her representatives in Australia disrespectfully in debate or for the purpose of influencing the Assembly's deliberations.⁹⁵

10.72 This rule would not preclude discussion of the conduct of the Sovereign or her representatives by way of a substantive motion drawn up in proper terms and the rule does not exclude statements of facts by a Minister concerning the Sovereign or debate on the constitutional position of the Crown.⁹⁶

89 *Redlich*, op. cit. Vol III, p. 58. Referring to Hatsell, Redlich states 'each vote ends the discussion which leads up to it, and binds the dissenting minority. Further opposition is therefore illogical, as it is taken for granted that a decision by majority expresses the will of the whole House'.

90 *Assembly Debates* (13.8.1992) 1656.

91 *Assembly Debates* (18.5.1993) 1563.

92 *Assembly Debates* (27.8.2003) 3310.

93 *Assembly Debates* (27.6.1996) 2229-30.

94 *Assembly Debates* (27.8.1996) 2567-8. And see *Assembly Debates* (31.8.1999) 2568-9; *Assembly Debates* (1.12.1994) 4447; *Assembly Debates* (27.6.1996) 2223-30.

95 Standing order 53. See also *House of Representatives Practice*, pp. 502-3.

96 *House of Representatives Practice*, pp. 502-3. For background to the rule see *May*, p. 436 and *Redlich*, Vol II, p. 220 and Vol III, p. 60 and footnote 2. Redlich states that there has been no surrender to the great principle maintained against Charles I in 1641 and against George III in 1783 that in matters of state the King can have no other views than those of his Ministers who bear the responsibility for them: 'Crown influence upon the proceedings of Parliament had under George III revived to an enormous extent and had produced most serious consequences for England'. The resolution of 1783 stating 'That to report any opinion or pretended opinion of His Majesty upon any bill or other proceeding depending in either house of parliament, with a view to influence the votes of the members, is a high crime and misdemeanour derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament and subversive of the constitution of the country'.

Offensive or disorderly words

10.73 In addition to the prohibition on using the name of the Queen or of her representatives in Australia disrespectfully or for the purpose of influencing deliberations, Members are prohibited from using offensive words against:

- the Assembly;
- any Member of the Assembly; and
- any member of the judiciary.⁹⁷

All imputations of improper motives and all personal reflections on Members must be considered highly disorderly.⁹⁸

10.74 The practice of the Assembly has been consistently based on that of the House of Representatives and the United Kingdom House of Commons in that:

- Members can direct a charge against other Members or reflect upon their character or conduct only upon a substantive motion which admits of a distinct vote of the Assembly;⁹⁹
- although a charge or reflection upon the character or conduct of a Member may be made by substantive motion, in expressing that charge or reflection a Member may not use unparliamentary words; and
- this practice does not necessarily preclude the House from discussing the activities of any of its Members.¹⁰⁰

If a charge is made against a member of a committee, standing order 259 applies.¹⁰¹

10.75 Criticism of the courts has been permitted in debate as long as Members do not reflect on individual members of the judiciary.¹⁰² For example, a Member was required to withdraw a suggestion that magistrates did not understand the concept of the separation of powers.¹⁰³ As addressed in Chapter 1, the Assembly has enacted legislation relating to the examination of complaints against judicial officers and their removal from office. It places specific and unusual restrictions on any Member who raises allegations relating to the behaviour or the physical or mental capacity of a judicial officer, including:

- the matter may be raised only by way of a motion to have a specific allegation in respect of the judicial officer (made in precise terms) examined by a judicial commission;
- the Member is obliged to give the Attorney-General not less than five sitting days notice of the motion; and
- the Member can proceed with the motion in the Assembly only if the Attorney-General declines to act on the complaint or, more precisely, if, within the period of notice, the Member has not been notified by the Attorney-General that the executive has been requested to appoint a commission to examine the allegation.¹⁰⁴

97 Standing order 54.

98 Standing order 55.

99 Such charges have been permitted on an amendment to such a motion—A motion condemning a Minister for certain action having been moved, an amendment was moved censuring the shadow Minister '... for his blatant and repeated misleading of the people of Canberra and this Assembly', and agreed to. See MoP 2004-08/313-5; Assembly Debates (24.8.2005) 3188.

100 Assembly Debates (16.5.1996) 1348. And see Assembly Debates (25.3.1999) 862-3.

101 See Standing Committee on Legal Affairs, Report No 2, 'Standing order 259 and the inquiry into the operation of the Dangerous Goods Act 1975 with particular reference to fireworks', dated June 2002, MoP 2001-04/210.

102 Assembly Debates (26.11.2003) 4755. The Assembly was considering the Sentencing Reform Amendment Bill 2003.

103 Assembly Debates (13.10.1999) 3100 and 3102-3. The Assembly was considering the Children's Services (Amendment) Bill (No.2) 1999, the key provision of which 'would enable the Chief Magistrate to assign another Magistrate in the event that the designated Children's Magistrate was unavailable or for other good reasons'. The comments made alluded to the lack of commitment by the Magistrates Court to earlier legislative changes made by the Assembly. And see Assembly Debates (8.12.2004) 155; Assembly Debates (9.12.2004) 215.

104 *Judicial Commissions Act 1994*, subsection 14(3). For a full outline of these procedures see Chapter 1: The Legislative Assembly, its establishment, role and membership.

Offensive and disorderly language

10.76 Should any offensive or disorderly words be used (whether by a Member addressing the Chair or any Member who is present), the Speaker is obliged to intervene and, when his or her attention is drawn to words used, the Speaker is required to determine whether or not they are offensive or disorderly.¹⁰⁵

10.77 What is offensive or disorderly? As McGee points out in relation to New Zealand practice:

There are some specific types of references which the Standing Orders hold to be unparliamentary – personal reflections and imputations of improper motives. These might equally be regarded as being offensive or disorderly; indeed, it may be very difficult to determine under which precise provision of the Standing Orders an expression is being ruled out of order.

Whether a particular phrase is offensive or disorderly depends upon the context in which it is used, and an expression acceptable in one context may be unacceptable in another ... [expressions] ... may have been ruled to be unparliamentary because they could lead to disorder in the House, or because they are offensive in themselves, or because they are personal reflections.¹⁰⁶

10.78 If it is determined that words used are offensive or disorderly, the Speaker will require that they be withdrawn. Should a Member refuse to withdraw offensive or disorderly words, the Member may be named by the Speaker pursuant to the provisions of standing order 202. Though it is considered better to draw the attention of the Speaker to words used at the time they are used,¹⁰⁷ Members have been required to withdraw imputations of improper motives and personal reflections after the Speaker has reviewed the *Hansard* record.¹⁰⁸

10.79 Words contained in a quotation that make imputations of improper motives (matters that could be addressed only upon a substantive motion) and offensive words against a Member of the Assembly must be withdrawn¹⁰⁹ and the Speaker has advised the Assembly that he/she intended to rule as unparliamentary any statement which he/she deemed to be so, regardless of its veracity.¹¹⁰

10.80 It is disorderly to imply that a Member is racist¹¹¹ (it has been ruled as disorderly) and to canvass a previous decision of the Assembly where a Member was found to have misled the Assembly.¹¹² The Speaker, citing standing order 156, has disallowed imputations of conflict of interest, stating that they were matters for the Assembly to decide and that the same rule applied as would apply in relation to claims about people misleading the Assembly.¹¹³

10.81 A withdrawal must be unequivocal¹¹⁴ and must be made unqualifiedly and immediately.¹¹⁵ A Member may not decline to withdraw an imputation and seek to support it by moving a substantive motion on the matter; the imputation must be withdrawn.¹¹⁶

¹⁰⁵ Standing orders 56 and 57.

¹⁰⁶ David McGee, *Parliamentary Practice in New Zealand*, p. 187.

¹⁰⁷ Assembly Debates (6.4.2005) 1432.

¹⁰⁸ Assembly Debates (28.11.1990) 4773; Assembly Debates (25.3.1999) 862-3; Assembly Debates (14.11.2002) 3667.

¹⁰⁹ MoP 1998-2001/852-3; Assembly Debates (11.5.2000) 1520-38. And see Assembly Debates (27.6.2002) 2380; Assembly Debates (25.8.2005) 3258.

¹¹⁰ Assembly Debates (16.6.1992) 803. In advising the Assembly the Speaker tabled a legal opinion she had received on the matter.

¹¹¹ Assembly Debates (25.8.2005) 3257-8.

¹¹² Assembly Debates (15.6.1994) 2003.

¹¹³ Assembly Debates (10.12.2003) 5187. And see Assembly Debates (11.2.2004) 246; Assembly Debates (15.2.2005) 381-2 and Assembly Debates (7.4.2005) 1489. On an earlier occasion a Member was named and suspended for refusing to withdraw an imputation that a Member had a conflict of interest; see Assembly Debates (15.5.1997) 1544-8.

¹¹⁴ Assembly Debates (9.3.2004) 892.

¹¹⁵ Assembly Debates (24.8.1989) 1375.

¹¹⁶ Assembly Debates (28.10.1998) 2348-50.

10.82 After a range of serious charges had been made by a Member against another Member in a document tabled in the Assembly, the Speaker asked Members to be more aware in the future of the possible repercussions of tabling documents and asked Members to make themselves fully aware of the contents of documents before granting leave to table them.¹¹⁷

10.83 The question of whether remarks that reflect upon a group rather than upon individual Members are out of order has arisen in the Assembly from time to time. In August 1996 Speaker Cornwell advised the Assembly that:

In recent months points of order have been raised and rulings given concerning the use of unparliamentary words against a group or an organisation. For example, a member was prevented from accusing a Minister of being a liar, but subsequently accused the Government of being liars. In the past a remark having been made that reflects upon a group rather than an individual has not been ruled out of order.

Having considered the matter, I intend to prevent such occurrences in future. From now on, subject to any direction that the Assembly may give me, I intend to adopt the House of Representatives practice ... which quotes the following ruling by Speaker Snedden in 1981 which has been applied by successive Speakers in that house:

I think that if an accusation is made against members of the House which, if made against any one of them, would be unparliamentary and offensive, it is in the interests of the comity of this House that it should not be made against all as it could not be made against one. Otherwise, it may become necessary for every member of the group against whom the words are alleged to stand up and personally withdraw himself or herself from the accusation.

Accordingly, I call upon members to cease using unparliamentary expressions against a group or all members which would be unparliamentary if used against an individual.¹¹⁸

10.84 Comments critical of the conduct of the Speaker are addressed in Chapter 5: Speaker and officers of the Assembly, paragraphs 5.39 to 5.44.

10.85 The fact that Members are criticised in the Assembly does not necessarily mean that standing orders have been breached.¹¹⁹ For example, the Chair has declined to rule that words complained of were offensive or disorderly, stating that he was reluctant to get involved in nuances and emphases in what, on the facts available, appeared to be essentially a political matter. In so ruling, he cited an observation made in the Senate by Deputy President Wood:

When a man is in political life it is not offensive that things are said about him politically. Offensive means offensive in some personal way. The same view applies to the meaning of 'improper motives' and 'personal reflections' as used in the standing orders. Here again, when a man is in public life, and a member of this Parliament, he takes upon himself the risk of being criticised in a political way.¹²⁰

¹¹⁷ Assembly Debates (10.12.2002) 4059-60. And see Assembly Debates (19.11.2003) 4279.

¹¹⁸ Assembly Debates (27.8.1996) 2568. And see Assembly Debates (20.10.92) 2748-50 (reference to an Assembly committee); Assembly Debates (15.5.1997) 1505; Assembly Debates (20.2.1997) 276-8; Assembly Debates (14.5.2004) 1958.

¹¹⁹ Assembly Debates (19.11.2002) 3774. And see Assembly Debates (3.3.2004) 666.

¹²⁰ MoP 2001-04/285; Assembly Debates (27.8.2002) 2789. And see Assembly Debates (2.4.2003) 1259.

10.86 In October 2003, Speaker Berry, in referring to a Member's comments about the issue of her being described as 'being guilty of hypocrisy', stated:

... I have had a chance to reflect on the *Hansard*, and the decision and practice in this place over many years. On other occasions hypocrisy has been ruled out of order but I have formed the view that it is difficult in such a political hotbed to rule out discussion about the pretence of one's position, sometimes described as hypocrisy. That is not to say that I am going to allow it where an inventive use of the word could lead to disorder.

I will not tolerate using name-calling in this chamber—for example, where a member is described as a hypocrite—because I know that is unacceptable and unparliamentary.¹²¹

Claims that Members have misled the community have not been ruled out of order.¹²²

10.87 The Assembly, noting earlier rulings on a matter concerning the use of a particular word, has called upon the Speaker, in a motion passed by the Assembly, to review the proof *Hansard* of proceedings to determine whether words used were offensive or disorderly and, if so found, direct that they be withdrawn. The motion also asked that the Speaker conclude his deliberations and report to the Assembly on his decision by a set time. The Speaker ruled that the use of the word complained of in the terms that it was used was unparliamentary.¹²³

10.88 Members have been reminded of the resolution of the Assembly regarding the exercise of freedom of speech when referring to public servants.¹²⁴ The Assembly has ordered that a notice containing imputations regarding the behaviour of a public servant be removed from the *Notice Paper* for the remainder of the year.¹²⁵

10.89 A Member had attempted to move an amendment to a bill which was clearly out of order and, in addition, contained words substantially the same as words the Speaker had earlier directed to be removed from a notice of motion because of their unbecoming nature (and which had also been contained in a question on notice ruled out of order).

10.90 In advising the Assembly of her action, the Speaker concluded that, given her earlier rulings on the appropriateness of certain statements being included in notices of motions and questions, the recent order of the Assembly prohibiting the placing of a notice of motion containing certain allegations on the *Notice Paper*, and the disorderly manner in which the Member had sought to place those allegations on the record the previous evening, the comments made should not be included in the record, and she had directed accordingly.¹²⁶

Sub judice convention

10.91 One significant limitation on the ability of the Assembly to consider and discuss matters is the restraint that it has placed upon itself in relation to matters that are under adjudication in the courts of law. This is commonly referred to as the sub judice convention (or

¹²¹ Assembly Debates (22.10.2003) 3885. And see earlier ruling at Assembly Debates (27.8.2003) 3252.

¹²² Assembly Debates (18.11.2003) 4221.

¹²³ MoP 1995-97/775; Assembly Debates (4.9.1997) 2890-94. The word complained of was 'harlot'.

¹²⁴ Assembly Debates (18.11.1998) 2608. And see Assembly Debates (24.6.1997) 1954, Assembly Debates (17.11.1998) 2562, Assembly Debates (8.12.1998) 3229-31 (public servants); Assembly Debates (27.8.2003) 3252 regarding comments about former administrations; and Assembly Debates (11.2.2004) 237-8 regarding a Commonwealth Minister.

¹²⁵ MoP 1992-94/344-5. And see NP 60 (13.5.1993) 797.

¹²⁶ Assembly Debates (19.5.1993) 1615-6.

sub judice rule).¹²⁷ It has three main components, namely that:

- proceedings in the courts are not prejudiced—by influencing juries or witnesses or undermining evidence that might be led—because matters before the court have been canvassed in the legislature;
- legislatures do not undermine public respect for the courts by the appearance of political interference in judicial processes; and
- the principle of ‘comity’—that the legislature and the judiciary should, as far as is possible, avoid intruding in each other’s areas of responsibility.¹²⁸

10.92 *Odgers’* quotes the remarks of Justice Spender of the Federal Court where he states that ‘if the effect of a public prejudgement is to undermine public confidence in that judgement, even though it does not affect the process by which that judgement is reached, that equally is a contempt’.¹²⁹ It is of note that evidence received by the House of Commons Procedure Committee suggested that the principle of comity was as important as the risk of prejudice.¹³⁰

10.93 The elements of the convention are open to debate and interpretation. Issues to be considered include:

- how far advanced are the legal proceedings in question?
- how susceptible is the court to external influence?
- how detailed must the reference to the matter be before it can be considered prejudicial?
- by what mechanism will parliamentary debate or a committee inquiry actually interfere with judicial proceedings?
- does the convention apply only to courts of law, strictly defined, or does it have application in other quasi-judicial or inquisitorial tribunals?
- does the public interest in debating the matter outweigh concerns for the court’s processes?

These questions must be considered by a legislature in reaching a decision on whether to apply the convention to a specific matter.

10.94 Up until March 2008, when the Assembly adopted a resolution of continuing effect based on a similar resolution in the United Kingdom House of Commons, the Assembly had not adopted a standing order or other rule on the matter but has drawn on the practice of the House of Representatives (which itself draws on that of the House of Commons) and, increasingly in recent years, the Senate.¹³¹

¹²⁷ The rule developed in the House of Commons as a convention dependent upon Speakers’ rulings since 1889 and first codified as a resolution in 1963. It was last updated in November 2001 following a recommendation of the Joint Committee on Parliamentary Privilege. See House of Commons Procedure Committee, *The Sub Judice Rule of the House of Commons*, First Report of Session 2004-05, HC 125, pp. 5–6 and 19. House of Commons Procedure Committee, *Application of the sub judice rule to proceedings in coroners’ courts*, Second Report of Session 2005-06, HC 714, p. 7.

¹²⁸ Assembly Debates (20.2.2002) 408; Assembly Debates (11.12.2002) 4203-4; and Assembly Debates (8.12.2004) 136. The Speaker of the Assembly has referred to this on a number of occasions, adding, on the last of these, that he expected the courts to observe similar caution when it comes to using Assembly proceedings in evidence that comes before them.

¹²⁹ *Odgers’*, p. 198. See also, House of Commons Procedure Committee, *The Sub Judice Rule of the House of Commons*, First Report of Session 2004-05, HC 125, p. 6 (Evidence to the committee by the Attorney General, Lord Goldsmith QC).

¹³⁰ *Application of the sub judice rule to proceedings in coroners’ courts*, Second Report of Session 2005-06, HC 714, p. 15.

¹³¹ See Assembly Debates (20.2.2002) 408; Assembly Debates (2.4.2003) 1199; Assembly Debates (8.12.2004) 127-55 and 182-95; Assembly Debates (16.2.2005) 469-70. In fact, the application of the convention in Australian legislatures at least varies from jurisdiction to jurisdiction. A July 1997 report of the Legislative Assembly of Queensland’s Members’ Ethics and Parliamentary Privileges Committee found that, whilst there were many similarities between the way legislatures apply the convention in their jurisdictions, there were also significant discrepancies (see *Report on the sub judice convention*, Report No. 7 of the Members’ Ethics and Parliamentary Privileges Committee, Legislative Assembly of Queensland, July 1997, pp. 4-5.

10.95 In its application in the House of Representatives, the convention is that, 'subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in debate, motions or questions'.¹³²

10.96 In the House of Representatives the 'right of the House to debate and legislate on matters without outside interference' is viewed as self-evident and the discretion exercised by the Chair 'must be considered against the background of the inherent right and duty of the House to debate any matter considered to be in the public interest'. The convention would not, for example, preclude the introduction of legislation 'to remedy a situation which is before a court'.¹³³

10.97 The House has defined the application of the convention in the case of criminal matters as being 'from the time a person is charged until a sentence has been announced ... [and if] ... an appeal is lodged ... until the appeal is decided'. In terms of civil matters, they 'should not be referred to from the time they are set down for trial or otherwise brought before a court'.¹³⁴

10.98 The Senate has tended to take an approach at once more robust and more nuanced. It has given more emphasis to the balancing of the public interest with the principle of non-interference in judicial proceedings and also the examination of issues on a case-by-case basis to ascertain the real likelihood of prejudice having regard to all the circumstances surrounding a particular matter. *Odgers'* identifies three key principles:

- there should be an assessment of whether there is a real danger of prejudice in the sense of a court being unable to deal fairly with the evidence put before it or the possibility of a future witness being affected;
- the danger of prejudice must be weighed against the public interest in the matters under discussion; and
- the danger of prejudice is greater when a matter is actually before a magistrate or a jury.¹³⁵

10.99 This last is an important consideration, endorsed by Justice Spender in his comments quoted above (see paragraph 10.92). A judge or judges of a superior court sitting without a jury are much less likely to be influenced in their deliberations than is a jury. Indeed, as *Odgers'* notes:

The courts are now less concerned about such public discussion, having concluded that 'in the past too little weight may have been given to the capacity of jurors to assess critically ... [and] ... to reach their decisions by reference to the evidence before them'.¹³⁶

10.100 The Clerk of the Senate has also counselled against applying the convention to a matter that is still under investigation in anticipation that it might lead to legal proceedings. Having noted that the existence of unexaminable evidence taken by a parliamentary committee might 'create difficulties' for subsequent legal proceedings, the Clerk commented that:

If the Senate or its committees were to refrain from inquiries deemed to be in the public interest on the basis of mere possibilities or relevant legal proceedings in the future, there would be very few inquiries which they could pursue.¹³⁷

¹³² *House of Representatives Practice*, p. 505.

¹³³ *House of Representatives Practice*, pp. 57. In the United Kingdom the discretion is exercised by the Speaker personally, and in that jurisdiction only a few cases reach the Speaker. See House of Commons Procedure Committee, *The Sub Judice Rule of the House of Commons*, First Report of Session 2004-05, HC 125, p. 5 and pp. 14-5.

¹³⁴ *House of Representatives Practice*, pp. 506-7.

¹³⁵ *Odgers'*, pp. 199-200.

¹³⁶ *Odgers'*, p. 203.

¹³⁷ Advice to the Chair of the Senate Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p. 3. Journals 1998-2001, p. 4831.

10.101 A further consideration when applying the convention is that the practice of the media in avoiding discussion of matters before the courts has changed significantly in recent decades. Reporting of investigations leading up to a matter coming before a court is detailed, often sensationalised and intrusive. ‘Judgements’ as to guilt and innocence are freely offered. The merits of evidence are discussed, the strengths and weaknesses of defence and prosecution cases widely debated and likely outcomes canvassed. Even law officers and the police now routinely make statements to the media on the progress of investigations. Thus, judges, juries and witnesses are, potentially, subject to a barrage of information and comment before a case starts, and the legal system has had to adapt to that.

10.102 Legislatures should not join a rush to the lowest common denominator of acceptable practice. However, they would be foolish to deny themselves the opportunity to debate important matters of public concern by the rigid application of a convention rendered redundant by the actions of others.¹³⁸

10.103 The Senate has also taken the view that royal commissions and boards of inquiry which are not courts and to which the convention does not strictly apply are unlikely to be influenced in their findings by parliamentary debate. However, similar issues can arise. Clearly, the potential for the appearance of political interference exists even if debate in the legislature had no influence on the process and findings of an inquiry.

10.104 With regard to coronial inquests—a particular issue in the ACT—*Odgers’* takes the view that an inquest ‘although an administrative inquiry ... may be prejudiced by parliamentary debate’¹³⁹ and the legislature should avoid canvassing issues before such an inquiry. Perhaps more importantly, some potential exists to affect the evidence-gathering process.

10.105 The Clerk of the Senate, in advice (see footnote 138) also considered this matter. It had been submitted that a committee should not conduct an inquiry into matters which were the subject of a coronial inquest because material taken in evidence by the committee would be a ‘proceeding in parliament’, and ‘would be unexaminable in the coroner’s inquiry and thereby might prevent the completion of that inquiry’.

10.106 The advice argued that this was not the case, that there is nothing to prevent a document being submitted to both a legislature and a coronial or other inquiry and therefore ‘nothing to prevent witnesses ... being examined on the content of documents which had also been submitted to the committee’.¹⁴⁰ It was noted that oral evidence could present a real difficulty because parliamentary privilege would prevent a witness before a coroner or other tribunal being examined on evidence that they had given to a parliamentary committee.

10.107 The Clerk advised that:

... if a witness ... gave evidence which appeared to be inconsistent with, or contradictory of, their evidence before a committee, they could not be cross examined ... about the inconsistency or contradiction.¹⁴¹

Conceivably, the inability to resolve such a contradiction might mean that the inquiry ‘could not be fairly completed’.¹⁴² Thus, the legislature and its committees should have regard to that possibility, however small.

¹³⁸ Advice to the Chair of the Senate Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p. 1. The Clerk of the Senate noted that a matter which the committee was examining and which was also the subject of a coronial inquest ‘... has been the subject of extensive public discussion which ... weakens the case for restraint on the part of the Senate or its committees’.

¹³⁹ Though in the Territory, the Coroners Court is a court of record. See paragraph 10.110.

¹⁴⁰ Advice to the Chair of the Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p. 2.

¹⁴¹ Advice to the Chair of the Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001.

¹⁴² Advice to the Chair of the Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, pp. 2-3.

Application of the convention in the Assembly

10.108 To date, the convention has been applied in the Assembly in relation to matters before the courts, both within the Territory and elsewhere in Australia (with a significant number, if not the majority of precedents, applying to matters subject to coronial inquiries and inquests) and, in limited circumstances, to boards of inquiry.

10.109 In the Territory, the *Coroners Act 1997* establishes the Coroner's Court as a court of record constituted by a single coroner (a magistrate) and with the person holding or occupying the office of Chief Magistrate being the Chief Coroner.¹⁴³ The jurisdiction of coroners is to:

- (a) hold inquests into the manner and cause of deaths of persons in certain stipulated circumstances;
- (b) hold inquiries into fires that have destroyed or damaged property as set out in the Act; and
- (c) to inquire into the cause and origin of disasters at the request of or with the consent of the Attorney-General.¹⁴⁴

The coroner has the power to subpoena witnesses,¹⁴⁵ to take evidence under oath¹⁴⁶ and to deal with contempt of court matters.¹⁴⁷ Inquests and coronial inquiries have certainly been viewed as judicial inquiries in the Assembly.¹⁴⁸

10.110 The Assembly has also made legislative provision for both royal commissions¹⁴⁹ (to date, no royal commissions have been appointed by the executive) and boards of inquiry.¹⁵⁰ It is in connection with the proceedings of boards of inquiry conducted pursuant to the provisions of the *Inquiries Act 1991* that matters relating to sub judice have also arisen in the Assembly.

10.111 The danger of prejudicing proceedings in the courts, proceedings of inquests, and coronial inquiries and boards of inquiry concerning the conduct of individuals has led to the application of the sub judice convention in the Assembly with, perhaps, matters on occasion not being as straight forward as they may be in other jurisdictions. Discussion on significant issues of governance and the administration of the Territory has been delayed for considerable periods whilst inquests and coronial inquiries have been underway.¹⁵¹ On separate occasions, the conduct of a board of inquiry and a coronial inquiry has been the subject of proceedings in the Supreme Court. The Speaker was obliged to seek to be represented on a privilege matter in the former¹⁵² (there were also inquests underway on related matters) and motions were proposed in the Assembly to hold the Chief Minister and Attorney-General (who was also a witness before the particular coronial inquiry) to account for supporting an order seeking to prohibit a coroner from further conducting a coronial inquiry in the latter.

143 *Coroners Act 1997*, Sections 4 to 6.

144 *Coroners Act 1997*, Sections 13, 18 and 19.

145 *Coroners Act 1997*, Section 43.

146 *Coroners Act 1997*, section 48. Thus falling within the definition of "tribunal" for the purposes of subsection 16(3) of the *Parliamentary Privileges Act 1987* (Commonwealth).

147 *Coroners Act 1997*, Section 99A.

148 See comments by Attorney-General Stanhope at Assembly Debates (5.3.2003) 509-10.

149 *Royal Commissions Act 1991*.

150 *Inquiries Act 1991*; and see paragraphs 2.38 to 2.41.

151 Following the demolition of the former Royal Canberra Hospital on 13 July 1997 and the consequent inquest into the death of a young girl, it was not until 24 November 1999 after completion of the inquest that the Assembly debated the matter fully in a motion of want of confidence in the Chief Minister; Assembly Debates (24.11.1999) 3549-62; and see comments by Chief Minister Carnell—Assembly Debates (27.8.1997) 2516-7. The delay in holding inquests was seen as one of the main sources of frustration with the application of the sub-judice resolution to coroners' courts in the United Kingdom; see House of Commons Procedure Committee, *Application of the sub judice rule to proceedings in coroners' courts*, Second Report of Session 2005-06, HC 714, p 21. There was also a considerable delay in the coronial inquest into the January 2003 bushfires.

152 See Chapter 2: Immunities and powers of the Assembly (Privilege).

10.112 An added layer or dimension to the application of the convention has also emerged, given the propensity for the Assembly to pressure and even force the executive to appoint boards of inquiry. One board of inquiry (the Smethurst inquiry), appointed after extensive consultation with Members, put into recess by the Chief Minister because of the possibility of it impacting on an inquest into the death of a young girl arising from the demolition of the old Royal Canberra Hospital.¹⁵³ This occurred after the Assembly had rejected motions calling for the appointment of a board of inquiry whilst a coronial inquiry was progressing.¹⁵⁴

Danger of prejudicing court proceedings

10.113 The sub judice convention has been invoked in the Assembly to ensure that the decisions of courts are not impeded or prejudiced. In early 1991, in what became known as the Westpac documents case,¹⁵⁵ the Speaker ruled that disclosure of certain documents to the Assembly, and their subsequent publication elsewhere could prejudice one of the parties in proceedings before the courts (elsewhere in Australia). This ruling confirmed an earlier ruling that the documents were not to be tabled nor their contents disclosed in the Assembly.¹⁵⁶ In making the ruling, the Speaker advised the Assembly that he had not done so lightly and that, having balanced the rights of the Assembly and the public interest against the interests of justice, he did not believe that disclosure of the contents of the documents at that stage in the legal proceedings would be prudent.

10.114 It might be argued that this was not a matter of sub judice. However, the legal proceedings in question were hearings seeking injunctions to prevent publication of the documents. Thus, their disclosure in the Assembly, and subsequent publication, would have pre-empted a decision of the court and denied the plaintiff the opportunity to present his case. The majority of the cases pending were of a civil nature with no jury consideration (although in one case it had become clear that subsequent criminal prosecutions may occur at a later stage). Accordingly, debate on the merits of suppressing the documents was likely to influence the courts.¹⁵⁷

10.115 There have been other cases where the sub judice convention has been invoked due to there being a perceived danger of prejudicing the outcome of matters before the courts, for example:

- the Speaker directed the Clerk to withdraw two parts of a question placed on notice that may have prejudiced a coronial inquiry;¹⁵⁸

153 See comments by Chief Minister Carnell at Assembly Debates (27.8.1997) 2516-7. The appointment of the boards of inquiry (there were actually two) and their termination and suspension occurred during the winter adjournment period though it is apparent from the Chief Minister's comments that extensive negotiation had taken place with Assembly members on their terms of reference.

154 MoP 2001-2004/550-2 and 580-1, and see comments by Chief Minister Stanhope at Assembly Debates (5.3.2003) 509-11.

155 See *Odgers*, pp. 200-2; for a full account of the matter in the Assembly see *Sub judice: Recent Developments*, Paper by David Prowse, MLA, Speaker of the Legislative Assembly for the ACT at the 22nd Presiding Officers' and Clerks' Conference, July 1991.

156 The documents set out legal advice to Westpac about foreign currency loans which involved a Westpac subsidiary and were the subject of several injunction proceedings in the Supreme Court of New South Wales against newspaper companies, the Australian Broadcasting Corporation and a former bank employee preventing the disclosure of the letters.

157 MoP 1989-91/404; Assembly Debates (12.2.1991) 91-3, 96-7; Assembly Debates (13.2.1991) 251-4; Assembly Debates (14.2.1991) 329-35. The Member sought to table the documents on two occasions. The two major documents, advices from a law firm to Westpac Banking Corporation (believed to be the same documents which had been referred to in the media), were the subject of several interlocutory injunctions preventing their publication in the media and had been the subject of a ruling by the President of the Senate earlier in that week. One factor considered by the Speaker was the legal professional privilege that was attached to the documents—See *Sub judice: Recent Developments*, Paper by David Prowse, MLA, Speaker of the Legislative Assembly for the ACT, at the 22nd Presiding Officers' and Clerks' Conference, July 1991.

158 Assembly Debates (14.5.1996) 1188-9. See also NP 46 (14.5.1996) 550; NP 47 (15.5.1996) 568. The Speaker had first requested the Member to remove the parts from the question on the *Notice Paper*.

- reports of a board of inquiry having been tabled and there being related matters before both the coroner (concerning the deaths of two persons) and the Supreme Court (regarding the conduct of the board of inquiry), Members were directed to restrain their comments;¹⁵⁹
- a matter of public importance submitted for discussion was ruled out of order, there being proceedings before the Supreme Court; pleadings had taken place and although the matter was not set down for trial, mediation was scheduled to take place in the very near future;¹⁶⁰
- Members were asked not to stray into areas that may discredit witnesses or influence proceedings before the coroner;¹⁶¹ and
- a question on matters that may be of interest to a coroner was disallowed.¹⁶²

10.116 The convention has not necessarily prevented the raising of matters of major concern regarding the administration of the Territory by the executive, though the parameters of debate have been curtailed on occasion.

10.117 At the commencement of the Sixth Assembly, an order having been sought in the Supreme Court to prohibit a coroner from further conducting a coronial inquiry into the causes of the January 2003 bushfires in Canberra (on the ground of apprehended bias), and the ACT Government having joined the appeal (there were other respondents), two principal motions critical of the government's intervention in proceedings undertaken in the Supreme Court were permitted to proceed in the Assembly:¹⁶³

- The first, in December 2004, purported to direct the Attorney-General to instruct lawyers representing him and the government to discontinue the appeal against the coroner in the Supreme Court and to affirm his and his government's confidence in the coronial process. It later transpired that there was a belief that there was a conflict of interest in the Attorney's role as Attorney and as a witness before the coronial inquiry.¹⁶⁴
- The second, in February 2005, called upon the Attorney-General to stand aside until the coronial inquest into the January 2003 bushfires and other related court actions were concluded.¹⁶⁵

10.118 Prior to each motion being moved, the Speaker made statements to the Assembly on the application of the sub judice convention. On the first occasion, he referred to the motion's potential to create debate that would go to issues that would likely be before the court.

10.119 The Speaker also referred to the public debate that was proceeding concurrently and the ability of the court to defend itself if that debate impinged on its proceedings. The Speaker argued that since the court had no similar power with regard to debate in the Assembly, the onus was on him to protect the court, adding:

... I think there is a likelihood that this debate will be a very thin one because it is very hard to avoid questions of sub judice in dealing with this matter. I will err on the side of safety: if Members contributing to the debate touch on

¹⁵⁹ Assembly Debates (20.2.2002) 408.

¹⁶⁰ Assembly Debates (11.12.2002) 4203.

¹⁶¹ Assembly Debates (21.10.2003) 3850-3.

¹⁶² Assembly Debates (18.10.2005) 3741-2.

¹⁶³ Inquests were also conducted into the deaths of four persons in the fires but interim findings on those matters had not been challenged. The inquiry had been stayed until further order of the court. See judgement of the Supreme Court at <<http://www.courts.act.gov.au/supreme/judgments/doogan1.htm>>.

¹⁶⁴ A motion expressing lack of confidence in the Attorney-General was moved following the failure of the first motion; See MoP 2004-08/3 1-3; Assembly Debates (8.12.2004) 127-55, 182-95.

¹⁶⁵ MoP 2004-2006/62-3; Assembly Debates (16.2.2005) 469-80, 497-503.

issues that I feel may find their way to the court, I will prevent the debate from continuing along those lines.¹⁶⁶

10.120 The Speaker made a similar statement prior to commencement of consideration of the second motion in February 2005, advising the Assembly that he intended to follow the principles as set out in *Odgers'* in deciding whether to invoke the sub judice convention stating:

In deciding whether to invoke the convention for debates, questions and motions concerning both proceedings in the Supreme Court and the Coroners Court, I intend to follow the same principles that are set out in the 11th edition of *Odgers*, namely, that there should be an assessment of whether there is a real danger of prejudice in the sense that it would cause real prejudice to the outcome of the trial or inquest; that the danger of prejudice must be weighed against the public interest in the matters under discussion; and that the danger of prejudice is greater when a matter is actually before a magistrate or a jury. And it should be noted that magistrates undertake the duties of a coroner in the ACT.¹⁶⁷

The Speaker again referred to the inability of the courts to defend themselves when matters were discussed in the Assembly. He warned Members that, with regard to matters still before the coroner, they should restrain their comments about the cause of death of the four persons and, in relation to matters before the Supreme Court, asked Members to refrain from discussing the apprehension of bias in the conduct of the coronial inquest.¹⁶⁸

10.121 In both debates there was a tension between the Speaker's efforts to prevent prejudice to the proceedings in the Supreme Court and the coronial inquiry and inquest and the desire of Assembly Members to hold the executive to account for its intervention in and handling of the matter. During the course of both debates, the Speaker intervened on a number of occasions, calling Members to order where it was felt that court proceedings may be prejudiced. A motion of dissent from a Speaker's ruling was moved in the December 2004 debate (see paragraph 10.132) and, on another occasion, a Member was directed to resume his seat.¹⁶⁹

10.122 On one occasion, the mover of the motion was called to order when it was postulated that the Attorney-General had a conflict of interest specifically because he had appeared as a witness before the coronial inquiry. It was asserted that this was in conflict with the conventions and role of an Attorney-General. The Speaker called the mover of the motion to order. He stated that matters had been raised that were going to come before the courts; they would almost certainly be led in evidence. Accordingly, if the mover of the motion raised these issues in the Assembly, that would prevent their being raised in the courts.¹⁷⁰

10.123 It is of note that both in relation to the above precedent (and on a later occasion), the Speaker expressed a particular caution about matters in debate impinging on the proceedings in court—the perceived difficulty being that matters that are entered into in Assembly proceedings may become inadmissible in the courts.¹⁷¹

¹⁶⁶ Assembly Debates (8.12.2004) 127. During the debate that followed the Speaker made a number of rulings invoking the convention and cautioning Members, and a motion of dissent was moved and negatived (see paragraph 10.121).

¹⁶⁷ Assembly Debates (16.02.2005) 470.

¹⁶⁸ Assembly Debates (16.2.2005) 469-70. In fact it was the coronial inquiry.

¹⁶⁹ Assembly Debates (8.12.2004) 208.

¹⁷⁰ Assembly Debates (16.2.2005) 469-71, 475, 479, 480.

¹⁷¹ Assembly Debates (16.2.2005) 471; Assembly Debates (17.8.2005) 2834-5.

10.124 The application of the convention in the Assembly has not prevented the Assembly from legislating on matters,¹⁷² nor has it prevented the relevant Minister from responding to a question about criticism by the coroner of the Government Solicitor's Office (for withholding funds from counsel).¹⁷³ The Speaker has also expressed the view that Members can make passing reference to current court proceedings and that it was inappropriate for Members to attempt to stifle debate completely by taking points of order in relation to such references.¹⁷⁴

Need for comity

10.125 In addition to ensuring that the decisions of courts are not impeded or prejudiced by proceedings in the Assembly, the need for comity has also been a factor in the Chair exercising his or her discretion in the Assembly. In ruling on matters, the Speaker has referred to his concern to ensure that the judiciary and the legislature do not interfere with each other's proceedings.¹⁷⁵

Boards of inquiry and other tribunals

10.126 The sub judice convention has been invoked in relation to the operation of a board of inquiry where it was thought the propriety of the actions of a person may have been questioned. This arose in a supplementary question regarding a perceived conflict of interest relating to the public servant appointed as secretary to the Smethurst inquiry. The Speaker cited the practice in the House of Representatives and ruled the question out of order.¹⁷⁶

10.127 The convention was not invoked in April 1994 when the Assembly considered a motion expressing lack of confidence in a Minister 'by reason of his deliberate or reckless misleading of the Assembly concerning matters relating to the ACTTAB's contract with VITAB Limited' whilst an inquiry established pursuant to the Inquiries Act was underway. It was claimed that the inquiry's terms of reference related directly to the conduct of the Minister and his involvement in the agreement.¹⁷⁷

10.128 The Speaker considered invoking the convention in relation to a matter before the Refugee Review Tribunal (notice having been given of a motion relating to the proposed deportation of Timorese people living in Australia) but allowed the motion to proceed.¹⁷⁸ Whilst understanding that a matter before the Discrimination Commissioner was not subject to the sub judice convention, the Speaker asked Members to recognise the importance of exercising some restraint in this matter when it came to commenting on the situation of individuals.¹⁷⁹

172 See, for example, consideration of the Bushfire Inquiry (Protection of Statements) Bill 2003 (a bill aimed at protecting people making statements to an inquiry announced by the executive into the operational response to the January 2003 bushfires), MoP 2001-04/579; Assembly Debates (5.3.2003) 495; the Limitation Amendment Bill 2005 at MoP 2004-08/365, 513-4; Assembly Debates (21.9.05) 3425-8; and Assembly Debates (14.12.2005) 4792-800.

173 Assembly Debates (17.8.2004) 3700-1.

174 Assembly Debates (29.3.2006) 797.

175 Assembly Debates (20.2.2002) 408; Assembly Debates (11.12.2002) 4203-4; and Assembly Debates (8.12.2004) 136 (on the last occasion, the Speaker adding that he expected the courts to observe similar caution when it comes to using Assembly proceedings in evidence that comes before them).

176 Assembly Debates (26.8.1997) 2448-9.

177 Assembly Debates (12.4.1994) 569-71. In the course of the debate the Attorney-General drew the attention of the Assembly to the sub judice convention and the practice in the House of Representatives and the Senate in relation to royal commissions and advised the Assembly that the government had consciously not raised the sub judice convention (not wishing to be accused of trying to stifle debate).

178 MoP 2001-04/681; Assembly Debates (2.4.2003) 1199; NP 54 (2.4.2003) 944.

179 Assembly Debates (30.5.1995) 516-7. The Assembly was considering a substantive motion—That, in recognition of the seriousness with which the community regards sexual harassment and to ensure the continued good standing of the Legislative Assembly, this Assembly urges the Chief Minister to stand her Deputy Chief Minister aside until the sexual harassment allegations concerning him are resolved.

Discretion of Speaker

10.129 The discretion of the Speaker is a core feature of the operation of the sub judice convention. The Speaker has the discretion to invoke or waive the convention. In the 1991 precedent regarding the Westpac documents (see paragraphs 10.114 and 10.115) the Speaker even declined to ascertain whether the leave of the Assembly sought to table the document was granted until he had ruled on the matter.

10.130 After the ruling on the Westpac documents matter, the Member who had sought to table the documents moved, by leave, a motion proposing that the Assembly, in the interests of the community, override the decision of the Speaker and that it order the tabling of and authorise the publication of the two letters concerned. Debate ensued on the motion and was then adjourned, the order of the day for the resumption of the debate being later discharged.¹⁸⁰

10.131 In the course of the debate on the December 2004 matter referred to above when particular reference was made to the role of the Attorney-General as a witness before the coronial inquiry (and a witness who had corrected his statement to the coroner), the Member addressing the Assembly was ordered to discontinue 'that line'. The Speaker repeated his comment that he was going to err on the side of safety and referred to the danger of prejudicing evidence what might go before the courts.

10.132 A motion of dissent from the ruling was moved (by leave). Issues raised in the resulting debate included the potential conflict of interest in the Attorney-General's role as Attorney-General and his role as a witness before the inquiry (it being postulated that what was said was 'nowhere near getting into the evidence') and the application of the sub judice convention. The Assembly upheld the Speaker's ruling.¹⁸¹

10.133 In October 2005 the Assembly considered a motion which indicated that some Members were concerned that the sub judice convention was being applied too widely. The motion proposed that the Speaker's discretion be removed and guidelines for debating matters before a court be adopted. The terms of the motion were as follows:

- (1) The Assembly reinforces the basic principle that debate should be avoided which could involve a substantial danger of prejudice to proceedings before a court, unless the Assembly considers that there is an overriding requirement for the Assembly to discuss a matter of public interest.
- (2) Debate shall be allowed in the Assembly on any matter before the courts unless it can be demonstrated by a Member of the Assembly that such debate will lead to a clear and substantial danger of prejudice in the courts' proceedings.
- (3) Unless the matter before the Assembly could cause real prejudice to a trial or court hearing in the sense of either creating an atmosphere where a jury would be unable to deal fairly with the evidence put before it, or would somehow perhaps affect a future witness in the giving of evidence, whether for the prosecution or the defence, then the matter for debate or questioning before the Assembly should be allowed.
- (4) Sub judice only applies to matters which are awaiting or under adjudication in a court.¹⁸²

¹⁸⁰ MoP 1989-91/404, 478; Assembly Debates (14.2.1991) 329-35. The documents in question were widely published elsewhere at the time the motion was discharged.

¹⁸¹ MoP 2004-08/32; Assembly Debates (8.12.2004) 136-47.

¹⁸² MoP 2004-08/418-9.

10.134 Later in the debate, in an effort to reach a compromise, an amendment was moved which would have preserved the Speaker's discretion. The questions on both the amendment and the motion were negatived.¹⁸³

10.135 In the United Kingdom House of Commons, the 2001 resolution (as well as preceding resolutions) provides that application of the sub judice rule is 'subject to the discretion of the Chair'. This gives the Speaker absolute discretion to waive the rule in the Chamber as he or she sees fit. Over the years this power has been used sparingly and the rule has been relaxed only in exceptional circumstances. In 2006 the Procedure Committee of the House of Commons, whilst not expecting the rule to be waived habitually, referred to its inquiry highlighting some areas of concern. The committee stated that evidence and argument submitted to the inquiry led it to conclude that certain criteria may make a case more suitable for discretion than others, including cases where:

- a discussion of relevant policy matters is sought, rather than an exposition of the facts of the case themselves;
- the inquest has already been subject to a significant delay and proceedings are not expected to commence for a further lengthy period;
- it is thought important that the matters be debated in parliament, due to the need to influence current events (other than the case itself) or to press for government action (perhaps to prevent another death in similar circumstances);
- the likelihood of prejudice to a current inquest is very low (the view of the coroner may be sought in these cases); and
- the Speaker is satisfied that a debate would not violate the principle of comity, or interfere or be thought to interfere with the role of the judiciary.

10.136 The committee stressed that it was not possible to set out hard and fast rules to determine which cases would be suitable for the Speaker to exercise his discretion over. The list above was intended as a guide to the factors which might weigh in favour of allowing a debate or question. However, the view of the committee was that the exercise of the Speaker's discretion must remain a matter for him or her alone, and must be based on a consideration of the specific circumstances of each case.¹⁸⁴

Matters before committees

10.137 In the House of Representatives the sub judice convention can also be invoked in respect of committee inquiries. *House of Representatives Practice* points out that, as committees have the ability to take evidence in private, they are able to guard against any risk of prejudice to proceedings as a result of evidence given or the reporting of such evidence by the media. An example given concerned the Standing Committee on Transport, Communications and Infrastructure inquiry into aviation safety in 1994–95. The committee decided that it should not receive evidence in public concerning two particular matters, one being the subject of a coronial inquiry and the other the subject of a judicial inquiry.¹⁸⁵

10.138 In its report titled *Administration of AusSAR in the search for the Margaret J*, the Senate Standing Committee on Rural and Regional Affairs and Transport made reference to having resolved to defer its hearings on the inquiry at one stage. This followed the raising of issues concerning the inquiry's timing and potential to conflict with a coronial inquest and issues relating to speculation arising from media coverage. The committee's legal advice indicated

¹⁸³ MoP 2004-08/418-9, 449-50; Assembly Debates (19.10.2005) 3894-9 and Assembly Debates (16.11.2005) 4181-94.

¹⁸⁴ House of Commons Procedure Committee, *Application of the sub judice rule to proceedings in coroners' courts*, Second Report of Session 2005-06, HC 714, pp. 26-7.

¹⁸⁵ *House of Representatives Practice*, p. 506.

that its inquiry might prejudice the conduct of the coronial inquest. Correspondence received from counsel had also outlined concerns that evidence obtained in the committee's inquiry could pre-determine the issue and undermine the coroner's determination. Based on this request, the committee resolved not to proceed with scheduled public hearings and deferred the inquiry pending the coroner's report.¹⁸⁶

References to persons—freedom of speech and citizen's right of reply

10.139 The standing orders listing the rules of debate (Chapter 6) contain no specific provisions relating to persons other than the Queen and her representatives in Australia, the judiciary and Members of the Assembly. Those standing orders relating to questions seeking information (Chapter 10) provide that questions may not contain statements of fact or names of persons unless this is strictly necessary to render the question intelligible and the facts can be authenticated.¹⁸⁷ The standing orders require notice to be provided when questions are critical of the character or conduct of 'other persons'.¹⁸⁸

10.140 The Assembly has, however, adopted significant resolutions (a) calling upon Members to act responsibly in exercising the right of freedom of speech and to have regard to the reputations of others; and (b) adopting procedures to give persons or corporations that have been referred to or otherwise identified in the Assembly an opportunity to respond to such remarks in certain circumstances and to ask for their responses to be published in the Assembly record (citizen's right of reply). These resolutions, first proposed to the Assembly in 1991 and based on procedures of the Australian Senate, were adopted on a permanent basis on 4 May 1995¹⁸⁹ following a trial period. The resolutions and related procedures are discussed in Chapter 2: Immunities and powers of the Assembly (Privilege), paragraphs 2.107 to 2.129.

CURTAILMENT OF SPEECHES AND DEBATE

Time limits on speeches and debate

10.141 Standing order 69 sets out in schedule form the maximum period for which a Member may speak on matters as listed in the standing order (the provision includes 'Debates not otherwise provided for') and the maximum period for certain debates¹⁹⁰ unless the Assembly were to otherwise order. The standing order has been suspended for the consideration of an executive business notice of motion on a particular day.¹⁹¹

10.142 There is provision for the extension of time of a Member's speech. On the interruption of a Member's speech (the maximum period having been reached), the Member may be granted leave by the Assembly to conclude his or her speech within a period of time that is one period half of the original period allotted.¹⁹²

10.143 A motion to extend the time allotted for a debate or a speech is not open to debate, must be moved 'without argument or opinion offered' and must be put forthwith from

¹⁸⁶ See *Administration of AusSAR in the search for the Margaret J*, Report of the Senate Rural and Regional Affairs and Transport Legislation Committee, August 2004, pp. 1-2 at <http://www.aph.gov.au/Senate/committee/rurat_cte/completed_inquiries/2002-04/aussar/report/a01.pdf>.

¹⁸⁷ Standing order 117(b)(i).

¹⁸⁸ Standing order 117(d). Standing order 117(b) also prohibits questions that contain inferences, imputations or epithets. See comments by Speaker Cornwell at Assembly Debates (13.5.1997) 1273.

¹⁸⁹ MoP 1995-7/32-4.

¹⁹⁰ Motion for the adjournment of the Assembly, the question that a bill be considered an urgent bill, matter of public importance (a discussion rather than a debate) and suspension of standing orders.

¹⁹¹ MoP 1998-2001/322-3.

¹⁹² Standing order 69(j).

the Chair without amendment.¹⁹³ Though there is no formal provision preventing Members from seeking extensions of time on the adjournment debate and discussions of matters of public importance (where the whole debate and discussion are limited in time), it is not customary for them to do so.¹⁹⁴

10.144 On occasions, the Assembly has ordered that Members speak without limitation of time,¹⁹⁵ standing orders have been suspended to allow Members to address the Assembly for an unlimited time on a particular matter¹⁹⁶ and leave has been granted to Members to speak without limitation of time.¹⁹⁷

10.145 Though standing order 63(b) and the preamble to standing order 69 envisage that motions may be moved to extend the time allotted for a debate, there are no specific provisions within the standing orders for motions to extend the time for the debate on a motion for the adjournment of the Assembly, the question that a bill be considered an urgent bill, a motion for the suspension of standing orders or the discussion on a matter of public importance.¹⁹⁸

Motion for the adjournment of debate

10.146 During the course of a debate any Member, with the exception of a Member who has spoken to a question or who has the right of reply, may move 'That the debate be now adjourned' (though he or she may not interrupt another Member speaking to do so).¹⁹⁹ The Member moving the motion must have been called by the Speaker in the course of the debate, the Speaker must put the question forthwith and the question must be determined without amendment or debate.²⁰⁰

10.147 If the question on the motion is negatived, debate on the question before the Assembly continues and the Member who moved the motion for the adjournment is not precluded from addressing the Assembly later in the debate.²⁰¹ Standing order 64 provides that no similar proposal shall be received if the Chair is of the opinion that it is an abuse of the orders or forms of the Assembly or is moved for the purpose of obstructing business.

10.148 If the question on the adjournment of the debate is resolved in the affirmative, the Chair must then put the question to fix the time for the resumption of the debate.²⁰² The Chair usually puts the question in the form 'That the resumption of the debate be made an order of the day for the next sitting,' though the Chair would not be precluded from nominating a different day or time if, for example, the Chair had ascertained that it was the wish of the Assembly that a debate be resumed on a particular day or time (or following consideration of a related item of business)²⁰³ or a Member had given an indication in moving the motion for the

193 Standing order 63. In addition, such motions cannot be moved for the purpose of obstructing business (see standing order 64).

194 Assembly Debates (23.10.2003) 4067; MoP 2001-04/991.

195 MoP 1998-2001/567.

196 MoP 1989-91/49.

197 MoP 1995-97/195.

198 On occasions, especially on the last sitting prior to the winter and summer adjournment periods, the adjournment debate has been extended by way of a motion to suspend the standing orders. See MoP 2001-04/502.

199 Standing order 61. See Assembly Debates (21.11.1989) 2719; Assembly Debates (19.10.1993) 3575.

200 Standing order 65.

201 Standing order 67.

202 Standing order 65.

203 For example, the presentation of a related report—as discussed in Chapter 9: Motions. The fact that the order is made for the resumption of the consideration of a matter to be made an order of the day 'for the next day of sitting' does not mean that the item will necessarily be listed on that day or called upon on that day. Items are listed under Assembly, executive or private Members' business, according to the provisions of the standing orders and the status of their sponsors (whether he or she be a private Member or a member of the executive). Unless the Assembly specifically orders otherwise, their precedence is determined within those categories as provided elsewhere in the standing orders.

adjournment that he or she proposed a particular day, time or occurrence for the resumption of the debate.²⁰⁴ A common occurrence is for the Chair to propose the question in the form 'That the resumption of the debate be made an order of the day for a later hour this day' when it is clear that this course is proposed by the mover of the initial motion.

10.149 The question on fixing the time for the resumption of the debate is open to both amendment and debate. Should it be negated, the Assembly not having made an order for the resumption of debate, the item would drop from the *Notice Paper*.²⁰⁵

10.150 Standing order 66 provides that the Member, upon whose motion any debate is adjourned by the Assembly, shall be entitled to speak first on the resumption of the debate.

Closure of debate on a question

10.151 Once a question has been proposed by the Chair, any Member may move, whether another Member is speaking or not, 'That the question be now put' and, unless it appears to the Chair that this closure is an abuse of the rules of the Assembly or an infringement of Members' rights, the question must be put forthwith and determined without amendment or debate.²⁰⁶ A Member who has already spoken to a question or, indeed, a Member who is speaking to a question, is not precluded by the standing order from moving the closure.

10.152 Should there be no question before the Assembly—for example, during the discussion of a matter of public importance or during the election of a Speaker, Deputy Speaker, Chief Minister or Leader of the Opposition—the closure cannot be moved. The closure cannot be moved if a Member is moving a motion and the Speaker has yet to propose the question²⁰⁷ and on many occasions the Chair has declined to put the question if the moving of the motion has been perceived as an abuse of Members' rights.²⁰⁸

10.153 In the event of the closure being moved and agreed to whilst a Member is moving an amendment prior to the question on the amendment being proposed by the Chair, the question that is put relates to the original question. If the closure motion is agreed to, the question that is then put always relates to the original question before the Chamber.

10.154 Should the question 'That the question be now put' be negated, the Assembly resumes proceedings at the point at which they had been interrupted and the Speaker is precluded from receiving a similar closure proposal if he or she is of the opinion that it is an abuse of the forms of the Assembly or it has been moved for the purpose of obstructing business.²⁰⁹

10.155 Should a vote on the question 'That the question be now put' be in progress at the time fixed for the Speaker to propose the question 'That the Assembly do now adjourn' pursuant to the provisions of standing order 34, the time fixed for the expiration of Assembly business on sitting Thursdays pursuant to the provisions of standing order 77 or the time fixed for the Speaker to call upon questions without notice pursuant to standing order 74, that vote

²⁰⁴ See, for example, Assembly Debates (8.12.1998) 3178-9. In this precedent the motion for the adjournment of the debate was negated. Should it have been resolved in the affirmative and the Speaker had chosen to put the following question in the terms 'The question now is—That the resumption of the debate be made an order of the day for the next sitting,' it would have been open to any Member to move an amendment to achieve the result desired.

²⁰⁵ See Chapter 9: Motions.

²⁰⁶ Standing order 70.

²⁰⁷ Assembly Debates (13.8.1992) 1667-8.

²⁰⁸ See, for example, Assembly Debates (16.12.1992) 3977.

²⁰⁹ Standing order 64.

and any vote consequent upon it shall be completed and the result(s) announced prior to the Speaker proposing the question 'That the Assembly do now adjourn,' or executive business being called on or questions without notice being called on.²¹⁰

Other provisions relating to curtailment of debate

10.156 Other times when Members' speeches and Assembly debate may be curtailed are:

- on the interruption of debate at 6 pm each sitting day when the Speaker proposes the question 'That the Assembly do now adjourn' (in this case there are specific provisions for the resumption of the interrupted debate);²¹¹
- on the interruption of debate on an item of Assembly business pursuant to the provisions of standing order 77 (either at the expiration of the time or extended time allotted or should the Assembly agree to the motion 'That executive business be called on');
- on the interruption of the business before the Assembly at 2 pm to call on questions without notice pursuant to standing order 74 (again there are provisions for the resumption of proceedings);²¹²
- at the expiration of any time allotted by the Assembly for the various stages of the bill that is declared urgent;²¹³
- should the Speaker adjourn the Assembly until the next sitting day, a vote having indicated a lack of a quorum or following a lack of a quorum having been noticed pursuant to the provisions of standing orders 31 and 32; and
- should the Speaker adjourn the Assembly in the event of grave disorder.²¹⁴

10.157 On each of these occasions there are procedures in place for the Speaker to fix a future time for the resumption of proceedings²¹⁵ except in the case of grave disorder.

DISORDER

10.158 Disorder is quite simply any behaviour by Members or people in the public galleries which makes it difficult to conduct the business of the Assembly or its committees. The Assembly's powers to deal with disorder and discipline its Members (and others) are set out in Chapter 17 of the standing orders.

10.159 There are two sources of these powers. Subject to the provisions of the Self-Government Act, the Assembly has the power to make standing rules and orders with respect to the conduct of its business²¹⁶ and, having the same powers as the powers for the time being of the House of Representatives,²¹⁷ it has the power to treat disorderly behaviour as a contempt of the Assembly (see Chapter 2: Immunities and powers of the Assembly (Privilege)).

²¹⁰ Standing orders 34(a), 77(c) and 74(a).

²¹¹ Standing order 34. And see Chapter 7: Sittings and adjournment of the Assembly.

²¹² Standing order 74.

²¹³ Standing order 192.

²¹⁴ Standing order 207.

²¹⁵ Including when a quorum is unable to be formed. See standing order 68.

²¹⁶ Self-Government Act, subsection 21(1).

²¹⁷ Self-Government Act, section 24.

MAINTENANCE OF ORDER

10.160 The standing orders provide that it is the duty of the Speaker to maintain order in the Assembly.²¹⁸ Whenever the Speaker rises during proceedings, Members are required to be silent and seated to enable the Speaker to be heard without interruption.²¹⁹ The Member speaking must thus resume his or her seat.

10.161 Whenever a Member wishes to speak he or she must rise and address the Speaker.²²⁰ Whilst speaking no other Member may converse or make any noise or disturbance to interrupt the Member.²²¹ Members are required to acknowledge the Chair when passing to or from their seats and may not pass between the Chair and a Member who is speaking.²²²

10.162 Whenever any offensive or disorderly words are used, whether by the Member addressing the Chair or any Member present, the Speaker must intervene²²³ and when the Speaker's attention is drawn to words used, it is the Speaker who is required to determine whether or not they are offensive or disorderly.²²⁴

10.163 Whilst the Assembly is sitting a Member may not bring any visitor into nor may any visitor be present in any part of the Chamber appropriated to the Members of the Assembly²²⁵ (see Chapter 18: Chamber and Assembly precincts).

POINTS OF ORDER AND SPEAKER'S RULINGS

10.164 A Member may at any time raise a point of order which shall, until disposed of, suspend the consideration of and decision on every other question.²²⁶ Upon a question of order being raised, the Member called to order must cease speaking and sit down.²²⁷ After the question of order has been stated to the Speaker by the Member raising it, the Speaker is required to 'rule on the matter',²²⁸ though on occasion the Speaker has undertaken to review the *Hansard* record and make a ruling at a later time or, after reviewing *Hansard*, has dealt with the matter at the next sitting.²²⁹

10.165 Before making a ruling the Speaker may hear other points of order on a matter (it is up to the discretion of the Chair), provided they are relevant to the issue being discussed and they are raised before a ruling has been made. The opportunity to raise points of order should not be used to disrupt proceedings or to enter into debate. Numerous or repetitive points of order have been seen as being disorderly in themselves.²³⁰ The Speaker has seen fit to draw the attention of Members to standing order 202(a) (wilful disruption to the business of the Assembly) and to advise Members that he would not tolerate debates being interfered with by points of order which do not have substance.²³¹

²¹⁸ Standing order 37.

²¹⁹ Standing order 38.

²²⁰ Standing order 42.

²²¹ Standing order 39.

²²² Standing orders 40 and 41. But see Assembly Debates (1.6.1989) 354. Whilst the Assembly occupied temporary premises movement by Members around the periphery of the Chamber was very restricted and impossible in some sections.

²²³ Standing order 56.

²²⁴ Standing order 57.

²²⁵ Standing order 210. The word 'visitor' in the standing order does not apply to a nursing infant being breastfed by a Member.

²²⁶ Standing order 72.

²²⁷ Due to an infirmity, a Member speaking when a matter of order was raised has been allowed to remain on his feet. Assembly Debates (27.6.1996) 2228. And see Assembly Debates (27.3.1990) 965.

²²⁸ Standing order 73.

²²⁹ See Assembly Debates (9.3.2000) 902 and (28.3.2000) 956.

²³⁰ Assembly Debates (12.9.1990) 3095-6.

²³¹ Assembly Debates (29.6.2005) 2449; Assembly Debates (22.9.2005) 3533.

10.166 To reflect upon a ruling of the Chair is out of order. The Speaker has stated that, though a Member is entitled to move a motion of dissent once a ruling is made, it is disorderly to reflect continually upon it²³² (but see also paragraph 10.167).

Motions of dissent from Speaker's Rulings

10.167 Assembly standing orders do not contain any provision for a Member to move a motion of dissent from a ruling of the Speaker. In the early days of the Assembly, Speakers were adamant about this matter and, consequently, motions of dissent were not allowed.²³³ In recent years, however, the Speaker has accepted such motions, although there is no provision for them to be moved without notice.²³⁴

10.168 A Member wishing to move a motion of dissent, must obtain leave of the Assembly to do so, successfully move a motion to suspend the standing orders to enable the motion to be moved or give notice of such a motion.²³⁵

10.169 Notice has been given of a motion of dissent from a ruling of the Speaker²³⁶ and a motion seeking to suspend so much of the standing orders as would prevent a Member from moving a motion of dissent has been negated.²³⁷ The Acting Speaker having ruled that there was no provision for moving without notice dissent from the Speaker's ruling, a motion of dissent from the ruling was moved by leave and later withdrawn, by leave.²³⁸ In the course of responding to the matter, the Acting Speaker ruled that the provisions of standing order 275 (practice of House of Representatives to be observed, unless other provision is made) could not be used in the Assembly to adopt the House of Representatives practice of moving motions of dissent without notice.²³⁹

10.170 A motion of dissent from a ruling of the Speaker has been agreed to. In May 1991, the Speaker, having ruled that an interjection made by a Member was unparliamentary and having directed that it be withdrawn, the Member, by leave, moved that the ruling be dissented from. The motion was agreed to on the voices.²⁴⁰

232 Assembly Debates (17.8.2005) 2835.

233 See, for example, Assembly Debates (11.12.1990) 5033.

234 See, Assembly Debates (25.9.1996) 3342-5; Assembly Debates (11.12.2002) 4203-4; Assembly Debates (22.6.1995) 2155; Assembly Debates (17.8.2005) 2835. And see comments by Acting Speaker Stefaniak, Assembly Debates (8.8.1990) 2567.

235 Assembly Debates (23.11.1995) 2506.

236 NP 10 (16.6.1992) 108.

237 MoP 1998-2001/852-3.

238 In fact, the Acting Speaker having ruled that two bills (introduced earlier) contravened the provisions of [then] standing order 200, then ruled that there was no provision for dissent. A Member, after having moved his motion of dissent from the second ruling, by leave, then moved a motion to suspend so much of the standing and temporary orders as would prevent him from moving a motion of dissent from the ruling on the two bills (thus superseding consideration of the question on the first motion). The motion to suspend standing and temporary orders having been negated, the motion of dissent was withdrawn, by leave. MoP 1989-91/272.

239 On the basis of precedents in the Assembly (notice having been required of a motion in the past and the Speaker having ruled a motion without notice out of order), Assembly Debates (8.8.1990) 2567-8. The motion that the ruling be dissented from was moved by leave and later withdrawn, by leave Assembly Debates (8.8.1990) 2568-9. And see Assembly Debates (24.2.1993) 433.

240 MoP 1989-91/460; Assembly Debates (2.5.1991) 1901-8. The word used was 'furfury'. The motion having been agreed to, the Speaker thanked the Assembly for its direction on the matter.

NAMING AND SUSPENSION OF A MEMBER WHO IS DISORDERLY

10.171 Standing order 202 identifies behaviour by Members that constitutes disorderly conduct. It states:

If any Member has:

- (a) persistently and wilfully obstructed the business of the Assembly; or
- (b) been guilty of disorderly conduct; or
- (c) used offensive words, which the Member has refused to withdraw; or
- (d) persistently and wilfully refused to conform to any standing order; or
- (e) persistently and wilfully disregarded the authority of the Chair –
that Member may be named by the Speaker.

The last of these grounds gives the Speaker considerable discretion in deciding what is disorderly. Thus, naming need not be on the grounds of a specific offence described in standing order 202.

10.172 Where a Member is disorderly, the Speaker may 'name' that Member and invite the Assembly to suspend the Member from the Assembly. The naming of a Member is in effect 'an appeal to the House to support the Chair, to remove the disturber'.²⁴¹ The Speaker may choose to warn a Member concerning disorderly behaviour prior to naming but is not required to do so.²⁴²

10.173 Once a Member has been named, he or she may not speak to the matter, nor may the Member seek to move a motion to suspend so much of standing orders as would prevent him or her from moving a motion of dissent from the ruling.²⁴³ In naming a Member, the Speaker is not making a ruling; thus there is nothing before the Chamber to dissent from.

10.174 If a Member is named, the Speaker then proposes the question 'That such Member be suspended from the service of the Assembly.' This motion cannot be amended or debated and no adjournment is allowed until the question is decided.²⁴⁴ On one occasion, the Speaker (with the concurrence of Members) suspended the sitting after the naming of a Member until the ringing of the bells.²⁴⁵ The motion to suspend the named Member was moved after the sitting resumed.

Speaker may order disorderly Member to withdraw

10.175 In extreme cases—'grossly disorderly'—the procedure for naming and suspending a Member set out in standing orders 202 and 203 may not be sufficient to deal with the situation. In such circumstances, the Speaker is empowered to order a Member to leave the Chamber immediately 'to ensure the urgent protection of the dignity of the Assembly', and to order officers of the Assembly to take any necessary action to ensure that the Member

²⁴¹ See *Redlich*, Vol III, p. 72, footnote 1.

²⁴² See *Assembly Debates* (7.12.2000) 3846; *Assembly Debates* (24.11.2005) 4626-7, 4665.

²⁴³ *Assembly Debates* (28.3.2000) 956-7. In this example, the Member, having been asked to withdraw offensive words, first sought to speak to the matter. On again being directed by the Speaker to withdraw the words, the Member tried to move a motion to suspend standing orders to allow him to move a motion of dissent but the Speaker required him to sit down and proceeded with the suspension.

²⁴⁴ Standing order 203.

²⁴⁵ *MoP* 1992-94/120; *Assembly Debates* (19.8.1992) 1851. The sitting was suspended for some 50 minutes to let everybody 'calm down'.

withdraws.²⁴⁶ The naming procedure then occurs. If the Assembly resolves the question in the negative, the Member named may return to the Assembly.

10.176 In naming a Member, the Speaker is asking the Assembly to maintain appropriate standards of behaviour and to support the Chair in doing so. The considerable authority of the Speaker must be used judiciously so that Members will be ready support the Chair. The power to 'name' is used sparingly in the Legislative Assembly and to date the Members have always supported the Speaker.²⁴⁷

Speaker may adjourn Assembly or suspend sitting

10.177 When faced with grave disorder arising in the Assembly, the Speaker also has the power to adjourn the Assembly without putting the question, or to suspend any sitting to a time to be named by the Speaker.²⁴⁸

10.178 When there has been disorder in the public gallery, the Speaker has suspended the sitting;²⁴⁹ on one occasion, when the Chief Minister refused to withdraw an imputation that a Member had lied, the Speaker suspended the sitting for 10 minutes. On resumption of the sitting, the Chief Minister apologised to the Speaker and withdrew the imputation.²⁵⁰

10.179 On 11 December 1990, following Members' disorderly behaviour in the Chamber during the preceding sitting, the Speaker gave reasons for not invoking standing order 207 to adjourn the sitting because grave disorder had arisen.²⁵¹

10.180 A similar power to adjourn a committee meeting in response to grave disorder is provided to the Chair of a committee by standing order 229A. The committee may be adjourned without the question being put and the chair may set a time for the committee to reconvene. The Speaker may also set a time for the next meeting of the committee if requested to do so by a majority of Members. This standing order was adopted in 1999 as a result of 'unruly' behaviour by a committee member in an estimates committee hearing.

Member ordered to attend the Assembly

10.181 A Member who disobeys an order of the Assembly may be ordered by the Assembly to be present in the Chamber and to answer for his or her conduct.²⁵²

Exclusion of suspended Members from the Chamber

10.182 A Member who has been suspended from the Assembly is excluded from the Chamber and the gallery.²⁵³ The Assembly follows the practice of the House of Representatives in that a Member suspended from the Assembly is excluded from 'chamber-related'

²⁴⁶ Standing order 205. This procedure has not been invoked in the Assembly.

²⁴⁷ It has been suggested that the relatively generous amount of time devoted to private Members' business and, until the Sixth Assembly, the prevalence of minority or coalition governments have contributed to minimising the frustrations of non-executive Members and maintaining a cooperative approach to the conduct of the Assembly's business.

²⁴⁸ Standing order 207.

²⁴⁹ MoP 1989-91/439; MoP 1995-97/258 (2), 267-8 (2); MoP 1998-2001/507-8 and MoP 2001-04/1333.

²⁵⁰ Assembly Debates (7.6.1990) 2335.

²⁵¹ Assembly Debates (11.12.1990) 4907-8. The Member whose behaviour had initiated the disorder having apologised and immediately left the Chamber, the Speaker chose not to name him. The Speaker also decided not to invoke standing order 207 and suspend or adjourn the sitting because he believed that it would provide a precedent whereby Members might close down any parliamentary debate to which they objected simply by creating disorder.

²⁵² Standing order 208.

²⁵³ Standing order 206.

activities—the lodging of petitions, notices of motion, questions on notice and matters of public importance.²⁵⁴ A Member who is suspended from the Chamber is not excused from duty on committees.

10.183 The standing orders specify the period of time for which a Member can be suspended.²⁵⁵ Repeat ‘offences’ in the same calendar year attract a ‘sliding scale’ of suspensions, from three hours on the first occasion, two sitting days on the second occasion and three sitting days for a third or subsequent suspension. On three occasions Members have been suspended on a second occasion during the same calendar year.²⁵⁶ The Assembly may make an order on the matter setting a different period of suspension.

DISORDERLY PERSON MAY BE REMOVED

10.184 The Assembly and its committees have the authority to maintain order among members of the public who attend their meetings. The Speaker or the chair of a committee can require a person who is behaving in an offensive or disorderly manner or who disrupts the proceedings in any other way to leave the public galleries of the Assembly, the meeting room of a committee and the precincts of these places.²⁵⁷ The Speaker or committee chair can also direct that a person responsible for disruption be removed.²⁵⁸

254 See standing order 206.

255 Standing order 204.

256 MoP 1989-91/201, 206; MoP 1992-94/384; MoP 1995-97/919.

257 Standing order 209.

258 Standing order 209.

INTRODUCTION—THE TERRITORY’S LAWS

11.1 The Self-Government Act empowers the Assembly to make laws for the peace, order and good government of the Territory.¹ This extends to the exercise of the powers of the executive to make laws as provided for by section 37 and Schedule 4 of the Act. Those powers are subject to the provisions of Part VA of the Act relating to the judiciary, (inserted into the Act in 1992) and section 23, which lists specific matters excluded from the Assembly’s power to make laws.²

11.2 In addition, section 21 of the Self-Government Act empowers the Assembly (subject to the provisions of the Act) to make rules and orders with respect to the conduct of its business. The Assembly is thus authorised to make standing and other orders covering the introduction and consideration of proposed laws. The Assembly may also make laws relating to its own privileges and immunities, but it has yet to do so.³

11.3 A range of laws, other than those made by the Assembly, is in force in the Territory. The notes to Part 1.3 of the *Legislation Act 2001* summarise those sources of law:

Note 1 The laws in force in the ACT consist of the written law and various unwritten laws known as the principles and rules of common law and equity.

Note 2 The written law of the Territory consists primarily of laws, known as Acts, made by the Legislative Assembly. It also includes regulations, rules of court and other legislative instruments made under specific powers given by Acts. (Written laws made under an Act are commonly called ‘subordinate’ or ‘delegated’ legislation.)

Note 3 Before self-government, ordinances made by the Governor-General under the *Seat of Government (Administration) Act 1910* (Cwlth) were the main form of legislation made for the ACT. Most of the ordinances in force at self-government have been converted into Acts (see the Self-Government Act, s 34). However, the Governor-General (in practice, the Commonwealth Government) retains the power to make ordinances for the ACT on a limited number of topics (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

¹ Self-Government Act, section 22. Note that this Act uses the term ‘enactment’ to describe a law made by the ACT Assembly or an Act of another jurisdiction that is in force in the ACT pursuant to section 34 of the Self-Government Act.

² Section 3A of the Australian Capital Territory (Self-Government) Regulations (Statutory Rules 1989 No. 96 as amended) excludes certain matters from paragraph 23(1)(h) of the Self-Government Act. Other provisions of the Self-Government Act that relate to the Assembly’s law making powers are: section 25 (Notification of enactments—now superseded by section 28 of the Legislation Act (see paragraph 11.66)); section 26 (Special procedures for making certain enactments (see paragraphs 11.61 to 11.74)); section 29 (Avoidance of the application of an enactment or part of an enactment to the Commonwealth Parliament (see paragraph 1.37)); section 31 (Publication of enactments (the responsibility actually rests with the executive, not the Assembly)); section 35 (Disallowance of enactments by the Governor-General and the power of the Governor-General to recommend amendments (see paragraph 11.60)); and sections 57 (Public money), section 58 (Withdrawals of public money) and section 65 (Proposal of money votes) (see paragraphs 11.221 to 11.271 on subordinate legislation).

³ Self-Government Act, section 24. See also Chapter 2: Immunities and powers of the Assembly (Privilege).

- Note 4 The written laws in force in the ACT also include the Commonwealth Constitution, Commonwealth Acts, and regulations and other legislative instruments made under Commonwealth Acts. As a general rule, Commonwealth Acts and legislative instruments apply in the ACT in the same way as they apply in other parts of Australia. Commonwealth Acts and instruments prevail over the Acts made by the Legislative Assembly to the extent to which they are inconsistent (see Self-Government Act, s 28).
- Note 5 Certain Acts of New South Wales and the United Kingdom also formed part of the written laws in force in the ACT.⁴ Because of the *Interpretation Act 1967*, s 65, these are now taken to be laws made by the Legislative Assembly as if they had been enacted by the Assembly. (Section 65 has expired, but its previous operation was saved – see s 65 (3)).⁵

BILLS

11.4 A bill is a proposed law presented to the Assembly for its consideration. Though the Self-Government Act does not use the term 'bill' to denote proposed laws, the term has a long history of parliamentary usage, is commonly used in Australia and has been adopted throughout the Assembly's standing orders.⁶ The adoption of the term is not without historical significance; 'bills' replaced 'petitions' as the term for proposed laws in England in the fifteenth century and marked an important step in the development of an independent parliament. As Redlich describes it:

... the essence of the change was that the basis for discussion and the matter for determination in the House were no longer requests, but drafts of the desired enactments free from any formula of asking.⁷

11.5 In Assembly usage, a bill is a proposed law which, if agreed to by the Assembly (and notified on the ACT Legislation Register by parliamentary counsel at the request of the Speaker), becomes law.

11.6 As is the practice in the House of Representatives, all bills in the Assembly are treated as 'public bills'—that is, bills relating to matters of public policy. The Assembly standing orders do not contain provision for 'private bills'—that is, bills for the particular interest or benefit of any person or persons, public company or corporation—as recognised in the United Kingdom House of Commons and certain other legislatures derived from Westminster. Again,

4 For example, the *Bill of Rights 1688* (UK), which includes the guarantee of freedom of speech in Parliament, has, via New South Wales and the Commonwealth, become a law of the ACT.

5 These Acts are listed in Schedule 1 (to the Legislation Act) and see section 34 of the Self-Government Act. For a summary of the sources of law in the Territory see the ACT Legislation Register at <http://www.legislation.act.gov.au/updates/sources_of_law.asp>.

6 In fact, with the exception of standing orders 193 and 194, the term 'proposed law' does not appear in the standing orders. Standing order 193 sets out the procedures for certification of a bill once it has passed and requires the Speaker to request parliamentary counsel to notify 'the making of the proposed law'.

7 (See *May*, p. 982). See Redlich, Vol. 1, pp. 16-7, ix, and Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, pp. 10-4, 22-5. Bills had been first adopted for legislative proposals brought forward at the instance of the Crown (it being convenient to supply Parliament with drafts of the new statutes). Redlich sees the great advance being taken when petitioners who approached Parliament from without began to make use of the same form, and when the Commons began to replace their own petitions to the Crown by complete drafts of laws. A survivor from this earlier procedure is that private bills must be accompanied by a petition signed by the parties (or some of them) who are the promoters for the bill.

as in the House of Representatives, there is no recognition of what are termed 'hybrid bills'—that is, public bills to which some or all of the procedures relating to private bills apply.⁸

11.7 The subject matter of bills is restricted by the power of the Assembly to make laws as set out in the Self-Government Act⁹ and standing order 200 requires that bills appropriating money be proposed by a Minister. Other than these requirements, there is no restriction on the subject matter of bills introduced by executive and non-executive, or private, Members.

11.8 Assembly bills may originate from the executive or from private Members, the distinction denoting the status of the Member introducing the bill. This determines the listing of the business on the *Notice Paper* and its precedence in the order of consideration. Of the bills introduced in the Assembly to December 2006, 1 418 were introduced by the executive, 379 were introduced by private Members (21% of bills introduced) and seven were introduced by 'Executive Members'. Of those bills enacted, 89% were introduced by the executive and 10.7% were introduced by private Members. During the course of the Fourth Assembly, a further category of business—Executive Members' business—was adopted by temporary order. A small number of bills were introduced and considered under this category of business.¹⁰

11.9 Generally, the Assembly offers non-executive Members very generous opportunities to introduce business when compared with other Australian parliaments. However, the proportion of private Members' bills introduced and passed has varied from Assembly to Assembly. In the Sixth Assembly, with a majority government, proportionately fewer private Members' bills were introduced than in previous Assemblies, and the proportion of such bills enacted was significantly lower. Details are given at Appendix 11.

Form of a bill

Long title

11.10 A bill begins with a long title that sets out its purposes in brief terms. A short description of the scope of the bill may also be provided.¹¹ A bill also has a short title that serves as a convenient name for the proposed law. This short title is usually placed in the first clause of a bill. Any reference in the standing orders to the 'title' of a bill is a reference to the long title, as is any procedural reference, without being qualified, to the 'title' of a bill.¹² The usual terms of the long title are 'A Bill for an Act to ...' or 'A Bill for an Act relating to ...'.

8 See *House of Representatives Practice*, p. 336 and May, pp. 965-7. There is no obvious constitutional bar to the Assembly adopting such procedures (provided the subject of the proposed laws falls within the provisions of section 22 of the Self-Government Act). Standing rules and orders for the consideration of private bills have been proposed to the House of Representatives by standing orders committees, but not adopted. (See the reports of the Standing Orders Committees of the House of Representatives of 9 October 1902, 14 October 1903, and 19 September 1905).

9 Sections 22-24 of the Self-Government Act.

10 On 24 September 1998 the Assembly amended standing orders 77 and 78 by temporary order to create 'Executive Members' business', being business introduced by a member of the executive that was not government business. See MoP 1998-2001/190-1; Assembly Debates (24.9.1998) 2213-9. Over the course of the Fourth Assembly, seven bills were introduced under this category (pursuant to notice as an Executive Member), four of which were enacted: see MoP 1998-2001/419, 760, 772, 850. This provision reflected the unusual circumstances of the coalition which formed the executive in the Fourth Assembly in which a Minister was not bound by conventions of 'Cabinet solidarity' with regard to matters outside his portfolio responsibilities and retained the right to introduce bills in his private capacity.

11 For example, 'A bill for an Act to approve and provide for carrying out an agreement entered into between the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory with regard to the water, land and other environmental resources of the Murray-Darling Basin, and for other purposes'; short title, 'Murray-Darling Basin Agreement Bill 2007'. See also *House of Representatives Practice*, p. 336.

12 *House of Representatives Practice*, p. 336.

11.11 The long title is significant. It describes the proposed law and its relationship to previous legislation. Procedurally, it is very important in the context of the relevancy rule and the scope of amendments that may be moved. The rules of procedure have never treated the title as a casual or unimportant matter. It is part of a bill; it is capable of amendment; and it must be agreed to by the Assembly.¹³ The provisions and powers contained in a bill must be covered by the description given in the title. If a bill contains clearly extraneous matters, then it should be withdrawn. Standing orders require that the title of a bill must be specified in (and agree with) the notice of presentation. A bill may not include a clause that does not come within its title.¹⁴ Further, any amendments which are proposed to a bill must be relevant to its subject matter, as specified by the long title. Bills not complying with these requirements have been ordered to be withdrawn.¹⁵

11.12 A developing trend in legislative drafting has been to include a 'catch-all' phrase in the long title of bills—'and for other purposes'. This practice must be viewed with some concern since it appears to reduce the importance of the title as a guide to the substantive matters being dealt with in a bill. The use of the phrase is often justified by the need to make consequential amendments to a series of other pieces of legislation which it would be cumbersome to include in the long title or to take the opportunity to make minor amendments to other Acts. The practice of the Assembly is to read this phrase narrowly; the 'other purposes' should have a clearly demonstrable relationship to the main purpose of the bill.

Preamble

11.13 Following the long title, a bill may have a preamble which precedes (and, in the Territory, may include) the enacting formula. The preamble 'is to state the reasons why the enactment proposed is desirable and to state the objects of the proposed legislation'¹⁶ though these matters are often encompassed in the explanatory statement. A preamble is often included in a bill regarded as being of particular significance. For example, the Native Title Bill 1994 included a preamble setting out the circumstances of pre-European settlement in Australia; the importance of land to Aboriginal people and Torres Strait Islanders and their circumstances since European occupation; the circumstances of the 1992 native title decision of the High Court; the objects of the *Native Title Act 1993* of the Commonwealth; and the intent of the Assembly to participate in the scheme enacted by the Commonwealth.

11.14 Examples of other bills that have included preambles have been the Human Rights Bill 2003, the Charter of Responsibilities Bill 2004, the Residential Property (Awareness of Asbestos) Bill 2004,¹⁷ the Gungahlin Drive Extension Authorisation Bill 2004, the Hotel School (Repeal) Bill 2005 and the Civil Unions Bill 2006. The Electoral Bill 1992 did not contain a preamble; however, one was inserted during consideration of the bill at the detail stage. It briefly outlined the background to the choice of the proportional representation (Hare-Clark) system by referendum and the wish of the Assembly to enact legislation to implement the system chosen.¹⁸ On occasion, where the legislation has been particularly controversial, the

13 Standing orders 186 and 180(e). And standing order 179 provides that the title and any preamble stand postponed in the order of consideration of the bill in the detail stage.

14 Standing orders 168(b) and 169.

15 See MoP 2004-08/1309. See also paragraphs 11.47 to 11.52. On occasion, bills have been withdrawn at this stage pursuant to standing order 169 which requires that the title of a bill agrees with that used in any relevant notices and orders and that the clauses of the bill be consistent with the title. Where a bill contravenes this standing order, another Member will move that it be withdrawn.

16 *House of Representatives Practice*, p. 337.

17 The preamble was inserted during Assembly consideration of the bill; see MoP 2001-04/1684-7.

18 Assembly Debates (24.11.1992) 3348-90; MoP 1992-94/213-220. Paragraph 5 of the original preamble (relating to the need to facilitate the implementation of that electoral system by the establishment of the offices and procedures necessary to enable the Territory to be divided into electorates) was omitted by section 5 of the *Electoral (Amendment) Act 1994*.

preamble may be a restatement of the proponent's justification for the legislation and have some of the character of an introductory speech to a sceptical chamber.

11.15 The preamble is part of a bill and can be amended by the Assembly.

Enacting clause

11.16 The enacting formula precedes the other clauses of a bill and, as mentioned above, it has on occasions been included as part of the preamble to a bill. The formula, reflecting the provisions of section 22 of the Self-Government Act, is:¹⁹

The Legislative Assembly for the Australian Capital Territory enacts as follows.

The Assembly does not consider the enacting formula during its consideration at the detail stage (see paragraph 11.71).

Short title

11.17 The *Legislation Act 2001* provides that the name for an Act is the Act's short title.²⁰ Short titles are generally made up of a few words that describe in broad terms the area of law to be changed or affected.

11.18 Clause 1 of a bill contains the bill's short title and is usually worded as follows: 'This Act is the *Financial Management Act 1996*.' If the intention of a bill is to amend a principal Act, the word 'Amendment' is usually included in the short title. For example, the Financial Management Amendment Bill 2007 stated in its long title that it was 'A Bill for an Act to amend the *Financial Management Act 1996*.'

11.19 When more than one bill is introduced in the same year with effectively the same short title, the second and any subsequent bill introduced will include (No 2), (No 3), etc, in the short title. If a bill is dealing with matters contained in a principal Act or is seeking to add or delete provisions to the principal Act, it is usual practice to place words in parenthesis within the short title—for example, the Environment Protection (Fuel Sales Data) Amendment Bill 2007—which, if passed, would amend the *Environment Protection Act 1997*.

11.20 If a bill is introduced in one year and passed in a subsequent year, the bill is given a citation and the name of the bill changes to reflect the year in which it was agreed to by the Assembly. For example, the Construction Occupations Legislation Amendment Bill 2004 originated in the Assembly as the Construction Occupations Legislation Amendment Bill 2003 but, as it was not passed until 2004, the short title was amended prior to notification pursuant to the provisions of standing order 191 (see paragraphs 11.116 to 11.118). This fact, and any other amendment to the title, is recognised by the Clerk in certifying a bill has passed pursuant to the provisions of standing order 193.

11.21 For much of its consideration during the detail stage, the Human Rights and Equal Opportunity Bill 1991 was without a short title, the question 'That clause 1 be agreed to' having been negated at an early stage in the Assembly's consideration of the bill. At the conclusion of the detail stage consideration of the bill, the Assembly ordered that clause 1 be reconsidered and the clause was agreed to following its amendment.²¹

¹⁹ The enacting formula in the United Kingdom House of Commons was developed in the 15th century (see May, p. 536-7) and the formula in Commonwealth legislation has changed several times since 1901 (see *House of Representatives Practice*, p. 337).

²⁰ *Legislation Act 2001, Dictionary, Meaning of commonly-used terms*, p. 231, (Republication No 53). There is a trend in some jurisdictions to adopt a title for legislation which appears to promote its claimed benefits; thus a 'Taxation Amendment Bill' becomes the 'Fairer Taxation System Bill'.

²¹ MoP 1989-91/571-2, 598-9, 599-602, 603-7, 611-4, 615-9.

Commencement clause

11.22 The commencement clause sets the day on which the law will come into effect. Such clauses are expressed in a range of ways. Commencement may occur on the day the Act is notified, on a particular date specified in the clause, on a date to be fixed by the Minister by written notice or on a date contingent on some other specified event—for example, the passage of another piece of legislation. The Appropriation Bill 2007-2008 did not pass the Assembly until late in August 2007 but was taken to commence on 1 July 2007, the first day of the financial year.²²

11.23 The Legislation Act, at section 77, provides that different dates or times may be set for the commencement of different parts of an Act. Section 79 also provides that, if an Act or any provision has not commenced within six months of notification, that Act or provision automatically commences on the completion of the six-month period. Thus, unlike in other jurisdictions there would be very few (if any) Acts on the statute books with uncommenced sections.

Dictionary clause

11.24 The dictionary clause defines certain terms used in a bill and other pieces of legislation. A definition in the dictionary to an Act or statutory instrument applies to the entire Act or instrument unless the Act or instrument provides for the definition to have a more limited application.²³ If a dictionary clause is included in a bill it usually appears early in the bill while the actual dictionary is located towards the end of the bill. Prior to 1999 the 'dictionary' clause of a bill had also been referred to as the 'definitions' clause and the 'interpretation' clause.

Notes and headings

11.25 Notes are included in a bill to assist with its interpretation or to provide additional information that is not necessarily contained in its provisions. Along with footnotes and endnotes, notes do not form part of a bill.²⁴

11.26 Headings to a chapter, part, division, subdivision and schedule do form part of a bill. Headings to sections or subsections are part of the bill if the bill was enacted or the heading was amended or inserted after 1 January 2000.²⁵

Main body clauses

11.27 Thereafter comes the main body of a bill, in which the substantive matters that the bill deals with are set out. After the clauses, a bill may include a schedule or schedules which list relevant matters. For example, Schedule 4 of the Self-Government Act lists the 'Matters concerning which the executive has power to govern the Territory' and Schedules 2, and 5 and Part 3 list the Commonwealth, state and [British] imperial legislation that are to become enactments of the ACT at the commencement of self-government.

Consideration of bills by the Assembly

11.28 The more familiar stages of consideration of bills in other legislatures follows the pattern of a first reading, a second reading, consideration of the bill clause by clause in committee of the whole and a third reading. While the Assembly's procedure is structurally

²² Legislation having retrospective effect is undesirable. However in this case it is acceptable for reasons relating to the supply provisions that operate in the ACT. See paragraphs 11.147 to 11.220 on money bills.

²³ Section 156 of the *Legislation Act 2001*.

²⁴ Section 127 of the *Legislation Act 2001*.

²⁵ See section 126 of the *Legislation Act 2001*.

similar, though with different terminology and emphasis, it does not utilise the committee of the whole procedure.²⁶

11.29 The major stages that a bill must pass through during Assembly consideration up to enactment are as follows:

- (a) initiation and presentation in the Assembly;²⁷
- (b) agreement in principle;²⁸
- (c) possible reference to a select or a standing committee;²⁹
- (d) detail stage;³⁰
- (e) agreement to bill;³¹
- (f) certification of bill as having passed.³²

²⁶ As a unicameral legislature the procedures for reaching agreement with the 'other place' do not apply.

²⁷ Standing orders 167-70.

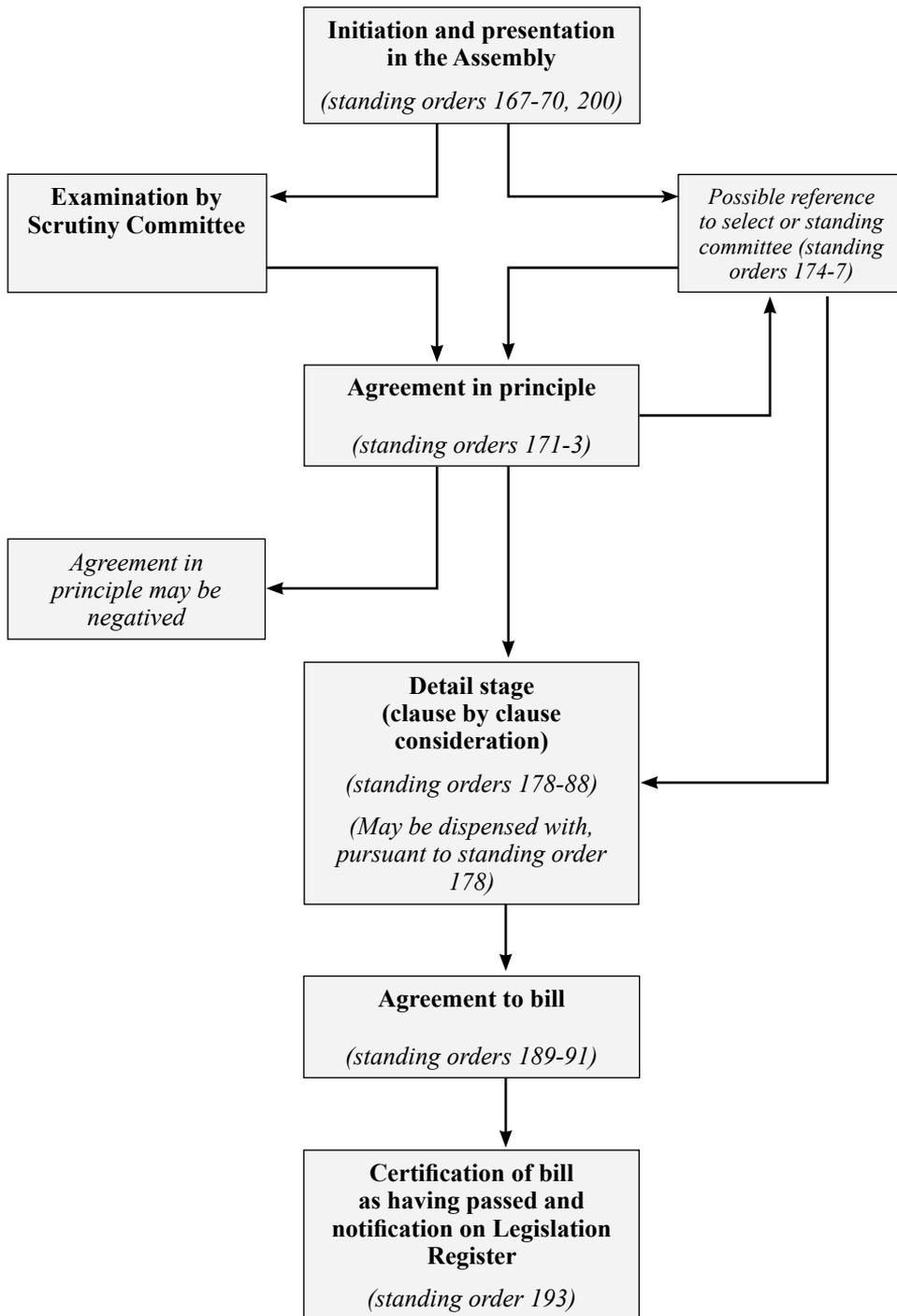
²⁸ Standing orders 171-3.

²⁹ Standing orders 174-6. Following the May 2008 amendments to the standing orders, standing order 174 now provides that reference to a committee may occur at any time after the presentation of a bill to the Assembly, including immediately after a bill has been agreed to in principle but not after the completion of the detail stage.

³⁰ Standing orders 178-88.

³¹ Standing orders 189-91.

³² Standing order 193.

Diagram 11.1– Consideration of bills by the Assembly

11.30 The procedure for consideration of bills may vary by leave of the Assembly (for example, detail stage may be by-passed) or by special order. In addition, standing orders contain specific provisions for:

- bills being declared urgent (see paragraphs 11.109 and 11.110);
- bills for entrenching laws (see paragraphs 11.121 to 11.128);
- money proposals (see paragraphs 11.221 to 11.271 on subordinate legislation); and
- consideration of amendments recommended by the Governor-General.

Initiation and presentation

11.31 Up until 2008, bills were able to be initiated in the Assembly, as provided by standing order 167:

- by motion for leave;³³
- by notice; or
- without notice, pursuant to standing order 200 (money bills).

In addition, bills have been presented pursuant to order of the Assembly.³⁴

11.32 The most common means of introducing a bill into the Assembly is for either a Minister or a non-executive Member to give notice of his or her intention to do so. Standing order 168 provides that:

- a notice of intention to present a bill shall be given by a Member by delivering a copy of its terms to the Clerk in the Chamber during a sitting;
- a notice of intention to present a bill shall specify the long title of the bill, and shall be signed by the Member; and
- on the calling on of the notice a Member shall present to the Assembly two printed copies of the bill signed by that Member and any associated explanatory statement.³⁵

11.33 The usual form of a notice of presentation of a bill is 'I give notice that, on the next day of sitting, I shall present a bill for an Act to [*long title of the bill*]'.³⁶ The date the notice was lodged with the Clerk is indicated on the *Notice Paper*. A notice becomes effective only when it appears on the *Notice Paper*.³⁷

33 This standing order has not been utilised and the procedure was removed from the standing orders when a major review was conducted in 2008. Although this procedure is still utilised in the Senate (see *Odgers*' p. 228-30), by the time of the publication of the first edition of *House of Representatives Practice* in 1981 the procedure had fallen into disuse in that chamber after the adoption of new procedures in 1963 in order to save the time of the House. The motion for leave, usually moved on notice, specified that the long title of the bill was capable of amendment and 'while this would not ordinarily be the appropriate time for long debate, the motion could be debated'. When the motion was moved, the objects of the bill could be explained, an amendment could be moved and the question could be put to a division. See *House of Representatives Practice*, First Edition, p. 314.

34 On 25 July 1989 the Assembly agreed to a recommendation of the Select Committee on the Police Offences (Amendment) Bill 1989, 'That [the bill] be withdrawn and that [the Member sponsoring the bill] be ordered to prepare and present a bill in accordance with the recommendations of this Committee'. Later, on 22 August 1989, the Member, pursuant to order, presented the Police Offences (Amendment) Bill 1989 [No. 2]. MoP 1989-91/55 (original bill withdrawn), MoP 1989-91/67; Assembly Debates (22.8.1989) 1188-92.

35 Standing order 168 also provides that the standing orders shall, to the necessary extent, be applied and read as if a notice of intention to present a bill were a notice of motion.

36 During the Fourth Assembly, notice of presentation of a bill presented by a member of the executive as Executive Members' business was in the form 'I give notice, as an Executive Member, that on the next day of sitting, I shall present a bill for an Act to < *long title of the Bill* >'. On the notice was an indication from the Manager of Government Business that the Manager of Executive Business had determined that the matter was an item of Executive Members' business.

37 Standing orders 112, 168 (d).

11.34 Notices are not given openly (orally) as in some legislatures, nor are they reported to the Assembly by the Clerk on the day of their submission. A record of all notices lodged on any day is kept at the Table by the Clerks and is available for inspection by any Member, thus ensuring that Members have access to information on the bills and motions to be introduced before the information appears on the *Notice Paper*.

11.35 A Member, in the absence of another Member and at that Member's request, may give a notice for that Member, sign the notice and put his or her name on the notice.³⁸ The Member who has given notice may alter its terms by notifying the Clerk in writing within such time as would enable the alteration to be made on the *Notice Paper*.³⁹ The Member who has given the notice may withdraw the notice by notifying the Clerk in writing at any time prior to that proposed for presenting the bill.⁴⁰

11.36 Money bills, which are covered by the provisions of standing order 200, may be introduced without notice and may be proposed only by a Minister.⁴¹ The Assembly has on many occasions granted leave to a Member to present a bill (not being a money bill).⁴² On occasion, leave having been denied, a motion to suspend standing orders to enable a bill to be introduced has been successful.⁴³

11.37 The majority of bills are presented after notice has been given of their presentation. The determination of the precedence of notices on the *Notice Paper* is governed by standing order 77 (see Chapter 9: Motions). It should be noted that the Assembly has, in the past, resolved that the executive should give advance notice of its legislation program.⁴⁴

11.38 When the Clerk calls upon a notice (for example, 'executive business, Notice No 3'), the Member who has given notice rises and states 'I present the [short title of the bill]'. Standing order 168(c) requires that the Member present 'two printed copies of the bill signed by that Member'. The Member may then present a printed copy of any associated explanatory statement and (if the Member presenting the bill is a Minister) a copy of a Human Rights Act compatibility statement.⁴⁵

11.39 On one occasion a Member was granted leave to present two bills together (as both bills dealt with the creation of a new criminal offence in the Territory)⁴⁶ and it is not unusual for a package of bills relating to the same subject matter to be presented seriatim on

38 Standing orders 168 and 104.

39 Standing orders 168 and 110. The fact that the notice has been amended and the date of amendment(s) is indicated on the *Notice Paper*.

40 Standing orders 168 and 111.

41 Standing order 200 refers to the introduction of money bills and is dealt with in paragraphs 11.147 to 11.220.

42 For example, MoP 2004-08/1015, 1042.

43 For example, MoP 2001-04/243.

44 On 22 October 1989 the Assembly resolved:

That the Assembly:

- (a) believes that a forward legislative program is essential to the effective scrutiny of government legislation and the good government of the ACT;
- (b) calls on the Government to provide Assembly Members with a forward legislative program at the beginning of each sitting session and that this program be regularly updated;
- (c) notes that on 6 July 1989 the Chief Minister made an undertaking in the Assembly to provide a forward legislative program and to update this program on a regular basis; and
- (d) demands that the Government corrects its failure to provide such a program.

See MoP 1989-91/105-6. See also MoP 1992-94/241 where the Assembly discussed a matter of public importance on 'The government's failure to implement its legislative program.'

45 Standing order 168(c). Section 37 of the *Human Rights Act 2004* provides that the Attorney-General must prepare a compatibility statement for each bill presented by a Minister for presentation to the Assembly.

46 (Crimes (Amendment) Bill 1996 and Domestic Violence (Amendment) Bill 1996.) MoP 1995-97/289. Assembly Debates (27.3.1996) 674-6.

the same sitting day.⁴⁷ In November 1991, standing orders were suspended to permit the presentation together of 10 bills (of which notice had been given and which proposed the implementation of certain policies in Territory statutory authorities) and for one motion to be moved and one question put in regard to, respectively, the agreement in principle, the detail stage and agreement to the bills.⁴⁸

11.40 It is not unusual for a Minister to present a bill on behalf of an absent Minister pursuant to the provisions of standing order 80.⁴⁹

11.41 After the Member presents his or her signed copies of the bill, the Clerk reads the long title of the bill and the Member must then move, 'That this bill be agreed to in principle.'⁵⁰ The Member may (and invariably does) speak to the motion for a period not exceeding 20 minutes (or, if the bill is the main appropriation bill for the year, for an unspecified period).⁵¹ The speech is referred to as the presentation speech.

11.42 The relevancy rule (standing order 58) applies to the in principle or presentation speech. The presentation speech is of importance for Assembly Members and the community because it assists them to understand the purpose of the bill. It also aids the Chair in the application of the relevancy rule in subsequent debate and it provides a guide to the courts in the interpretation of the resulting Act.⁵²

11.43 The Speaker then proposes the question, 'That this bill be agreed to in principle.' Standing order 171 requires that debate on the question must then be adjourned until a future day on the motion of another Member. (The question may not be determined by the Assembly during the sitting at which the bill was first introduced—unless the bill has been declared to be an urgent bill.⁵³ Accordingly, a Member moves, 'That the debate be adjourned.' The Speaker then puts the question and declares the result. If the question is resolved in the affirmative,⁵⁴ the Speaker next proposes the question, 'That the resumption of the debate be made an order of the day for the next sitting' (unless the Speaker had ascertained that it was proposed the debate be adjourned until a specific day or occurrence in the future). This question is open to amendment and debate.

47 Firearms Bill 1996 and Prohibited Weapons Bill 1996, see MoP 1995-97/427-9; Assembly Deb (29.8.1996) 2766-73. Children's Services (Amendment) Bill (No. 3) 1998, Crimes (Amendment) Bill (No. 6) 1998 and Magistrates Court (Amendment) Bill (No. 3) 1998, see MoP 1998-2001/169-70; Assembly Deb (23.9.1998) 2041-2. Human Rights Commission Bill 2005 and Human Rights Commission Legislation Amendment Bill 2005, see MoP 2004-08/141-2; Assembly Deb (7.4.2005) 1508-11.

48 MoP 1989-91/610. And see precedent of April 1992 when, standing orders having been suspended to enable the course to be followed, 10 bills which proposed the implementation in ACT statutory authorities policies of equal employment opportunity and the merit principle in respect of appointment and promotions were presented together, one motion moved and one question put in regard to, respectively, the agreement in principle, the detail stage and agreement to the bills—MoP 1992-94/20-1, 40-41 (in the detail stage the bills were, by leave, taken as a whole and amendments were made to all bills (on motion moved by leave).

49 See, for example, MoP 1989-91/577.

50 Standing order 171.

51 Standing order 69 (d)

52 *Legislation Act 2001*, section 142.

53 Standing order 172.

54 Following the presentation of the Publications Control (Amendment) Bill (No. 2) 1990 (and a point of order having been taken that the bill contravened the provisions of standing order 136) and no Member having moved the motion to adjourn the debate, the Speaker, having addressed the point of order, advised the Assembly that the debate stood adjourned under the provisions of standing order 171, see MoP 1989-91/375; Assembly Debates (12.12.1990) 5044-5. Strictly speaking, the Assembly declining to make an order setting a time for future consideration of the bill, its further consideration should not have been listed on the *Notice Paper*. However, the Speaker was constrained by and sought to comply with the provisions of standing order 171.

11.44 Although leave of the Assembly has been granted to enable consideration of the motion for the agreement in principle immediately after it was moved⁵⁵ and a Member has been permitted to move that the resumption of the debate be made an order of the day for a later hour that day,⁵⁶ these precedents must be regarded as highly unusual.

Irregular bills to be withdrawn

11.45 Standing orders provide that:

- the long title of a bill must agree with the notice of presentation;
- no clause may be included in a bill not coming within its title;⁵⁷ and
- any bill not prepared according to the standing orders shall be ordered to be withdrawn.⁵⁸

The Speaker usually has no prior knowledge of the contents of bills introduced and could not be expected to be aware of irregularities contained in them. Accordingly, should a point of order be taken as to whether the contents of a bill contravene the provisions of the standing orders, the Speaker will often allow its introduction to proceed and rule on the matter after considering the contents of the bill.⁵⁹

11.46 Bills have been ordered to be withdrawn because they contravened the provisions of standing order 136 (same question rule)⁶⁰ or standing order 169 (clauses to come within title).⁶¹ On occasions when bills that contravened the provisions of [then] standing order 200 (money proposals), debate on the motion to withdraw the bills has been adjourned and the orders of the day for the resumption of debate were eventually discharged.⁶² However, on other occasions when bills have been ruled out of order as they had not been prepared in accordance with the standing orders, different procedures have been followed, for example:

- the Assembly has agreed to suspend the standing orders to enable the order of the day for the consideration of the bill to remain on the *Notice Paper*;⁶³ the motion that the bill be withdrawn was negatived and debate proceeded on the bill;⁶⁴

55 MoP 1998-2001/477-8.

56 MoP 2004-08/97, Assembly Debates (10.3.2005) 865.

57 Standing order 169. Bills have been presented pursuant to notice, as amended, by leave. See MoP 1998-2001/663; Assembly Debates (8.12.1999) 3949; MoP 1998-2001/989 (2), 990.

58 Standing order 170.

59 See, for example, comments by Speaker Prowse at Assembly Debates (22.10.1991) 4110.

60 Publications Control (Amendment) Bill (No.2) 1990, see MoP 1989-91/355, 357; Assembly Debates (28.11.1990) 4689-94, 4773-4 (the Speaker, having considered the contents of the Bill, made his ruling later in the day), and see ruling and order to withdraw on later attempt to introduce the Bill, see MoP 1989-91/375, 392; Assembly Debates (12.12.90) 5044 and (13.12.90) 5339; Road Transport (Safety and Traffic Management) Amendment Bill 2001, see MoP 1998-2001/1493; Assembly Debates (20.6.2001) 2138-41. A motion proposing to suspend so much of standing orders as would prevent the Member presenting the bill was negatived. And see later proceedings when standing orders were suspended to enable the Member to present his Road Transport (Safety and Traffic Management) Amendment Bill 2001 (No.2), see MoP 1998-2001/1655-6; Assembly Debates (22.8.2001) 3120-4.

61 On 30 May 1995 two bills were reintroduced in the Assembly, the Minister sponsoring the bills indicating during his presentation speech that due to a discrepancy between the description on the long title in the notice for presentation of one of the earlier bills and the one that had appeared on the bill itself, it was necessary for both bills to be presented again, see MoP 1995-97/51-2; Assembly Debates (30.5.1995) 532. The Assembly then ordered that the original bills be withdrawn from the *Notice Paper*, MoP 1995-97/53; Assembly Debates (30.5.1995) 533. And see paragraph 11.49.

62 Ainslie Transfer Station Bill 1990 and Royal Canberra Hospital Bill 1990, see MoP 1989-91/255, 271-2, 478; Assembly Debates (6.6.1990) 2131, 2136, (8.8.1990) 2563-83. Schools Authority (Amendment) Bill 1990, see MoP 1989-91/271, 284, 478; Assembly Debates (8.8.1990) 2546-57, (15.8.1990) 2854-77. Human Rights Bill 1990 and Landlord and Tenant (Rental Bonds) Bill 1990, see MoP 1989-91/293, 299, 394, 407, 478; Assembly Debates (12.9.1990) 3094-106 and (13.9.1990) 3206-27. Royal Canberra Hospital Bill 1991, see MoP 1989-91/514, 556; Assembly Debates (11.9.1991) 3162-9 and (22.10.1991) 4110-2.

63 Bail Amendment Bill 1992; see MoP 1992-94/234, Assembly Debates (8.12.1992) 3598-9. The bill contravened standing order 136 (same question rule).

64 Stamp Duties and Taxes (Amendment) Bill (No.4) 1993; see MoP 1992-94/514-5, Assembly Debates (15.12.1993) 4610-3. The bill contravened standing order 136 (same question rule).

- the Speaker has permitted debate to proceed as standing orders had been suspended in relation to the bill;⁶⁵ and
- standing orders were suspended to enable consideration of the bill to resume forthwith.⁶⁶

11.47 Sometimes the Assembly has permitted bills to be presented pursuant to notice, as amended by leave,⁶⁷ and on 21 April 1999, on the resumption of the debate on the question that Building and Construction Industry Training Levy Bill be agreed to in principle and the attention of the Assembly having been drawn to the fact that the title did not agree with the notice of presentation of the bill, the Assembly gave leave for the debate to be resumed.⁶⁸

11.48 The provisions of standing order 136 (same question rule) would not normally prevent the presentation of a bill the same in substance as a bill already listed for consideration on the *Notice Paper* where the Assembly had not made a substantive decision on the earlier bill.⁶⁹ Once a decision had been made to agree in principle to either of the bills, further consideration of the order of the day for the resumption of debate on the other bill would be prevented by standing order 136.

11.49 It is in order to present an amending bill whilst the principal bill is still before the Assembly. However, in making a statement to the Assembly on this matter, Speaker Berry added that it would be expected that the principal bill would be considered by the Assembly prior to consideration of the amending bill.⁷⁰ In 2002 a point of order was taken concerning the applicability of standing order 136 to the Medical Practitioners (Maternal Health) Amendment Bill. The Deputy Speaker ruled that the bill did not breach the provisions of standing order 136 as it did not obstruct the Assembly, nor was it unnecessarily repetitive, but provided an alternative course to the Assembly.⁷¹

11.50 The Speaker, having ruled the Royal Canberra Hospital Bill 1991 out of order as it contravened the provisions of [then] standing order 200 (its effect would have been to dispose of or charge the public money of the Territory), then called on the Deputy Chief Minister to move the appropriate motion under standing order 170. As neither the Deputy Chief Minister nor any other Member would move the motion, the Speaker advised the Assembly:

After seeking the guidance of the assembled Members and no-one wishing to move under standing order 170, I must abide by the direction given to me by the Assembly on this matter, as indicated from the floor, and override standing orders. In that case, the matter will be placed back on the *Notice Paper*.⁷²

In 2008 the standing orders were amended to provide that when a bill is ruled out of order by the Speaker, it is automatically withdrawn from the *Notice Paper*.⁷³

65 Long Service Leave (Building and Construction Industry) (Amendment) Bill (No.2) 1993, see MoP 1992-4/521; Assembly Debates (16.12.1993) 4714-5. The bill contravened standing order 136 (same question rule).

66 Egg (Labelling and Sale) Bill 2001, see MoP 1998-2001/1825; Assembly Debates (29.8.2001) 3659-60. The bill contravened standing order 136 (same question rule).

67 See, for example, MoP 1995-97/871, 1998-2001/663, 989 (2), 990.

68 MoP 1998-2001/383.

69 An exception could be where the bills had been introduced by motion for leave to bring them in (pursuant to standing order 167), a procedure that has not been utilised in the Assembly to date (see paragraph 11.31). This provision was omitted from the standing orders in March 2008.

70 MoP 2001-2004/340-1; Assembly Debates (26.9.2002) 3318. The bill for the principal Act was considered and agreed to that day, the amending bill was considered and agreed to on 13 November 2002.

71 MoP 2001-2004/262; Assembly Debates (21.8.2002) 2546-7, 2569-70. The key to the point of order was, should the two earlier Bills succeed, whether the bill in question would be out of order because it was seeking to reinstate something that the Assembly had just removed.

72 Assembly Debates (22.10.1991) 4110-2.

73 See standing order 170.

Early reference to a committee

11.51 Even though there was no provision for it in the standing orders, bills have sometimes been referred to standing or select committees at the presentation stage (or later during the course of the in principle debate) by order of the Assembly, notwithstanding the provisions of standing order 174 before the standing order was amended in 2008. Leave of the Assembly has been granted for the requisite motions to be moved or the relevant motions have been moved pursuant to notice or following the suspension of standing orders.⁷⁴ Standing order 174 now makes provision for a reference to be made at any time after the presentation of a bill to the Assembly but not after the completion of the detail stage. Committees may be given specific instructions in the order of referral.⁷⁵ It usually provides for the restoration of the order of the day to the *Notice Paper* after the presentation of the report to the Assembly. It must be noted that the reports of committees in these circumstances are advisory in nature, standing orders making no provisions otherwise.⁷⁶

11.52 As will be addressed later in this chapter, although bills have not been referred to the committee performing the duties of a scrutiny of bills and subordinate legislation committee (currently the Standing Committee on Justice and Community Safety, but previously the Standing Committee on Legal Affairs),⁷⁷ the committee is charged with examining each bill introduced to consider whether its clauses unduly trespass on personal rights and liberties and other related matters, and whether any explanatory statement, explanatory memorandum or regulatory impact statement meets the technical or stylistic standards expected by the Committee. It also reports to the Assembly 'about human rights issues raised by bills presented to the Assembly'.⁷⁸ Members are protective of the committee and it is very unusual for a bill to be considered by the Assembly without either a report from the scrutiny committee or a statement from the chair summarising the committee's view.⁷⁹

11.53 With the exception of the main appropriation bill dealing with the ordinary annual services for a year, which is referred to a select committee, it is common practice to refer appropriation bills to a committee before the agreement in principle stage. This course is followed as a simple convenience to expedite the Assembly's consideration of bills generally. It is also usual for consideration of the detail stage of such bills to be dispensed with after the Assembly has received the committee's reports. Once again, the exception is the main appropriation bill for a year, which is always considered in detail at the detail stage.⁸⁰

Agreement in principle

11.54 Following presentation of a bill, the Member having carriage of it moves, 'That this bill be agreed to in principle' and may speak to the motion. This stage of consideration is analogous to the second reading stage in other legislatures. It allows Members to debate the

⁷⁴ Select Committees have been established to consider bills at the commencement or prior to the commencement of the in principle debate (for example, MoP 1989-91/19) or during the course of the debate (MoP 1992-94/350) and Bills have been referred to existing standing or select committees (MoP 1992-4/129-30, 315, 1995-97/313). The Assembly has ordered the referral of a bill following the establishment of a select committee to inquire into and report on the bill (MoP 1992-94/369. See also MoP 1995-97/598 where the Assembly rescinded the order referring a bill to a committee following a statement by the committee chair pursuant to standing order 246A.

⁷⁵ MoP 1989-91/19.

⁷⁶ On the presentation of such reports the recent practice has been for a motion to be moved to take note of the report but this has not always been the case. Motions have been moved 'That the recommendations be agreed to'. See MoP 1989- 91/52, 54-5.

⁷⁷ MoP 2004-08/12-16.

⁷⁸ *Human Rights Act 2004*, section 38. The Act provides that the report must be made by 'The relevant committee'—a standing committee nominated by the Speaker for the purposes of the section or, if no nomination is in effect, the standing committee responsible for the consideration of legal issues.

⁷⁹ Standing order 246A empowers a committee to authorise the Chair to make a statement to the Assembly with regard to '... matter within the committee's terms of reference'.

⁸⁰ See, for example, Appropriation Bill 2001-2002 (No 3), MoP 2001-04/46-7; Appropriation Bill 2002-2003 (No 2), MoP 2001-04/559-60.

broad policy of the bill. Standing orders 171 and 172 require that debate on this motion be adjourned and not be completed until a later sitting day.⁸¹

11.55 Though the ‘in principle’ debate is primarily concerned with the principles of the legislation, the Chair has permitted brief reference to foreshadowed amendments. In the application of the relevancy rule, the Chair would have recourse to the long title and the content of the bill, the sponsoring Member’s presentation speech and any explanatory statement presented with the bill. The Chair would also have available any report on the bill from the committee undertaking the duties of a scrutiny committee or any other report from a standing or select committee should the bill have been referred to committee prior to its agreement in principle.

11.56 The key factors in the application of the relevancy rule are the long title of a bill and its contents. Where a bill has a restricted title and its contents are of limited purpose, the interpretation and application of the relevancy rule are relatively simple. Where a bill has an unrestricted title and a large number of clauses, the interpretation and application of the relevancy rule are very difficult.⁸²

Amendment to the question, ‘That this bill be agreed to in principle’

11.57 Standing order 173 permits the moving of any amendment to the question, ‘That this bill be agreed to in principle’ as long as the amendment is relevant to the bill, does not anticipate an amendment which may be moved during the detail stage and makes clear whether or not the bill will proceed to further stages of passage. This standing order was amended in March 2008.

11.58 It is unusual in the Assembly for amendments to be moved at the agreement in principle stage. When it occurs, the amendments usually tend to be declaratory in nature. The following examples illustrate the point.

- On 28 June 1989, after the order for the consideration of a bill had been called on and the question before the Assembly was ‘That this bill be agreed to in principle’, an amendment was moved by a Member proposing the addition of words at the end of the motion. The amendment was negated after a vote of the Assembly.⁸³
- When debate resumed at the agreement in principle stage of the Film Classification (Amendment) Bill 1989 on 26 July 1989, an amendment was moved to the question ‘That this bill be agreed to in principle’. The amendment proposed to omit all words after ‘That’ and to substitute other words which indicated that the Assembly would not oppose the bill but did hold certain opinions in relation to its subject matter. This amendment was also negated by the Assembly.⁸⁴

81 Unless the bill has been declared an urgent bill; standing order 192. The issue of legislative processes and time frames relating to the passage of bills through the Assembly has been raised on a number of occasions since 1989 and there have been several efforts to impose a delay in the consideration of legislation before or at the agreement in principle stage. Motions have been moved attempting to amend standing orders to set minimum periods between different stages of a bill to allow for longer consultation processes for interested parties. (MoP 1992-94/765, 791; Assembly Debates (9.11.1994) 3926-33 and Assembly Debates (20.11.1994) 4343-46. MoP 1992-94/253; Assembly Debates (16.12.1992) 3950-73). A motion has also been moved noting the haste in which a government had brought forward legislation for premature debate after introduction. (MoP 1992-94/288-9; Assembly Debates (23.2.1993) 368-71). Also, during the First and Second Assemblies, several matters of public importance were submitted and discussed in relation to the issue of time frames for the passage of bills through the Assembly (MoP 1989-91/285; Assembly Debates (15.8.1990) 2901-15; MoP 1989-91/376-7; Assembly Debates (12.12.1990) 5092-5108; MoP 1992-94/72; Assembly Debates (23.6.1992) 1073-88).

82 See *House of Representatives Practice*, pp. 355-6.

83 Water Pollution (Amendment) Bill 1989, see MoP 1989-91/34; Assembly Deb (28.6.1989) 503-13. The amendment, in fact, contravened the provisions of standing order 173.

84 Film Classification (Amendment) Bill 1989, see MoP 1989-91/59-60; Assembly Deb (26.7.1989) 1002-15.

- On 21 November 2002, an amendment was moved to the question that the Planning and Land Bill 2002 be agreed to in principle. It proposed the omission of all words after 'That' and substituting words indicating that the Assembly, whilst not declining to agree to the bill in principle, condemned the responsible Minister for failing to provide all supporting statutory rules so as to allow the Assembly to make an informed decision about whether the total package deserved support. The amendment was negated.⁸⁵
- An amendment to the motion for agreement in principle to the Heritage Bill 2004 criticised the Minister for his failure to consult interested parties in preparing the bill, sought to require the Minister to carry out certain consultations and made further consideration of the bill conditional on the completion of those consultations.⁸⁶ The amendment was defeated.

11.59 The Assembly has never agreed to an amendment to the question that a bill be agreed to in principle. Just what the effect of agreement to such an amendment would be is problematical. Taking as examples the proposed amendments of 26 July 1989 and 21 November 2002 should they have been agreed to and the motions, as amended, been agreed to, neither of the bills would have been agreed to in principle. The final outcome would depend upon the wording of the amendment and, ultimately, it would be up to the Assembly to decide.

11.60 There are no precedents in the House of Representatives of that House agreeing to second reading amendments. The view there is that, should this occur in the future, any determination of the effect of carrying such an amendment may well depend upon its wording. If the rejection is definite and uncompromising, the bill may be regarded as having been defeated. However, wording giving qualified agreement could be construed to mean that the second reading may be moved on another occasion.⁸⁷

Determination of question

11.61 When the debate on the question 'That this bill be agreed to in principle' has concluded and the question on any amendment has been resolved, the Chair then puts the original question to the Assembly.

11.62 Should that question be resolved in the negative, as occurs on occasion with both executive and non-executive bills, as the standing orders countenance further consideration of the bill if it has been agreed to in principle, the practice of the Assembly is for there to be no further consideration of the bill unless the Assembly, by special order, rescinds the order and resumes debate on the bill or the bill is re-introduced in the following calendar year. Defeat on this question is, therefore, fatal to the bill.

Reference to committee

11.63 Immediately after a bill has been agreed to in principle, a Member may move that it be referred to a select committee.⁸⁸ No such motion may be moved after completion of the detail stage of a bill.⁸⁹

⁸⁵ MoP 2001-04/428.

⁸⁶ MoP 2001-04/1597-8.

⁸⁷ *House of Representatives Practice*, pp. 361-2. See also Odgers', p. 237 and McGee, pp. 364-6.

⁸⁸ Under the new provisions of standing order 174, adopted in March 2008, this motion may be moved at other stages of the consideration of a bill.

⁸⁹ Standing order 174. A proposal to establish a select committee to consider the Animal Welfare Bill 1992, whilst the Bill was being considered at the detail stage, was negated. MoP 1992-94/105.

11.64 Should a bill be so referred, it cannot be dealt with by the Assembly until the committee has reported,⁹⁰ the appropriate time to consider the committee's work being after its report to the Assembly. In practice, however, following reference of the main appropriation bill for the year to a select committee on estimates, references to public proceedings of the committee have been permitted in Assembly questions and answers. When a bill has been referred to a committee for inquiry and report, the entry for the bill is moved to a separate section of the *Notice Paper*, thus indicating that no further proceedings will take place on the bill until the committee has reported (unless the Assembly were to make a special order in relation to the matter).⁹¹

Proceedings following reference to committee

11.65 When a bill has been referred to a select or standing committee and the committee has reported to the Assembly, unless leave is granted to dispense with the detail stage the Assembly 'shall proceed to the next stage of the bill as reported' at the next sitting.⁹² To date, however, though bills have been referred to committees pursuant to the provisions of standing order 174, the resultant reports have been advisory in nature. While many contain recommendations for amendments, no committee has reported a bill with an amendment or amendments.

Detail stage

11.66 Following the Assembly agreeing to the question 'That this bill be agreed to in principle', and providing there are no proceedings pursuant to standing order 174 (reference of a bill to a select or standing committee), the Assembly must then forthwith proceed to consideration of a bill at the detail stage unless leave of the Assembly is granted to dispense with this stage.⁹³ In fact, current practice is that leave of the Assembly is granted to dispense with the detail stage for the majority of the bills considered.

11.67 Should it be the wish of the Assembly to postpone further consideration of a bill prior to its consideration in detail (for example, to allow time for the drafting of amendments to clauses or further consultation on particular provisions), it is not uncommon for the detail stage consideration to commence and debate on the consideration of the first clause to be adjourned. The resumption of the debate is made an order of the day for a future time.⁹⁴

11.68 To date, the Assembly has not seen fit to adopt the committee of the whole procedure (common in comparable legislatures) for the clause-by-clause consideration of bills.⁹⁵ In the Assembly the Speaker remains in the Chair whilst the plenum proceeds with its detailed consideration of the provisions of each bill. Approximately [as at 31 December 2007] 38% of bills agreed to by the Assembly since its creation have been amended at the detail stage.⁹⁶

11.69 The provisions of a bill are usually considered seriatim, with the question being proposed by the Chair for agreement to each clause (or other provision) as it is reached (see also

⁹⁰ Standing order 175.

⁹¹ For example, Adoption Bill 1992, MoP 1992-94/236, 307; NP (8.12.1992) 513, NP (24.3.1993) 688. Long Service Leave (Cleaning, Building and Property Services) Bill 1999, MoP 1998-2001/530-1, 641; NP (1.9.1999) 833, NP (8.12.1999) 1063. Appropriation Bill 2005-2006, MoP 2004-08/171-2, 185; NP (6.5.2005) 278, NP (22.6.2005) 295. The entry includes the date the bill was referred and at what stage further consideration is once again listed in the relevant section of the *Notice Paper*.

⁹² Standing order 176.

⁹³ Standing order 178.

⁹⁴ See, for example, MoP 2004-08/959, 961.

⁹⁵ For a background on the historical development of the committee of the whole procedure, see *An Introduction to the procedure of the House of Commons*, Lord Campion, 3rd edn, pp. 25-9.

⁹⁶ In the final years of the Fourth and Fifth Assemblies (2001 and 2004), 52.6% and 51.5% respectively of bills agreed to were amended at the detail stage.

paragraphs 11.70 to 11.74). Often, leave of the Assembly is granted to enable consideration of clauses together or consideration of the bill as a whole. Debate may proceed on each question proposed. Apart from the Member in charge of the bill, Members are restricted to speaking for two periods on each question for a limited period of time (see also paragraph 11.78). Members may vote against clauses they oppose; they may move amendments to clauses; and they may move that new provisions be inserted in the bill. Flexibility is provided in that the standing orders contain provisions to allow consideration of clauses to be postponed and clauses to be reconsidered.

Order of consideration during the detail stage

11.70 The standing orders are very specific about the order of consideration of the provisions of bills during the detail stage and the order of consideration of amendments. On occasion, the provisions may appear unnecessarily complicated. There is, however, reason and logic behind them (based on procedures that have evolved over the years). They protect the Assembly from reaching decisions on the order of consideration and the content of amendments which, while they may appear reasonable at the time, in fact, could lead to confusion and ill considered legislation.⁹⁷

11.71 The Assembly's standing orders stipulate that, with certain exceptions, the order of the consideration of a bill at the detail stage shall be:

- (a) clauses as printed and new clauses (including their headings), in their numerical order;
- (b) schedules as printed and new schedules, in their numerical order;
- (c) postponed clauses (not having been specifically postponed until after certain other clauses);
- (d) the dictionary;
- (e) the preamble; and
- (f) the long title.⁹⁸

11.72 Exceptions to this order are:

- for the consideration of the main appropriation bill for the year, when any schedule expressing the services for which the appropriation is to be made must be considered before the clauses and, unless the Assembly otherwise orders, the schedule must be considered by proposed expenditures in the order in which they are shown;⁹⁹
- the common practice of the Assembly to grant leave for a bill to be considered as a whole at the commencement of the detail stage, to permit groups of clauses to be considered together, or to allow the remainder of a bill to be considered as a whole; and

⁹⁷ Mistakes do occur. On 11 December 1991 the Crimes (Amendment) Bill (No. 5) 1991 was considered at the detail stage. The bill was, by leave, taken as a whole and six amendments were moved together, by leave, and agreed to. In fact, amendment six was inconsistent with amendments three, four and five. The bill was later recommitted, the relevant resolutions rescinded, and consideration of the bill at the detail stage recommenced, see MoP 1989-91/686-7. On 21 December 1994, during consideration of the Commercial and Tenancy Tribunal Bill 1994, the bill, likewise, was by leave taken as a whole at the detail stage. The government having, by leave, moved three groups of amendments to the bill at different stages (in addition, other Members moved amendments) it later emerged that the Assembly had agreed to two amendments to omit a particular paragraph (paragraph 6(c)) and substitute another paragraph or paragraphs. It being held that standing order 191 did not give authority to omit either amendment, the bill as agreed to was in due course certified by the Clerk and notified in the Territory Gazette with both paragraphs included (though re-lettered in accordance with the usual procedures). See MoP 1992-94/725-9 and *Tenancy Tribunal Act 1994*, Advice of the Clerk, dated 9 November 1994. (The title is the title of the bill as amended during Assembly consideration.)

⁹⁸ Standing orders 179 and 180. Consideration of the preamble and the title stand postponed as amendments agreed to during the detail stage may necessitate an amendment to the title and preamble.

⁹⁹ Standing order 180. See paragraphs 11.221 to 11.271 on subordinate legislation.

- when the Assembly, by specific order, sets a different order for the consideration of a bill at the detail stage.¹⁰⁰

11.73 This order of consideration must be followed, as far as possible, in any reconsideration of a bill ordered by the Assembly.¹⁰¹

11.74 The enacting words in a bill are not considered during the detail stage, though standing order 181 stipulates that an amendment may be moved 'to any part of the bill'.¹⁰²

Consideration of each clause

11.75 As each clause is reached, the Speaker announces the number of the clause and must propose the question 'That the clause be agreed to,'¹⁰³ though in practice the Speaker may propose 'That clause [citing the specific number of the clause] be agreed to' or that a proposed new clause or schedule be agreed to, in accordance with the provisions of standing order 180.

11.76 Once proposed, each question is open to debate (and amendment). It takes precedence of other questions until resolved, unless superseded by the questions that an amendment be agreed to, that consideration of a clause be postponed or that the debate be adjourned. Debate must be confined to the relevant provision of the bill as set out in standing order 180 or to an amendment before the Assembly.¹⁰⁴

11.77 Should a Member oppose a clause in a bill, he or she does not move that the clause be omitted. The Member simply votes against the clause—that is, votes 'No' when the question 'That the clause be agreed to' is put. Any schedule of amendments circulated will usually indicate when a Member will oppose a clause. However, should the Assembly grant leave for a bill to be considered as a whole (for groups of clauses to be considered together or for the remainder of the bill to be considered as a whole), practice has allowed a Member to move that a clause be omitted (though this does raise the possibility of a clause being carried without majority support).¹⁰⁵

11.78 On any question before the Chair at the detail stage, any Member (with the exception of the Member in charge of the bill) may speak only twice for a period not exceeding 10 minutes on each occasion.¹⁰⁶ The standing orders do not specify any speaking periods for the Member in charge of a bill (be it an executive bill or a private Member's bill).¹⁰⁷ At the conclusion of a Member's speech, should no other Member seek the call, the Chair may

100 See, for example, MoP 1989-91/603-4. For an example of a bill having been declared an urgent bill during consideration in detail and a specific order being set down for the consideration of the remaining stages and the reconsideration of specified clauses in the order for the allotment of time, see MoP 1989-91/647-8. For an example where the order of consideration was varied as a result of the drafting of a particular bill (there being no clauses 68 to 99), see MoP 2001-04/442.

101 Standing order 180.

102 And see *Odgers'*, p. 247, where there are precedents for amendments being made to enacting words on instructions to the committee of the whole.

103 Standing order 179.

104 Standing order 183.

105 See *Odgers'*, p. 247, regarding the possibility of a clause or item being carried without a majority in these circumstances. If the question is negatived with the votes equally divided, the amendment is negatived and the clause or item remains, notwithstanding that it does not have majority support. In the Senate, therefore, the question is put separately on any clause or item which is opposed thus ensuring that the risk of a clause or item being carried without a majority is avoided.

106 Should the Assembly be considering an appropriation bill for the ordinary annual services of the year, the Minister in charge or a Minister responsible for a department or appropriation unit may speak for 'periods not specified'.

107 Standing order 69(e).

allocate the call to the Member who has just spoken to enable him or her to speak for the second period.¹⁰⁸

11.79 Debate must be relevant to the question proposed—ie, Members must confine themselves to the subject matter of the clause or the provision being considered.¹⁰⁹ Therefore, the scope of the debate may be limited. Should leave of the Assembly be granted for the consideration of a group of clauses together or for the consideration of the bill as a whole, the scope of the debate is widened.¹¹⁰

11.80 Standing orders permit the Assembly to order that a question be divided and to order that reports of committees and other matters be considered by parts.¹¹¹ The question 'That the clause be agreed to' has been divided by order of the Assembly.¹¹²

11.81 Once the question 'That the clause (or the clause as amended) be agreed to' is resolved, the Speaker then proposes the question on the next clause.

Postponement of clauses or other provisions

11.82 Standing orders provide for a clause or other component of a bill, or a clause or other component which has been amended, to be postponed.¹¹³ Practice in the House of Representatives provides that a clause, or clauses which have been taken together by leave and any amendments moved thereto, may also be postponed.¹¹⁴ Postponement may be specified—eg, until after consideration of a specific clause or clauses,¹¹⁵ an occurrence¹¹⁶ or it may be open. If the postponement order does not specify a particular time or occurrence, postponed clauses are considered after the schedules or any proposed new schedules¹¹⁷ and (in the event of the possible necessity for consequential amendments) before the dictionary.

11.83 Consideration of clauses can be postponed by way of a motion which may be moved prior to or during that consideration. The motion is open to debate and amendment.

Amendments

11.84 A Member may seek to alter the terms of a bill by proposing an amendment to any part of it. The amendment must relate to the long title of the bill; it must be relevant to the subject matter of the bill; and it must otherwise conform with the standing orders.¹¹⁸ An amendment is a subsidiary motion. Therefore, the question on the amendment temporarily

108 This does not necessarily mean that Members are restricted to speaking twice during the consideration of a clause; the restriction applies to 'each question before the Chair'. A Member who has already spoken twice to the question 'That the clause be agreed to' may therefore speak for a further two periods on subsequent questions such as those proposed on amendments, or on a motion to postpone consideration of the clause or that the clause, as amended, be agreed to.

109 Standing order 58.

110 And see *House of Representatives Practice*, p. 366.

111 Standing order 133.

112 MoP 1998-2001/190-1, MoP 2001-2004/1685 (the Assembly ordering that a proposed amendment be divided during detail stage consideration). For an example where a Member having, by leave, moved that three new clauses be inserted in a bill and the question agreed to with the Assembly later ordering that the question be reconsidered and further ordering that the question be divided, see MoP 1995-97/908-11, and see MoP 1998-2001/1586 where, clauses having, by leave, been considered together, the Speaker having ascertained that it was the wish of the Assembly to do so, put the question on the clauses *seriatim*.

113 Standing order 185.

114 *House of Representatives Practice*, p. 370.

115 MoP 1989-91/605, MoP 1998-2001/1236. This course may be followed in cases where it is agreed that the decision the Assembly makes on a particular provision of a bill is critical to the direction it takes in considering other clauses or circulated amendments.

116 See *Odgers'*, p. 247 where consideration of a clause was postponed until a Minister produced certain information or documents.

117 Standing order 180. MoP 1998-2001/1236. Or after the remainder of the bill has been taken as a whole, by leave, and agreed to—MoP 1995-97/155-6.

118 Standing order 181.

supersedes the original question. Should the Assembly agree to an amendment, the original question is proposed, as amended.¹¹⁹

11.85 A question, having been proposed (eg, 'That the clause be agreed to' or that 'Ms X's amendment be agreed to'), may be amended by:

- omitting certain words only;
- omitting certain words in order to substitute other words; or
- inserting or adding words.¹²⁰

11.86 In addition, a Member may propose that new clauses or schedules be inserted in a bill or that a preamble be inserted in a bill.

Inadmissible amendments

11.87 Standing order 201 prohibits a Member, other than a Minister, from moving an amendment to a money proposal (as specified in standing order 200) if that amendment would increase the amount of public money of the Territory to be appropriated. Amendments to bills have been ruled out of order pursuant to this provision (see paragraphs 11.221 to 11.271 on subordinate legislation).

11.88 In addition, an amendment may not be moved if it:

- transgresses the anticipation rule;¹²¹
- transgresses the same question rule;¹²²
- does not come within the long title of the bill and is not relevant to the subject matter of the bill;¹²³
- is substantially the same as one already negatived or, unless the bill has been reconsidered (in whole or in part), is inconsistent with one that has already been agreed to;¹²⁴
- is made to a part of a question after a later part has been amended, or after a question has been proposed on a question thereto (unless that proposed amendment has, by leave, been withdrawn);¹²⁵
- contains words that are determined to be offensive or disorderly.¹²⁶

11.89 The relevancy rule states that amendments must be within the scope of a bill and must be relevant to the subject matter of a bill. It is applied strictly in the Assembly—perhaps more strictly than in the House of Representatives.¹²⁷ In a key ruling in 2003 Speaker Berry stated:

The question arises whether amendments proposed to be moved . . . are within the title or relevant to the subject matter of the bill. The long title is fairly broad

¹¹⁹ Standing order 184.

¹²⁰ Standing order 138.

¹²¹ Standing order 130.

¹²² Standing order 136. Standing order 136 has been suspended to permit a Member to move an amendment—MoP 1998-2001/1250. See footnote 137 in Chapter 9: Motions.

¹²³ Standing order 181. And see MoP 1995-97/714, Assembly Debates (25.6.1997) 2040 (the bill, the Health and Community Care Services (Validation of Fees and Charges) Bill 1997 had a restrictive title [A Bill for an Act to remove any doubt about the validity of certain determinations and fees and charges under the *Health and Community Care Services Act 1996*] and the amendments clearly fell outside of the title (one of the amendments proposing to alter the title)). The Minister proposing the amendments was actually granted leave by the Assembly to move the amendments. And see MoP 1998-2001/623 and, in particular, the ruling by Speaker Berry (upheld by the Assembly) on 8 May 2003.

¹²⁴ Standing order 188. MoP 1998-2001/671. And see standing order 141.

¹²⁵ Standing order 142.

¹²⁶ Standing orders 53 to 57. See comments by Speaker McRae at Assembly Debates (19.5.1993) 1615-6 regarding an amendment proposed to the Radiation (Amendment) Bill 1993 the preceding evening.

¹²⁷ *House of Representatives Practice*, p. 367.

and one could make the assumption that, because the bill amends the principal act, any amendment that also amends the principal act would be in order.

However, the practice of the Assembly has been not to allow amendments that are outside the scope of the bill. Examples could be, for example, where the long title of a bill was “A Bill for an Act to amend the *Motor Traffic Act 1937*” and the bill dealt with speed limits outside schools. If our practice were followed, an amendment dealing with the weights and dimensions of articulated vehicles would be ruled out of order, even though it was within the long title of the bill.

The basis of such practice and rules is to ensure that “business, especially legislation, is conducted in an orderly, open and predictable manner devoid of surprise, haste or sleight of hand”. I refer members to *Odgers’ Australian Senate Practice*, 10th edition, page 19. Even if other members were alerted to the amendment, it could not be guaranteed and it would be hard to assume that community groups or other interested parties would be aware of such a proposal contained in an amendment.

That is particularly relevant in this Assembly because we have a unicameral Assembly and there is no house of review or place of review in relation to legislation passed here.¹²⁸

11.90 Speaker Berry then went on to address the amendments in question and ruled certain of them out of order. A motion of dissent from one of the rulings was moved. The ruling was upheld by the Assembly.

Procedure on amendments

11.91 A Member may not propose an amendment unless:

- it is in writing and signed by the Member; and
- copies of the amendment are immediately available for circulation to Members.¹²⁹

11.92 Prior notice is not required of amendments (nor are they printed in the *Notice Paper*), though the texts of important amendments are often circulated prior to consideration of the bill. The practice is that amendments are lodged with the Clerks (usually at the table). They make any necessary arrangements for their printing and, with the authorisation of the Member, their circulation.

11.93 A Member proposing an amendment is not precluded from reading out the terms of the amendment when moving it. However, the more common practice is to move in the terms ‘I move the amendment [or amendment No. X] circulated in my name.’ As the terms of amendments must be circulated in the Chamber, a Member cannot require that the Speaker read the terms of an amendment.¹³⁰

11.94 On an amendment being moved, the question that is then proposed in the Assembly by the Speaker is ‘That the amendment be agreed to.’¹³¹ The question on the amendment thus supersedes the question ‘That the clause [or other provision] be agreed to,’

¹²⁸ Assembly Debates (8.5.2003) 1799-1804; MoP 2001-04/724-5.

¹²⁹ Standing order 182. The Speaker having drawn attention to the fact that copies of an amendment were not available for circulation to members as required by standing orders, the Assembly adjourned the debate until a later hour in the day. MoP 1998-2001/523. In the Seventh Assembly, a temporary order was adopted to refer Government amendments to the Standing Committee on Justice and Community Safety. MOP 2008-12/1 17-8.

¹³⁰ Standing order 60.

¹³¹ In fact, the Speaker is normally more precise in proposing the question on amendments during consideration of a bill at the detail stage—proposing the question in the form, for example, ‘...that Ms X’s amendment No. [] be agreed to’ or ‘...that Mr Y’s amendment to Ms X’s amendment No. [] be agreed to’.

and the amendment proposed must be disposed of before another amendment to the original question may be moved.¹³²

11.95 When amendments are moved together by leave of the Assembly, the question 'That the amendments [or Ms X's amendments Nos Y to Z] be agreed to,' is that which is proposed and put.

11.96 In considering amendments circulated and in allocating the call, the Speaker will seek to call Members in a sequence that ensures each of their amendments is considered and dealt with in the order in which they procedurally apply to the clause or other provision of the bill under consideration. This ensures that the provisions of standing orders 141 and 142 are met and that the Assembly progresses through its consideration of the bill in an orderly and consistent manner.

11.97 An amendment may be moved to a proposed amendment. Should an amendment be moved to an amendment (this is not unusual in the Assembly; an amendment has been moved to an amendment to an amendment) the question 'That the amendment to the amendment be agreed to' supersedes the question 'That the amendment be agreed to'.¹³³

11.98 The Speaker then works back to the original question, with the question on each amendment being resolved separately. When an amendment is agreed to, the main question must be put, as amended.¹³⁴ Should the amendment be negated, the question must be put as originally proposed.¹³⁵ Thus, the Assembly must vote on, say, the amendment to the amendment, then on the amendment (or the amendment as amended), then on the original question 'That the clause [or the clause as amended] be agreed to.'

11.99 Amendments may be withdrawn by leave of the Assembly.¹³⁶

New clauses

11.100 Should a Member propose that a new clause or a new schedule (or even a new preamble)¹³⁷ be inserted in a bill, he or she does so at the appropriate stage in the order of consideration by moving (when no question is before the Assembly) 'That proposed new clause [citing the number] be inserted in the bill,' or 'That proposed new schedule [citing number where appropriate] be inserted in the bill.' The Speaker then proposes the question, which is open to debate and amendment. A proposed new clause must comply with the standing orders. It may be ruled out of order for the same reason as an amendment may be ruled out of order.

11.101 As with other amendments, the terms of any new clause or new schedule proposed must be provided in writing, must be signed by the Member proposing it, and copies must be immediately available for circulation to Members in the Chamber.

¹³² Standing order 143. The Chair would not be precluded from proposing and putting the question on amendments in the form as printed and circulated as determined by standing order 138 (for example, 'That the words proposed to be omitted stand part of the question') though the practice in the Assembly (where Members vote by way of a call of the Assembly and therefore are not required to cross the floor to vote in the negative on a question) is for the Speaker to propose and put the question in the form 'That the amendment be agreed to'. For a discussion of the practice of the House of Representatives see *House of Representatives Practice*, pp. 366-7 and see paragraphs 9.70 to 9.93.

¹³³ During Assembly consideration of the Residential Property (Awareness of Asbestos) Amendment Bill 2004, the *Minutes of Proceedings* record: 'On the motion of Ms Dundas, her amendment No. 1 to Mrs Cross' proposed amendment to Ms Gallagher's proposed amendment (see schedule 4) was made, after debate'. See MoP 2001-04/1685.

¹³⁴ Standing order 146.

¹³⁵ Standing order 147.

¹³⁶ Standing order 144.

¹³⁷ MoP 1992-94/219.

11.102 As is the practice in the House of Representatives, should more than one new clause be proposed to be inserted in a bill, each new clause is considered and dealt with as a separate question. However, amendments to insert several new clauses, which may constitute a new part or division, may be moved together, by leave.¹³⁸

Completion of the detail stage

11.103 Once the Assembly has completed its consideration of a bill's clauses, schedules and dictionary, it next considers the preamble to the bill (if any) and then its long title. If any amendment has been made to the bill that necessitates an amendment to the long title, the standing orders provide that the long title must be amended, and the question proposed 'That the title, as amended, be agreed to.'¹³⁹ This provision suggests that an amendment may only be moved to the title if an amendment to the bill necessitates this.

Reconsideration of bill

11.104 Any Member may move that a bill be reconsidered, either in whole or in part.¹⁴⁰ Should the Assembly so order, for the purpose of speaking opportunities and times, the practice has been for any questions proposed to be considered new questions. Thus, Members may speak again for a further two periods on each question before the Chair.

11.105 Once any questions on the title are resolved and the detail stage completed, the Speaker must put the question 'That this bill be agreed to' or 'That this bill, as amended, be agreed to' forthwith. The question must be determined without amendment or debate.¹⁴¹

Bill passed

11.106 Once a bill has been agreed to, no further question on it may be put, and it has been passed by the Assembly.¹⁴²

11.107 Should the question on the agreement be negatived, the bill proceeds no further (as is the case should the question on the agreement in principle be negatived). The bill may be re-introduced in a later calendar year.¹⁴³

11.108 In cases of particular necessity, however, the Assembly has rescinded resolutions agreeing to bills and it has reconsidered these bills. The Assembly recommits bills usually by overriding the requirements of standing order 137. It does this by suspending the standing order or by way of a motion moved by leave (unanimous consent required), having subsequently ordered that the resolutions of the Assembly agreeing to particular amendments, clauses or other questions and agreeing to the bill or the bill, as amended, be rescinded. Further, the Assembly has, by special order, set out at what stage the bill is to be reconsidered (and when)¹⁴⁴ or the specific scope of any reconsideration.¹⁴⁵

¹³⁸ *House of Representatives Practice*, p. 369.

¹³⁹ Standing order 186.

¹⁴⁰ Standing order 187. See, for example, MoP 1989-91/587-8, 619, 654 (a number of clauses including clauses as amended), MoP 1995-97/910 (an amendment inserting three new clauses reconsidered), MoP 1998-2001/977, 1105; MoP 1998-2001/1249, 1432; MoP 1998-2001/1002 (clause reconsidered, by leave, during detail stage consideration).

¹⁴¹ Standing order 189. For comment on the origin of the rule see *May*, p. 4. On occasions the Assembly has granted leave for debate to ensue on the question.

¹⁴² Standing order 190.

¹⁴³ See, for example, Community Referendum Bill 1995—negatived on 14 December 1995 (MoP 1995-97/247) and reintroduced as the Community Referendum Bill 1996 on 27 June 1996 (MoP 1995-97/389); Utilities (Network Facilities Tax) Repeal Bill 2007—negatived on 14 November 2007 (MoP 2004-08/1275) and reintroduced as the Utilities (Network Facilities Tax) Repeal Bill 2008 on 5 March 2008 (MoP 2004-08/1381). But see paragraphs 11.191 to 11.201.

¹⁴⁴ Usually forthwith.

¹⁴⁵ For example, see MoP 1989-91/686; MoP 1992-94/801-2 (the order rescinded the resolutions agreeing to the bill as amended and the resolution in relation to a specific clause and restricted the Assembly's reconsideration to those questions); MoP 1995-97/292-3 (the order rescinding the resolution agreeing to the bill in principle and providing that the question 'That this Bill be agreed to in principle' be reconsidered forthwith) and MoP 1995-97/971 (the order (as amended) rescinding the resolution agreeing to the bill as amended and providing for the reconsideration of clauses 5 and 8 of the bill).

Urgent bill

11.109 Should a Member in charge of a bill, or a Member acting on behalf of that Member, declare that a bill is urgent, the question 'That this bill be considered an urgent bill' must be put and, if agreed to, that Member may forthwith move a motion specifying the time which shall be allotted to the various stages of the bill.¹⁴⁶ One declaration of urgency and one motion for the allotment of time have even been moved in relation to three bills after standing and temporary orders were suspended to allow that course to be followed.¹⁴⁷

11.110 Debate on the motion to declare a bill urgent or on the motion for the allotment of time shall in each case not exceed 15 minutes with each Member speaking for no more than five minutes. Both questions are open to debate.¹⁴⁸

Clerical, grammatical or typographical amendments

11.111 Corrections to clerical, grammatical and typographical errors are often made by the Clerk with the Speaker's authority pursuant to standing order 191 (and often following suggestion by the Office of Parliamentary Counsel). The scope of such amendments is particularly limited and, in making amendments of this nature, the Clerk refers to the principles governing the making of printing corrections as set out in Bennion,¹⁴⁹ particularly Rule 4 which states (in reference to the United Kingdom context):

Where the text of the House Bill contains a misprint, and it is clear what the correct version should be, it is for the Public Bill Office to correct the error. If it is not clear what the correction should be the error must be allowed to remain (unless, there being further stages of the Bill's progress to come, the error can be put right by an amendment).¹⁵⁰

11.112 The Speaker is now obliged to advise the Assembly of such amendments.¹⁵¹

11.113 The practice is that certain formal amendments, particularly revisions of cross-referencing following the insertion or deletion of provisions by the Assembly, can be made by the Clerk prior to a bill's certification.

Certification and notification of enactment

11.114 As the Territory does not have an official position analogous to an administrator or a state governor, there are therefore no assent procedures for legislation as is the case in comparable Australian legislatures. Originally, the Self-Government Act, complemented by the certification provisions in the standing orders, set out the process whereby proposed laws took effect.¹⁵² The Territory has since enacted legislation providing for the notification of Acts and

¹⁴⁶ Standing order 192. See MoP 1989-91/97-8, 647-8; MoP 1992-94/83-4 (three bills); 1995-97/449-51; MoP 1998-2001/20; MoP 2004-08/1204-5.

¹⁴⁷ MoP 1992-94/83-4.

¹⁴⁸ Standing order 69(f). MoP 1992-94/295.

¹⁴⁹ F.A.R. Bennion MA, *Statutory Interpretation—A Code*, Butterworths, 1997, Third Edition, pp. 148-9.

¹⁵⁰ For discussion of the scope of such amendments, see the paper presented by the Clerk of the South Australian House of Assembly, *Twenty Fourth Regional Conference of Presiding Officers and Clerks, Port Vila, Vanuatu, 26-29 July 1993*, Transcript of Proceedings, pp. 121-38.

¹⁵¹ Standing order 191.

¹⁵² They took effect upon the date of notification in the *Territory Gazette* of their having been passed by the Assembly (unless the proposed law otherwise provided) with the Chief Minister being responsible for the publication of the notification; Self-Government Act, section 25. The notification had also to indicate the place or places where copies of the proposed law could be purchased. In the event of copies of the law not being available for purchase as notified, the Act made provision for the tabling of a statement advising the Assembly of the fact and giving of reason why they were not so available. Subsection 25(6) of the Act provided that the original provisions ceased to have effect on and after the commencement of an enactment providing for the publication of notice of the passing of a proposed law by the Assembly by an alternative means and the commencement of such a law.

these provisions are now contained in Chapter 4 of the Legislation Act (which provides for both the numbering and notification of Acts).

11.115 However, before an Act can be notified Assembly standing order 193 requires that, after a bill has been passed, the Clerk must certify a copy of it as being a true copy of the bill passed by the Assembly. The Speaker must then ask parliamentary counsel to notify the making of the proposed law. The Clerk's certificate reads as follows:

I hereby certify that the above is a true copy of the [short title of bill], which was passed by the Legislative Assembly on [date].

11.116 The certificate is signed and dated by the Clerk. In the event that the title of the bill has been amended during its passage through the Assembly, the certificate reflects that fact by stating:

I hereby certify that the above is a true copy of the [amended short title of bill], which originated in the Legislative Assembly as the [short title of bill as presented] and was passed by the Legislative Assembly on [date].

11.117 In the case of a bill for an entrenching law, the certificate differs again (see paragraphs 11.121 to 11.123).

11.118 The Legislation Act¹⁵³ also provides that, should a proposed law be passed by the Assembly, the Speaker must ask parliamentary counsel to notify the making of the proposed law. Parliamentary counsel is obliged to establish and maintain in electronic form a register of Acts and statutory instruments (the ACT Legislation Register).¹⁵⁴ The making of the proposed law is notified in the register by entering a statement that the law has been passed by the Legislative Assembly and the text of the law.¹⁵⁵

11.119 The Speaker notifies parliamentary counsel of the passing of a bill by forwarding a paper copy of the Act as certified by the Clerk in accordance with standing order 193, together with a letter of transmittal asking parliamentary counsel to notify the making of the proposed law. At the same time, the Assembly Secretariat forwards to parliamentary counsel an unsigned electronic version of the Act and an unsigned electronic copy of the letter of transmittal. It is also the practice for the Speaker to nominate a particular day for the notification of the passing of each proposed law in accordance with subsection 28(3) the Legislation Act.

¹⁵³ Subsection 28(1).

¹⁵⁴ *Legislation Act 2001*, Chapter 2.

¹⁵⁵ *Legislation Act 2001*, subsection 28(4) specifically provides that the making of the proposed law is notified in the Legislation Register by entering in the register (a) a statement that the law has been passed by the Legislative Assembly; and (b) the text of the law. If it is not practical to do so, the making of the proposed law is notified in the *Australian Capital Territory Gazette* by (a) publishing the text of the law in the Gazette; or (b) publishing in the Gazette a statement (i) that the law has been passed by the Legislative Assembly; and (ii) of the place or places where copies of the law can be obtained (whether by purchase or otherwise). *Legislation Act 2001*, subsection 28(5). If, on the date of gazettal, no copies are available at the nominated places, parliamentary counsel must give to the Minister responsible for the administration of the Act a statement that the copies were not available and explaining why they were not available and the Minister must present the statement to the Assembly not later than six sitting days after the gazettal date; *Legislation Act 2001*, subsections 28(4)-(9). For a precedent where a similar statement was presented to the Assembly (prior to enactment of the Legislation Act) see MoP 1989-91/192.

The ACT Legislation Register and website

Chapter 2 of the *Legislation Act 2001* provides that parliamentary counsel must establish a register of Acts and statutory instruments (the ACT Legislation Register).

The register must contain:

- authorised republications of laws currently in force;
- Acts as made;
- subordinate laws as made;
- disallowable instruments as made;
- notifiable instruments as made;
- commencement notices as made;
- resolutions by the Legislative Assembly to disallow or amend subordinate laws or disallowable instruments;
- bills presented to the Legislative Assembly;
- explanatory statements for bills and amendments to bills presented to the Assembly;
- explanatory statements and regulatory impact statements under Chapter 5 of the *Legislation Act* for subordinate laws and disallowable instruments;
- notifications of the making of Acts, subordinate laws, disallowable instruments, notifiable instruments and commencement notices; and
- notifications of the disallowance or amendment of subordinate laws and disallowable instruments by the Legislative Assembly.

Parliamentary counsel may enter additional material in the register if he or she considers that it is likely to be useful to users of the register.

The register is at <<http://www.legislation.act.gov.au>>.

Numbering of Acts

11.120 Section 27 of the *Legislation Act* provides that the Acts passed each year are to be numbered as nearly as practicable in the order in which they are passed.¹⁵⁶

ENTRENCHING LAWS AND ENABLING LAWS

Entrenching laws

11.121 The *Self-Government Act* empowers the Assembly to pass a law called an entrenching law. An entrenching law imposes certain special conditions on the manner and form of making particular enactments, including enactments that amend or repeal an entrenching law). The conditions envisaged are a special voting majority in the Assembly (two-thirds of Members) and/or support of a specified majority of the electors at a referendum. Once the entrenching law is passed by the Assembly, it must then be submitted to referendum. If approved by a majority of electors of the Territory, it takes effect.

¹⁵⁶ *Legislation Act 2001*, section 27.

11.122 The purpose of the entrenching process is similar to that of the laws governing amendments to the Constitution. It recognises that certain laws are of fundamental importance to the legal structure of a jurisdiction or to the processes of government in that jurisdiction and should be subject to change only if clear popular support for such change can be demonstrated. The entrenchment process permits an Assembly to bind later Assemblies to a certain extent. This has occurred in relation to the electoral system in use in the Territory.

11.123 The authority to pass entrenching laws is found in section 26 of the Self-Government Act. In introducing the Self-Government Bill into the House of Representatives, the responsible Minister described the purpose of section 26 as extending:

... to the people of the Territory, who are not party to the Australia Act, the general provisions of that Act, which allow the States to entrench laws relating to the Constitution, powers and procedures of their parliaments.¹⁵⁷

11.124 The key elements of section 26 are:

- the entrenching law itself must be submitted to a referendum of the electors of the Territory¹⁵⁸ and must be approved by a majority of electors;
- while the entrenching law is in force, any enactment to which it applies has no effect unless made in accordance with the entrenching law; and
- if an entrenching law imposes requirements (or restrictions) on other enactments, the same requirements apply to the entrenching law.

There are therefore two basic categories of laws (and therefore proposed laws) in question: **entrenching laws** and **enactments to which entrenching laws apply** (which may include proposed laws that amend or repeal the entrenching law).

11.125 An entrenching law may apply to a specific piece of proposed legislation—for example, the 'Bill for an Act to entrench the *Community Referendum Act 1995*', or it may apply to a class of legislation. For example, the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* applies to 'any law that is inconsistent with any of the following principles of the proportional representation (Hare-Clark) electoral system'. Section 4 of the Act then lists eleven characteristics of the ACT electoral system that cannot be altered other than by legislation which complies with the entrenching law.

11.126 All bills for entrenching laws must:

- (a) pass the Assembly, and
- (b) be submitted to a referendum of the electors of the Territory.

These particular hurdles may not necessarily apply to an enactment to which an entrenching law may apply. For example, an entrenching law might simply require that a law to which it applies must pass the Assembly with a special majority. However, if an entrenching law imposes requirements on other laws, those same requirements apply to the entrenching law itself. That is, if an entrenching law requires that a proposed law to which it applies must be passed by the Assembly with a two-thirds majority, then the entrenching law must also pass the Assembly with a two-thirds majority.

11.127 The Assembly has considered two bills for entrenching laws. The Proportional Representation (Hare-Clark) Entrenchment Bill 1994 was agreed to by the required majority of Members and approved by a majority of electors at a referendum, becoming law as

¹⁵⁷ H.R. Deb. (19.10.1988) 1925.

¹⁵⁸ An elector of the Territory is defined in the Act as a person who is entitled to vote at a general election.

the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.¹⁵⁹ The Community Referendum Laws Entrenchment Bill 1995 failed to pass the Assembly and, thus, was never put to a referendum.

11.128 In addition, the Assembly has considered two proposed laws to which the entrenching law applied.

- The Proportional Representation (Hare-Clark) Entrenchment Amendment Bill 2001 proposed to amend the entrenching law already enacted, Though agreed to by a majority of Members of the Assembly, it did not pass the Assembly by the required two-thirds majority set by the principal (entrenched) Act¹⁶⁰ (thus failing at the first hurdle), and it did not further proceed.
- The Electoral (Entrenched Provisions) Amendment Bill 2001 was a proposed law to which the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* applied. It was agreed to by the Assembly by more than the two-thirds majority of Members required by the principal (entrenched) Act (and thus did not need to be submitted to a referendum and passed by a majority of electors).¹⁶¹

Assembly procedure

11.129 Bills for entrenching laws and bills to which entrenching laws apply are not given any special notation or identification marks when presented in the Assembly.¹⁶² Standing orders make no specific provisions affecting their consideration.¹⁶³ Such bills are introduced and are considered by the Assembly in the same manner as other bills until the conclusion of the detail stage.

11.130 The provisions of subsection 26(5) of the Self-Government Act are invoked once the Speaker, pursuant to standing order 189, puts the question 'That this bill be agreed to' or 'That this Bill, as amended, be agreed to,'¹⁶⁴ if:

- the bill (in the case of a bill for an entrenching law) includes the requirement that an enactment (including the bill itself) or enactments be passed by a special majority of Members; or
- the bill is subject to the provisions of an entrenched enactment that requires it be passed by a special majority of Members.

11.131 In these cases, even if there is no call for a vote, the practice of the Assembly has been that the Speaker, having stated the question, will direct the Clerk to call the Assembly. Each Member, on being called, will signify 'Aye' or 'No' in accordance with the provisions of standing order 160.

11.132 Should the bill not achieve (be passed by) the special majority required, it will be of no effect in that it has not been validly or effectively 'passed by the Assembly' within

¹⁵⁹ This Act, at subsection 5(1) specifies '... that any amendment or repeal of this Act' requires a two-thirds majority of the Members of the Assembly and a majority in a referendum, whereas subsection 5(2) specifies that a law to which the Entrenchment Act applies must be passed either by a simple majority in the Assembly and a majority at a referendum or a two-thirds majority of the Assembly.

¹⁶⁰ Subsection 5(1) of the principal Act providing that the principal Act, or any amendment or repeal of the principal Act, has no effect unless passed by at least a two-thirds majority of Members and a majority of electors at a referendum.

¹⁶¹ *Proportional Representation (Hare-Clark) Entrenchment Act 1994*, subsection 5(2).

¹⁶² Of the former, the long titles of the bills presented to date clearly identified them as bills for entrenching laws. Of the latter, the short and long title of the Proportional Representation (Hare-Clark) Entrenchment Amendment Bill 2001 clearly identified it as a bill to amend an entrenching law, and the short title, explanatory memorandum and Minister's presentation speech identified the Electoral (Entrenched Provisions) Amendment Bill 2001 as a bill to which an entrenching law applied.

¹⁶³ Standing order 194 relates to the certification by the Clerk that an entrenching law has been passed by the Assembly and approved at a referendum.

¹⁶⁴ Assuming that proceedings have reached this stage.

the meaning of subsection 25(1) of the Self-Government Act¹⁶⁵ and there will be no further proceedings on the bill, irrespective of the provisions of standing order 134. In the precedents to date, the special majority required for relevant bills considered by the Assembly has been ‘at least’ a two-thirds majority of Members—taken to be at least 12 Members.

11.133 Details of proceedings to date on relevant bills are set out at Appendix 22.

Certification and later proceedings

11.134 Once passed by the Assembly, all entrenching laws must be submitted to a referendum of the electors of the Territory, as provided by enactment,¹⁶⁶ as must those laws where this is required by an entrenching law. The Assembly has provided for this by enacting the *Referendum (Machinery Provisions) Act 1994*.

11.135 In addition, standing order 194 provides:

Whenever a bill for an entrenching law has been passed by the Assembly and approved by a majority of the electors of the Territory at a referendum, it shall be so certified by the Clerk and the Speaker shall then ask Parliamentary Counsel to notify the making of the proposed law.

11.136 In the case of the one entrenching law passed by the Assembly—the Proportional Representation (Hare-Clark) Entrenchment Bill 1994—the bill was initially certified by the Clerk as having passed the Assembly and was transmitted to the Electoral Commissioner.¹⁶⁷ The actual terms of the certificate (printed on page one of the text of the bill) are set out below:

This Bill for an entrenching law passed the Legislative Assembly on 8 December 1994 by a special majority as required by section 26 of the *Australian Capital Territory (Self-Government) Act 1988* and section 5 of this Bill. It is transmitted to the Electoral Commissioner for submission to a referendum of the electors of the Territory in accordance with the provisions of the *Referendum (Machinery Provisions) Act 1994*.

11.137 The trigger mechanism for a referendum to proceed is contained in the provisions of the *Referendum (Machinery Provisions) Act 1994*. Section 5 provides that the Act applies in relation to a ‘referendum law’—that is, an enabling law (see paragraphs 11.145 and 11.146), an entrenching law (a law required to be submitted to a referendum under subsection 26(2) of the Self-Government Act) or a law required by an entrenching law to be submitted to a referendum.¹⁶⁸

11.138 The Act¹⁶⁹ makes provision for the timing and conduct of referendums. It establishes that a poll for a referendum shall be held:

- either on the polling day of the next ordinary election; or

¹⁶⁵ Advice of the ACT Government Solicitor of 3 May 2001.

¹⁶⁶ Self-Government Act, subsection 26(2).

¹⁶⁷ At the same time the Speaker formally advised the Chief Minister of the course being followed. The Chief Minister at that time having responsibility for publishing notices of proposed laws having been passed pursuant to subsection 25(1) of the Self-Government Act.

¹⁶⁸ *Referendum (Machinery Provisions) Act 1994*, section 5 and Dictionary.

¹⁶⁹ The purpose of which is to provide default machinery provisions that are to operate to the extent to which they are not actually inconsistent with the actual provisions of a referendum law, thus ensuring referendums are conducted in the same way as elections, as far as practicable, and avoiding the necessity for specific referendum laws to address general machinery provisions (see *Referendum (Machinery Provisions) Act 1994*, section 5 and Assembly Debates (22.9.1994) 3279).

- in the case where a referendum law provides for a referendum day other than polling day, on a day fixed by the executive in writing unless the referendum law itself provides otherwise (although certain days are precluded).¹⁷⁰

11.139 The Act also contains a range of provisions governing the conduct of referendums. For example, it provides that, as soon as practicable after the count is concluded, the Electoral Commissioner must prepare a notice setting out the numbers so counted and declaring the result of the referendum.

11.140 On 16 March 1995, the Electoral Commissioner advised the Clerk of the result of the referendum for the entrenchment of the Proportional Representation (Hare-Clark) Entrenchment Bill 1994, including a copy of the *Territory Gazette* notice declaring that a majority of the electors entitled to vote at the referendum had approved the entrenching law.

11.141 The Clerk, however, did not certify the bill immediately in accordance with the provisions of standing order 194. Certification was delayed until receipt of advice from the Registrar of the Supreme Court that no application had been made to the Supreme Court (as the Court of Disputed Elections) disputing the validity of the referendum.¹⁷¹ This course was based on the practice of the House of Representatives of delaying certification of Constitution alteration bills approved by the electors until ascertaining whether a petition disputing the referendum had been lodged and until any dispute had been determined. In addition, legal advice sought at the time concluded that it was reasonably practicable for the Clerk not to certify the entrenching law before the expiry of the period in which the referendum result could be challenged.¹⁷²

11.142 Following the receipt of advice from the Registrar of the Supreme Court that no application had been made disputing the validity of the referendum, the Clerk certified the bill as follows:

I certify —

- (a) that the above is a true copy of the Proportional Representation (Hare Clark) Entrenchment Bill 1994 which was passed by the Legislative Assembly on 8 December 1994 by the majority of Members required by paragraph 5(1) of the Bill; and
- (b) that the entrenching law was submitted to a referendum of the electors of the Territory in accordance with subsection 26(2) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth and approved by a majority of the electors.

The period allowed by law for making an application to the Court of Disputed Elections disputing the validity of the referendum has now expired without any such application having been made.

11.143 In accordance with standing order 194, the Speaker then presented the bill to the Chief Minister for notification.¹⁷³

¹⁷⁰ *Referendum (Machinery Provisions) Act 1994*, section 7. The day cannot occur (a) between the commencement of a pre-election period (defined by the Electoral Act as meaning the period of 37 days ending on the end of polling day for an election) and the expiration of 36 days after the polling day for the relevant election or (b) on a polling day for the election of Senators or a general election of Members of the House of Representatives or a referendum held under a law of the Commonwealth unless the Minister makes appropriate arrangements with the appropriate Commonwealth Minister for the poll for the referendum to be held on that day.

¹⁷¹ Received on 27 April 1995.

¹⁷² *Certification of bills for entrenching laws under standing order 194*, Legal Opinion, Parliamentary and Constitutional Section, Constitutional and Law Reform Branch, Attorney General's Department, 30 March 1995.

¹⁷³ Note that the Legislation Act, at section 28, now requires the Speaker to ask parliamentary counsel to notify the making of a law.

11.144 Where special conditions apply to the making of a law other than the requirement to submit the law to a referendum, the Speaker submits the proposed law to parliamentary counsel for notification and the Clerk certifies that the special conditions have been met. For example, the Electoral (Entrenched Provisions) Amendment Bill 2001, having been agreed to by the Assembly by the special majority of Members as set by the principal (entrenched) Act, was certified by the Clerk as follows:

I certify that the above is a true copy of the Electoral (Entrenched Provisions) Amendment Bill 2001 which was passed by the Legislative Assembly on 15 June 2001 by at least a 2/3 majority of members of the Legislative Assembly as required by paragraph 5(1)(a) of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.

Enabling laws

11.145 In addition to making provision for referendums of the electors of the Territory for entrenching laws and laws that entrenching laws require to be submitted to referendum, the *Referendum (Machinery Provisions) Act 1994* makes provision for enabling laws to be submitted to referendum. An enabling law is defined by the Act as a law that provides for a matter, including a proposed law, to be submitted to a referendum and is included in the dictionary definition of 'referendum law'.¹⁷⁴ To date, the Assembly has not considered an enabling law.

11.146 The Referendum (Machinery Provisions) Act provides the general mechanisms for the conduct of referendums required to be held by laws of the Assembly, except to the extent that the actual referendum law provides otherwise.¹⁷⁵

MONEY BILLS

SELF-GOVERNMENT ACT

11.147 The Self-Government Act gives the ACT a capacity to raise revenue similar to that of the states and the Northern Territory. All moneys received by the Territory—taxes, fees and other charges, income from investment and commercial activities—form the public money of the Territory, which is regulated under enactment passed by the Assembly. Funds may not be withdrawn or appropriated from the public moneys—except by way of legislation passed by the Assembly.

11.148 The key sections of the Self-Government Act that govern (and ensure the primacy of the Assembly in regard to) the control of the public money of the Territory are:

- section 57 (public money), which provides that:
 - the public money of the Territory (the revenues, loans and other money received by the Territory) shall be available for the expenditure of the Territory; and
 - the receipt, spending and control of the public money of the Territory shall be regulated as provided by enactment;

¹⁷⁴ The Assembly might consider that, with regard to a particular matter, the views of the electorate should be sought directly by making that matter the subject of a referendum. It would do this by passing an enabling law setting out the question and requiring that it be submitted to the electorate at a referendum.

¹⁷⁵ *Referendum (Machinery Provisions) Act 1994*, subsection 5(2).

- section 58 (withdrawals of public money), which provides that (with one exception) no public money of the Territory shall be issued or spent except as authorised by enactment and that the public money of the Territory may be invested as provided by enactment;¹⁷⁶ and
- section 65 (proposal of money votes), which provides that:
 - an enactment, vote or resolution (proposal) for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister.

However, it is important to note that section 65 does not prevent a Member other than a Minister from moving an amendment to a proposal made by a Minister unless the amendment is to increase the amount of the public money of the Territory to be appropriated.

11.149 The provisions of section 65 relating to ‘the financial initiative of the Crown’ have received considerable attention in the short life of the Assembly.

11.150 The Self-Government Act also sets out provisions for financial relations between the Commonwealth and the Territory,¹⁷⁷ including borrowing from the Commonwealth. In addition, certain provisions originally included in the Self-Government Act relating to controls by the Commonwealth over the Territory’s borrowings have now been repealed. These are section 61 (borrowing from persons other than the Commonwealth), section 62 (guarantee of borrowing), section 63 (borrowing not otherwise permitted) and section 64 (guarantees by executive).¹⁷⁸

FINANCIAL INITIATIVE OF THE CROWN

11.151 In addition to sections 57 and 58 of the Self-Government Act ensuring the primacy of Assembly control of the public money of the Territory, section 65 ensures that it is only the executive of the day that may initiate or move to increase appropriation proposals in the Assembly. This is a principle of long standing that is referred to as the financial initiative of the Crown.¹⁷⁹

11.152 Section 65, which is modelled on section 56 of the Constitution, provides that:

Proposal of money votes

- (1) An enactment, vote or resolution (*proposal*) for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister.

¹⁷⁶ See subsection 16(4) of the Act where, in the event of a dissolution of the Assembly by the Governor-General and the subsequent appointment of a commissioner, should it be necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment, the commissioner may do so with the authority of the Governor-General.

¹⁷⁷ Section 50: the Commonwealth being obliged to conduct its financial relations with the Territory so as to ensure that the Territory is treated on the same basis as the States and the Northern Territory, having regard to the special circumstances arising from the existence of the national capital and the seat of government of the Commonwealth in the Territory together with other guarantees. (This section was repealed in 1994.)

¹⁷⁸ Sections 61, 62, and 63 were repealed by the *Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act 1991* (No. 3 of 1991), the repeal being a result of a 1990 decision by the Loan Council that the states and territories would gradually assume full responsibility for raising and servicing their government debt (see H.R. Deb. (14.02.1991) 653). Section 64, which required the Territory to obtain the approval of the Treasurer of the Commonwealth before making guarantees for the discharge of certain obligations, was repealed by the *Australian Capital Territory Self-Government Legislation Amendment Act 1992* (No. 10 of 1992), the provisions reflecting the views that the Territory legislature should have greater responsibility for its own affairs (see H.R. Deb. (6.11.1991) 2467).

¹⁷⁹ It is of interest to note that during Senate consideration of the self-government legislation in November 1988, an amendment proposing that a law etc for the disposal or charge of the public moneys of the Territory may be proposed by any Member and shall not be passed unless a nominated committee of the Assembly approved the provision of the public moneys of the Territory for the purpose of the proposal. The amendment was negatived, the government viewing it as different from any provision operating in the States and the Northern Territory in relation to money bills and, as a matter of effective and sensible budget management, the initiation of money bills needed to be retained in the hands of the executive. The opposition supported the government. Sen. Deb. (24.11.1988) 2813-4.

(2) Subsection (1) does not prevent a Member other than a Minister from moving an amendment to a proposal made by a Minister unless the amendment is to increase the amount of public money of the Territory to be appropriated.

11.153 The principle is one of long standing and, though greatly enhancing the power of the executive, is seen as fundamental to good government. As Anson put it, it is:

... the great safeguard of the tax-payer against the casual benevolence of the House wrought upon by the eloquence of a private member [or] against a scramble for public money among unscrupulous politicians bidding against one another for the favour of democracy.¹⁸⁰

11.154 In addressing the issue of amendments in the context of the rules regulating financial procedures in the United Kingdom House of Commons, May states:

The House of Commons has long found it necessary to place restrictions on the moving of amendments in order to keep intact the principle of the financial initiative of the Crown ...

He goes on to contend:

The Crown's recommendation lays down the maximum amount of a charge on public funds or on the people, as well as its objects and purposes. An amendment infringes the financial initiative of the Crown not only if it increases the amount, but also if it extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has recommended a charge.¹⁸¹

11.155 The principle reflects the fact that it is the executive that is responsible for the management of the public finances of the Territory and the administration of those finances. For the Assembly to impose expenditure proposals initiated by non-executive Members on the Government must be seen as inimical to the principles of good government.¹⁸²

11.156 The current form of section 65 of the Self-Government Act was inserted following approaches from the Territory to the Commonwealth Parliament in 1994. The new provisions sought to remove uncertainty which flowed from the original wording. The explanatory memorandum to the amending bill stated:

Subsections 65 (1) and (2): amended to ensure that the initiative of the Government in introducing legislation in the Assembly on financial matters is no greater or less than that of the Commonwealth Government under section 56 of the Constitution. The reference in the present section 65 to the 'object or effect' of a proposed law, and the absence of reference to 'appropriation'

180 Gordon Reid, *The Politics of Financial Control*, Hutchison University Library, London, 1966, pp. 41-3. Reid is quoting the 1886 view of Sir William Anson. For further discussion on the background to the rule and its application in the Commonwealth Parliament see the comments by Reid at pp. 41-5, and also *Quick and Garran*, p. 681.

181 *May*, pp. 856-7.

182 See comments (on section 56 of the Constitution) by *Quick and Garran* where they also quote from Hearn's *Government of England*—'We are so accustomed to the general practice, and the deviations from it have been so inconsiderable, that its importance is scarcely appreciated. Those, however, who have had the experience of the results which followed from its absence, of the scramble among the members of the Legislature to obtain a share of the public money from their respective constituencies, of the 'log-rolling', and of the predominance of local interests to the entire neglect of the public interest, have not hesitated to declare that 'good government is not attainable while the unrestricted powers of voting public money and managing the local expenditure of the community are lodged in the hands of an Assembly.' *Quick and Garran*, p. 681.

suggests that section 65 covers proposals to increase the Territory's possible financial liabilities without actually appropriating public moneys. This is not intended.¹⁸³

11.157 The executive's exclusive responsibility in this regard has significant practical implications for the passage of financial measures through the Assembly. As *House of Representatives Practice* states in relation to that legislature:

... the constitutional and parliamentary principle that only the Government may initiate or move to increase appropriations or taxes—plays an important part in procedures for the initiation and processing of legislation.¹⁸⁴

These procedures are substantially reflected in the provisions of the Self-Government Act and the standing orders of the Assembly.

11.158 It should be noted that, unlike the House of Representatives, the Assembly has not further enhanced the hand of the executive over and above the constitutional provisions by imposing restrictions on non-executive members initiating proposals to impose taxes. It has, however, enhanced the hand of the executive by imposing certain additional restrictions (initially by way of resolution) on non-executive Members proposing amendments to expenditure proposals (see paragraphs 11.162 and 11.178 to 11.190) and, by statute, obviating the need for the executive to seek 'supply' by making provision for a standing supply provision in the Financial Management Act (see paragraphs 11.163 and 11.202 to 11.208). In relation to taxation matters, the Assembly has significantly restricted Members' ability to target a discrete portion of a subordinate law imposing a tax, charge or fee in a motion of disallowance or a motion to amend a subordinate law.¹⁸⁵

STANDING ORDERS

11.159 Standing orders 200 and 201 relating to money proposals were amended in 1994 to reflect amendments to the Self-Government Act. They state that:

Money proposals submitted – without notice

200. An enactment, vote or resolution for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister. Such proposals may be introduced by a Minister without notice.

¹⁸³ The explanatory memorandum to the Arts, Environment and Territories Legislation Amendment Bill 1993 (as enacted Act No. 6 of 1994, Cwlt). Note that while section 56 of the Constitution refers to the requirement for 'a message of the Governor-General' recommending a proposed appropriation, in effect ensuring executive support for the proposal, there is no reference to such a message as the Territory does not have an Administrator or a Governor as is the case in the Northern Territory and the states.

¹⁸⁴ *House of Representatives Practice*, p. 407

¹⁸⁵ Prior to the commencement of the Legislation Act, the *Subordinate Laws Act 1989* made provision for the disallowance by the Assembly of a subordinate law (or disallowable instrument) or 'a provision of that law'. The reference to the disallowance of a provision of a subordinate law was omitted from the new provisions that came into effect in September 2001, though, at page 21, the explanatory memorandum to the Legislation (Access and Operations) Bill 2000 stated that the new provision 'would restate' the relevant subsections of the *Subordinate Laws Act 1989*. The omission is potentially one of significance. The reason is that, given the Assembly's inability to amend subordinate laws where the amendment would have the effect of waiving or changing any fee, charge, penalty or other amount payable to the Territory and the exclusion of determinations of fees or charges by a Minister from the amendment provisions (Legislation Act, subsection 68(1)), a Member's ability to target a discrete portion of such a subordinate law in a motion of disallowance has been lost. The provision enabling the Assembly to amend subordinate laws was originally proposed in the Subordinate Laws (Amendment) Bill 1993. The restricting provisions were inserted in the bill during Assembly consideration. See Assembly Debates (23.2.1994) 149-80; (20.4.1994) 1025-6. Though not directly relevant, note that when, in April 1994, the Assembly considered the original amendment to the Subordinate Laws Act to enable it to amend subordinate laws, the proposal (as amended) specifically excluded amendments to subordinate laws that would have the effect of waiving or changing any fee, charge, penalty or other amount payable to the Territory.

Limitations on amendments

201. A Member, other than a Minister, may not move an amendment to a money proposal, as specified in standing order 200, if that amendment would increase the amount of public money of the Territory to be appropriated.

11.160 Prior to the adoption of these standing orders in their current form, there had been considerable controversy and frustration in the Assembly over the application of the former standing orders in regard to the initiation of legislation. Members had been prevented from proceeding with their sponsorship of bills in the Assembly. The original provisions could operate to virtually exclude private Members from proposing business in the Assembly. There was a need to strike a balance between the rights of private Members to initiate proposals, and to have them decided by the Assembly, and the executive's exclusive responsibility for initiating the expenditure of the Territory's money.¹⁸⁶

11.161 Since the adoption of the new standing orders in 1994, no private Members' bills proposed in the Assembly have infringed the provisions of standing order 200.¹⁸⁷

11.162 In March 2008 the Assembly further amended the standing orders by adopting standing order 201A, thus incorporating in the standing orders the terms of a 1995 resolution further restricting the scope of amendments that non-executive Members may move to money proposals. The new standing order provides:

201 A. An amendment in accordance with standing order 201 must be in accordance with the resolution agreed to on 23 November 1995 – i.e. 'That this Assembly reaffirms the principles of the Westminster system embodied in the "financial initiative of the Crown" and the limits that that initiative places on non-executive Members in moving amendments other than those to reduce items of proposed expenditure.'

FINANCIAL MANAGEMENT ACT

11.163 The Territory initially regulated the receipt, spending and control of the public money through provisions of the Audit Act until, in 1996, it enacted the *Financial Management Act 1996*.¹⁸⁸ This law now regulates the management of the public money of the Territory.¹⁸⁹

11.164 The Financial Management Act confirms that the appropriation of the public money of the Territory must be by way of an enactment. Section 6 of the Act provides

¹⁸⁶ The new standing orders were adopted, the Assembly agreeing to a recommendation of the Standing Committee on Administration and Procedures—*Standing Orders 200 and 201*, Report of the Standing Committee on Administration and Procedures, 7 June 1994, MoP 1992-94/633. Subsection 65(1) of the Self-Government Act had originally provided 'An enactment, vote, resolution or question (any of which is in this section called a "proposal") the object or effect of which is that to dispose of or charge any public money of the Territory shall not be proposed in the Assembly except by a Minister.' For a summary of the application of the earlier procedures, see *Standing Orders 200 & 201 and their interpretation*, Report of the Standing Committee on Administration and Procedures, December 1990.

¹⁸⁷ But see paragraphs 11.188 and 11.189 re the concerns of Speaker Cornwell regarding the provisions of the Financial Management Amendment Bill 2001 (No. 2) vis-à-vis the resolution of the Assembly of 23 November 1995.

¹⁸⁸ Its long title is 'An Act to provide for the financial management of the government of the Territory, to provide for the scrutiny of that management by the Legislative Assembly, to specify financial reporting requirements for the government of the Territory, and for related purposes.'

¹⁸⁹ The Act replaced the *Audit Act 1989* (originally the *Audit Ordinance 1989* (No. 37 of 1989) made by the Governor-General under the *Seat of Government (Administration) Act 1910* on 9 May 1989), which was repealed by the *Financial Management and Audit (Consequential and Transitional Provisions) Act 1996*.

that 'no payment of public money¹⁹⁰ must be made otherwise than in accordance with an appropriation.' The dictionary to the Act defines an appropriation as 'an appropriation of public money by any Act including this [the Financial Management] Act'.

11.165 The Act also includes a number of provisions governing the form and content of appropriation bills, the preparation and presentation of budget papers and the reporting requirements of the Territory and individual departments. It also sets out rules for the management of the Territory and departmental budgets, financial reporting requirements, the financial management responsibilities of chief executives, the management of the Territory bank account, departmental bank accounts, investment, borrowings and trust moneys, and financial provisions for territory authorities.

11.166 In relation to the Assembly's consideration of money bills, particular provisions of the Act are:

- section 5: unless the Assembly provides otherwise, the first appropriation bill relating to a financial year must be introduced into the Assembly no later than three months after the beginning of the financial year; and
- section 8: provides for the possibility of an Appropriation Act making separate appropriations in relation to each department for:
 - the provision of outputs by the department;
 - any capital injection to be provided to the department; and
 - any payments to be made by the department on behalf of the Territory.

11.167 Sections 9 and 9A provide for appropriations to be expressed net of payments that a department receives for the provision of outputs and input tax credits that apply to those outputs. These sections also authorise departments to apply that income to 'paying the expenses and liabilities of the department'. Sections 12 and 12A specify what must be included in a proposed budget for a department, a Territory authority or a Territory-owned corporation respectively.

11.168 At section 7, the Act provides for an 'automatic' supply period at the beginning of a financial year if an appropriation bill for that year has not been passed by the Assembly.¹⁹¹ The Treasurer, within strict limits, is authorised to make payments to meet the requirements of government, but not so as to exceed in total half of the amount appropriated in the previous financial year. With the passage of the Appropriation Act, payments made by the Treasurer under this section 'are taken for all purposes to have been made out of money appropriated by that Act'. This provision has been utilised on a number of occasions.¹⁹²

¹⁹⁰ The definition of 'public money' in the Financial Management Act differs from that in the Self-Government Act, the former excluding money held by the Territory as trust money and certain other moneys received by the Territory from Territory-owned corporations and Territory authorities.

¹⁹¹ It used to be the practice of the Commonwealth Parliament that the budget was presented in August and the appropriation bills for that financial year debated thereafter. Thus, it could be that appropriations were not passed until some months into the financial year. To cover the period from the start of the financial year until the passage of the appropriation bills, the Parliament used to pass supply bills in the previous financial year to make interim provision for the first few months of the following financial year.

¹⁹² See, for example, MoP 1998-2001/934, where the appropriation bill was defeated and an amended appropriation bill was not passed until 10 July 2000 (MoP 1998-2001/939), and MoP 2004-08/1205, where the appropriation bill for the financial year 2007-08 was passed on 30 August 2007. See also paragraphs 11.202 to 11.208 for a fuller discussion of the interpretation of this section.

PROCEDURE ON APPROPRIATION BILLS

Introduction

11.169 Appropriation bills must be introduced by a Minister and may be introduced without notice.¹⁹³ Though section 65 of the Self-Government Act (and standing order 200) envisages that an appropriation may be initiated by resolution,¹⁹⁴ section 6 of the Financial Management Act makes it clear that no payment of public money may be made otherwise than in accordance with an appropriation Act.

11.170 The Financial Management Act makes provision for the form of appropriation Acts. An appropriation Act may make separate appropriations in relation to each department for:

- the provision of outputs by the department;
- any capital injection to be provided to the department; and
- any payments to be made by the department on behalf of the Territory.

It also specifies the form of any separate appropriation in relation to a Territory authority or Territory-owned corporation.¹⁹⁵ It also makes provision for net appropriations for outputs, capital injections and payments on behalf of the Territory.¹⁹⁶

11.171 Section 10 of the Act obliges the Treasurer, immediately after the presentation of the bill for the first Appropriation Act relating to the year, to present to the Assembly the proposed budgets for the Territory, each department and each Territory authority and Territory-owned corporation for the year. A consolidated financial management statement in relation to the general government sector and the public trading enterprise sector must be included in the budget papers. Where the executive seeks a supplementary appropriation (additional expenditure not provided for in the budget) at any time during the financial year, section 13 requires the Treasurer to present supplementary budget papers and specifies the information that must be included in those papers.

Motion for agreement in principle

11.172 Standing orders contain two provisions relating to the consideration of the question that a bill be agreed to in principle that are unique to the consideration of appropriation bills in the Assembly:

- the relevancy rule in debate is relaxed in that, on the motion for agreement in principle to appropriation bills for the ordinary annual services of the executive, matters relating to public affairs may be debated;¹⁹⁷ and
- for consideration of the main appropriation bill for the year, there is no time limit specified for the speeches of the mover of the motion 'That this bill be agreed to in principle' and the

¹⁹³ Standing order 200.

¹⁹⁴ Section 65 of the Self-Government Act is based upon section 56 of the Constitution. The use of the term 'a resolution for the appropriation of public money' may relate to the financial procedures in the colonial legislatures and the United Kingdom House of Commons at the time of Federation (and used by the House of Representatives until 1963) when certain Bills were based upon financial resolutions. At that time financial procedures were more complex, involving consideration by the Committee of Supply and Ways and Means. The procedure in relation to the main appropriation bill of the year culminated with formal consideration by a committee of ways and means, after which a bill to give effect to the resolution was brought in and usually passed formally and immediately.

¹⁹⁵ *Financial Management Act 1996*, section 8. Prior to the amendments made by the *Financial Management Legislation Amendment Act 2005* this provision regarding the form of appropriation Acts was proscriptive.

¹⁹⁶ *Financial Management Act 1996*, sections 9, 9A and 9B.

¹⁹⁷ Standing order 58(b).

Member next speaking (the practice of the Assembly is to limit the time for the Member next speaking (Leader of the Opposition) and also the time of crossbench Members to no more than the time taken by the mover of the motion).¹⁹⁸

Procedures following agreement in principle

11.173 The practice of the Assembly in relation to the main appropriation bill for the year has been to refer it to a Select Committee on Estimates following agreement to it in principle. The committee is established to examine the expenditure proposals contained in the bill, together with any revenue estimates proposed by the Government in the budget.¹⁹⁹ Appropriation bills introduced subsequent to the main appropriation bill for the year have also been referred to estimates committees or to the Standing Committee on Public Accounts.²⁰⁰

11.174 Reports of estimates committees include recommendations which may relate to specific items of expenditure, to overall financial management, to other budgetary issues or to the presentation of the budget papers themselves. Following presentation of a committee report, the government provides a response outlining its attitude to the various recommendations and indicating which, if any, it is prepared to act on. The practice is that motions are moved to take note of the respective papers.

11.175 After the estimates committee has reported and the government response has been presented, the Assembly then proceeds to the detail stage of consideration of the bill. Normally the Assembly agrees to permit the orders of the day for the consideration of the report of the estimates committee and the government response to be called on and debated cognately with the order of the day relating to the appropriation bill.²⁰¹ At the commencement of consideration of the detail stage, the Speaker reminds the Assembly that leave of the Assembly has been granted for a cognate debate and that Members can speak to the bill, the relevant parts of the estimates committee report and the government's response to that report.²⁰²

Detail stage consideration

11.176 An appropriation bill is generally quite a short document.²⁰³ Basically, it defines expenditure in terms of the Financial Management Act. The actual amounts to be appropriated are contained in a schedule to the bill and the detail of expenditure for individual departments and agencies is included in the budget papers. Standing order 180 sets the procedure to be followed in consideration of the bill. The schedule listing the services for which an appropriation is to be made must be considered before the clauses, and the schedule must be considered in the order in which proposed expenditures are shown, unless the Assembly orders otherwise. Thereafter, the general provisions of standing order 180 apply.

198 Standing order 69(d).

199 See, for example MoP 2004-08/1005-6, 1060.

200 For example, Appropriation Bill 2003-2004 (No. 2) (MoP 2001-04/823-4) and Appropriation Bill 2003-2004 (No. 2) (MoP 2001-04/1210). Appropriation Bill 1999-2000 (No. 3) was referred to the Select Committee on Estimates already appointed to consider Appropriation Bill 2000-2001, the resolution of appointment having been amended (MoP 1998-2001/881). Appropriation Bill 2002-2003 (No. 2) was referred to the Standing Committee on Public Accounts (MoP 2001-04/560). The Assembly has declined to refer appropriation bills to select committees; see for example MoP 1998-2001/473-4 (Appropriation (Bruce Stadium and CanDeliver Limited) Bill 1999), and MoP 1998-2001/497 (Appropriation Bill (No. 2) 1999-2000).

201 MoP 2004-08/784.

202 Assembly Debates (22.8.2006) 2420.

203 For example, the text of the 2007-2008 bill is only four pages including the title page, commencement and definitions clauses. The schedules add another five pages. Schedule 1 lists the amount appropriated for each agency and schedule 2 simply lists the subdivisions within agencies. In contrast, the budget papers, which include the Treasurer's budget speech, comprise four volumes and approximately 1 000 pages.

11.177 Since 1996 the practice of the Assembly in considering the schedules has been slightly different from that set down in standing order 180, reflecting the changed layout of appropriation bills since the enactment of the Financial Management Act. The order of consideration is as follows: the first schedule is considered part by part (consisting of net cost of outputs, capital injection and payments on behalf of the Territory); then the clauses, Schedule 2 and the title are considered.²⁰⁴

Amendments to appropriation bills

11.178 Some amendments proposed to appropriation bills have caused the Assembly to review the application of standing order 201 and to impose even tighter restrictions than those set by the standing order and the Self-Government Act. This culminated in the adoption of standing order 201A in March 2008.

11.179 Prior to the adoption of standing order 201 in its current form, an amendment was proposed during detail stage consideration of the Appropriation Bill 1993-1994 to insert a new clause in the bill. The amendment did not propose to increase the amount appropriated, but proposed restricting the use the executive could make of the money appropriated. The proposed new clause read:

The executive shall not use money appropriated by this, or any other, Act for the purpose of reducing: (a) the number of persons employed as teachers in schools or colleges in the Territory; or (b) the number of teaching hours provided overall in those schools and colleges taken as a whole.

11.180 After reference to the unprecedented nature of the amendment and its potential effect, the Speaker, after taking further points of order on the matter (and the sitting having been suspended for a short period), ruled that the amendment was in order. The amendment was agreed to by the Assembly after some debate.²⁰⁵

11.181 The issue came to a head in November 1995 during Assembly consideration of the Appropriation Bill 1995-1996. Prior to the detail stage, the Assembly considered whether it would be in order for a non-executive Member to propose to the Assembly an amendment or amendments, the object of which was to transfer a sum of money from the Treasurer's Advance²⁰⁶ to one of the divisions relating to the Department of Education and Training. In the weeks leading up to the consideration of the relevant stage of the bill, legal opinions were obtained on the matter. These, together with a memorandum by the Clerk on the issues, were presented in the Assembly on 23 November 1995.²⁰⁷

11.182 Standing order 201 limited the ability of non-executive Members to move amendments to money proposals. It provided that a Member, other than a Minister, may

204 See, for example, Assembly Debates (22.8.2006) 2420-1. See also, in contrast, MoP 2001-04/125 (Appropriation Bill 2001-2002 (No. 2)); the proposed amounts to be appropriated were set out in clause 6 of the bill; so the bill was considered in the ordinary way.

205 MoP 1992-94/490-1; Assembly Debates (25.11.1993) 4178-99. There was an earlier precedent: in 1989, it appeared that a Member could not obtain drafting assistance to prepare an amendment to the Legislative Assembly (Members' Staff) Bill (to facilitate the employment of consultants by Members) as the amendment would contravene section 65 of the Self-Government Act; see Assembly Debates (2.11.1989) 2393. An interesting sequel to the inclusion of this clause was that the status of the 1993 amendment (the inclusion of section 11) was queried two years later and the Speaker undertook to obtain advice on the matter: Assembly Debates (14.12.1995) 3049, 3063. Advice was received and circulated to Members later that month. The advice concluded that the effect of the section could not be said to extend beyond the 1993-94 financial year; see section 11 of the Appropriation Act 1993, Advice of Andrew Barram, Acting Director, Parliamentary and Constitutional, Attorney-General's Department, 20 December 1995.

206 The Treasurer's Advance is a contingency fund appropriated for the Treasurer to use in the case of any unforeseen expenditure arising.

207 MoP 1995-97/202.

not move an amendment to a money proposal, as specified in standing order 200,²⁰⁸ if that amendment would increase the amount of public money of the Territory to be appropriated. Unlike [then] standing order 292 of the House of Representatives (and the more restrictive provisions later formalised in standing order 201A), standing order 201 did not specifically exclude a non-executive member from moving an amendment that would extend the objects and purposes or alter the destination of the appropriation recommended.

11.183 The advices focused, in part at least, on the meaning of the words 'enactment, vote or resolution' (especially 'vote'), conceding that the 1988 explanatory memorandum to the Self-Government Bill envisaged that certain types of transfers were permitted on the motion of non-executive Members.²⁰⁹ However, they concluded that, whilst it would be in order for a non-executive Member to move to amend an appropriation unit to reduce the amount of money appropriated, it would not be in order to move an amendment that would have the effect of transferring funds from the Treasurer's Advance to one of the education appropriation units—in effect, to increase the amount appropriated but offsetting that increase by a corresponding reduction in another appropriation unit.

11.184 The advice of the Clerk concluded:

The standing orders do not contain a prohibition on non-Executive Members proposing amendments that would transfer or alter the destination of the moneys to be appropriated, except they do prohibit non-Executive Members moving an amendment to a 'proposal' (ie. Enactment, vote or resolution) that would increase the amount of the public money of the Territory to be appropriated. Whether such an amendment as proposed would be in order depends on the definition of 'enactment, vote or resolution for the appropriation of public moneys', especially, in this context, the term 'vote'.²¹⁰

The advice referred to the provisions of standing order 180, the practice of the Assembly to that time and practice elsewhere. The view of the Clerk was that the most ready identification of 'vote' in the context of the Assembly's consideration of the appropriation bill was that it referred to a division as listed in part II to the schedule of that bill. The advice went on to state that any amendment to decrease the amount of the proposed expenditure in a vote or division would be in order, as it would be a vote against a proposed expenditure. To propose an amendment to increase the amount of a proposed expenditure in a particular vote or division would be out of order, even if the amount to be appropriated by the bill overall remained the same. It would be in order, however, to move to transfer money within a vote (for example, from capital expenditure to recurrent expenditure within the same division). This would not now be the case given the 23 November 1995 resolution and (new) standing order 201A.

11.185 Matters came to a head on the second day of consideration of the bill at the detail stage, the Assembly having earlier rejected a proposal that the schedule be taken as a whole and the Speaker having ruled out of order an associated motion to have the schedule considered a single 'vote'.²¹¹ Standing orders having been suspended to allow the Manager of Government Business to move a motion concerning amendments to appropriation bills, the Assembly resolved:

That this Assembly reaffirms the principles of the Westminster system embodied in the 'financial initiative of the Crown' and the limits that that initiative places

²⁰⁸ That is, an enactment, vote or resolution for the appropriation of the public money of the Territory.

²⁰⁹ The explanatory memorandum stated 'Sub-clause 64(2) enables Members of the Assembly to move amendments to monetary proposals made by a Minister but only to decrease or transfer the amount proposed.'

²¹⁰ MoP 1995-97/202.

²¹¹ MoP 1995-97/190; Assembly Debates (21.11.1995) 2219-23.

on non-Executive Members in moving amendments other than those to reduce items of proposed expenditure.²¹²

11.186 Later that evening during consideration of the proposed expenditures in the schedule to the appropriation bill, amendments moved by non-executive Members were ruled out of order as they conflicted with the earlier resolution of the Assembly. The amendments would have:

- increased the amounts of proposed expenditure;²¹³
- placed restrictions on the use the executive could make of moneys appropriated;²¹⁴ and
- given directions on how moneys received were to be credited.²¹⁵

11.187 As a result of the Assembly's agreement to the 23 November 1995 resolution, whilst clearly amendments moved by Ministers to increase the amounts appropriated have been in order,²¹⁶ as have amendments moved by non-executive Members proposing to decrease the amount to be appropriated,²¹⁷ amendments sponsored by non-executive Members were ruled out of order, as they would be in conflict with the resolution of the Assembly. The amendments proposed the:

- transfer of funds within a line of appropriation to a department (from capital injection to net cost of outputs);²¹⁸ and
- insertion of a new part into schedule I of the Appropriation Bill 2006-2007.²¹⁹

11.188 On 20 June 2001 the Speaker made a statement to the Assembly concerning the provisions of the Financial Management Amendment Bill 2001 (No. 2), which was a private Members' bill. The bill proposed to insert a new section 66AA in the Financial Management Act which would provide that no payment of public money may be made for a free school bus scheme unless the scheme had been approved expressly by a resolution of the Assembly.

11.189 The Speaker advised the Assembly that the bill did not contravene the provisions of standing orders 200 and 201, though he reminded Members of the resolution of the Assembly of 23 November 1995. He stated that the issue was one that had considerable significance for the governance of the Territory as well as for the rights of non-executive Members. He further advised that he did not propose to rule the bill out of order at that stage on the grounds that it conflicted with the 1995 resolution as the standing of the resolution in relation to the bill was not beyond doubt.²²⁰ The bill was rejected by the Assembly later that day.

11.190 In its December 2007 review of the standing and other orders of the Assembly, the Standing Committee on Administration and Procedure suggested that the resolution of 23 November 1995 be incorporated as a standing order to reflect the practice of the Assembly

212 MoP 1995-97/201-03; Assembly Debates (23.11.1995) 2362-83. An amendment to remove all words after 'principles of' and substitute 'Council style government embodied in Liberal Party policy which allows full participation by all members of the Assembly' was negatived, Ayes 4, Noes 13, and the question that the principal motion be agreed to was resolved in the affirmative, Ayes 13, Noes 4.

213 MoP 1995-97/204-5 (the Assembly, having negatived a motion of dissent, upheld the ruling).

214 MoP 1995-97/206, 207.

215 MoP 1995-97/206 (the Assembly, having negatived a motion of dissent, upheld the ruling); MoP 1995-97/206-7, 207 (2).

216 MoP 1998-2001/484; MoP 1998-2001/938; MoP 1998-2001/1369, 1375.

217 MoP 1998-2001/517-8; MoP 2001-04/771-2, 773, 777-8; MoP 2004-08/801, 805.

218 MoP 2004-08/220, 226.

219 MoP 2004-08/802, 807. A Member tried to frustrate a government proposal to close a number of schools by preventing any appropriation for that purpose. The new part would have identified 'school closures' as a specific output class and denied it any funding.

220 MoP 1998-2001/1494, 1495-6; Assembly Debates (20.6.2001) 2143. It should be noted that it is not uncommon for non-executive Members to move amendments to bills amending the Financial Management Act; see MoP 1995-97/912-3; MoP 1998-2001/1163; MoP 2004-2008/406-7.

over the preceding 12 years.²²¹ In March 2008 new standing order 201A was adopted by the Assembly as recommended.²²²

Appropriation bill negated

11.191 On 29 June 2000 the Appropriation Bill 2000-2001 was considered by the Assembly. The bill included a controversial proposal to fund a trial of a supervised heroin injection facility in Canberra. Despite the relevant appropriation for the Department of Health and Community Care having been agreed to earlier in the evening, the question 'That this Bill, as amended, be agreed to' was negated eight votes to nine with three crossbench Members supporting the opposition in voting against the bill. The Chief Minister immediately moved 'That the Assembly do now adjourn' and, after a short debate, the Assembly adjourned until the next scheduled sitting day, 29 August 2000.²²³

11.192 The Assembly in fact met on 10 July 2000 in response to a request by an absolute majority of Members. Following consideration of certain necessary procedural motions, the Minister for Justice and Community Safety presented the Supervised Injecting Place Trial Amendment Bill 2000, which proposed to delay the introduction of the trial until 1 January 2002 at the earliest. The bill, which addressed the concerns leading to the defeat of the appropriation bill, was agreed to.²²⁴

11.193 Following a further suspension of standing and temporary orders, the Assembly rescinded the critical vote taken on the morning of 30 June and reconsidered certain questions in relation to the main schedule of the appropriation bill. Government amendments to the bill having been agreed to, the Assembly then agreed to the question 'That this Bill, as amended, be agreed to'. The question was passed on the voices.²²⁵

11.194 During debate on 10 July, there was discussion concerning the action of the opposition (in particular) and crossbench Members in 'blocking supply', the propriety of such action and its effect. In the days preceding this debate there had been conjecture as to the position of the Government, the defeat being seen as a rejection of the Government on a critical matter of policy, namely its budget for the forthcoming year.

11.195 Certain matters stand out. Though the appropriation bill was rejected, supply was assured. Section 7 of the Financial Management Act 1996 ensures that, subject to certain conditions, funds are available to cover this contingency. Thus, there was no immediate budgetary crisis.²²⁶

11.196 As to blocking supply, Members are not obliged to vote in favour of any question arising in the Assembly, including the critical questions on the main appropriation bill of the year. The Self-Government Act vests in the Assembly the power to make laws for the peace, order and good government of the Territory. Subsection 18(2) of the Act provides that questions shall be decided by a majority of votes of the Members present and voting, unless a special majority is required by the standing rules and orders. Section 58 of the Self-Government Act also makes it clear that public moneys may be appropriated only by legislative enactment.

221 Standing Committee on Administration and Procedure, *Review of standing orders and other orders of the Assembly*—Volume 1, Report 2, December 2007, pp 54-5.

222 MoP 2004-2008/1388-9.

223 MoP 1998-2001/934; Assembly Debates (29.6.2000) 2367-9.

224 See comments by the Minister at Assembly Debates (10.7.2000) 2372-3 and the debate following.

225 MoP 1998-2001/935-9.

226 See paragraphs 11.168 and 11.202 to 11.208.

11.197 It would be wrong to assume that there is a convention or legitimate expectation that Members will always vote in favour of appropriation bills, particularly the main appropriation bill for the year.²²⁷ To obtain the passage of its budget is a major test the executive must meet each year. To suggest that, by convention, Members must vote in favour of the budget contradicts the clear intent of the Self-Government Act. It also implies a significant and undesirable shift in the balance between the legislative and executive branches and places a huge restriction on the power of the opposition and other non-executive Members.

11.198 The executive already possesses a significant advantage through the control it exercises by way of the standing supply provision, the provisions of standing orders 200 and 201, the resolution of 23 November 1995 and standing order 201A.

11.199 It is not unusual in the Assembly for an executive to be defeated on important issues, including its legislative proposals. It would be open for a Chief Minister to treat a defeat on a key issue as one of lack of confidence and to test the support of the Assembly by submitting his or her resignation to the Speaker. However, none has chosen to do so.²²⁸ Should an executive lose the confidence of the Assembly, sections 19 and 40 of the Self-Government Act make provision for a resolution of no confidence in a Chief Minister, and these provisions have been utilised on occasion (see Chapter 6: Executive).

11.200 Though the significance of the Assembly's rejection of the appropriation bill in June 2000 should not be dismissed, supply was assured (albeit with limitations) and particular circumstances did apply. The executive was able to obtain the support of an absolute majority of Members for an early recall of the Assembly and for a legislative initiative to address a key issue which contributed to the defeat. It also gained support to rescind the earlier resolution of the Assembly and for an amended appropriation bill. Had the Assembly declined to rescind the resolution and the executive failed to gain agreement for an appropriation bill for the forthcoming year, the executive would have had to consider its position.

11.201 In the unlikely event of an impasse developing and no party in the Assembly being able to form a government and gain support for its budget, the Assembly could be seen to be incapable of effectively performing its functions. In that circumstance, the Governor-General might act on advice and dissolve the Assembly in accordance with section 16 of the Self-Government Act and a general election would ensue.

Standing supply provision

11.202 Following the defeat of the Appropriation Bill 2000-2001 in the Assembly on 30 June 2000, advice was sought concerning the provisions of section 7 of the *Financial Management Act 1996* (payments authorised on lapse of appropriation). The basis of the request was that with the exception of what were believed to be limited standing appropriations and the provisions of the Financial Management Act, the bill that had been rejected had proposed to make authorisation for the payment of all public money for the Territory for the financial year that had just commenced on 1 July 2000.

227 There has been debate in Australia as to whether a legal prohibition or an established convention limited the power of second chambers of bicameral parliaments to reject or delay supply, particularly with regard to the Australian Senate's actions in 1975. With regard to a unicameral legislature, in the absence of any clear legislative or constitutional provision, there can be no suggestion that a government must be granted supply.

228 For discussion of precedents in the House of Representatives, see *House of Representatives Practice*, First edn, pp. 417-23.

- 11.203 Section 7 of the Financial Management Act provides:
- If, before the end of a financial year, no Act other than this Act has been passed appropriating public money to meet the requirements of the next financial year, the Treasurer may pay the amounts necessary to meet those requirements subject to the following provisions:
- (a) the authority of the Treasurer under this section ceases on the commencement of the first Appropriation Act for the next financial year;
 - (b) on that commencement all payments made under this section for the next financial year are taken for all purposes to have been paid out of money appropriated by that Act;
 - (c) the payments made under this section for any purpose must not exceed, in total, $\frac{1}{2}$ of the amount appropriated by Appropriation Acts for the immediately previous financial year for that purpose.

- 11.204 The explanatory memorandum to the 1996 bill relating to this section states:
- This clause makes provision for the supply period at the beginning of a financial year. The provision obviates the necessity for the passage of a separate Supply Bill before the beginning of the financial year. Under the provision, authority to incur expenses is continued by reference to the Appropriation Act or Acts for the immediate past year.

- 11.205 The advice was sought specifically concerning the limitations section 7(c) of the Financial Management Act placed on the Treasurer's authority to pay the sums to meet the requirements for the financial year that had just commenced, with particular reference to:
- the meaning of the words 'meet[ing] the requirements of the financial year' and the restrictions this may place on new spending initiatives;
 - the extent to which section 7 restricts the Government's ability to utilise the Treasurer's Advance; and
 - the amount that would be available to the Government from the Treasurer's Advance (taking into account the total amount that had been appropriated by Appropriation Acts for the preceding financial year)²²⁹.

- 11.206 The advice received²³⁰ addressed a number of matters of definition and practices elsewhere. It concluded that the permissible payments under section 7 of the Financial Management Act were up to half the amount allocated to each department by the Appropriation Acts in 1999-2000 (the preceding year) according to the categories of output, capital injection and payments on behalf of the Territory.²³¹ The advice further stated that the amount allocated to a department could not be viewed as a global sum, section 7 of the Act requiring the expenditure to be related to the individual categories—that being the 'purpose' of the appropriation.

- 11.207 In relation to the sum available for expenditure, the advice concluded that, since section 7 referred to the amount appropriated by Appropriation Acts, it therefore seemed that

229 Appropriation Acts for the preceding financial year were *Appropriation Act 1999-2000, Appropriation (Bruce Stadium and CanDeliver Limited) Act 1999; Appropriation Act (No. 2) 1999-2000 and Appropriation Act 1999-2000 (No. 3)*. Advice was also sought on a further question as to whether there was an avenue open to the government to fund the First Home Owner Grant Scheme through the *Goods and Services Tax (Temporary Transitional Provisions) Act 2000* (when enacted).

230 *Financial Management Act 1966*, Advice to the Clerk of the Legislative Assembly for the Australian Capital Territory from Dennis Pearce, Special Counsel, Phillips Fox Lawyers, 7 July 2000.

231 It was argued that the purpose (section 7(c)) for which an amount is appropriated by an Appropriation Act must be derived from section 8 of the Financial Management Act (section 8 has since been amended) and the form of the appropriations themselves—the three categories of payment (outputs, capital injections and payments on behalf of the Territory).

the total amount appropriated for the 1999-2000 financial year for the purposes referred to in section 8 was available.²³²

11.208 Due to the difficult language of [then] section 18 of the Financial Management Act and the relationship between that section and section 7, the advice found it more difficult to provide a definitive answer to the question of the use that could be made of the Treasurer's Advance, considering that the better (and safer) view was that section 7 could not provide for an advance to the Treasurer because of the limits imposed on that appropriation by then section 18.

EXPENDITURE OF PUBLIC MONEY WITHOUT AUTHORISATION BY ENACTMENT — BRUCE STADIUM REDEVELOPMENT

11.209 There has been one case in the history of the Assembly where public moneys were paid without proper legislative authorisation. It is worth considering that case in some detail as a reminder of the vital importance of having an independent Auditor-General reporting directly to the Assembly and of proper scrutiny by the legislature of expenditure by the executive.

11.210 In 1999 and 2000 the question of the legality of payments made by the executive towards the redevelopment of a major sporting arena in the Territory, Bruce Stadium, occupied much of the attention of the Assembly. The issue resulted in the resignation of the Chief Minister, thus pre-empting the Assembly's consideration of a motion of no confidence.

11.211 The payments at issue totalled some \$24 million, \$9.7 million having been paid in financial year 1997-98 and \$14.3 million in financial year 1998-99. The following provides a brief summary of what occurred.²³³

- The executive had originally committed \$12.3 million towards the redevelopment of the stadium, the total cost of the redevelopment being expected to be \$27.3 million. The difference of \$15 million was to be provided from other sources, mainly commercial users of the facility. The *Appropriation Act 1997-1998* had provided \$5.6 million as a capital injection for the project and *Appropriation Act 1998-1999* provided \$6.7 million.
- By early December 1997, the \$5.6 million appropriated for that year being committed and the other funding not having eventuated, the executive agreed that funds from the government's Central Financing Unit be used to enable the continuation of the redevelopment and that a commercial vehicle for the redevelopment be established by the government. These new financing arrangements were to be in place, including private sector financing arrangements, by 30 June 1998.
- By the end of the 1997-98 financial year, \$9.714 million had been drawn from the Central Financing Unit and paid into a Bruce Stadium redevelopment bank account. The moneys had been used to pay contractors engaged on the redevelopment. No external financing of the project was in place.

232 That meant that the appropriations provided for in the *Appropriation (Bruce Stadium and CanDeliver Limited) Act 1999* were not relevant as they related to previous financial years.

233 This summary is a condensation of that provided by the Auditor-General at pages 1 and 2 of Report 11 (Lawfulness of Expenditure) of *Auditor-General's Reports Nos 1 to 12 of 2000—Reports of the Performance Audit of the Redevelopment of Bruce Stadium*, September 2000.

- On 26 June 1998 the Under Treasurer sought a loan from the Commonwealth Bank of Australia for \$9.714 million,²³⁴ the bank agreed to the loan on 30 June 1998, and the money was paid into the same Central Financing Unit bank account from which the \$9.714 million had been drawn.
- On 1 July 1998—in the new financial year—the Central Financing Unit repaid the \$9.714 million loan to the Commonwealth Bank.
- With construction continuing throughout 1998-99, a further \$21 million was expended on the redevelopment—\$6.7 million being provided from funds appropriated in *Appropriation Act 1998-1999* and a further \$14.3 million being drawn from the Central Financing Unit.
- On 19 May 1999 the Chief Minister issued financial management guidelines with intended retrospective effect—the intended effect being that payments made from the Central Financing Unit would be retrospectively authorised as a ‘prescribed’ investment under section 38(1)(e) of the *Financial Management Act 1996*. Under section 38(2) of the Act, prescribed investments could be made without appropriation. Thus, the retrospective effect of the guidelines would have made the expenditure lawful.²³⁵

11.212 As outlined in paragraph 11.148, sections 57 and 58 of the Self-Government Act make specific provisions relating to the control of the public money of the Territory (the revenues, loans and other money received by the Territory). The sections stipulate that the receipt, spending and control of the public money of the Territory shall be regulated as set down by enactment, that no public money shall be issued or spent except as authorised by enactment and that the public money may be invested as provided by enactment. Also of direct relevance were section 6 of the Financial Management Act (no payment of public money shall be made otherwise than in accordance with appropriation) and section 38 (making provision for the investment of public money).

11.213 The Auditor-General’s report on the financial audits for the year ending 30 June 1998, which was tabled on 10 December 1998, alerted the Assembly to the Auditor’s serious concern about the matter. The report included this significant finding:

This year \$14.7m was spent in cash on the Bruce Stadium redevelopment; this exceeded the \$5.6m received as a capital injection for the project; the shortfall was met by borrowing \$9.7m from the Commonwealth Bank; \$17.4m has been expended on the redevelopment to year end with a further \$10m committed at balance date.²³⁶

11.214 On 18 June 1999 the Auditor-General wrote to all Members advising that the Audit Office would be conducting a performance audit of the redevelopment of Bruce Stadium and outlining tentative objectives of the audit.²³⁷

11.215 The Leader of the Opposition gave notice in the Assembly of a motion of no confidence in the Chief Minister on 22 June 1999. The motion was extensively debated later that month. The Leader of the Opposition focused on the legality of the actions of the executive in spending public money without the authorisation of an enactment.²³⁸ The motion of want of

²³⁴ The Under Treasurer had sought the approval of the Treasurer to the borrowing on 28 June and the Treasurer had initialled the request.

²³⁵ The guidelines were repealed by further guidelines issued on 3 June 1999.

²³⁶ *Financial audits with years ending to 30 June 1998*, Report No. 9 1988, p. 51; see also MoP 1998-2001/288.

²³⁷ Report 1 (Summary Report) of *Auditor-General’s Reports Nos 1 to 12 of 2000—Reports of the Performance Audit of the Redevelopment of Bruce Stadium*, September 2000, p. 1.

²³⁸ MoP 1998-2001/427, 433-5; *Assembly Debates* (30.6.1999) 1769-883. This was not the only occasion the Assembly considered the issue. See, for example, the order of the Assembly for the production of documents of 5 May 1999 (MoP 1998-2001/403-5, 406-8, 438-48, 468-73 (presentation of documents)).

confidence was amended to one of censure of the Chief Minister for her failure to ensure that the requirements of the *Financial Management Act 1996* were met in relation to the funding of the redevelopment of Bruce Stadium. The motion, as amended, was agreed to.

11.216 Efforts to obtain private sector finance were abandoned in June 1999 and the \$24.014 million was retrospectively appropriated by the *Appropriation (Bruce Stadium and CanDeliver Limited) Act 1999*.²³⁹

11.217 The Auditor-General's reports on the redevelopment of Bruce Stadium (there were 12 volumes) were presented to the Assembly on 25 September 2000.²⁴⁰ In volume 11, addressing the lawfulness of the expenditures, the audit concluded that:²⁴¹

The payments made for the redevelopment in excess of the amounts appropriated were not lawful at the time they were made.

This opinion is based on:

1. *Section 6* of the *Financial Management Act 1996* was not complied with in that expenditure on the redevelopment was made without being appropriated by the Legislative Assembly;
2. Expenditure on the redevelopment was not of a nature which constituted an investment in accordance with *Section 38(1)* of the Act;
3. Guidelines issued under *Section 67(2)* of the Act cannot be given retrospective effect to make lawful the unappropriated expenditure on the redevelopment;
4. *Section 37(1)* of the Act was not complied with in that money for the redevelopment was withdrawn from the Territory bank account without being authorised by a warrant signed by the Treasurer in accordance with an appropriation;
5. *Section 58* of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) was not complied with in that public money of the Territory was spent on the redevelopment without authorisation by enactment; and
6. *Section 31* of the *Financial Management Act* was not complied with in that the responsible Chief Executives did not ensure that moneys spent by their departments were within the appropriations made for their departments; nor did they ensure their department's officials complied with the Act.

The overnight borrowing was not lawful.

This opinion is based on:

7. *Section 40* of the Act was not complied with in that the \$9.714m overnight borrowing on 30 June 1998 was not reasonably characterisable as being in the interests of, or for the benefit of, the Territory.²⁴²

²³⁹ An Act to retrospectively appropriate money for the purposes of the redevelopment of the Bruce Stadium and for the purposes of CanDeliver Limited was presented on 1 July 1999 and debated and agreed to on 2 July 1999. See MoP 1998-2001/453, 485-6. A motion proposing to refer the bill and other related expenditure proposals to a Select Committee on Appropriations on 1 July 1999 was negatived; see MoP 1998-2001/473-4.

²⁴⁰ MoP 1998-2001/1011.

²⁴¹ Paragraph 17(3)(b) of the Auditor-General Act 1996 makes provision for audit opinions in a report of a special financial audit or a performance audit providing that the Auditor-General 'is to set out the reasons for opinions expressed in the report'.

²⁴² Report 11 (Lawfulness of Expenditure) of *Auditor-General's Reports Nos 1 to 12 of 2000—Reports of the Performance Audit of the Redevelopment of Bruce Stadium*, September 2000, p. 5.

11.218 On 10 October 2000, the sitting day following the presentation of the major report of the Auditor General on the matter,²⁴³ a further notice of a motion of no confidence in the Chief Minister was lodged by the Leader of the Opposition.²⁴⁴

11.219 At the next meeting of the Assembly on 18 October 2000, the Speaker announced that he had received a letter from the Chief Minister tendering her resignation as Chief Minister. The Assembly then proceeded to elect a Chief Minister, following which the Speaker advised that the notice of the motion of no confidence would be withdrawn from the *Notice Paper*, it having been called upon and the Member who gave notice of it having failed to move the motion.²⁴⁵

11.220 In August 2001 the Standing Committee on Finance and Public Administration (incorporating the Public Accounts Committee) presented its report on the *Review of the Auditor-General's Reports of the Performance Audit of the Redevelopment of Bruce Stadium*. The committee's report made 13 recommendations which were aimed at fostering in the government a strengthening of the internal controls in those areas where the Auditor-General had discovered breaches of the Financial Management Act.²⁴⁶

SUBORDINATE LEGISLATION

INTRODUCTION

11.221 The power to make the laws for the peace, order and good government of the Territory rests with the Assembly.²⁴⁷ However, the Assembly, by enactments, has also delegated its power to make laws to the executive and others.²⁴⁸ This form of law is generally known as subordinate law or delegated legislation. The term 'delegated legislation' has been defined thus:

Delegated legislation is a convenient general description for a legislative instrument made by a body to which (or a person to whom) the power to legislate has been delegated.²⁴⁹

11.222 The Self-Government Act defines 'subordinate law' as meaning 'an instrument of a legislative nature (including a regulation, rule or by-law) made under an enactment'.²⁵⁰

11.223 Delegated legislation is used to enable a person, usually a Minister, to make decisions having legal authority which vary or fill in the detail of a law made by the Assembly. This avoids the necessity of relatively minor matters of an administrative character being the subject of primary legislation. However, to maintain scrutiny by the legislature and to ensure that Ministers (and others) do not exceed their power to make delegated legislation, these

243 See MoP 1998-2001/1010. *Auditor-General Act—Auditor-General's Reports Nos 1 to 12 of 2000—Reports of the Performance Audit of the Redevelopment of Bruce Stadium*, September 2000.

244 MoP 1998-2001/1011.

245 MoP 1998-2001/1013-4.

246 Standing Committee on Finance and Public Administration (incorporating the Public Accounts Committee), *Review of the Auditor-General's Reports of the Performance Audit of the Redevelopment of Bruce Stadium*, Report No. 26, August 2001.

247 Self-Government Act, section 22.

248 Part 6.4 of the Legislation Act, for instance, envisages legislative instruments being made by the executive, Ministers, rule making committees established under the *Court Procedures Act 2004*, and courts or tribunals or members of courts or tribunals.

249 Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia*, 3rd edn, Butterworths, p. 1. This work (at page 4) discusses the use of the terms 'delegated legislation' and 'subordinate legislation', preferring the former term 'since it encapsulates the essential notion that the legislation is prepared and promulgated by a delegate of the parliament'.

250 But see paragraph 11.229 for the definition contained in the *Legislation Act 2001* section 8.

instruments must be tabled in the Assembly and may be disallowed by the Assembly (see paragraphs 11.241 and 11.242).

11.224 For example, the *Annual Reports (Government Agencies) Act 2004* requires all government agencies to prepare an annual report of their operations. The Act states that certain matters must be included in annual reports. Section 8 of the Act also enables the responsible Minister to issue directions about the form and content of an annual report. Thus, a Minister may add to the statutory reporting requirements but cannot remove requirements contained in the Act. Ministerial directions are notifiable instruments; they must be tabled in the Assembly and they may be disallowed. A Minister may also declare that a particular public agency is a public authority within the meaning of the Act and is therefore subject to the annual reporting requirements.

11.225 Whilst not explicitly vesting the Assembly with the power to delegate its law making power (with the possible exception of giving the executive responsibility for governing the Territory with respect to 'making instruments under enactments or subordinate laws' in schedule 4 of the Self-Government Act), the Act does recognise subordinate laws and there is an assumption that the Assembly will delegate some of its law making power.²⁵¹

11.226 The question of the right of legislative bodies in the Australian states and self-governing territories to delegate their legislative function is addressed in *Delegated Legislation in Australia*. Citing a number of cases from the latter part of the 19th century to recent times, the authors state that the courts have taken a generous view of the rights of legislative bodies to delegate their legislative function. In particular, where a legislature has been given power to legislate 'for peace, order and good government', the widest discretion of enactment has been held to follow.²⁵²

SUBORDINATE LAWS ACT

11.227 Prior to the first meeting of the Assembly in May 1989, the Governor-General, acting on the advice of the Federal Executive Council, made the *Subordinate Laws Ordinance 1989*—an ordinance relating to subordinate laws consequential upon the establishment of the Territory as a body politic under the Crown.²⁵³ The Ordinance, which became an Act on 11 May 1989,²⁵⁴ contained a range of provisions, including those relating to the regulation-making powers of the executive. It also contained provision for the numbering and citation of subordinate laws and disallowable instruments and their notification.²⁵⁵ Of particular importance from the Assembly's perspective, the Ordinance required subordinate laws and disallowable instruments to be laid before the Assembly within 15 sitting days of their notification. If this were not done, they were taken to be void and of no effect and the Assembly could disallow the law or instrument or a provision of the law or instrument.

251 For instance, the Act requires the courts, etc, to take judicial notice of enactments and subordinate laws (section 30), gives the executive the responsibility for executing and maintaining enactments and subordinate laws (paragraph 37(a)) and, again, in schedule 4 it also gives the executive responsibility for 'Matters arising under instruments made under enactments or subordinate laws'.

252 A qualification to the general power to delegate is that it does not allow a parliament to create a new legislature which can function independently of the parliament establishing it and without being answerable to that parliament. See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia*, 3rd Edn, Butterworths, pp. 284-5. Pearce and Argument also discuss the position with regard to the power of the Commonwealth Parliament to delegate its legislative power. See also the early part of Chapter 15 of Odgers' which discusses the power of the Commonwealth Parliament to delegate the power to make laws.

253 *Subordinate Laws Ordinance 1989*, No. 24 of 1989. The ordinance was made under the *Seat of Government (Administration) Act 1910*. The Act, as amended, was repealed by the *Legislation (Consequential Provisions) Act 2001*.

254 Pursuant to the provisions of subsection 34(4) of the Self-Government Act.

255 On 27 June 1989 the first subordinate law was presented in the Assembly and in that year 20 subordinate laws and 70 disallowable instruments were gazetted. Between 1989 and 2006, an average of 44 subordinate laws and 242 disallowable instruments have been gazetted or notified on the Legislation Register each year.

11.228 Until the enactment of the Legislation Act²⁵⁶ and the repeal of the Subordinate Laws Act, the provisions of the Subordinate Laws Act primarily governed the exercise of the regulation-making power and the Assembly's supervision of the exercise of that power. The Assembly has enhanced its powers and role in the following areas:

- In 1991 provision was made for the automatic disallowance of a subordinate instrument not considered and negated within 15 sitting days of its presentation in the Assembly.²⁵⁷
- In April 1994 the Subordinate Laws (Amendment) Bill 1993 was passed, enabling the Assembly, within certain constraints, to amend a subordinate law that had been laid before it.
- In June 1994 an amendment added the requirement for compulsory consultation on certain statutory appointments between the appointing Minister and a nominated standing committee of the Assembly. It also made provision for the instruments making statutory appointments to be disallowable instruments.
- In December 2000 an amendment added a requirement that regulatory impact statements accompany subordinate legislation in circumstances where there may be increasing costs placed on the community.

LEGISLATION ACT

11.229 The *Legislation Act 2001*, which came into operation on 12 September 2001, sought, in part, to arrange the various kinds of statutory instruments into logical groups, the view being that the then structure of the law governing subordinate laws did not make them easy to use and that provisions overlapped.²⁵⁸ It also introduced the new concepts of 'notifiable instrument' and 'registrable instrument'.

11.230 A key definition for the purposes of the Act is that of 'statutory instrument', which the Act defines broadly as an instrument²⁵⁹ (whether or not legislative in nature) made under an Act or another statutory instrument or power given by an Act or statutory instrument and also power given otherwise by law. Statutory instruments include (but are not limited to) subordinate laws, disallowable instruments, notifiable instruments and commencement notices.²⁶⁰

11.231 The Act defines 'subordinate law' as a regulation, rule or by-law (whether or not legislative in nature)²⁶¹ made under:

- (a) an Act; or
- (b) another subordinate law; or
- (c) power given by an Act or subordinate law and also power given otherwise by law.²⁶²

256 Act No. 14 of 2001. Presented in the Assembly as the Legislation (Access and Operation) Bill 2000.

257 Prior to the insertion of this provision, subordinate legislation automatically came into effect if motions of disallowance were not dealt with by the Assembly.

258 Legislation (Access and Operation) Bill 2000 and Legislation (Access and Operation) (Consequential Provisions) Bill 2000, explanatory memorandum, pp. 6 and 7.

259 An 'instrument' is any writing or other document; see Legislation Act, section 14.

260 Legislation Act, section 13.

261 Thus making it broader than the definition in the Self-Government Act.

262 Legislation Act, section 8. The explanatory memorandum notes that a subordinate law will usually be made under the power specifically given by an Act for the purpose, but the clause allows for the possibility that, in making the subordinate law, the Act may also draw upon another source of power such as a rule of common law or a prerogative. See Legislation (Access and Operation) Bill 2000 and Legislation (Access and Operation) (Consequential Provisions) Bill 2000, explanatory memorandum, p. 8.

11.232 A 'disallowable instrument' is defined by the Legislation Act as:

- (a) a statutory instrument (whether or not legislative in nature) that is declared to be a disallowable instrument by an Act, subordinate law or another disallowable instrument; or
- (b) a determination of fees or charges by a Minister under an Act or subordinate law.

11.233 Part 1.2 of the Act also makes provision for notifiable instruments, commencement notices and legislative instruments (a subordinate law, a disallowable instrument, a notifiable instrument or a commencement notice).

11.234 Parliamentary counsel is obliged to establish and maintain an electronic register of Acts and statutory instruments—the ACT Legislation Register.²⁶³ The Legislation Register is an authorised electronic statute book that provides the community with free and quick access to all ACT legislation and related information.²⁶⁴ In addition to primary laws and bills (and explanatory statements for bills and amendments to bills), the Legislation Act provides that the Legislation Register must contain:

- subordinate laws as made;
- disallowable instruments as made;
- notifiable instruments as made;
- commencement notices as made;
- resolutions passed, or taken to have been passed, by the Legislative Assembly to disallow a subordinate law or disallowable instrument; and
- explanatory statements, and regulatory impact statements under chapter 5, for subordinate laws and disallowable instruments.

MAKING OF SUBORDINATE LAWS AND DISALLOWABLE INSTRUMENTS

11.235 Should an Act authorise or require the executive to make a subordinate law or a disallowable instrument, the subordinate law or disallowable instrument is made by the executive when it is signed by two or more Ministers who are members of the executive and one of the Ministers is the responsible Minister. In addition, it is taken to be made when it is signed by the second Minister signing.²⁶⁵

11.236 The provision that the responsible Minister sign the law or instrument was inserted after some controversy in the Assembly (see paragraphs 6.17 to 6.23). The Act defines 'responsible Minister'²⁶⁶ and the provision does not apply if the responsible Minister cannot sign due to his or her absence from the Territory, illness or being on leave.

Regulatory impact statements

11.237 Where a proposed subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or a part of the community, the Minister administering the authorising law must arrange for the preparation of a regulatory impact statement for the proposed law and the statement must be presented to the Assembly with the subordinate law or disallowable instrument.²⁶⁷ Part 5.2 of the Legislation Act sets out the requirements for a regulatory impact statement.

²⁶³ Legislation Act, section 18.

²⁶⁴ See <<http://www.legislation.act.gov.au/about/default.asp>>.

²⁶⁵ Legislation Act, section 41.

²⁶⁶ Legislation Act, subsection 41(5).

²⁶⁷ Legislation Act, subsection 34(1) and section 37.

11.238 A Minister may exempt a piece of subordinate law from the requirement to provide an impact statement. However, that exemption must be presented to the Assembly with the subordinate law and the exemption itself is disallowable. If the exemption is disallowed, the Minister must then provide an impact statement.²⁶⁸

Notification and numbering

11.239 Part 6.4 of the Legislation Act establishes arrangements for the numbering and notification of registrable instruments (subordinate laws, disallowable instruments, notifiable instruments and commencement notices) that are similar to those for the notification of primary legislation. Authorised persons²⁶⁹ arrange for notification by parliamentary counsel. The Act also makes provision for regulations to prescribe the requirements that must be met for registration.²⁷⁰ As for primary legislation, the Act requires parliamentary counsel to notify the making of an instrument on the Legislation Register (or the *Territory Gazette*) and provides that a legislative instrument is not enforceable by or against the Territory or anyone unless it is notified.

11.240 Legislative instruments commence on the day after the day on which they are notified, though there is provision for later and earlier commencement.²⁷¹

Assembly consideration

Presentation

11.241 Subsection 64(1) of the Legislation Act requires that each subordinate law and disallowable instrument must be presented to the Assembly not later than six sitting days after its notification day. A sitting day of the Assembly is defined by the Act as 'a day when the Assembly meets'. Should a subordinate law or disallowable instrument not be presented in accordance with the subsection, it is taken to be repealed.²⁷²

11.242 Section 65 of the Act gives the Legislative Assembly the power to disallow any subordinate law or disallowable instrument that is presented to it. Disallowance under the provisions of that section 'has effect for all purposes as if it were a repeal made by an Act'.²⁷³

Consideration by scrutiny committee

11.243 The Assembly has, since its establishment, been aware of the importance of the scrutiny of subordinate legislation and has given the function to an Assembly committee since 1989.²⁷⁴ The scrutiny function for both bills and subordinate legislation was initially undertaken by a discrete Standing Committee for the Scrutiny of Bills and Subordinate Legislation but since the commencement of the Fourth Assembly (1998) the duties have been allocated to an existing standing committee, currently the Standing Committee on Justice and Community Safety.

268 Legislation Act, subsections 34(4) and (5). The statement must be presented to the Assembly not later than five days after the regulatory impact statement exemption is disallowed.

269 Subsection 61(12) of the Act defines an 'authorised person' for making a notification request for a legislative instrument.

270 The Legislation Regulations 2003 prescribe the requirements about the form of registrable instruments (including approved forms) and other requirements that must be complied with for the notification of subordinate laws and disallowable instruments.

271 Legislation Act, section 73. Chapter 8 of the Act deals with commencement and the exercise of powers before commencement and see also Legislation Act dictionary.

272 Legislation Act, subsection 64(2). The dictionary to the Legislation Act defines a sitting day as meaning a day when the Assembly meets. This is inconsistent with the practice of the Assembly and other Australian parliaments. A sitting day is a day on which the Assembly commences a sitting and the 'day' continues until the adjournment. Thus, a 'sitting day' may include more than one calendar day. (See Chapter 7: Sittings and adjournment of the Assembly, paragraphs 7.30 to 7.34).

273 Legislation Act, subsection 65(5).

274 MoP 1989-91/101; Assembly Debates (19.10.1989) 1862-7.

11.244 Although there is no formal reference of subordinate legislation (or bills) to the committee, the committee has clearly been directed by the Assembly through its resolution of appointment to examine all proposed laws (within specific, but important, parameters) and report to the Assembly on a regular basis. When considering subordinate legislation, the committee:

- (a) consider[s] whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - (i) is in accord with the general objects of the Act under which it is made;
 - (ii) unduly trespasses on rights previously established by law;
 - (iii) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
 - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (b) consider[s] whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meet the technical or stylistic standards expected by the Committee; ...
- (e) report[s] to the Assembly on these or any related matter ...

11.245 The committee does not make any comments on the policy aspects of legislation. Its terms of reference require it to consider whether an item of delegated legislation accords with the power delegated by the principal Act; determine that it is not offensive to established legal principles; and ensure that it does not deal with a matter which should, more appropriately, be dealt with by the Assembly in substantive legislation.²⁷⁵

11.246 The committee, when considering bills and subordinate legislation, avoids taking partisan positions. Thus, its relationship with the executive is generally cooperative. Much of its comment relates to technical drafting matters, compliance with process or the quality of supporting information provided. As its reports show, the committee has been successful in negotiating with the executive to improve the quality of explanatory and regulatory impact statements and rectifying errors in drafting.²⁷⁶

11.247 When the committee notes a significant problem, it will advise the Assembly through its report. It is not the practice of the committee to recommend disallowance. In practice, disallowance is a rare occurrence; where the committee brings a significant problem to light, the executive will generally rectify the matter by revoking the offending instrument and issuing a revised version.

Disallowance or amendment

11.248 The Assembly may disallow or, within certain limitations, amend a subordinate law. The Legislation Act provides that if a notice of motion to disallow a subordinate law or a disallowable instrument is given in the Assembly not later than six sitting days after the day it is presented to the Assembly and the Assembly resolves to disallow the subordinate law or disallowable instrument, it is taken to be repealed:

- on the day after the day the disallowance is notified; or
- if the resolution provides that it takes effect on the day the resolution is passed, that day.²⁷⁷

²⁷⁵ Derived from 'Role of the Committee' as printed in the frontispiece of the committee's scrutiny reports.

²⁷⁶ Subordinate legislation may be drafted by parliamentary counsel or by departmental officials, depending on the type of instrument. Thus, there can be considerable variation in the quality of drafting and the compliance with procedural requirements.

²⁷⁷ Legislation Act, subsections 65(1) and (2).

11.249 Also, and of particular importance, the Assembly is taken to have resolved to disallow the subordinate law or disallowable instrument if, at the end of six sitting days after the day the notice is given:

- the notice has not been withdrawn and the motion has not been called on; or
- the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

11.250 Notices of motions of disallowance are placed on the *Notice Paper* under Assembly business;²⁷⁸ in relation to each notice and order of the day, the number of sitting days to resolution is indicated on the *Notice Paper*.²⁷⁹

11.251 The Assembly has:

- seen fit to take steps to ensure that notices of motions or orders of the day for the consideration of such notices are considered prior to the expiration of the designated number of sitting days;²⁸⁰ and
- discharged orders of the day for the consideration of motions of disallowance before the expiration of the requisite number of sitting days.²⁸¹

11.252 Though standing order 112 provides that a notice of motion becomes effective only when it appears on the *Notice Paper*, the Assembly has on occasion suspended standing and temporary orders to permit a Member to move a motion to disallow a variation to the Territory Plan on the same day that the Member gave notice to the Clerk.²⁸² Near the expiration of the Third Assembly, similar action was taken in relation to subordinate laws.²⁸³ The procedure must be regarded as highly questionable unless extraordinary circumstances prevail. The giving of notice is generally required for substantive motions. It allows time for full consideration by Members. Publication on the *Notice Paper* also allows for consideration and comment by the community and it reduces the chances of poor decisions being made.

11.253 The soundness of providing notice is borne out by what occurred in relation to one of these precedents.²⁸⁴ Having obtained advice from the Government Solicitor that a resolution of the Assembly purporting to amend an instrument 'pursuant to the [then operative] *Subordinate Laws Act 1989*' was of no effect, the Speaker was obliged to write to the responsible Minister and inform him of this fact.

11.254 A motion to disallow an instrument made under the *Legislative Assembly (Members' Staff) Act 1989* called upon the Chief Minister to make a new determination to be effective from that day.²⁸⁵ Pursuant to provisions that now no longer apply, the Assembly has also considered a motion to disapprove of three determinations made pursuant to the *Remuneration Tribunal Act 1973* of the Commonwealth.²⁸⁶

278 Standing order 77(j). The standing order provides that 'Assembly business' include any notice of motion to amend, disallow, disapprove or declare void and of no effect any instrument made under any Act of the Assembly which provides for the instrument to be subject to amendment, disallowance or disapproval of the Assembly or subject to a resolution of the Assembly declaring the instrument to be amended or void and of no effect or any other order of the day to consider such a motion.

279 NP (16.11.2005) 667.

280 MoP 1989-91/548 and NP (17.10.91) 2087 (there were 14 sitting days remaining). And see MoP 1989-91/621 and NP 138 (3.12.1991) 2226-7 where the Assembly ordered that notices relating to two motions of disallowance be called on together and one question put on both motions.

281 MoP 1989-91/477; MoP 1995-97/634.

282 See MoP 1992-94/545-6. There was a notice of motion in identical terms on the *Notice Paper* with five sitting days remaining for resolution, NP 96 (3.3.1994) 1517.

283 See MoP 1995-97/967, 968-9.

284 Cited at footnote 39.

285 MoP 1998-2001/229. The motion was later withdrawn.

286 MoP 1995-97/124. 'Disapprove' is the term used in the Remuneration Tribunal Act, having the same effect as disallowance.

11.255 The Assembly has considered motions to disallow provisions of instruments.²⁸⁷

11.256 Where a subordinate law is disallowed or a disallowable instrument, not having been called on or disposed of and thus is taken to be disallowed, the Speaker is required to request parliamentary counsel to notify the disallowance. Upon being so requested, parliamentary counsel must notify the disallowance in the Legislation Register (or, if not practicable, in the Gazette).²⁸⁸ A disallowance under the provisions of the particular sections of the Act (section 65) has effect for all purposes as if it were a repeal made by an Act.²⁸⁹

11.257 Where a subordinate law or disallowable instrument that had amended or repealed an Act or statutory instrument²⁹⁰ has been taken to be repealed (due to it not having been presented to the Assembly within six sitting days of its notification or having been disallowed by the Assembly), section 66 of the Legislation Act makes provision for the revival of a law that had been affected (from the date of the effective repeal) as if the disallowed law had never been made.

11.258 In addition, should the Assembly resolve to disallow a subordinate law or statutory instrument, the Legislation Act prohibits the making of a subordinate law or disallowable instrument the same in substance within six months of the date of disallowance unless the Assembly were to rescind the resolution of disallowance or, by resolution, approve the making of a subordinate law or disallowable instrument in the same terms (or same in substance) as the original.²⁹¹

11.259 Prior to the commencement of the Legislation Act, the *Subordinate Laws Act 1989* made provision for the disallowance by the Assembly of a subordinate law (or disallowable instrument) or 'a provision of that law'. The reference to the disallowance provision of a subordinate law was omitted from the new procedures that came into effect in September 2001.²⁹² The omission is one of significance. A Member's ability to target a discrete portion of a subordinate law in a motion of disallowance was lost. This arose from the Assembly's inability to amend subordinate laws where the amendment would have the effect of waiving or changing any fee, charge, penalty or other amount payable to the Territory, and the exclusion of determinations of fees or charges set by a Minister (see paragraph 11.151).²⁹³

11.260 The provisions set out in section 68 of the Legislation Act are similar to those in place for the disallowance of a subordinate law, namely:

- notice of a motion to amend the subordinate law or disallowable instrument must be given in the Legislative Assembly not later than six sitting days after the day it is presented to the Assembly;
- should the Legislative Assembly pass a resolution to amend the subordinate law or disallowable instrument, it is amended accordingly:
 - on the day after the day the amendment is notified; or
 - if the resolution provides that it takes effect on the day the resolution is passed, that day;

287 MoP 1998-2001/812. MoP 1998-2001/1203-5—the motion was to disallow six provisions of an instrument but was amended to make it one of amendment to the instrument. The motion, as amended, was agreed to. MoP 1998-2000/849-50 (motion agreed to). MoP 1998-2001/732 (motion agreed to). MoP 1998-2001/1336 (motion, as amended, agreed to)

288 Legislation Act, section 65A. The section also provides for the Speaker to determine that notification be made on a particular day and sets out the details required of the registration.

289 Legislation Act, section 65.

290 And the repeal or amendment had commenced.

291 Legislation Act, section 67.

292 Though, at p. 21, the explanatory memorandum to the Legislation (Access and Operations) Bill 2000 stated that the new provision 'would restate' the relevant subsection of the *Subordinate Laws Act 1989*.

293 Legislation Act, subsection 68(1).

- the Assembly is taken to have passed a resolution to amend the subordinate law or disallowable instrument if, at the end of six sitting days after the day the notice is given:
 - the notice has not been withdrawn and the motion has not been called on; or
 - the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

In the latter circumstances, the resolution that takes effect is that set out in the original motion. An amendment so made has effect for all intents and purposes as if it had been made by an Act.²⁹⁴

11.261 The Assembly has considered motions to amend subordinate laws.²⁹⁵ On one occasion, a motion to disallow six provisions of an instrument was altered to an amendment.²⁹⁶

11.262 The Speaker is required to request parliamentary counsel to notify amendments to subordinate legislation (and may determine the day of notification). Parliamentary counsel must notify the disallowance or amendment in the Legislation Register (or, if not practicable, in the *Territory Gazette*).²⁹⁷

11.263 In addition, the 'six months' rule also applies to subordinate laws and disallowable instruments that have been amended. No subordinate law or disallowable instrument the same in substance as the amended law may be made within six months from the day the amendment was made, unless the Assembly rescinds the resolution that made the amendment or, by resolution, approves the making of a subordinate law or disallowable instrument in the same terms (or the same in substance) as the original.²⁹⁸

11.264 The question arises about what happens should the Assembly's term end²⁹⁹ or the Assembly is dissolved by the Governor-General³⁰⁰ within six sitting days after a notice of motion to disallow or amend a subordinate law or disallowable instrument is given in the Assembly, and at the time of the dissolution or expiration:

- the notice has not been withdrawn and the motion has not been called on; or
- the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

In both cases, the subordinate law or disallowable instrument is taken to have been presented to the Legislative Assembly on the first sitting day of the Assembly after the next general election of Members of the Assembly.³⁰¹

294 And the provisions of section 83 of the Act (Consequences of amendment of statutory instrument by Act) apply.

295 MoP 1998-2001/594, 595 (there were a number of amendments); MoP 1998-2001/805 (the motion was amended and, as amended, was agreed to).

296 MoP 1998-2001/1203-5. The motion, as amended, was agreed to.

297 Legislation Act, section 69. The section sets out details of the notification. On 11 December 1997 the Assembly agreed to a motion, as amended, providing that an instrument made pursuant to the *Independent Pricing and Regulatory Commission Act 1997* be amended by omitting a nominated requirement in relation to the conduct of an investigation by the Independent Pricing and Regulatory Commission to determine ACTEW Corporation's charges specified under subsection 16(1) of the Act. The motion had sought to amend the relevant terms of reference pursuant to (the then operative provision of) the *Subordinate Laws Act 1989*. The Speaker later sought legal advice as to whether the amendment was caught by subsection 6(18) of the [then] *Subordinate Laws Act* (which provided that an amendment to a subordinate law other than a regulation, rule or by-law made or deemed to have been made under section 6 of the Act, was of no effect.) Advice having been received from the Government Solicitor that the resolution of the Assembly was of no effect, the Speaker wrote to the responsible Minister and informed him that no further action (requiring the relevant Minister to have such amendments notified in the Gazette (under the then provisions)) was dictated by the *Subordinate Laws Act*. (Letter from the Speaker to the Minister for Urban Services, 31 December 1997—*Re: Terms of reference under sections 15 and 16 of the Independent Pricing and Regulatory Commission Act 1997, Sections 6(17), 6(18), 6(19), 10—“Regulation Rule or By-Law”—“Subordinate Law”*, Advice of the Government Solicitor to the Acting Clerk, 23 December 1997).

298 Legislation Act, section 70.

299 See Chapter 7, *Sittings and adjournment of the Assembly*.

300 Pursuant to section 16 of the *Self-Government Act*.

301 Legislation Act, section 71.

Variations to the Territory Plan

11.265 In addition to the requirements that the responsible Minister may refer any draft variation to the Territory Plan to the appropriate standing committee of the Assembly (and consider any recommendations made by the committee), the *Planning and Development Act 2007* stipulates that plan variations (and associated documentation) must be presented to the Assembly within five sitting days after the day of its approval. The Assembly may, on motion of which notice has been given, by resolution, within five sitting days, reject the variation or any provision of it.³⁰²

11.266 A motion in these terms has been agreed to.³⁰³ The Assembly has also divided the question when considering a motion to reject a proposed variation³⁰⁴ and, on the Assembly negating a motion to reject a proposed variation, the Speaker has directed that a notice of motion on the same matter be removed from the *Notice Paper*.³⁰⁵

11.267 An amendment has been moved to a motion moved pursuant to notice to disallow a proposed variation. The amendment proposed to add words which would restrict the ambit of the disallowance. Both the amendment and the motion were negated.³⁰⁶

Appointments to statutory positions

11.268 Where a Minister has the power under an Act to appoint a person to a statutory position, the Minister must consult with:

- a standing committee of the Assembly nominated by the Speaker for the purpose; or
- should there be no nomination in force, the Assembly committee responsible for the scrutiny of public accounts.³⁰⁷

The instrument making or announcing the appointment is a disallowable instrument.³⁰⁸

11.269 A statutory position is defined by the Legislation Act for the purpose of this provision as 'a position (including as a member of a Territory authority) established under an Act'. There are exclusions, however. The provision does not apply to the appointment of:

- a public servant to a statutory position (whether or not the Act under which the appointment is made requires that the appointee be a public servant); or
- a person to act in a statutory position for not longer than six months, unless the appointment is of the person to act in the position for a second or subsequent consecutive period; or
- a person to a statutory position if the only function of the position is to advise the Minister.³⁰⁹

302 *Planning and Development Act 2007*, section 79. The Act also makes provision for the plan variation (or provision specified in the motion) to be taken to have been rejected should the notice not have been called on, or been called on and moved but not withdrawn or otherwise disposed of.

303 MoP 1998-2001/572.

304 MoP 1989-91/665.

305 MoP 1989-91/665-6; NP 142 (11.12.1991) 2280.

306 MoP 1989-91/573, 576.

307 Legislation Act, sections 226 to 229.

308 Legislation Act, section 229.

309 Legislation Act, section 227. In advice to the Clerk of 31 March 2004, the Government Solicitor advised that the provisions of subsection 227(1) of the Act did not apply where appointments are made by the executive, as distinct from a Minister.

11.270 The committee may make a recommendation to the Minister about the proposed appointment and the Minister must not make the appointment until he or she has received a recommendation or until 30 days have passed since the consultation took place (whichever happens first).

11.271 In making the appointment, the Minister must have regard to any recommendation received.



12 QUESTIONS SEEKING INFORMATION

INTRODUCTION

12.1 The purpose of parliamentary questions is to allow Members of the Assembly to seek and obtain information. They are an important parliamentary procedure used by Members to ensure that the government is held accountable for its policies and actions through its Ministers. Questions are also used to obtain information from the Speaker or from private Members on matters for which they are responsible (see paragraphs 12.5 and 12.6). Opposition, crossbench and government backbench Members of the Assembly also use questions to obtain information about matters of concern to their constituents. They do this by directing their questions to the Minister who has the appropriate portfolio responsibility.

12.2 Questions may be asked orally without notice in the Chamber or placed on the *Notice Paper* for written reply.¹ The importance of questions without notice as a means of gaining information and holding Ministers accountable is demonstrated by the requirement that there must be a period set aside on every Assembly sitting day for questions to be asked (see paragraphs 12.11 to 12.18).

WHO MAY ASK QUESTIONS

12.3 The standing orders do not place any restrictions on who may ask questions. However, the majority of questions are asked by private Members. Ministers do not ask questions of other Ministers. There is also nothing in the standing orders to prevent the Speaker from asking questions, although the practice has been that they don't. From time to time Speakers have placed questions on the *Notice Paper*.²

TO WHOM MAY QUESTIONS BE DIRECTED

Questions to Ministers

12.4 The majority of questions are directed to Ministers. They may relate only to public affairs for which a Minister has some connection, to proceedings pending in the Assembly or to any matter of administration for which that Minister is responsible.³ A question cannot be put to a Minister about the portfolio responsibilities of another Minister unless, for whatever reason, he or she is acting in that Minister's portfolio. This does not apply to the Chief Minister.

Questions to Speaker

12.5 Any Member may ask the Speaker a question relating to the Speaker's responsibilities.⁴ However, if the question relates to a matter of privilege, the Member must raise the issue in accordance with standing order 276. Unlike the House of Representatives,

1 Standing order 113.

2 For example, see NP (15.2.2005) 39.

3 Standing order 114.

4 Standing order 115.

which only allows oral questions to be put to the Speaker at the conclusion of question time, questions without notice can be asked of the Speaker at any point during question time.⁵ Although not provided for in the standing orders, and it is not the practice elsewhere, the Speaker has permitted questions to be asked that relate to rulings made by the Chair.⁶ In relation to questions on notice to the Speaker, the same process is followed as is the case for questions directed to any other Member (see paragraphs 12.24 to 12.26).⁷

Questions to private Members

12.6 On rare occasions, private Members are asked questions, usually in the form of questions without notice. The question can relate only to a bill, motion or other public matter which is connected with the business of the Assembly and of which the Member has charge.⁸ A question to a committee chair has been permitted concerning committee proceedings, though care would need to be taken to ensure that the question did not transgress the provisions of standing order 241. For example, the chair of the Standing Committee on Planning and Urban Services was asked a question in relation to his conduct as chair of the committee.⁹ Questions may also be put to shadow ministerial spokespersons. For example, on 25 August 2005, the then Shadow Minister for Education was asked a question without notice relating to the Education Amendment Bill 2005, which she had presented to the Assembly.¹⁰

GENERAL RULES APPLYING TO QUESTIONS

12.7 Chapter 10 of the standing orders sets out the rules for the asking and answering of questions. Standing order 117, which outlines the general rules that apply to questions, states that questions shall be brief¹¹ and relate to a single issue and that they must not contain:

- statements of fact or names of persons unless they are strictly necessary to render the question intelligible and the facts can be authenticated; or
- arguments, inferences, imputations, epithets, ironical expressions or hypothetical matters.¹²

12.8 Ministers should not be asked for an expression of a personal opinion or for a legal opinion. Nor should they be asked to announce executive policy, but a question may seek an explanation regarding the policy of the executive and its application, and a Member may ask the Chief Minister whether a Minister's statement represents executive policy.¹³

12.9 Under standing order 117(f), the Speaker has the authority to direct that the language of a question be changed if it does not conform with the standing orders. This standing order can be applied more strictly to questions on notice as there is more time for them to be examined. This function is performed by the Clerk, who has the Speaker's authority to

5 For example, see Assembly Debates (9.5.2000) 1277; Assembly Debates (7.4.2005) 1525.

6 For example, see Assembly Debates (24 .8.2006) 2809-10

7 For example, see NP (15.1.2006) 813; NP (2.5.2006) 991.

8 Standing order 116.

9 Assembly Debates (9.8.2001) 2673. The question related to whether the Member was confusing his responsibilities as committee chair with his role as a Member of the Assembly.

10 Assembly Debates (25.8.2005) 3246. The question was asked by another member of the opposition and was effectively a 'Dorothy Dixer' (see paragraph 12.18). It provided an opportunity for the shadow spokesperson to make a statement with regard to her bill which was critical of the government. Since the question related to a matter that was on the *Notice Paper*, the answer could not include matter that could be regarded as debate on the issue (see standing order 117(f)). The Member was repeatedly warned by the Speaker to restrict herself to making a statement and not to debate the issue.

11 For example see Assembly Debates (23.9.1998) 2075-6 and Assembly Debates (18.8.2005) 2900.

12 Standing order 117(b).

13 Standing order 117(c).

amend questions before placing them on the *Notice Paper*. The Clerk also edits questions to adapt them to the style of the *Notice Paper*. Generally, these edits are carried out to eliminate unnecessary words, to ensure the questions are directed to the correct Ministers and to put them into the proper form.

12.10 The Speaker also has the authority to rule any question out of order if it does not conform to the standing orders. The reasons for doing so have included, but are not limited to, the following:

- sub judice convention;¹⁴
- not being within a Minister's ministerial responsibility;¹⁵
- imputations;¹⁶
- seeking legal opinions;¹⁷
- being hypothetical;¹⁸
- duplicating a question on the *Notice Paper*;¹⁹ and
- re-asking a question that had been fully answered.²⁰

QUESTIONS WITHOUT NOTICE (QUESTION TIME)

12.11 The accountability of the government is tested most clearly and publicly during question time when questions are asked orally without notice by opposition, crossbench and government backbench Members. This is why question time is one of the most significant parts of a sitting day. In fact, the importance placed on question time is indicated by the fact that all non-executive Members will usually be present in the Chamber and wish to ask a question.

12.12 At 2 pm each sitting day the Speaker calls for questions without notice.²¹ Members indicate their wish to ask a question by rising in their places. In accordance with standing order 113A, the period of time allocated to questions without notice is determined by the time necessary for all non-executive Members who wish to do so to have asked at least one question.²² This is generally approximately one hour. If question time proceedings are interrupted by other proceedings—for example, a motion to suspend standing orders or a motion of dissent from a Speaker's ruling—the requirement of standing order 113A still applies.

12.13 The practice of allowing all non-executive Members to ask at least one question was adopted by the Assembly on 15 September 1994 after a motion to suspend standing and temporary orders was moved by a non-executive Member during questions without notice. The motion sought to allow all non-executive Members to ask a question without notice if they wished to do so.²³ Given that the Member had a similar notice on the *Notice Paper* to amend the standing orders to include the provisions he wished to adopt for that sitting day, it was suggested that the Member withdraw the motion he had moved and move instead to suspend standing and temporary orders to allow the relevant private Members' business notice to be called on forthwith.²⁴

14 Assembly Debates (18.10.2005) 374.

15 Assembly Debates (9.4.2002) 824.

16 Assembly Debates (6.6.2002) 2018-9.

17 Assembly Debates (25.9.2002) 3220-1.

18 Assembly Debates (14.11.2002) 3642.

19 Assembly Debates (23.4.2003) 3604.

20 Standing order 117(g).

21 Standing order 74.

22 Standing order 113A.

23 MoP 1992-94/707; Assembly Deb (15.9.1994) 3015.

24 NP (15.9.1994) 1953.

12.14 The Member withdrew the motion, standing orders were suspended and the relevant private Members' business motion was called on. Members of the Assembly indicated during debate that the adoption of this standing order would be an equitable way to ensure all non-executive Members were given the opportunity to ask a question during questions without notice. The motion was agreed to.

12.15 Once all non-executive Members who have risen have asked a question, the Chief Minister asks that all further questions be placed on the *Notice Paper*. On an occasion when only three non-executive Members had asked a question, the Chief Minister rose and asked that all further questions be placed on the *Notice Paper*.²⁵ The Speaker explained to the Assembly that the Chief Minister took that action because no other Member had risen. The Speaker allowed question time to continue after several non-executive Members rose to ask further questions.²⁶

12.16 Although it is not set out in the standing orders, by convention non-executive Members may each ask only one question without notice per sitting day. Nevertheless, a Member was allowed to ask two questions during a question time.²⁷ The Member rose to ask a second question and was reminded by the Speaker that she had already asked a question and that other Members had not. The Member gave a short explanation indicating that she had not been quick enough to get to her feet to ask a supplementary question and that there was nothing in the standing orders to prevent a Member asking more than one question. The Speaker ruled that he was prepared to permit the Member to ask another question on that occasion.²⁸

12.17 It is the practice of the Assembly that the Speaker calls the Leader of the Opposition to ask the first question. The call is then alternated between government and non-government backbench Members, depending on who rises next.

12.18 It is a well-established practice that questions asked by government backbenchers are often prepared with the knowledge of the relevant Minister. This enables Ministers to respond with the government's point of view, to highlight government achievements and/or to criticise the opposition party's policies (and to praise the 'perspicacity and wisdom' of the Member who asked the 'question'). These 'prepared questions' are usually referred to as 'Dorothy Dixers'.²⁹ While this practice might reasonably be considered of limited value in terms of producing accountability outcomes, it has become accepted in all Australian parliaments.

Supplementary questions

12.19 Immediately following the oral answer to a question without notice, one supplementary question may be asked by the Member who asked the original question. Invariably, a supplementary question is asked. A supplementary question must be relevant to the original question or arise out of the answer given; it must not contain a preamble, and it should not introduce new matter.³⁰ Statistics on questions and supplementary questions are contained in Appendix 13.

25 Assembly Debates (4.8.2004) 3416.

26 Assembly Debates (4.8.2004) 3416.

27 Assembly Debates (20.2.2002) 401.

28 Assembly Debates (20.2.2002) 401.

29 This reference is reputed to have come from a popular advice column by journalist E M Gilmer called 'Dear Dorothy Dix'. It was said that the journalist herself invented many of the more interesting questions that she answered in her column.

30 Standing order 113B.

Answers to questions without notice

12.20 Standing order 118, which sets out the rules relating to answers to questions without notice, states that answers shall be concise, confined to the subject matter of the question and not debate the subject to which the question refers.³¹ The freedom given to Ministers when answering questions without notice can be a source of frustration for non-executive Members. However, as indicated by Speakers on a number of occasions, Ministers cannot be directed to answer questions in a particular way. The Speaker can intervene only if the answer is not in conformity with the standing orders.

12.21 The issue of the length of answers to questions without notice has been considered by the Assembly on several occasions. In May 2001 the Assembly noted the report of the Standing Committee on Administration and Procedure which recommended that:

... the Assembly not support the imposition of time limits for the asking and answering of questions without notice.³²

12.22 On 7 May 2003 the Assembly considered a motion which proposed that standing order 118 be amended to limit the time for answering questions without notice to five minutes. The Assembly resolved to refer the matter to the Standing Committee on Administration and Procedure for inquiry and report.³³ The committee reported to the Assembly on 18 November 2003, recommending a time limit of five minutes on answers to questions without notice. The report was adopted by the Assembly after debate, creating new standing order 118(c).³⁴

12.23 If a question without notice requires a detailed and complicated answer, a Minister may take the question on notice and provide an answer to the Member at a later time, usually orally in the Chamber.

QUESTIONS ON NOTICE

12.24 Questions asked on notice must be submitted to the Clerk in writing. They are published in the *Notice Paper* for answer by the appropriate Minister at a later date. Questions on notice are usually asked when a detailed, complex or lengthy answer is required.

12.25 Standing orders do not limit the number of questions a Member may place on the *Notice Paper* and in recent years the number of such questions has increased.

12.26 To appear in the next *Notice Paper*, questions on notice must be delivered by Members to the Clerk by 12 noon on the day prior to the publication of that *Notice Paper*. Questions must relate to a single issue, conform to the style of the *Notice Paper* and be signed by the Member.

31 For example, see Assembly Debates (23.9.2003) 3539; Assembly Debates (9.3.2004) 897; Assembly Debates (20.9.2005) 3361.

32 Standing Committee on Administration and Procedure, *Proposed amendments to standing orders relating to disorder, questions without notice and voting*, May 2001, Recommendation 3, p. 12.

33 MoP 2001-04/712.

34 MoP 2001-04/1002.

Answers to questions on notice

12.27 Answers to questions on notice are similarly delivered to the Clerk. A copy of the answer is then supplied to the Member who asked the question, and the question and answer are printed in the next Weekly Hansard.³⁵

12.28 Occasionally Ministers will reply to a question on notice or part of a question on notice by indicating that they are not prepared to allow the use of the resources required to obtain the information requested.³⁶ This usually occurs when a question requests very detailed statistical information. The standing orders place no obligation on a Minister to answer a question.³⁷ Given that standing order 117(g) states that 'A question fully answered cannot be re-asked,' there is some conjecture as to whether a question that receives such a response has been fully answered by the Minister in the event that a Member asks another similar question on notice.

Redirected question on notice

12.29 If a question is directed to the incorrect Minister, the Chamber Support Office is contacted by the Assembly Liaison Section within the Chief Minister's Department requesting that the question be redirected. It is then the practice of the Chamber Support Office to contact the relevant Member to seek their approval for the redirection. Details of the redirection are then shown on the next issue of the *Notice Paper*. It should be noted that, although this process may take several days, the 30-day rule for answering the question still begins from the date of the original question.

UNANSWERED QUESTIONS

12.30 On 4 May 1995 the Assembly adopted standing order 118A, which deals with requests for explanations concerning unanswered questions.³⁸ Under this standing order, a Minister has 30 days to provide an answer to a question on notice or a question without notice taken on notice. If a Minister has not provided an answer to the question within that time or has not provided the Member who asked the question with a satisfactory explanation as to why the answer has not yet been provided, at the conclusion of questions without notice the Member may seek an explanation from the relevant Minister concerning the unanswered question.

12.31 At the conclusion of the Minister's explanation, if the Member wishes to pursue the matter, he or she may move to take note of the explanation or, in the event that the Minister does not provide an explanation to the satisfaction of the Member concerned, move a motion with regard to the Minister's failure to provide an answer, explanation or statement.

12.32 This standing order has been utilised regularly since its adoption. On 15 February 2005, after a Member had requested an explanation from a Minister concerning answers to two questions on notice, the Minister indicated that he would take advice on the matter. The Member then moved, pursuant to standing order 118A(c), that the Assembly take note that the Minister had failed to answer the questions and had not provided a satisfactory explanation for the lateness of the answers. The motion was negatived after a vote of the Assembly.³⁹

35 Standing order 122.

36 For example, see Assembly Debates (22.10.2005) 3648-9; Assembly Debates (25.9.2003) 3812-3.

37 The Assembly may, of course, order a Minister to provide information. See paragraphs 9.94 to 9.98.

38 MoP 1995-97/26-32.

39 MoP 2004-08/50-1.

12.33 On 4 May 2005 a Member attempted to move a motion under standing order 118A in relation to an answer provided by a Minister concerning an unanswered question on notice. The Minister had indicated that he thought the answer had been signed and was on its way to the Member. On moving the motion, the Member indicated that the Minister should provide an explanation for the lateness of the answer, not speculate on where it was. The Speaker ruled that the Minister had given his explanation and the Member was unable to move a motion under standing order 118A(c).⁴⁰ The next day the Speaker made a short statement indicating that he had reviewed his ruling. He stated that Ministers need to give explanations as to why answers are late and that he would rule that way in the future.⁴¹

40 MoP 2004-08/163-4.

41 MoP 2004-08/171; Assembly Debates (5.5.2005) 1867.

INTRODUCTION

13.1 The tabling of documents is an important aspect of the Assembly's role in monitoring the conduct of the executive and ensuring that the community has access to the information necessary to judge the performance of government.

13.2 This chapter considers two categories of documents: those that are presented to the Assembly—tabled—by Ministers, the Speaker and, in certain circumstances, backbench Members; and those that are generated by the Assembly itself—*Minutes of Proceedings*, the *Notice Paper*, *Hansard* records of debates, etc—which facilitate the conduct of business, provide a record of proceedings and communicate the work of the Assembly to the community.

DOCUMENTS PRESENTED TO THE ASSEMBLY

13.3 This section deals with documents (also referred to as 'papers' in the standing orders) that are presented to the Assembly pursuant to standing orders, pursuant to legislation, at the initiative of the government, by order of the Assembly or in conformity with established practice. 'Document' is interpreted broadly to also include electronic 'documents', photographs, etc. For example, the extensive supporting documentation to the appropriation bills (the budget) is tabled in the form of a compact disc.

13.4 Because the Assembly sits periodically, there are provisions included in certain Acts which allow documents to be presented by the Speaker when the Assembly is not sitting—for example, the *Auditor-General Act 1996*¹ and the *Annual Reports (Government Agencies) Act 2004*.² In some cases, despite the fact that a document is deemed to have been presented, the relevant Act may also require that it be presented to the Assembly on the next sitting day.³

13.5 In addition to the above document types, documents or 'papers' may be presented by any Member by leave of the Assembly. Leave requires the consent of all Members present in the Chamber. It is often the practice of the Assembly that a Member seeking leave to table a document will inform other Members of its content and the reason for its presentation

Pursuant to standing order

13.6 Standing order 211 confers a general right on the Speaker and Ministers to present papers to the Assembly. Other Members, in their capacity as committee chairs, are authorised to present committee reports and other documents.⁴ The standing orders also include a requirement for the Clerk to present certain papers (see paragraph 5.70).⁵

1 *Auditor-General Act 1996*, subsection 17(5).

2 *Annual Report (Government Agencies) Act 2004*, subsection 13(4).

3 *Auditor-General Act 1996*, subsection 17(5)(f); *Annual Report (Government Agencies) Act 2004*, subsection 13(4)(c)(i).

4 Standing orders 246A (statements and discussion papers); standing order 253 (reports and minutes of proceedings).

5 Standing order 1(d) (election notification).

By the Speaker

13.7 As chair of the Standing Committee on Administration and Procedure, it is the responsibility of the Speaker to present any report of that committee.⁶ The Speaker also has responsibility under a number of Acts for the presentation of certain documents to the Assembly. For example, section 17 of the *Auditor-General Act 1996* requires the Speaker to present to the Assembly reports prepared for it by the Auditor-General. The Speaker, at his or her discretion, also presents documents related to parliamentary matters. These have included:

- study trip reports of Members;⁷
- non-executive MLAs' quarterly travel reports;⁸
- letters from Members in relation to alleged breaches of privilege;⁹
- warrants of nomination of temporary deputy speakers;¹⁰
- Secretariat annual reports;¹¹
- responses received from the Governor-General; and
- resolutions from other parliaments.¹²

By Ministers

13.8 Standing order 211 also provides that a Minister may present papers to the Assembly. An indication of the range of papers presented by Ministers is provided by the *Minutes of Proceedings* for 21 August 2007, the first sitting day in a new financial year and after the winter adjournment. Ministers presented details of:

- variations to employment contracts of senior public servants;
- salary determinations made by the Remuneration Tribunal;
- notifiable instruments pursuant to the Annual Reports (Government Agencies) Act;
- the Consolidated Financial Report under the Financial Management Act, details of expenditure from the Treasurer's Advance and transfers of funds within and between agencies;
- papers in relation to greenhouse gas abatement, human rights in correctional facilities and the administration of justice;
- variations to the Territory Plan; and
- subordinate legislation and explanatory statements in relation to more than 80 disallowable instruments.¹³

13.9 While subordinate legislation may be presented under standing order 211, the presentation of a bill requires a Minister (or other Member) to give notice. If notice of intention to present a bill is not given by a Minister, he or she must gain leave of the Assembly to do so (see Chapter 11: Legislation).

6 MoP 2001-04/1654.

7 MoP 2004-08/457.

8 MoP 2004-08/172.

9 MoP 2001-04/1403.

10 MoP 2004-08/11.

11 MoP 2004-08/829.

12 MoP 2004-08/755.

13 MoP 2004-08/1068-80.

Pursuant to legislation

13.10 Documents presented pursuant to legislation are those papers required to be presented to the Assembly by virtue of provisions in Acts. For example, under section 205 of the *Civil Law (Wrongs) Act 2002* the Attorney-General must present a copy of general reporting requirements of insurers within five sitting days after 1 October in each year. There are also a number of papers that are required by statute to be presented to the Assembly on a regular basis. Examples of these include:

- executive contracts and contract variations made under the *Public Sector Management Act 1994*;¹⁴
- instruments made under the *Financial Management Act 1996*;¹⁵ and
- determinations made under the *Remuneration Tribunal Act 1995*.¹⁶

Subordinate legislation

13.11 The bulk of papers presented to the Assembly fall into the category of subordinate legislation. For example, 337 items of subordinate legislation were presented to the Assembly in 2006. The requirement to present these papers is provided for in section 64 of the *Legislation Act 2001*, which states that a subordinate law or disallowable instrument must be presented to the Legislative Assembly no later than six sitting days after its notification on the Legislation Register.¹⁷

13.12 This section of the Act also states that if the subordinate law or disallowable instrument is not presented within this time, it is taken to be repealed. Thus, it is essential for the government to ensure that it is presented to the Assembly within the allocated timeframe.

Government initiative

13.13 The government often considers certain papers significant enough to present to the Assembly for the information of Members even though presentation is not required under legislation or pursuant to a standing order. These papers cover every aspect of government in the ACT and have included, but are certainly not limited to:

- exposure drafts of bills;¹⁸
- government legislation programs;¹⁹ and
- government strategies.²⁰

By order of the Assembly

13.14 Sometimes the Assembly passes resolutions ordering that certain documents be presented. Such resolutions can be made in relation to the presentation of committee reports²¹ or of certain other documents. For example, on 24 May 2000²² a motion was passed calling on the Gambling and Racing Commission to report to the Assembly on a number

¹⁴ See, for example, MoP 2001-04/1190-1.

¹⁵ See, for example, MoP 2001-04/1408, 1506.

¹⁶ See, for example, MoP 2001-04/1406-7.

¹⁷ MoP 2001-04/1320-1. And see paragraphs 11.221 to 11.271 on subordinate legislation.

¹⁸ MoP 2004-08/906.

¹⁹ MoP 2004-08/758.

²⁰ MoP 2004-08/778.

²¹ MoP 1998-2001/843-5.

²² MoP 1998-2001/872-4.

of issues relating to interactive gambling. The paper was presented to the Assembly on 27 June 2000.²³ One of the more significant resolutions was that requesting the tabling of documents relating to the Bruce Stadium redevelopment.²⁴

13.15 Other resolutions have requested that papers be presented to the Assembly on a regular basis. For example, on 24 May 2000 a resolution was passed calling on the Minister for Education to issue six-monthly reports on his department's progress on indigenous education.²⁵ Occasionally the Assembly has had to deal with issues relating to executive privilege and commercial-in-confidence documents (see paragraphs 2.88 to 2.97).

Tabling of quoted documents

13.16 Standing order 213 enables the Assembly to order that a document quoted from by a Member during a speech be tabled. The standing order also states that the order may be moved without notice immediately upon the conclusion of the speech of the Member who has quoted from the document. Generally this standing order is directed to documents used by Members to support arguments that they are presenting to the Assembly. Its purpose is to enable other Members to have access to the material and judge its validity for themselves.²⁶

13.17 Practical difficulties can arise with regard to the application of standing order 213. There have been debates in the Assembly on what constitutes 'quoting' as distinct from merely referring to a document. For example, on 25 November 1993 a Member moved a motion requesting that a Minister present a document he had referred to during question time. After some debate the Speaker ruled that the motion was out of order as the Minister had not quoted from the document but had only referred to it.²⁷

13.18 This same occasion also raised the question of the sensitivity of material in a document being quoted. The Minister was concerned that tabling of the document would identify its author and expose that person to the threat of reprisals. Where a document contains material that might be subject to claims of executive or other privilege, be it commercial in confidence or personal details the publication of which might be a breach of the privacy of an individual or individuals, the Assembly must give consideration to those issues before requiring that it be tabled. As is discussed elsewhere in this Companion, claims of executive and other privilege are not conclusive and must be decided by the Assembly.

13.19 A further issue has arisen with regard to the application of standing order 213 and possible conflict with established practices or conventions of the Assembly. On 23 August 1995 the Minister for Education and Training was ordered, after a vote of the Assembly, to present a document from which he had quoted. During debate on the motion it was argued that the Minister had not been quoting from a document but had merely relied on speech notes, and that:

There has been an informal agreement in this place that members are entitled to read from briefs or speaking notes without having to table those notes. Where a member reads from, say, a letter or a document, that is another matter. Members would certainly expect to have to table that document if they use it on

²³ MoP 1998-2001/902.

²⁴ MoP 1998-2001/412-4. And see paragraph 9.98.

²⁵ MoP 1998-2001/869. The resolution was amended on 16 February 2006 to change the reporting requirements (MoP 2004-08/552-3).

²⁶ See paragraphs 10.41 to 10.43.

²⁷ Assembly Debates (25.11.1993) 4165-6. The document in question was a statutory declaration stating certain matters which a Minister relied upon in answering a question without notice.

the floor of the house. This is a speaking note prepared for Mr Stefaniak in his office and he has read it in full.²⁸

13.20 Members accepted in principle the distinctions outlined above between supporting documents and speaking notes. However, in this particular instance it was argued that the document quoted from was a ministerial statement, not speaking notes, and, as such, the Assembly insisted that it be tabled.

By private Member

13.21 Other than for the presentation of committee papers or reports, standing orders make no provision for private Members to present documents to the Assembly and they are therefore required to seek leave to do so.

By the Clerk

13.22 On the first sitting day of a new Assembly the Clerk is required to present the official instrument notifying the names of candidates elected to the Legislative Assembly for the ACT at a general election.²⁹ This is the only occasion when the Clerk presents documents to the Assembly.

Time of presentation

13.23 Under the routine of business for each sitting day,³⁰ which is established in the standing orders, the presentation of papers occurs at the conclusion of question time. However, standing order 211 does allow for papers to be presented by the Speaker and Ministers at any time (see paragraphs 13.7 and 13.8). Generally, the practice of the Assembly has been to allow papers to be presented at any time as long it does not interrupt a Member who is speaking and it occurs between items of business. Standing order 75 permits the presentation of standing or select committee papers and reports at any time when other business is not before the Assembly.

Custody of records

13.24 Standing order 26 gives the Clerk custody of *Minutes of Proceedings*, records and all documents laid before the Assembly.

Inspection and copying of documents presented

13.25 The practice of the House of Representatives and the Senate is that tabled papers are automatically authorised for publication.³¹ The relevant standing orders in those chambers were adopted relatively recently—in 1997 and 1988 respectively. Thus, when self-government was granted to the ACT the automatic publication of tabled papers was not a practice of the House of Representatives and was a recent innovation in the Senate. Accordingly, no provision for automatic publication of tabled papers was included in the draft standing orders of the Legislative Assembly.

28 Assembly Debates (23.08.1995) | 389.

29 MoP 2004-08/2.

30 Standing order 74.

31 See *House of Representatives Practice*, p. 606 and *Odgers*, p. 443. The Houses have standing orders expressed in similar terms. The publication of each document laid on the table of the Senate is authorised by Senate standing order 167.

13.26 Consideration of such a provision has occurred in the Assembly.³² In early Assemblies, lack of experience or any well-established conventions gave rise to a concern that the process could be abused and that the protections afforded by parliamentary privilege might be given to documents that should not receive such protection. Similar procedures have, therefore, not been adopted by the Assembly, although in March 2008 the Assembly did amend its standing orders to enable Auditor-General reports, Assembly committee discussion papers and reports to be automatically published upon tabling.³³

13.27 Standing order 212 sets out that papers which have been tabled but not ordered to be published may be made available to Members. It also provides that if permission is given by the Speaker, a paper may be inspected by other persons or copies or extracts may be made from it. Such papers are held by the Chamber Support Office, which provides copies to Members and other persons as required.

Motion to take note of paper/s

13.28 A motion to take note of a paper that has been presented to the Assembly may be moved without notice by a Minister, pursuant to standing order 214(a). This practice is used in cases where the Assembly may wish to debate the subject matter of the document at a later time. If such a motion is moved, debate is usually adjourned and made an order of the day for the next day of sitting.³⁴ If the motion is not moved by a Minister at the time a paper is presented, it may be moved at a later time with notice or by leave.

13.29 Amendments may be moved to such motions. Generally, these amendments have added words to the motion proposing action relating to the document presented or expressing an opinion on the subject matter of the document.³⁵ Occasionally, an amendment to an amendment has been moved.³⁶

Referral to committee

13.30 Standing order 214(b) allows a Minister to move without notice that a paper which has been presented to the Assembly be referred to a committee for inquiry and report.³⁷ The standing order also states that if the motion is not moved at the time of presentation of the paper, it may be moved subsequently with notice or by leave. The Assembly has utilised this standing order on a number of occasions. For example, on 18 February 1999 a motion was agreed to referring the 1999-00 draft capital works program to the Standing Committee on Urban Services for inquiry and report by 24 March 1999.³⁸ The committee report was presented to the Assembly on Tuesday, 20 April 1999 after the reporting date had been altered.³⁹ On 1 July 1999 a motion was passed referring a discussion paper entitled *A Parliamentary Ethics Adviser for the ACT Legislative Assembly* to the Standing Committee on Administration and Procedure for inquiry and report. The report was presented on 22 August 2001.⁴⁰

32 See MoP 1998-2001/1660, Standing Committee on Administration and Procedure, Report No. 9, Legislative Assembly (Privileges) Bill 1998, 21 August 2001.

33 See standing order 212A.

34 MoP 2004-08/778.

35 MoP 1995-97/537; MoP 1998-2001/1317-8; MoP 2001-04/694.

36 MoP 1995-97/537; MoP 1998-2001/939-40.

37 Petitions may also be referred, see paragraphs 14.26 and 14.27.

38 MoP 1998-2001/321.

39 MoP 1998-2001/352-3.

40 MoP 1998-2001/1660.

ASSEMBLY DOCUMENTS

Notice Paper

13.31 The *Notice Paper* is an official document of the Assembly which is published by authority of the Clerk. It lists all outstanding business currently before the Assembly. The *Notice Paper* consists of three distinct sections: the business section, the questions section and the general information section. With the exception of the first sitting day of an Assembly, a *Notice Paper* is issued for every sitting day. It is prepared by the Chamber Support Office and is available electronically on the Assembly's website the evening before a sitting day and as hard copy on the day of sitting.

Items of business

13.32 Business before the Assembly is listed on the *Notice Paper* under the headings 'Executive business', 'Private Members' business' and 'Assembly business'. Each of these sections is divided into 'notices' and 'orders of the day'. Executive business refers to any bill or motion initiated by a government Minister in his/her official capacity. Similarly, private Members' business includes any bill or motion initiated by a Member who is not a Minister, including government backbenchers and the Speaker. Assembly business is defined in standing order 77 as:

- any notice of a motion or order of the day relating to the establishment or membership of a committee or the referral of a matter to a committee;
- any order of the day for the consideration of a motion moved upon the presentation of a committee discussion paper, committee report or the government response to a committee report;
- any notice of motion or order of the day to amend, disallow, disapprove or declare void and of no effect any instrument made under any Act of the Assembly which provides for the instrument to be subject to amendment, disallowance or disapproval of the Assembly or subject to a resolution of the Assembly declaring the instrument to be amended or void and of no effect or any other order of the day to consider such a motion; and
- any notice of motion or order of the day which deals with the administration of the Assembly or the manner in which the Assembly conducts its proceedings

Notices

13.33 Standing order 105 stipulates that notices should have priority over orders of the day and that they should be entered on the Notice Paper in the order in which the Clerk receives them.

Orders of the day

13.34 Standing orders define an order of the day as a bill or any other matter which the Assembly has ordered to be taken into consideration on a particular day.⁴¹ Standing orders also set out the order in which orders of the day will appear on the *Notice Paper*⁴² and what course of action will be taken if an order of the day has not been called on at an adjournment of the Assembly.⁴³

41 Standing order 148. See also paragraphs 6.58 to 6.64.

42 Standing order 149.

43 Standing order 151.

No confidence motion in the Chief Minister

13.35 Section 19 of the Self-Government Act sets out the procedures that need to be followed when a no confidence motion against the Chief Minister is lodged in the Assembly. Standing orders also reflect these procedures.⁴⁴

Order of business on the Notice Paper

13.36 Standing order 78 gives responsibility for the ordering of executive business to the Manager of Government Business, with standing order 16(a)(iii) giving the Standing Committee on Administration and Procedure the task of organising private Members' and Assembly business. The committee does this at its meeting every sitting Tuesday when the Assembly suspends for lunch.

13.37 On occasion the committee has clarified ambiguities or recommended specific rules with regard to the consideration of business. For example, on 27 August 1998 the Assembly agreed to the following resolution which related to private Members' business:

That the order of the day relating to a notice of motion under private Members' business having been moved and debated either:

- (1) adjourned pending the Assembly's suspension for lunch; or
- (2) interrupted pursuant to standing order 74 and the Speaker setting a later hour of the day for consideration of the matter;

such item of business has precedence over all other private Members' business, in accordance with standing orders 74 and 77, if debate has been adjourned by the Assembly until a later hour that day.⁴⁵

13.38 The resolution was the result of a recommendation of the Standing Committee on Administration and Procedure in its report entitled *Order of private Members and Assembly business*⁴⁶ which was presented to the Assembly on 27 August 1998.⁴⁷

Questions on notice

13.39 Standing order 113 gives Members the authority to place questions on notice and standing order 120 sets out the rules for giving notice of a question to be placed on the *Notice Paper*. A question will remain on the Notice Paper until an answer is received or until it is withdrawn by the Member who lodged the question (see Chapter 12: Questions seeking information).

General information

13.40 The final sections of the *Notice Paper* appear after the Clerk's signature. They are not an official part of the document and are included for information only. They contain a list of outstanding ministerial responses to petitions and a list of all committees for the current Assembly, together with up-to-date committee membership information.

44 Standing order 81.

45 MoP 1998-2001/134.

46 See <<http://www.parliament.act.gov.au/downloads/reports/A01orderofprivatemembersbusiness.pdf>>.

47 MoP 1998-2001/133.

Minutes of Proceedings

13.41 Section 20 of the Self-Government Act states that the Assembly shall cause minutes of meetings to be kept and that those minutes shall, on request, be made available for inspection.

13.42 The minutes of the Assembly are known as the *Minutes of Proceedings*. They provide the official record of the business transacted on every sitting day. Standing orders state that, 'All proceedings of the Assembly shall be recorded by the Clerk, and such records shall constitute the Minutes of Proceedings of the Assembly and shall be signed by the Clerk.'⁴⁸ Standing orders also set out what must be included in the *Minutes of Proceedings*. For example, standing order 21 states that the attendance of Members for each sitting shall be included in the *Minutes of Proceedings* and standing order 164 states that the Clerk shall record lists of votes in the minutes. If a complaint is made to the Assembly that a vote has been inaccurately reported, standing order 166 states that the Speaker may cause the record to be corrected. The *Minutes of Proceedings* also include details about the status of particular items presented and debated.

13.43 Proof *Minutes of Proceedings* are usually available online at <www.parliament.act.gov.au> within two hours of the Assembly rising, with final versions available some days later.

Hansard

13.44 *Hansard* is the name given to the official report of debates in the Assembly and to transcripts of public committee hearings. The official report is a 'rational verbatim' record of Assembly debates while transcripts of committee hearings tend to report more closely the evidence given. *Hansard* produces proof and final reports. Members may suggest changes to proof transcripts (but not additions or changes that alter the sense or meaning of what was said) and the Speaker may order that matters be omitted from the record.⁴⁹ Accordingly, there may be some variation between the proof and final versions. When there is dispute about what precisely was said in the Chamber, with the Speaker's approval reference may be made to the audio recording of proceedings.

13.45 Although *Hansard* is essentially a record of the spoken word, it also contains other information relating to other proceedings in the Chamber, including the results of divisions, the text of amendments moved to motions and bills, the text of petitions presented and the titles of papers tabled. The full text of both questions placed on notice and the answers to them are also published in *Hansard*. In the event that there is a procedural discrepancy between what is published in the *Minutes of Proceedings* and *Hansard*, minutes are deemed to be the definitive reference.

13.46 During the First Assembly a resolution was passed authorising the preparation and publication of transcription of debates and proceedings of the Assembly and its committees (*Hansard*). On 27 March 1992 the Assembly agreed to a resolution⁵⁰ authorising the preparation and publication of the *Hansard* record of the Assembly and its committees. The resolution also authorised publication of extracts of *Hansard* of the Assembly and its committees by the Clerk. The resolution had effect from the commencement of the Second Assembly and

48 Standing order 25.

49 For example, the name of a person who was the subject of a coronial inquest and whose name was the subject of a suppression order by the Coroner was mentioned in the Assembly. The Speaker advised the Assembly that he had instructed that the name not be included in the day's *Hansard*; see MoP 1998-01/53.

50 MoP 1992-94/5.

continues in force unless amended or repealed by a subsequent Assembly. Proof and final *Hansard* transcripts are published on the internet at <www.parliament.act.gov.au>.

BROADCASTING OF ASSEMBLY PROCEEDINGS

13.47 The *Legislative Assembly (Broadcasting) Act 2001* authorises the proceedings of the Assembly and its committees to be broadcast or recorded for broadcast to the public. This broadcasting may be audio only or visual and audio and may be carried by 'radio, television landline, the internet or any other electronic means'. The Clerk may also authorise audio transmission of proceedings of the Assembly or a committee to ACT public service departments and agencies, subject to the proviso that the department or agency bears the costs of providing the service.

13.48 Pursuant to section 5(2) of the Act, the Assembly has adopted a resolution setting out guidelines governing the broadcasting of proceedings.⁵¹ Essentially, the guidelines ensure that control of broadcasting remains with the Assembly. For example, anybody wishing to broadcast proceedings must first obtain the permission of the Speaker or committee chair and must abide by the guidelines. The process of recording, however undertaken, must not interfere with the proceedings of the Assembly or a committee. Committee members or witnesses at committee hearings may object to the proceedings being recorded or broadcast.

13.49 The resolution sets out in some detail the restrictions on the use of cameras, either for still photography or television, including the types of shots that may be taken and subjects that may be covered. For example, panning shots of the benches, coverage of the galleries and any demonstrations are not permitted. The person undertaking the broadcasting must also observe any instructions given by the Speaker or committee chair.

13.50 The broadcast must be a fair and accurate record and must not be used for:

- (a) the purpose of satire or ridicule;
- (b) advertising for or by political parties or electioneering; or
- (c) commercial advertising or sponsorship; ...⁵²

The Speaker, in the case of the Assembly, or a committee chair, in the case of a committee, can cancel the permission to record proceedings. The Assembly has taken strong action when the broadcasting guidelines have been breached. This has included banning reporters of the offending broadcasters from the Assembly Chamber for specific periods.

Webstreaming

13.51 In 2006 the Speaker approved a six-month trial to webstream proceedings.⁵³ Webstreaming provides realtime broadcasts of Assembly and committee proceedings to anyone who has a personal computer with internet access. In 2007 the Speaker approved the implementation of permanent arrangements to webstream all Assembly proceedings.⁵⁴

51 'Broadcasting Guidelines', Resolution agreed by the Assembly, 7 March 2002 (amended 17 March 2005 and 23 June 2005).

52 Guidelines, paragraph (5).

53 MoP 2004-08/833.

54 MoP 2004-08/1257.

INTRODUCTION

14.1 The practice of petitioning parliament to seek the redress of grievances, to request some action or to stop a proposed action dates back at least to the reign of King Edward I in the 13th century.¹ It has been described as the oldest parliamentary form, pre-dating bills and legislation. In fact, the terms 'bill' and 'petition' originally had the same meaning. Early legislation in England was actually based on petitions agreed to by the King.

14.2 The modern form of petitions developed in the 17th century. The rights of petitioners and the power of legislatures to deal with petitions were affirmed by resolutions of the House of Commons in 1669:

That it is an inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and of the House of Commons to receive the same.

That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received.²

14.3 The style and form of petitions have changed over the centuries but the underlying intent and purpose have not. Petitions allow citizens of the ACT to request the Assembly to redress any personal, local or Territory-wide grievance they may present. Petitioners might ask for changes to a law, or to have an administrative decision reconsidered. Petitions can also request the redress of a personal grievance—for example, the correction of an administrative error.

14.4 Although petitions remain an important feature of the parliamentary day and an important way to bring the views of the community to the Assembly, the weight given to them has declined. In addition, it is now rare for a petitioner to be seeking redress of a specific personal injustice; typically, petitions now relate to matters of public policy. There are many more effective ways of seeking to influence the processes of government or pursue redress of a grievance. The use of parliamentary committees, the emergence of disciplined political parties, the growth of avenues for addressing grievances—for example, the Ombudsman and the various administrative law tribunals—and a 'campaigning' media have all provided alternative mechanisms for seeking redress or influencing parliament and the executive.

14.5 Over the life of each Assembly, an average of 21 petitions containing 1 092 signatures have been presented annually. Significantly, on average another 9.5 out-of-order petitions containing 821 signatures were tabled annually (see Appendix 13).

14.6 The largest single petition was lodged on 27 June 1996. The terms of the petition called for the Assembly to vote against the government's proposed restricted shopping

¹ *House of Representatives Practice*, p. 611.

² *May*, p. 932.

hours legislation. The petition contained 39 874 signatures.³ Other issues that have resulted in a large number of signatures, often on multiple petitions, were those opposing the closure of the Royal Canberra Hospital on Acton Peninsula (62 981 signatures in nine petitions);⁴ the battery cage system of egg production (10 986 signatures); smoking in enclosed public areas (12 571 signatures); support for small business (31 000 signatures); the proposed sale of ACTEW (10 679 signatures); and pay rates for ACT firefighters (17 066 signatures). More recently, the proposed closure of government schools generated a large number of petitions containing significant numbers of signatures. A petition does not require a minimum number of signatories. In 1994 a petition from one person was presented.⁵

RULES RELATING TO PETITIONS

14.7 Petitioners cannot present a petition to the Assembly in person; rather they must request a Member to present it on their behalf, whether that be a Member from their electorate or another Member. Although not the practice in most jurisdictions in Australia, the Speaker of the Assembly has accepted and lodged petitions for presentation.⁶

14.8 Petitions can only be received if they relate to matters over which the Assembly has jurisdiction. They cannot request redress of matters which are the responsibility of other legislatures, for example, the Commonwealth. They can relate to public or personal matters, though personal grievances are more commonly dealt with by non-public direct interaction with Members or bodies such as the Ombudsman and the Administrative Appeals Tribunal.

14.9 There are many rules within the standing orders associated with the form and content of petitions and their presentation. To ensure a petition is in order, persons initiating a petition should be aware of these rules.

14.10 A petition is considered to be in order when it meets the following requirements of the standing orders. These requirements are that a petition:⁷

- is legible—fairly written, typewritten, printed or reproduced by mechanical process without interlineation or erasure;
- does not contain any indication that it has been sponsored by a Member;
- must be addressed to the Speaker and Members of the Legislative Assembly;
- contains a request for action or remedy and for that request to be printed on every page;
- is in English or be accompanied by a translation certified to be correct by a person whose name and address appear on the translation;
- contains at least the signature and address of at least one person on the sheet on which the petition is written;
- contains the names and addresses of the petitioners and their own signatures;⁸
- is signed only by ACT residents;
- does not include attachments;
- does not attack a named person or use intemperate or offensive language;

3 MoP 1994-96/389. The legislation in question was passed later that sitting day. The issue remained controversial and the Act was repealed when a private Member's bill, which the government did not oppose, was agreed to by the Assembly on 14 May 1997.

4 The hospital was closed in 1991 and the former hospital buildings were demolished in 1997.

5 MoP 1994-96/553 (seeking security of tenure for the venue of Belconnen Trash 'n' Treasure market).

6 MoP 2004-08/753.

7 Standing orders 85-96.

8 Standing order 89 provides that '... persons unable to write shall affix their marks in the presence of a witness, who shall, as such, also affix his or her signature and address, and the address of the petitioner'.

- is not lodged by a Member who has signed the petition as a petitioner;
- does not contain signatures pasted or otherwise transferred to the petition;
- if from a corporation, is made under its common seal;⁹ and
- relates to a matter within the jurisdiction of the Territory and within ministerial responsibility of the Territory.¹⁰

14.11 A recommended form of a petition is shown at the end of this chapter.

PARLIAMENTARY PRIVILEGE

14.12 A petition presented to the Assembly attracts absolute privilege. However, the status of a document being circulated in the community (ostensibly) to gather signatures prior to presentation to a parliamentary chamber has been the subject of some debate. Section 9 of the Bill of Rights 1688, which applies in the ACT, protects the proceedings in parliament from impeachment in any court or tribunal.¹¹

14.13 Section 16 of the *Parliamentary Privileges Act 1987* (Cwlth) declares that proceedings in parliament include:

- 2(b) the presentation or submission of a document to a House or a committee;
- 2(c) the preparation of a document for purposes of or incidental to the transaction of any such business; ...

The ambit of the phrase ‘the preparation of a document’ has been the subject of some debate.

14.14 The Senate Standing Committee of Privileges considered the extent of protection provided to petitions following the reference of a matter by the Senate.¹² The committee concluded that ‘the act of circulating a petition is not, and indeed never has been, privileged.’¹³ The committee’s conclusion was based on a number of considerations: that ‘the circulation of a petition is not essential for its presentation’; that the granting of absolute privilege to the circulation of a petition would ‘give a petitioner the means of ignoring the civil and criminal law’; and that, given the comprehensive nature of the Parliamentary Privileges Act, the absence of any ‘specific provision to grant ... statutory protection to the circulation of petitions’ indicates that the Parliament did not intend to grant such protection.¹⁴

14.15 The significance of the committee’s first point—that circulation of a petition is not a necessary precondition for its presentation—is that a petition may be presented with only one signature, thus obviating the need for circulation, and hence publication, of the petition’s contents prior to presentation. The act of presentation would be privileged. Where the document did not comply with the Assembly’s rules with regard to petitions—for example, by including material defamatory of a named person—it could not be certified by the Clerk’s office (see paragraph 14.21).

9 For example, MoP 1992-94/525 (Rotary Club of Canberra Belconnen Incorporated, re. Belconnen Trash ‘n Treasure).

10 Standing order 94.

11 Section 9, Freedom of Speech—That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament: *Bill of Rights 1688* 1 *William & Mary* sess 2c2.

12 The question before the committee was ‘... whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what form’. See Senate Standing Committee of Privileges, 11th Report, *The Circulation of Petitions*, June 1988, p. 2, paragraph 5.

13 Senate Standing Committee of Privileges, 11th Report, *The Circulation of Petitions*, June 1988, p. 7

14 Senate Standing Committee of Privileges, 11th Report, *The Circulation of Petitions*, June 1988, pp. 5-6.

14.16 The right of citizens to bring matters to the attention of the Assembly is not diminished by this conclusion. A petition that the Clerk could not certify as being in compliance with standing orders can still be tabled as a paper with leave of the Assembly or if the Member having carriage of the petition can convince a Minister to table it on the grounds that the matter is in the public interest (see paragraph 14.21).

14.17 As the Senate committee also pointed out, an action for defamation arising out of the circulation of a petition would require a court to interpret the reach of the Parliamentary Privileges Act having regard to the content of the petition and the motives of the petitioner.¹⁵ It should also be noted that various abuses of the right of petition have been dealt with as contempts.¹⁶

MEMBER'S RESPONSIBILITY

14.18 Only Members may lodge petitions for presentation to the Assembly, but Members may not lodge petitions to which they themselves are signatories. Standing order 97 states that 'Every Member lodging a petition shall take care that the petition conforms to these standing orders.' In reality, this is difficult. Members are not permitted to be seen to be sponsoring petitions;¹⁷ so there is limited control over their form and content. Almost all petitions are community initiated, and while information on how they should be structured is publicly available, the number of out-of-order petitions appears to indicate that contact with Members before petitions are prepared is limited.

14.19 A Member proposing to lodge a petition with the Clerk for presentation to the Assembly is required to sign the front page of the petition and indicate the number of signatures the petition contains.¹⁸

LODGEMENT AND PRESENTATION

14.20 While it is usual for Members to lodge all petitions that have been forwarded to them, they are not obliged to do so. The act of lodging a petition for presentation in no way implies that the Member presenting it is necessarily in agreement with the issues raised.

14.21 Every petition is required to be lodged with the Clerk's office by 5 pm on the day before the meeting of the Assembly at which it is proposed that the petition be presented. The petition is then checked by the Clerk or Deputy Clerk, who certifies that the petition conforms to the standing orders.¹⁹ If a petition is found to be out of order, it may be tabled as a paper in accordance with standing order 83A. The Manager of Government Business is approached by the Chamber Support Office to determine, in accordance with standing order 83A, whether a Minister will table the out-of-order petition as a paper.

14.22 Standing order 74, which establishes the routine of business for a sitting of the Assembly, requires that petitions are presented as the first item of business following the prayer

15 It should be noted that a dissenting report was submitted by Senator Peter Durack, a former Attorney-General, regretting that the committee had not considered the specific case that gave rise to the inquiry, where it was asserted that an individual seeking to raise a genuine issue was intimidated by the threat of legal action from doing so. Consideration of the specific case would have required the committee to make a finding with regard to contempt, whereas the inquiry, as conducted, was a largely 'academic' consideration of 'whether there is or ought to be a legal immunity in respect of the circulation of a petition'. Senate Standing Committee of Privileges, 11th Report, *The Circulation of Petitions*, June 1988, pp. 13-6.

16 See *House of Representatives Practice*, p. 619-20 and May, pp. 131-2 and 935-6.

17 Standing order 95.

18 Standing order 96.

19 Standing order 83.

or reflection. However, there is another opportunity for a Member to present a petition. Under standing order 84, a petition referring to a motion or an order of the day may be presented when the matter is called on. In this circumstance, there may have been no assessment of the petition in terms of its conformity to the standing orders. In principle, this does not override the requirement for the petition to be certified as 'in order' by the Clerk. In practice, it would be expected that the Member presenting the petition would, in accordance with standing order 83, lodge the petition with the Clerk by 5 pm the previous day.

14.23 Each sitting morning at 10 am following the prayer or reflection, the Speaker calls on the Clerk to announce the petitions lodged for presentation. The Clerk announces in respect of each petition presented, the Member who lodged the petition, the identity and number of petitioners and the subject matter of the petition.²⁰ If more than one petition is lodged on the same subject matter, the petitions will be grouped together. The Clerk then advises the Assembly that the full terms of the petitions will be recorded in *Hansard* and a copy referred to the appropriate Minister. At this point, the Clerk announces any ministerial responses to petitions previously presented.²¹ Though the Assembly standing orders do not specifically provide that each petition shall be received by the Assembly,²² they do acknowledge that this is the case, standing order 91 providing that all petitions shall be received only as petitions of the parties signing the same.²³

14.24 It is usual to count as signatories to petitions only residents or citizens of the Australian Capital Territory. Non-resident signatories are not included in the count. For example, in the Second Assembly, 11 petitions with 19 032 signatures from interstate residents relating to the availability of X-rated material were lodged with the Clerk. They were tabled as out-of-order petitions.²⁴

14.25 The Assembly has adopted a practice whereby Members are not provided with the names and addresses of petition signatories once petitions are lodged. Nor are these personal details recorded in the *Minutes of Proceedings or Hansard*. The petitions containing the original signatures are retained by the Secretariat along with the original minutes of proceedings. In accordance with the provisions of standing order 212, these documents, together with tabled papers, may be viewed only with the Speaker's permission.

Questions on presentation

14.26 No discussion of the subject matter of a petition is allowed when it is presented to the Assembly. There is only one question that may be proposed by a Member, and that is that the petition be referred to a committee. Standing order 99 does not specify what the committee is required to do with the petition but the assumption is that it would inquire into the issues raised and report to the Assembly.²⁵

14.27 There have been relatively few attempts to have petitions referred to committees. The first was on 28 August 1997²⁶ when a Member successfully moved that a petition relating to the Curtin shops be referred to the Standing Committee on Planning and

20 Standing order 98.

21 MoP 1995-97/209(2), 239, 277(2), 477.

22 For example, standing order 208(b) of the House of Representatives provides that each petition is received by the House, unless a motion that it not be received is moved immediately and is agreed to.

23 And see standing orders 92 and 100 and footnote 25.

24 MoP 1992-94/89, 127.

25 It is problematical what would occur should a Member seek to move a motion that a petition not be received following its presentation. As standing order 208(b) of the House of Representatives makes provision for such a motion the Speaker may very well be obliged to accept and propose the question on such a motion given the provisions of Assembly standing order 275.

26 MoP 1995-97/751, 817.

Environment. Unusually, on 21 October 1999²⁷ an out-of-order petition was referred to the Standing Committee on Urban Services for inquiry into and report on its terms as part of an ongoing inquiry. More recently in the Sixth Assembly, a Member successfully moved that a petition regarding a direct land grant be referred to the Standing Committee on Planning and Environment.²⁸ It is worth noting that, less than three weeks later, the committee advised the Assembly, through a statement made under standing order 246A, that it had resolved not to conduct an inquiry into the terms of the petition.

REFERENCE TO MINISTERS AND MINISTERS' RESPONSES

14.28 Standing order 100 stipulates that a copy of each petition presented to and received by the Assembly is referred to the Minister responsible for the administration of the matter that is the subject of the petition (or to the Minister whose portfolio responsibilities most closely match the issues raised). Accordingly, following presentation the Clerk communicates the terms of petitions to the responsible Ministers. The petition documents containing the original signatures are retained by the Secretariat and filed with the original minutes. They remain confidential and may only be viewed with the Speaker's permission.

14.29 A Minister must lodge a response with the Clerk for presentation to the Assembly within three months of the petition being presented.²⁹

PETITIONS THAT DO NOT CONFORM TO STANDING ORDERS

14.30 There are many reasons why a petition may not conform to the standing orders. Most commonly, petitions are considered out of order because they are incorrectly addressed to the Chief Minister or to a portfolio Minister and not to the Speaker and Members of the Assembly. Other reasons include photocopies (rather than originals) of petitions being lodged and pages containing only signatures without the terms of the petition being attached.

14.31 The practice of seeking leave to table out-of-order petitions as papers commenced in 1989 when a Member presented an out-of-order petition on radiotherapy machines for the ACT and Queanbeyan and made a statement in relation to the paper.³⁰ The Assembly's process for receiving out-of-order petitions has evolved in recognition of the fact that residents, in good faith, have signed petitions which, through no fault of theirs, did not conform to the standing orders.³¹ However, that in itself did not make the issues raised in such petitions any less valid.

14.32 The process was formalised in 1995 with the adoption of standing order 83A, which permitted out-of-order petitions to be tabled as papers at the discretion of a Minister. This was the result of a review of the standing orders by the Standing Committee on Administration and Procedure.³² Prior to this amendment, Members were required to seek leave—a time consuming process that gave greater prominence to petitions that did not meet the requirements of the standing orders. Since 1989, 162 out-of-order petitions have been tabled.

27 MoP 1998-2001/591.

28 MoP 2004-08/554.

29 Standing order 100. See MoP 2004-08/1563.

30 MoP 1989-91/133.

31 The largest out-of-order petition was lodged in the Fifth Assembly relating to pharmacies in supermarkets and contained 35 000 signatures.

32 Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply*, dated 28 April 1995.

14.33 Under standing order 94 a petition can also be ruled out of order if the Speaker is of the opinion that its subject matter is not within the ministerial responsibility of the Territory, reflects on the character or actions of a named person, is expressed in inappropriate terms or is otherwise in breach of standing orders. The committee was concerned that some residents might seek to use the opportunity to lodge petitions to make offensive or otherwise unacceptable allegations, thus taking advantage of the protections offered by parliamentary privilege.

14.34 The committee also developed a proforma petition document for Members to distribute to residents who were considering petitioning the Assembly. This was done to avoid out-of-order petitions continuing to be lodged. The assumption was that it was unrealistic to expect residents to seek advice from a Member or the Clerk on every occasion before preparing a petition.

RECOMMENDED STYLE OF PETITION**Petition**

To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory

This petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that: (outline situation which needs change)

Your petitioners therefore request the Assembly to: (detail the action which the Legislative Assembly should take)

	NAME (please print)	ADDRESS	SIGNATURE
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

* **The request for action must appear on every page that has signatures.**

* **All signatures must be original and at least one signature must appear on each page.**



15 MATTERS OF PUBLIC IMPORTANCE

INTRODUCTION

15.1 Matters of public importance originated from a provision in the House of Representatives standing orders adopted in 1901 which permitted Members to formally discuss a definite matter of urgent public importance. The rationale for permitting this was described by Speaker Johnson as being based on:

... the supposition that something of an urgent public nature has suddenly arisen which prevents notice of a motion for its consideration being given in the ordinary way.¹

15.2 A 'matter of public importance' (MPI) gives Members a vehicle to discuss a matter of current concern without the requirement for a question to be before the Chair. The Assembly does not make a judgement on the matter by way of resolution. The form of that discussion is not a debate and no vote is taken at the completion of the discussion.² The order of business provides for this discussion to take place following the presentation of papers and ministerial statements.

15.3 Unlike a motion, no action is called for and the discussion concludes when the time allocated has expired or no further Members rise to speak. Standing order 69(g) specifies that the time allocated for the whole discussion is limited to one hour, with the proposer and Member next speaking being allocated 15 minutes and any other speakers 10 minutes.

15.4 The MPI procedure is one of the principal avenues available to non-executive Members to initiate discussion on matters that are of immediate concern. In the Assembly it is common for all non-executive Members to lodge proposals for MPIs with the Speaker on a regular basis. Of course, those from government backbenchers tend to be congratulatory in nature and those from the opposition critical of government policy or administration.

15.5 Technically, there is nothing in the standing orders that would prevent a Minister initiating an MPI but there have been no instances where a Minister has attempted to do so. There are other and better avenues available to Ministers to put their views before the Assembly. In addition, MPIs are accepted as an opportunity for non-executive Members to promote their views, and for Ministers to intrude into this area would be seen to diminish opportunities for non-executive Members to initiate matters in the Assembly. This is consistent with House of Representatives practice.³

15.6 During the term of the Sixth Assembly, there was an informal arrangement between the Whips and the crossbench Members that Members would not propose MPIs for sitting Wednesdays (private Members' business day). It was considered that, with the introduction of the 6 pm adjournment, the consideration of an MPI was cutting into the time

1 H.R. Deb. (21.7.22) 718-9.

2 The Senate, at standing order 75, has provision both for matters of public importance and for urgency motions on issues of immediate concern. The latter involves debate and a vote on a question and is preferred by oppositions and crossbenchers because it can result in a decision of the Senate critical of the government of the day.

3 *House of Representatives Practice*, p. 576.

available for non-executive Members' business. There were a few occasions in 2008 when this agreement was ignored.⁴

RESPONSIBILITIES OF THE SPEAKER

15.7 Standing order 79 requires a Member who wishes to raise an MPI to lodge a written and signed letter⁵ outlining the terms of the proposal with the Speaker one and a half hours prior to the commencement of the time fixed for the meeting of the Assembly at which it is proposed the matter is sought to be discussed. In practice, the letter is required to be lodged with the Speaker by 8.30 am on a sitting morning. The terms of the MPI are then printed in the *Daily Program*, which is distributed to all Members around 9 am each sitting day.

15.8 The Speaker has the power to determine whether the matter proposed is in order. While the standing orders are less than specific as to what constitutes 'in order', the Speaker takes the following issues into consideration:

- whether the matter is within the scope of ministerial action;
- whether the matter is critical of an individual;
- whether the proposal is in the form of a statement, not a motion;
- whether the matter is currently before a committee;
- whether the matter anticipates debate on a matter on the *Notice Paper* (standing order 130); and
- whether the proposal risks breaching sub judice conventions.

15.9 Many of the issues that are considered by the Speaker also apply to the general rules of debate. The Speaker has ruled MPIs out of order on the following grounds:

- the matter was not within the scope of ministerial action;⁶
- the proposal was in the form of a motion, not a statement;⁷
- the proposal contained matter than should have been more properly moved in a substantive motion;⁸
- the matter anticipated debate on a matter on the *Notice Paper* (standing order 130);⁹ and
- the proposal risked breaching sub judice conventions.¹⁰

15.10 It is the practice of the Speaker to announce at the commencement of each sitting day whether any MPIs have been ruled out of order and the reasons for that decision.¹¹ The decision of the Speaker is regarded as one that cannot be challenged by a motion of dissent as it is not a ruling but the exercise of an authority vested in the Speaker by the standing orders.

15.11 No amendment can be made to a matter under discussion as it is not a motion before the Assembly. However, proposals are sometimes amended by the Member at the suggestion of the Speaker or the Clerk prior to their discussion in the Assembly.

4 MoP 2004-08/772.

5 In the First Assembly it had been the practice to circulate a photocopy of the letter to the Speaker detailing the MPI to Members prior to the commencement of the sitting that day. On one occasion it appeared that the document provided to the Speaker did not contain the true signature of the Member. There was much debate and subsequently the MPI was withdrawn. MoP 1989-91/621.

6 MoP 2004-08/276.

7 Assembly Debates (28.8.2003) 3325; MoP 2001-04/911.

8 MoP 2001-04/911.

9 MoP 2001-04/197.

10 MoP 2001-04/471.

11 See MoP 2001-04/1209 for an example.

15.12 In the event that more than one Member submits a matter for discussion, pursuant to standing order 79 the Speaker determines by lot the matter to be submitted for discussion. This process is conducted in the Speaker's office at 8.30 am on a sitting day in the presence of the Speaker, his or her senior adviser and the Clerk. The Speaker's office advises the Member whose proposal is successful. All matters proposed, including those that are unsuccessful, are retained with the originals of the minutes held by the Clerk's Office.

TIME FOR DISCUSSION

15.13 The standing orders that determine the order of business for a sitting day—specifically, standing orders 69 and 74—state that the discussion of an MPI shall take place following the presentation of papers and ministerial statements, which occurs after question time. In effect, with question time starting at 2 pm, taking about one hour, and papers and ministerial statements often up to 30 minutes, the discussion of the MPI usually commences at about 3.30 pm.

15.14 One hour is set aside for the discussion, with the proposer being allocated 15 minutes, the next Member speaking 15 minutes, and any other speaker 10 minutes.¹²

MEMBER NOT PRESENT

15.15 The Member who proposes a matter for discussion must, under the standing orders, open the discussion. If that Member is not in his or her place in the Chamber or has been suspended¹³ when the matter is called on, the matter lapses and the Assembly proceeds to the next item of business.

¹² Standing order 69(g)

¹³ *House of Representatives Practice*, p. 582.



16 COMMITTEES

16.1 The systematic use of standing and select committees¹ to scrutinise proposed legislation, to monitor the activities of the executive and to examine public policy issues in a more detailed way but, at the same time, in a less formal atmosphere than is possible in a parliamentary chamber, has become an accepted and well-established practice in all Australian parliaments. With the creation of the ACT's Legislative Assembly in 1989, provision was made for a comprehensive committee system.² Despite the ACT being a small jurisdiction, the combination of 'state' and 'local government' functions at the one level has resulted in governments having a very broad range of responsibilities and significant legislative programs.³ Thus the demands on the committees have been significant.

16.2 There are two types of Assembly committees: standing committees and select committees. Standing committees are created at the commencement of an Assembly and remain in operation for the life of the Assembly, while select committees are created to consider specific matters, generally within specified timeframes.

16.3 Standing committees fall into the following categories:

- there is an internal administrative committee, the Standing Committee on Administration and Procedure, which is the only committee created directly under the standing orders; and
- there are general purpose committees with responsibility for a broad range of government activity, they also have certain statutory responsibilities.

16.4 The Standing Committee on Administration and Procedure's role is to consider the practices and procedures of the Assembly and to advise the Speaker on such matters as Members' entitlements and internal Assembly operations. For this reason, it is supported from within the Chamber Support Office. All other committees (with the exception of the Scrutiny of Bills and Subordinate Legislation Committee) are supported from within the Committee Office.

16.5 General purpose standing committees consider a range of matters allocated across specified portfolio areas. These matters are determined by their resolutions of appointment, while specific terms of reference apply to individual inquiries. Over the years differing committee structures have been established, but some committees are longstanding, albeit with title variations. Assembly standing committees also have significant statutory responsibilities, particularly the Standing Committee on Public Accounts and the Standing Committee on Planning and Environment.

1 The titles of committees vary between jurisdictions. In Australia 'standing committee' normally refers to a committee that has a continuing life throughout the term of a parliament. 'Select committee' refers to a committee that is established for a defined term, normally with a limited remit to examine a specific subject, and ceases to exist once it has reported.

2 The authority of the Legislative Assembly to establish committees can be said to flow from section 49 of the Constitution, which provides that the '... powers, privileges and immunities of the Senate and of the House of Representatives ... shall be those of the Commons House of Parliament of the United Kingdom,' via the House of Representatives and the Self-Government Act.

3 The ACT Government has responsibility for a range of 'state' and municipal functions—education, health, social welfare, housing, justice and policing, land management, licensing, public transport, water and power supply, and household waste management.

16.6 A select committee is established each year to consider the annual appropriations bills. Select committees are also established to consider matters which are considered to be highly topical, and matters which the Assembly considers need to be accorded specific and timely consideration.

16.7 The titles and areas of responsibility of the general purpose standing committees and the structure of the committee system have varied over time. These changes have reflected the views of Members and the evolution of a system appropriate to the Assembly's needs. At various times there have been proposals that committees take responsibility for broad policy areas, that they track ministerial portfolios and that they focus on key areas of government activity. In practice, no one system has been adopted.

COMMITTEES IN THE FIRST ASSEMBLY

16.8 General purpose standing committees were established at the commencement of the First Assembly in an *ad hoc* way. Non-government Members complained of a lack of consultation. They claimed that there was no consensus on the number of committees and their areas of responsibility, and concerns emerged very early about the implications for Members in meeting the demands of an extensive committee system.

16.9 Three general purpose standing committees were established on 23 May 1989⁴ (the second sitting day), each of four members. Their terms of reference reflected contemporary Commonwealth and state parliamentary practice. On 25 May 1989 a further standing committee was established. The motion to establish this committee proposed that it have only three members. The mover indicated that this reflected a concern about the demands that the committee system would make on Members' time. The motion was amended to give the committee four members. The Chief Minister opposed the establishment of the committee because of the implications for both Members' time and the resources available to the Assembly. She indicated that the governing party 'favoured a rather more streamlined approach to committees'.⁵

16.10 In August 1989 the ACT Chief Minister wrote to the Speaker of the Assembly noting that:

Members of the Assembly have expressed concerns regarding various aspects of the Assembly committee system ... these concerns appear to have their foundation in the fact that no overall examination of Assembly committees has been attempted.⁶

16.11 The Chief Minister sought the Speaker's comments on a discussion paper 'The Role of Assembly Committees',⁷ which was also provided to party leaders in the Assembly. In fact, the paper did little more than propose a fifth standing committee on legal affairs. It would include the scrutiny of bills and delegated legislation function to 'fill the gap' in the existing areas of responsibility of standing committees. It also proposed that a select committee be established each year to examine the appropriation bills and recognised that select committees might also be created to look at specific bills or other clearly limited subjects. There was no discussion of the implications of the proposals for either the demands on Members' time or the staffing and financial resources of the Legislative Assembly's Secretariat.

4 Standing Committee on Public Accounts, Standing Committee on Planning, Development and Infrastructure and Standing Committee on Social Policy.

5 Assembly Debates (25.5.1989) 167.

6 Standing Committee on Administration and Procedures, *Restructuring the committee system*, dated March 1990, p.14.

7 Standing Committee on Administration and Procedures, *Restructuring the committee system*, dated March 1990, p.15-7.

16.12 The Speaker's response was somewhat more substantial.⁸ It recognised the constraints placed on the Assembly by the small number of Members available to serve on committees and, without making any substantive proposals, foreshadowed the need for 'careful assessment' of staffing and resource issues. The Speaker proposed the establishment of five general purpose standing committees having responsibility for broad subject areas.⁹ The standing committees would also have individual responsibility for the estimates function (scrutinising appropriation bills), for considering legislation, and they would be expected to develop a broad expertise in their subject areas. The use of select committees was to be kept to an absolute minimum. It was also proposed to adopt flexible rules with regard to the membership of standing committees to accommodate the interests of individual Members who wished to participate in a particular inquiry.

16.13 In response to pressure from Members, a Standing Committee for the Scrutiny of Bills and Subordinate Legislation was established on 18 October 1989 with three members.¹⁰ It was noted that this was an interim measure 'pending Government consideration of suggestions for a broad reorganisation of standing committees'.¹¹

16.14 The Australian Labor Party, by then in opposition, responded to the Speaker's paper on 8 February 1990, broadly supporting the proposed structure. Mr Kaine, the new Chief Minister, provided a government response on 1 March 1990. The government proposed four general purpose standing committees. It also proposed that a single Select Committee on Estimates consider appropriation bills, mainly because the responsibilities of the standing committees did not correspond to the distribution of ministerial portfolios, which would result in Ministers and their officials having to appear before a number of committees.

16.15 On 12 March 1990 the various proposals were referred to the Standing Committee on Administration and Procedures for examination and report to the Assembly. That committee reported on 22 March 1990 and recommended that the existing general purpose standing committees be retained with minor adjustments to their areas of responsibilities. In making this recommendation, the committee rejected the broad consensus of proposals from the Speaker, the government and the opposition that the Standing Committee on Conservation, Heritage and Environment be subsumed into a modified planning and environment committee. The proposals to create an education committee, separate from the social policy committee, or to reduce the number of standing committees by one, as suggested by the government, were also rejected.

16.16 The administration and procedure committee also recommended that the Assembly establish a legal affairs committee separate from the scrutiny of bills and delegated legislation committee. This was done on 27 March 1990. It was argued that the latter committee, which was largely concerned with technical legal issues, benefited from a tradition of bipartisanship which might be compromised if it was combined with a committee which might 'travel down more controversial paths'.¹²

16.17 Three characteristics of the Assembly's committee system were already apparent and of concern to Members:

8 Standing Committee on Administration and Procedures, *Restructuring the committee system*, dated March 1990, p.18-9.

9 Education and Community Affairs; Legal Affairs (including the scrutiny of bills and delegated legislation function); Public Accounts; Planning, Environment and Infrastructure; and Social Policy.

10 The Scrutiny of Bills and Delegated Legislation Committee is not considered to be one of the general purpose standing committees. It has a very specific remit and its secretariat support is provided by the Chamber Support Office of the Assembly.

11 Chief Minister, Assembly Debates (19.10.1989) 1863.

12 Standing Committee on Administration and Procedures, *Restructuring the committee system*, dated March 1990, p. 9.

- the limited number of Members available to serve on standing and select committees¹³ imposed a heavy burden on those Members, particularly from the governing party;
- with a small number of standing committees, the areas of responsibility of those committees were very wide, bringing into question their ability to oversee a particular area; and
- the lack of correspondence between the committees' remit and the portfolio responsibilities of Ministers limited the effectiveness with which the executive could be scrutinised.

COMMITTEES OF LATER ASSEMBLIES

16.18 At the commencement of the Second Assembly (March 1992 to February 1995), the five general purpose standing committees from the previous Assembly were re-established and an additional Standing Committee on Tourism and ACT Promotion was created. A further standing committee, the Standing Committee on the Public Sector, was created in June 1994 to continue the work of a select committee. With that exception, all the general purpose standing committees were established on the first sitting day of the new Assembly. In the Third Assembly (March 1995 to February 1998), six general purpose standing committees were established on the first sitting day. The Standing Committee on Conservation, Heritage and the Environment, the Standing Committee on Tourism and ACT Promotion and the Standing Committee on the Public Sector were not re-established. The Assembly set up a new committee, the Standing Committee on Economic Development and Tourism, which took on some of the functions of the discontinued committees, with other functions being allocated to other standing committees.

16.19 The first significant attempt since 1990 to restructure the committee system was made early in the Fourth Assembly (March 1998 to October 2001). The *Review of the Governance of the Australian Capital Territory* (the Pettit Review) examined inter alia the structure of the committee system. It concluded that:

... [a] weakness in the current committee system is that the spread of Committees does not match the spread of policy areas covered by Government Departments ...

and recommended:

The Standing Committees of the Assembly should be restructured so that there is a committee to track each of the main agencies – and in particular, each of the main policy areas – of government.¹⁴

16.20 At the commencement of the Fourth Assembly the motion to establish the standing committees proposed, citing Pettit, that the committees track ministerial portfolios. In practice, given the small number of Ministers and their diverse responsibilities in the ACT system, this proposal replaced one broadly based approach with another. It had become apparent that creating committees to track ministerial portfolios did not produce a coherent structure because ministerial responsibilities changed regularly both within and between Assemblies. Five general purpose standing committees were therefore established with the public accounts function subsumed into a new Standing Committee for the Chief Minister's Portfolio (renamed Standing Committee on Finance and Public Administration on 25 November 1999) and the functions of the scrutiny of bills and subordinate legislation committee being taken into the Standing Committee on Justice and Community Safety.

¹³ There were 11 select committees in the First Assembly, seven in the Second, eight in the Third, 11 in the Fourth, 10 in the Fifth and six in the Sixth.

¹⁴ *Review of the Governance of the Australian Capital Territory* (Canberra, 1998), pp. 48-50.

16.21 It might be argued that the Assembly's early history, which was characterised by minority governments and by a diverse range of Members, including many independents, minor parties and Members opposed to the ACT's system of self-government, meant that there was a lack of broad consensus on the structure and responsibilities of the Assembly's committee system. As a result, decisions on the structure of the committee system and other institutional questions were heavily influenced by the small number of Members available to serve on committees and the political exigencies of the moment rather than by a clear perception of the institution's long-term needs.

16.22 Committee responsibilities may be very generally defined—for example, social policy—or may combine a general remit with responsibility for a specific task. For example, each Assembly has had a standing committee with responsibility in the areas of planning, infrastructure, development and the environment which has also discharged the specific legislative requirement that variations to the ACT's land use plan must be referred to an appropriate committee of the Legislative Assembly.¹⁵ Later Assemblies combined the specific responsibility for commenting on the reports of the Auditor-General with the general oversight of matters relating to finance and public administration.

¹⁵ Section 73 of the *Planning and Development Act 2007*:

Consideration of draft plan variations by Assembly committee

The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft plan variation to the Legislative Assembly.

**Table 16.1: Legislative Assembly for the Australian Capital Territory
Committee Structure, up to and including the Sixth Assembly**

First Assembly	Second Assembly	Third Assembly	Fourth Assembly	Fifth Assembly	Sixth Assembly
Standing	Standing	Standing	Standing	Standing	Standing
Administration and Procedures	Administration and Procedures	Administration and Procedure	Administration and Procedure	Administration and Procedure	Administration and Procedure
Conservation, Heritage and the Environment	Conservation, Heritage and Environment	Economic Development and Tourism	Education, Community Services and Recreation	Community Services and Social Equity	Education, Training and Young People
Legal Affairs	Legal Affairs	Legal Affairs	Finance and Public Administration (incorporating the Public Accounts Committee)	Education	Health and Disability
Planning Development and Infrastructure	Planning Development and Infrastructure	Planning and Environment	Health and Community Care	Health	Legal Affairs (also performing the duties of a scrutiny of bills and subordinate legislation committee)
Public Accounts	Public Accounts	Public Accounts	Justice and Community Safety (also performing the duties of a scrutiny of bills and subordinate legislation committee)	Legal Affairs (also performing the duties of a scrutiny of bills and subordinate legislation committee)	Planning and Environment
Scrutiny of Bills and Subordinate Legislation	Public Sector	Scrutiny of Bills and Subordinate Legislation	Planning and Urban Services	Planning and Environment	Public Accounts
Social Policy	Scrutiny of Bills and Subordinate Legislation	Social Policy		Public Accounts	
	Social Policy				
	Tourism and ACT Promotion				

First Assembly	Second Assembly	Third Assembly	Fourth Assembly	Fifth Assembly	Sixth Assembly
Select	Select	Select	Select	Select	Select
Cultural Activities and Facilities	Budget Performance and Outcomes for 1993-94	Additional Estimates 1995-96	2001-2002 Budget	Estimates 2001-2002	Estimates 2005-2006
Establishment of a Casino	Community Initiated Referendums	Competition Policy Reform	Estimates 1998-99	Estimates 2002-2003	Estimates 2006-2007
Estimates 1989-90	Drugs	Estimates 1995-96 and Budget Review	Estimates 1999-2000	Estimates 2003-2004	Estimates 2007-2008
Estimates 1990-91	Establishment of an ACT Public Service	Estimates 1996-97	Estimates 2000-2001	Estimates 2003-2004 (No 2)	Estimates 2008-2009
Estimates 1991-92	Estimates 1992-93	Estimates 1997-98	Estimates 2001-2002	Estimates 2003-2004 (No 3)	Privileges
HIV, Illegal Drugs and Prostitution	Estimates 1993-94	Establishment of a New Private Hospital	Gambling	Estimates 2004-2005	Working Families in the Australian Capital Territory
Hospital Bed Numbers	Estimates 1994-95	Petrol Pricing	Government Contracting and Procurement Processes	Privileges 2002	
Occupational Health and Safety Bill 1989	Euthanasia	Workers' Compensation Provisions	Public Housing	Privileges 2003	
Police Offences (Amendment) Bill 1989			Report of the Review of Governance	Privileges 2004	
Self-Government			Territory's Superannuation Commitments	The Status of Women in the ACT	
Tenancy of Commercial Premises			Workers' Compensation System		
Amalgamation of Territory Institutions					

COMMITTEE WORKLOAD

16.23 In terms of output of reports, the standing committees that have been most prolific have been those with a specific function imposed by legislation or their resolution of appointment. Between the Second and Fifth Assemblies, the planning committee averaged 48 reports, mainly on variations to the ACT's Territory Plan. The public accounts committee (later the finance and public administration committee) averaged 24 reports over the same period, largely in response to reports by the ACT's Auditor-General. The scrutiny of bills and subordinate legislation committee, which averaged 62 reports, comments on all legislation introduced into the Assembly and all disallowable legislative instruments made under ACT legislation.

16.24 The need to respond to an external demand has produced two responses in committees. On the one hand, the members of the committee responsible for planning variations—a matter of active public concern—have tended to devote the bulk of their time and energy to those inquiries, perhaps at the expense of other matters within the committee's broad remit.¹⁶ On the other hand, the committee responsible for the scrutiny of bills and subordinate legislation function, which deals with technical issues related to the drafting of legislation and the legitimate exercise of legislative authority, has relied heavily on specialist legal advisers for research, advice and drafting of reports. Thus, its members have been able to devote more time and resources to the general inquiry function of the standing committee that is responsible for legal issues.

16.25 The scrutiny committee is an example of the response to the constraints imposed by having a limited number of members. In most parliaments its functions are discharged by two committees, one responsible for bills and the other for delegated legislation. In the ACT this is simply not practicable; so combining the responsibilities has become accepted practice. The committee has also had a chequered history. In the first three Assemblies it was a separate committee while more recent practice has been for the standing committee with responsibility for legal matters generally—law reform; the administration of justice; policing—to perform the role of the scrutiny committee. In recognition of the fact that the scrutiny of legislation is a function of the Assembly as a whole, the Chamber Support Office provides secretariat support for the scrutiny role while the Committee Office supports the general inquiry role.

16.26 The Standing Committee on Administration and Procedure similarly combines functions that are the responsibility of a number of committees in larger parliaments. In the standing orders prepared for the First Assembly, two committees were envisaged but on the second sitting day of that Assembly the proposed orders were set aside and replaced by one providing for a single committee.

POWERS OF COMMITTEES

16.27 The Self-Government Act provides that:
Until the Assembly makes a law with respect to its powers, the Assembly and its Members and committees have the same powers as the powers for the time being of the House of Representatives and its Members and committees.¹⁷

16.28 Thus, the Assembly has the power to establish committees which share its powers and privileges. The Assembly's devolved inquiry powers, including those of its

¹⁶ For an example, see paragraphs 16.144 and 16.145 where the planning and environment committee discharged an inquiry into an environmental issue citing the workload imposed by its planning responsibilities.

¹⁷ Self-Government Act, subsection 24(3).

committees, might be limited to matters within its legislative responsibility, but this has not been tested.¹⁸ The powers of committees broadly fall into two categories. The first, which *House of Representatives Practice* more accurately characterises as authorisations, is the ability to conduct hearings, move from place to place, authorise publication of evidence and present reports to the Assembly. The real power of committees, which underpins their inquiry function, is 'to call for persons, papers and records'—to require the attendance of witnesses and the production of documents.

16.29 The extent of these powers with regard to the Commonwealth Parliament has been the subject of debate and some judicial comment.¹⁹ However, the question is unresolved and is likely to remain so. The courts are generally wary of questioning parliaments' use of their powers and, equally, parliaments tend to assert their powers with discretion and exercise their authority through the voluntary cooperation of witnesses and by negotiation.

16.30 In the Legislative Assembly, having regard to the reservations above, there has been no significant challenge to the powers of committees to conduct inquiries, call witnesses or require the production of papers.²⁰ Equally, committees have not explored the limits of their powers to call for the production of documents.

STATUTORY REQUIREMENTS

16.31 Certain Acts require Assembly committees to undertake tasks. The *Human Rights Act 2004* requires a committee nominated by the Speaker to report to the Assembly about human rights issues raised by bills presented to the Assembly.²¹ The *Planning and Development Act 2007* requires a committee nominated by the Speaker to report on certain draft plan variations and draft plans of management.²²

16.32 The *Legislation Act 2001* requires a Minister to consult the appropriate Assembly committee, as determined by the Speaker, before making a statutory appointment—that is, an appointment to a position created by an Act.²³ A committee may make recommendations with regard to a proposed appointment and a Minister is required to consider any such recommendations prior to making an appointment. There are various reservations within this section; it does not apply to ordinary positions within the ACT Public Service, to short-term appointments or to appointments of ministerial staff. The Minister may proceed to make the appointment if the committee does not respond to the initial consultation within 30 days.²⁴

16.33 In practice, the limited resources available to standing committees preclude any but the most cursory consideration of proposed appointments and committee consideration of statutory appointments concentrates on what might be described as formal compliance—whether the Minister has met the statutory requirements with regard to consulting the relevant Assembly committee. The normal form of consultation is for the Minister to write to the committee advising it of the proposed appointment and providing a brief resume for the appointee. While it was extremely rare for committees to request further information, in the

¹⁸ *Odgers'*, pp. 57-8.

¹⁹ For a thorough consideration of this question, see *House of Representatives Practice*, pp. 645-8 and *Odgers'*, Chapter 16 (powers of committees) and pp. 437-42 (orders for the production of documents).

²⁰ There are reasonable claims—for example, based on crown privilege (or public interest immunity). While parliaments may acknowledge the validity of such claims on a case-by case basis they have resisted conceding them as general principles.

²¹ *Human Rights Act 2004*, section 38.

²² *Planning and Development Act 2007*, section 73.

²³ *Legislation Act 2001*, division 19.3.3, section 228. The *Territory-owned Corporations Act 1990*, subsection 12(2), has a similar requirement in relation to the appointment of the directors of such corporations. These appointments are referred to the Standing Committee on Public Accounts.

²⁴ *Legislation Act*, subsection 228(3).

Sixth Assembly a number of committees have requested further information on appointments from the relevant Minister. The usual response from committees is that appointments are 'noted'.

STANDING ORDERS RELATING TO COMMITTEES

16.34 The standing orders relating to committees are expressed in general terms. To understand fully the areas of responsibility, membership, reporting requirements and even powers of individual committees it is necessary to read the standing orders in conjunction with the resolution of appointment of individual committees, which may vary the general provisions quite considerably, and any relevant resolutions of the Assembly. Where the Assembly's own orders, practices and procedures are insufficient, the practices of the House of Representatives, the Senate and other parliaments should also be considered.

APPOINTMENT OF STANDING COMMITTEES

16.35 Standing order 215 requires that standing committees be established for the life of the Assembly. The practice of the Legislative Assembly is to appoint general purpose standing committees on the first or second sitting days of a 'new' Assembly. In the first Assembly (1989 to 1991) standing committees were created at various times as the Assembly developed a clearer view of how it would proceed. In the second and subsequent Assemblies, standing committees were generally established at the beginning of the Assembly.

16.36 In the Second Assembly (1992 to 1995) the Standing Committee on the Public Sector was established in June 1994 to continue the work of a select committee. The justification offered at the time (rather than simply extending the life of the select committee) was that a standing committee would indicate the Assembly's commitment to continuing oversight of the newly established ACT Public Service. However, the committee was not re-established in subsequent Assemblies.

16.37 The number of standing committees has varied between six and nine; in four of the six Assemblies to date there have been seven standing committees. This number includes the Standing Committee on Administration and Procedure, which is appointed under standing order 16. Standing order 16 requires the committee to be appointed, defines its responsibilities and names the Speaker as its presiding member.

16.38 The Assembly's standing orders are silent on the number of committees to be established, their areas of responsibility and, other than in the most general terms, their membership. In contrast, the House of Representatives and the Senate both specify the titles of the standing committees that are to be established, the number of members and the 'source' of members—that is, the number to be nominated by the government party, the opposition party or from among independent Members. However, the Assembly has developed the practice of adopting a comprehensive resolution at the start of each Assembly. It establishes the general purpose standing committees, sets out their areas of responsibility, defines the membership (by party) and specifies some of their powers.²⁵

25 MoP 2004-08/12.

JOINT INQUIRIES

16.39 There has been one example of an attempt to have two standing committee meet jointly to conduct an inquiry. At issue was a major change in the ACT's land development system. It was argued that because of the significant implications for both the Territory's future planning and its public finances, a joint committee combining the Standing Committee on Planning and Environment and Standing Committee on Public Accounts should examine the proposal.²⁶ After extensive debate, which did not go to the structure of the proposed committee, narrower terms of reference relating strictly to the relevant legislation were given to the Standing Committee on Planning and Environment. The record does not reveal why a joint committee was proposed rather than a select committee comprising the members of the two standing committees

16.40 In 2007 the Standing Committee on Planning and Environment made an approach to the Commonwealth Parliament's Joint Standing Committee on the National Capital and External Territories to conduct joint inquiries on some matters that necessitated amendments to the National Capital Plan and Territory Plan. In its response to the Assembly committee's letter, the chair of the Commonwealth joint committee advised that the proposal had been considered by the committee, but rejected after receiving advice.²⁷

16.41 Any such proposal for a joint committee would need the concurrence of the Assembly. Should a committee go ahead without the required order of the Assembly (and possibly legislative protection in the latter case), the 'joint' committee or inquiry would not be properly constituted.

INQUIRIES BY STANDING COMMITTEES

16.42 In addition to matters referred to standing committees by the Legislative Assembly and their undertaking their statutory responsibilities, committees can themselves initiate inquiries that relate to their areas of responsibility. The resolutions appointing standing committees which were adopted by the Assembly on 7 December 2004 included the following power:

... to inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community.²⁸

In March 2008 the Assembly amended standing order 216 to explicitly give the committees the power to self-refer.²⁹

16.43 This is a more extensive power than is available to committees of either the House of Representatives or the Senate, which do not have the power of self-referral.³⁰ Self-referral is used extensively by Legislative Assembly committees. References come from four main sources:

²⁶ MoP 2001-04/198-9, 227, 275-6. If authorised by the Assembly such a committee could be established and have access to the papers of both the constituent committees.

²⁷ Assembly Debates. (23.8.2007) 1923-4.

²⁸ MoP 2004-08/12.

²⁹ See standing order 216.

³⁰ The House of Representatives' standing committees may inquire into any matter referred by the House or a Minister, or any aspect of an agency annual report which falls within its responsibilities. Senate legislative and general purpose references committees can inquire into matters referred to them by the Senate. Annual reports of departments and agencies are also referred to the appropriate committee for examination. The relevant Senate standing order (Chapter 5, standing order 25- 21) sets out the detailed responsibilities of committees with regard to annual reports.

- a recurring requirement imposed in resolutions of appointment or in the practices of the Assembly—for example, to review Auditor-Generals reports, agency annual reports and the conduct of community consultation on the annual budget;
- legislation—for example, the consideration of planning variations (see footnote 15);
- a reference from the Assembly (including the reference of a paper presented by a Minister or the Speaker, pursuant to standing order 214), and
- self-referral by the standing committee.

16.44 Referral by the Assembly of a specific matter within a standing committee's general remit is the exception. For example, in the Fifth Assembly three standing committees—the Standing Committee on Health, the Standing Committee on Education and the Standing Committee on Community Services and Social Equity—produced 13 reports on references. Of these, 10 were on matters that the committees had self-referred and two were references from the Assembly.³¹ The committees also produced seven reports arising from the budget or agency annual reports.

16.45 Given the small number of standing committees, each having diverse responsibilities, there has sometimes been debate as to which committee is the most appropriate to undertake an inquiry. For example, in 2001 debate on a motion to refer a question with regard to the sale, use and general safety of fireworks in the ACT was adjourned after the Speaker intervened to point out that the proposed terms of reference 'include[d] matters within the responsibility of another standing committee', and suggested that the debate be adjourned while the matter was considered by the proponent of the reference. At a later hour on the same day, debate was resumed and the motion was amended to send the reference to a different standing committee.³² Committees can negotiate formally and informally both before a reference is adopted and after the inquiry has been referred.

16.46 The reference of a matter to a committee does not preclude the Assembly from considering the same or a similar matter. In 1996 a matter was referred to a standing committee. On the same day, debate on the motion that a bill be agreed to in principle was resumed. The bill related to a matter which was central to the committee reference. The Speaker declined to uphold a point of order that the reference to a committee precluded the Assembly from considering the bill. He noted that at the completion of the debate the Assembly could, pursuant to standing order 174, refer the bill to the same committee. In fact, the bill was taken through all its stages in the Assembly and passed.³³

16.47 References to committees by either the Assembly or by the committees themselves should relate to matters within the competence of the Assembly and the executive.

SELECT COMMITTEES

16.48 In the Australian parliamentary tradition, select committees, in contrast to standing committees, are established with specific terms of reference and set reporting dates. Select committees respond to issues that fall outside the remit of standing committees or are of such importance or urgency that a specific committee is considered necessary to examine them.

³¹ One self-reference, by the Community Services and Social Equity Committee, generated two reports.

³² Assembly Debates (13.12.2001) 203-5 and 219-20.

³³ Assembly Debates (27.6.1996) 2374.

16.49 The Legislative Assembly has made extensive use of select committees,³⁴ particularly to consider the annual appropriation bill. Select committees have also been established to consider three matters of privilege in the Fifth Assembly. In earlier Assemblies, privilege matters had been considered by the Standing Committee on Administration and Procedures. In recent Assemblies the use of select committees to inquire into matters of public policy, a common practice in earlier Assemblies, has become less frequent. There was only one such committee in the Fifth Assembly and only one 'public policy' inquiry was established in the Sixth Assembly.

16.50 The requirement for a select committee to avoid matters within the competence of a standing committee is in practice unrealistic. The scope of the responsibilities of the standing committees is such that virtually any matter relevant to the ACT which could be referred to a select committee will fall within the competence of one of the standing committees. The Assembly seeks to avoid establishing a select committee to inquire into a matter that overlaps with a current inquiry by another committee. In March 2008 the Assembly amended standing order 217 to provide that standing committees should take care not to inquire into any matters which are being examined by a select committee.³⁵

Report from select committees

16.51 A distinguishing feature of select committees is that they have a fixed reporting date. While standing committees may seek an extension of time to report, Assembly select committees have generally completed their inquiries within the time limits set.

FIRST MEETING

16.52 Standing order 219 provides that the secretary of a committee, under the general direction of the Speaker, shall fix the time of the first meeting of a committee. It is a somewhat more formal practice than applies in other parliaments. In both the House of Representatives and the Senate it is the responsibility of the secretary of the committee, in consultation with the members, to arrange the first meeting and advise all members in writing of the time and place of the meeting.

16.53 In the House of Representatives the process is simply an established practice: If, as is normally the case, it is left to a committee to elect its own chair, the committee secretary must call the first meeting.³⁶

16.54 The Senate, in standing order 30(1), requires the secretary to organise the first meeting if the 'mover of a committee' is not a member. In practice, the committee secretary liaises with committee members to arrange the first meeting.

16.55 The normal process in the Assembly is for committee secretaries to ascertain Members' availability before advice is provided to the Speaker to enable the first meetings of committees to take place. In March 2008 the Assembly amended the relevant standing order to provide that the first meeting must be within seven days of the establishment of the committee.³⁷ The standing orders were also amended to make it clear when subsequent meetings can be held and under what authority they can be called.³⁸

34 First Assembly, 11 reports; Second Assembly, 7 reports; Third Assembly, 8 reports; Fourth Assembly, 12 reports; Fifth Assembly, 10 reports. There were six select committees established in the Sixth Assembly.

35 See standing order 217.

36 *House of Representatives Practice*, p. 690.

37 See standing order 219.

38 See standing order 219A.

MEMBERSHIP

16.56 The standing orders provide only the most general guidance to the membership of committees; even the upper limit of five members may be varied by a specific motion in the Assembly.³⁹ The number of members on a committee has generally been defined by the resolution establishing it. The resolution may do no more than state that the committee shall consist of those Members of the Assembly who nominate; it may specify the number of members; or it may go into some detail, naming the presiding member and some or all of the other members. In the Third Assembly and the Sixth Assembly—in the latter case, a single party held a majority for the first time—the resolutions appointing the committees specified the number of members and the grouping within the Assembly that would nominate them to each committee.⁴⁰ In the Second Assembly the motion to establish the committees was followed immediately by a motion appointing the membership, which had been agreed in prior negotiation.⁴¹

16.57 Membership of standing committees varied considerably in early Assemblies, with one committee having as few as two members while another had five. In the First Assembly the standing committees initially had four members each.⁴² The established practice currently is to have three members on each standing committee.⁴³ Specifying the membership in the resolution of appointment rather than in the standing orders provides flexibility to accommodate the shifting political balance in the Assembly, particularly when there are a number of independent Members. During the Fifth Assembly a Member moved from the major opposition party to the crossbenches, with the result that two standing committees had their membership increased to four for part of that Assembly to accommodate the Member's wish to serve on those committees. In the Sixth Assembly, membership of general purpose standing committees stood at three.

16.58 Select committees also generally have three members except in the case of select committees on estimates which, in recent Assemblies, have had five or six members. The number is specified in the resolution of appointment. In the First Assembly the Select Committee on Estimates 1989-90 had no limit placed on its membership. The resolution establishing the committee nominated the Leader of the Opposition as presiding member and stated that the committee 'also comprise such members of the Assembly who notify their nominations in writing to the Speaker'. Eleven Members, in addition to the presiding member, nominated to the committee. The committee therefore comprised every Member of the Assembly other than the Speaker and the four Ministers. The following year the resolution establishing the select committee limited the membership to five, but in 1991 the resolution of appointment returned to the form adopted in 1989, again resulting in a 12-member committee.⁴⁴ In the Second Assembly 12 Members were appointed to the select committee to consider the Appropriation

39 The resolutions establishing committees often include a 'catch all' clause; '... the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders'; see, for example, MoP 1998-2001/306.

40 MoP 1995-97/10; MoP 2004-08/14.

41 MoP 1992-94/7, though one member refused to accept his nomination. See Assembly Debates (27.3.1992) 21-5 and footnote 36 above.

42 MoP 1989-91/9. Note, as previously mentioned, that the Standing Committee on Conservation, Heritage and the Environment, established on 25 May 1989, was proposed with three members but that was increased to four during debate. In December 1989 three standing committees and two select committees had their membership reduced to three; MoP 1989-91/164. The Standing Committee on Legal Affairs was established on 27 March 1990 with three members; on the same day the membership of the Standing Committee on Conservation, Heritage and the Environment was increased to four; see MoP 1989-91/204.

43 The Standing Committee on Administration and Procedure, appointed under standing order 16, is an exception. Standing order 16(b) states that 'The committee shall consist of the Speaker and no more than five other members; ...'.

44 MoP 1989-91/91, 301, 495.

Bill 1992-1993.⁴⁵ The motion to appoint the committee named the presiding member and placed no limit on the membership. The select committees on the appropriation bills for 1993-94 and 1994-95 each comprised 11 members.

16.59 A major influence on the membership of committees has been the small size of the Assembly. With Ministers generally not available to serve on committees, and the Speaker by convention chair of the Standing Committee on Administration and Procedure only, the government backbench typically comprises three or fewer members. This can make it difficult for the governing party to maintain representation on all committees, potentially undermining the representative character of the committee system. This problem was compounded, particularly in early Assemblies, by an electoral system which tends to favour the election of minor parties and independent Members and to produce minority governments.⁴⁶ Like most other Australian parliaments, Ministers generally do not serve on Assembly committees. However, during the Fifth Assembly a Minister was appointed as a member of the Select Committee on Privileges.⁴⁷

16.60 The most extreme example of the difficulties that can arise occurred in the Fourth Assembly when a minority government was formed by the six members of a party, with the support of one independent (who held a ministerial portfolio), leaving only one government party backbench Member.⁴⁸ As a result, the sole backbencher was a member of five of the six standing committees and of seven select committees (out of 10 formed prior to February 2001). The Speaker, in addition to chairing the Standing Committee on Administration and Procedure, represented the government party on one standing committee and three select committees.

16.61 Complying with standing order 221 has on occasion also been extremely difficult for Members of the non-government parties and independent Members. In earlier Assemblies there tended to be significant numbers of minor party or independent Members representing diverse political views.⁴⁹ Thus, it was not easy to accommodate the full range of views on committees comprised of three or four members. As a result, ballots for membership were not uncommon. An alternative response has been to increase the number of committee members. In the First and Second Assemblies, which were perhaps the most politically diverse, as noted above, the select committees on estimates comprised all or almost all the available Members. In the Second Assembly the Standing Committee on Planning, Development and Infrastructure and the Standing Committee on Social Policy were both established with five members. In the Fifth Assembly the two independent Members cooperated to share committee duties. However, as mentioned above, when a former member of a party sat as an independent that arrangement had to be modified.

16.62 Standing order 221 is generally interpreted as a 'holistic' requirement. For example, not every committee membership can mirror the proportionate representation of the Assembly membership, but overall committee membership should be representative of the membership of the Assembly. At the beginning of the Sixth Assembly, when there was only

45 MoP 1992-94/92, 378, 563.

46 The Sixth Assembly is the first occasion on which an ACT Government formed by a single party has had a majority in the Assembly.

47 MoP 2001-04/805.

48 Until February 2001. With the resignation of the Chief Minister, Ms Carnell, the Ministry was reduced to four members, the backbench increased to two and committee responsibilities were reallocated. During the First Assembly, the then Labor Government was in a similar position.

49 There is a case of a Member refusing to serve on standing committees, causing some debate among Members as to whether participation in committees was a duty inherent in membership of the Assembly. The Member refused to accept nomination to two standing committees. As a result, one committee, legal affairs committee, was established with only two members (restored to three in February 1993) and the public accounts committee had its membership increased to four to accommodate two additional Members from the government and main opposition parties. See Assembly Debates (27.3.1992) 21-5, 53.

one crossbench Member, the resolution to appoint the standing committees stipulated three-member committees and specified that the crossbench Member, representing the Greens, would be a member of two committees—legal affairs and public accounts. In debate on the resolution of appointment, the crossbench Member proposed to increase the membership of committees to which she had not been nominated by one to enable her to sit on them.⁵⁰ She argued that those committees—education, training and young people; health and disability; and planning and the environment—were her party’s areas of particular interest. The government party opposed the amendment on grounds of proportionality; ‘we think it is very difficult to justify that a party with only one member in this place should be represented on each and every standing committee’. The opposition party supported the amendment on the grounds that committees should reflect the ‘perspective of the whole community’. The amendment was defeated on party lines.⁵¹

Membership reported

16.63 Standing order 222 provides for a ballot to be conducted when the number of nominations to membership of a committee exceeds the number of members set by the Assembly.⁵² Ballots were more common in earlier Assemblies with a number of independent Members competing for a limited number of places.⁵³ In recent Assemblies, with larger representation of the major parties, committee memberships have tended to be resolved by negotiation prior to the establishment of the committees rather than by ballot.

Discharge of members and replacement

16.64 There are many reasons for changes in committee membership; for example, promotions to ministerial office, shifting ‘shadow’ responsibilities or changing party allegiance. Because most Members are involved in committees, a single change may have a ‘knock on’ effect on all the committees. In March 2008 the Assembly amended the standing orders to provide that when a change to committee membership is required and the Assembly is not sitting for two weeks, the relevant Whip or crossbench Member may write to the Speaker suggesting any appointment or discharge of a Member of a committee. The Speaker may approve the change if he or she considers it necessary to the functioning of the committee, and the change in membership takes effect from the time the Speaker responds to the Member who requested the change. At the next meeting of the Assembly, the Speaker reports the change of membership of the committee to the Assembly, and the Assembly resolves the membership of the committee.⁵⁴

50 MoP 2004-08/15.

51 Assembly Debates (7.12.2004) 52-5.

52 The rules with regard to balloting are set out in standing orders 265-7.

53 See, for example, MoP 1989-91/27, describing a situation where ballots were conducted to decide the membership of the Standing Committee on Public Accounts and Standing Committee on Social Policy. In both cases the nominees from the major parties received overwhelming support; the real contest was between independent members for the final place available. In 1990 two rounds of balloting were required to determine the membership of the Select Committee on Estimates; see MoP 1989-91/307.

54 See standing order 223.

PECUNIARY INTEREST

16.65 Standing order 224, which relates to pecuniary interest in the context of committee membership, is expressed in very similar terms to House of Representatives standing order 231. 'Pecuniary interest' tends to be interpreted broadly. For example, it could be argued that a Member has pecuniary interests as a ratepayer, homeowner or parent of school-age children attending schools in receipt of public funding. However, to require a declaration of such interests, which are, in a sense, contingent on being a resident of the ACT, would render the work of committees impossible.

16.66 Direct pecuniary interest is interpreted narrowly. For example, a declaration of interest would be expected from a member who was a property owner likely to gain directly from a proposed planning variation or from a member who sat on the board of governors of a school that was one of a class of schools the subject of a committee inquiry. These types of interest might preclude these members from participating in committee inquiries dealing with planning or school-related issues.⁵⁵

16.67 Conflict of interest conventions are wider in scope than the strict requirements of the standing orders. Members are required to have regard not only to an actual conflict of interest but also to 'the perception of a conflict of interest'.⁵⁶ A personal interest giving rise to a possible conflict need not be pecuniary but may go to personal relationships or other interests. For example, *House of Representatives Practice* cites the example of a member withdrawing from a privileges committee inquiry because he was also a member of the committee in which the issue of privilege had first arisen.⁵⁷

16.68 In the first instance, a potential conflict of interest in a committee is a matter for the committee to resolve. A committee may decide that a declaration of a possible conflict is sufficient or, at the other extreme, may require a member to withdraw for the duration of the relevant inquiry and ask the Assembly to replace that member. Only where a committee cannot reach agreement on the appropriate course is the matter referred to the Assembly. In practice, few examples of conflict of interest have arisen in committees. Generally, committees have relied on members' judgement in these matters. Requiring a member to be discharged, either temporarily or permanently, is highly unusual. For example, committees are consulted about proposed appointments to statutory offices in the ACT and may comment on them.⁵⁸ Members have on occasion taken no part in this activity because of personal acquaintances with proposed appointees. Should this situation arise, a member should declare the conflict at the first available committee meeting.

16.69 In 1992 the Legislative Assembly discharged a Member from service on the public accounts committee for the term of its consideration of an Auditor-General's report that commented on the salary and other payments to a former staff member of the Member. The motion to discharge the Member was moved in the Assembly by a Member who was not a member of the public accounts committee; the motion had not been discussed in the committee.⁵⁹

55 Note the Resolution of the Assembly, 'Code of Conduct for all Members of the Legislative Assembly for the ACT', 25 August 2005, as amended 16 August 2006, particularly with regard to Conflict of interest, Disclosure of pecuniary interest, Advocacy/bribery and Use of confidential information: 'A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or a broad class of persons.'

56 Resolution of the Assembly, 'Code of Conduct for all Members of the Legislative Assembly for the ACT', 25 August 2005, as amended 16 August 2006.

57 *House of Representatives Practice*, p. 636.

58 *Legislation Act 2001*, section 228.

59 *Assembly Debates* (17.12.1992) 4118.

16.70 In the Sixth Assembly a report of the Standing Committee on Planning and Environment raised a more substantial issue of pecuniary interest.⁶⁰ The committee was considering a variation to the Territory Plan which would directly benefit the Canberra Labor Club. The committee made no comment on the content of the variation, which was uncontroversial. However, the two Australian Labor Party members of the committee, comprising a majority of the committee, were former board members, and continuing ordinary members, of the club. The Labor Club is also a significant donor to the ACT Branch of the Australian Labor Party.⁶¹ The committee members acknowledged their potential conflicts of interest at the first meeting of the committee to consider the variation and the committee sought the advice of the Clerk of the Assembly on the matter.

16.71 The Clerk's advice put the matter back to the committee. If members felt that the conflict was serious, then the committee could request that the Assembly replace the relevant members for the duration of the inquiry. Alternatively, the committee, having noted the declarations of interest and concluded that they were not significant, could proceed with its inquiry. The two members concerned took the view that their former membership of the board of the Labor Club did not constitute a current conflict and nor did their continuing membership of the club purely as social members. With regard to the club's donations to the Labor Party, they argued that they did not benefit directly since the donations were made to the party, not to specific members. Since they formed a majority on the committee, their interpretation prevailed.

16.72 It can be inferred from the committee's report that the non-Labor member of the committee did not accept these arguments. The member withdrew from the committee for the duration of its inquiry. When the report was tabled he raised the matter in the Assembly but not in a manner that required the Assembly to make any decision with regard to the substance of the issue.⁶²

16.73 Social membership of an organisation that makes political donations, and even participation in the management of that organisation at some earlier date, may not constitute a current conflict of interest. However, it might be argued that donations to a political party that go to funding the operations of the party, including particularly election campaigns, are of direct benefit to the parliamentary candidates of that party. Thus, when a matter of direct benefit to a major donor comes before a committee a real conflict of interest could arise for members of the recipient party. If there is any doubt about the matter the members should withdraw from the committee.

16.74 In practice, however, this situation is a further example of the problems that a small legislature faces. The Members with a declared interest constituted a majority of the committee in question. This limited the options available to the third member of the committee to dispute their interpretation of the possible conflict. In the Sixth Assembly all the Labor Party Members faced a similar possible conflict. Convening a committee that was both representative of the balance of parties in the Assembly and that did not include any Members with a possible conflict was impossible.

16.75 The course that was followed was that the members acknowledged their possible conflict of interest, and conducted their inquiry with the maximum of transparency,

⁶⁰ Standing Committee on Planning and the Environment, *Draft Variation to the Territory Plan No. 258—Belconnen Labor Club Section 48 Belconnen*, (June 2005).

⁶¹ In discussing this situation there is no implication that the Members involved allowed their membership of the Labor Club or their knowledge of the club's donations to the Labor Party to influence their deliberations on the substantive matters before the committee.

⁶² Assembly Debates (16.08.2005) 2708-10.

affording all reasonable access to dissenting views and on occasion including details of their private deliberation in the report to demonstrate that the committee's approach to the matter had been absolutely even handed. In this way any public concern about the process can be assuaged.

16.76 The application of this standing order must be read in the context of the provisions of standing order 156 and section 15 of the Self-Government Act, which relate to conflict of interest of Members of the Legislative Assembly.⁶³

ELECTION OF CHAIR AND DEPUTY CHAIR

16.77 Generally, the decision as to who will be the chairs and deputy chairs of committees is decided by negotiation before committees first meet. The party forming the government does not necessarily have a majority on committees even when, as in the Sixth Assembly, it has a majority in the Assembly itself. As discussed above, a governing party would be unlikely to have sufficient backbench Members available to provide chairs to all the committees even should it wish to do so. Thus, the office of presiding member on committees is shared between government, opposition and crossbench Members.⁶⁴

16.78 A rare example of a disputed chairmanship of a committee occurred in the Select Committee on Estimates 2006-2007. This committee had six members, three from the government party, two from the opposition and one crossbench Member. Under the committee's resolution of appointment, only a Member of the governing party was eligible for election as chair. A Member of the governing party was nominated by a party colleague and another Member of the governing party was nominated by the opposition. Both members accepted the nominations, with the matter being put to a vote. The vote was tied at three votes each. Under the standing orders, where there is an equality of votes the matter is resolved in the negative. A second ballot was then held and this time the second nominee declined the nomination. While this situation does not arise often, it highlights the problems that can arise when a committee has an even number of members and no mechanism exists to resolve tied votes.

16.79 It is also highly unusual for a committee to pass a vote of no confidence in its chair, leading to the chair's resignation. In the Fifth Assembly a matter of privilege arose in relation to the conduct of a committee chair who had appeared to pre-empt the findings of the committee by releasing a public statement on an inquiry. The statement favoured a specific outcome and invited people to write to the committee supporting that outcome.⁶⁵

16.80 As a result of this action, a member of the committee moved a motion of no confidence in the chair, which requested that she resign her position. The motion was carried and the chair resigned.⁶⁶

63 Self-Government Act, section 15:
Conflict of interest

(1) A member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

64 House of Representatives standing order 232(a) specifies that committee chairs shall be government Members. Senate standing order 25(9)(a) specifies that the legislation and general purpose standing committees will be chaired by government Members.

65 A privilege matter was considered by the Select Committee on Privileges. See *Report on whether the actions of the Chair of the Standing Committee on Planning and Environment with regard to the distribution of a flyer in her name at the Belconnen Markets did constitute a contempt of the Assembly*, 19 March 2004.

66 Standing Committee on Planning and Environment, Minutes of meeting No. 93, 2 April 2004.

16.81 In the Sixth Assembly, the opposition chair of the Standing Committee on Public Accounts lost a vote of no confidence and a new chair, a crossbench Member, was duly elected by the committee. The opposition therefore went from holding the customary two committee chair positions to one.

TITLE OF PRESIDING MEMBER AND DEPUTY PRESIDING MEMBER

16.82 Standing order 225A was adopted by the Assembly in August 1993 to enable committees to determine the title of the presiding member and deputy presiding member. The mover of the motion to amend the standing orders referred to the 'confusion in the operation of ... committees, in particular with respect to the title of the committee chair', and noted that a number of titles were used. In a rather light-hearted discussion valid points were made with regard to gender-neutral terms and the desirability of uniformity in the titles adopted. The new standing order was adopted without amendment even though, as written, it would not necessarily solve the problem its mover sought to address. Until 2008 the practice was that most committees called the presiding member the 'chair'. In 2008 the Assembly amended the standing order to ratify that practice.⁶⁷

Absence of chair and/or deputy chair

16.83 Standing orders 226 and 227 provide for the deputy chair to act for the chair in the latter's absence and for committees to appoint an acting chair if both officeholders are absent. Committees do undertake business in the absence of the chair but it is rare for standing order 227 to be invoked. Most Assembly committees have three members and could not form a quorum if two were absent. In cases where it could happen—for example, estimates committees—the chair also tends to be the senior member of the committee and it would be unlikely for a committee to carry on its business in his or her absence.

VOTING RIGHTS OF COMMITTEE CHAIRS

16.84 The voting rights of committee chairs vary considerably across the various Australian jurisdictions. In the House of Representatives, committee chairs have a casting vote only, while in the Senate the general rule is that chairs have a deliberative vote only. However, the chairs of legislative and general purpose standing committees of the Senate also have a casting vote.⁶⁸ The state parliaments accord various combinations of deliberative and casting votes.

16.85 In early Assemblies, the large proportion of crossbench Members on committees and the diversity of views they represented meant that tied votes were rare even if, for voting purposes, there were an even number of Members on the committee. In more recent Assemblies, committees generally have had an uneven number of members. Thus, the question of giving the chair a casting vote has not arisen. However, note the example in paragraph 16.78 where the Select Committee on Estimates 2006-2007 had an even number of members and the possibility of a tied vote was a substantial cause for concern. One member of the committee was required to return to Australia from overseas in order to maintain government numbers on the committee during the critical final stages of report consideration.

67 MoP 2004-08/1388-9.

68 House of Representatives standing order 232(a); Senate standing orders 31 and 25(10)(f). Procedures for joint committees of the two houses may vary.

SITTINGS, ADJOURNMENTS AND SUSPENSIONS OF COMMITTEES

16.86 Committees of the Assembly cannot sit during sittings of the Assembly without the specific authority of the Assembly. This is rarely sought. While members are generally physically present in the ACT, the problem for ACT committees is the limited availability of members. Committees generally adopt the practice of fixing a regular meeting time soon after their establishment, but additional time for both public and private meetings is often required and is subject to competing demands on members' availability. Assembly practice has been adopted that meetings of committees occur during lunch and dinner suspensions. In March 2008 standing order 229 was amended to clarify that committees are able to meet during Assembly suspensions.⁶⁹

Chair may adjourn or suspend sitting of a committee

16.87 Standing order 229A provides that 'in the case of grave disorder' the chair of a committee may adjourn or suspend a meeting of a committee.⁷⁰ Assembly committees have generally conducted their business without recourse to this standing order. Where there is a dispute within a committee about the conduct of business, the committee should consider the matter in private session.

16.88 In general, the power of the chair of a committee is, subject to the standing orders, similar to that of the Speaker in the Assembly. However, committee business is conducted in a less formal manner than is the practice in the Chamber and the requirement for the chair to make procedural rulings is correspondingly reduced. Generally, committees resolve issues of procedure by negotiation rather than by formal motions of dissent or by taking points of order.

CONSTITUTING A QUORUM

16.89 Ensuring the presence of a quorum is essential to the proper conduct of committee business. In the absence of a quorum, there is no properly constituted committee meeting. Thus, anything that the members present purport to undertake has no validity and the powers and privileges that apply to properly constituted committees do not apply. This is particularly important when taking evidence at public hearings. The absence of a quorum at a public meeting could mean that what is said by committee members and witnesses does not attract the protections of parliamentary privilege.

16.90 The provision of standing order 231, that the quorum for taking and authorising publication of evidence is two members, has effect unless explicitly overridden in a committee's resolution of appointment. For example, the resolutions of appointment of select committees have, on occasion, specified a quorum that is less than half of that committee's membership. For instance, the select committee on estimates in the First and Second Assemblies had a quorum of three with a membership of 11 or 12.

16.91 Standing order 232 stipulates that, if after the lapse of 15 minutes from the time appointed for the meeting a quorum is not present, the members shall retire and their names entered in the minutes. The reference in standing order 232 to the minutes is taken to refer to the secretary's notes, since there will be no minutes of a meeting where a quorum cannot be formed.⁷¹

⁶⁹ See standing order 229.

⁷⁰ Assembly Debates (20.3.1999) 542-5.

⁷¹ *House of Representatives Practice*, p. 693.

16.92 In practice a certain amount of flexibility is applied to very short absences from meetings, particularly public hearings. If a committee member whose presence is necessary to form a quorum leaves a meeting very briefly, but remains in the immediate environs of the committee room, the committee meeting need not necessarily be suspended. It is important that committee members and the committee staff are alert to any such brief absences and do not allow them to extend beyond an acceptably short period of time. No votes can be taken during such brief absences. If a member or a witness draws attention to even a very brief absence of a quorum, the meeting must be suspended until a quorum is formed. When a committee is deliberating on important matters or hearing evidence in public on a controversial matter, even the briefest lapse in maintaining a quorum should be avoided.

16.93 There have been occasions in other jurisdictions when committees have travelled interstate to take evidence at public hearings but found themselves unable to form quorums. In these circumstances, the only option open to the members present, apart from cancelling the meeting, is to have informal discussions with the scheduled witnesses after ensuring that they understand that those discussions, and any record of them, are not formal proceedings and do not attract the protections of parliamentary privilege.

PARTICIPATION IN MEETINGS BY ELECTRONIC COMMUNICATION

16.94 In the Fifth Assembly the question arose of members who were unable to attend committee deliberative meetings in person participating remotely by electronic communication—that is, by audio or audio-visual link. A Member who was to represent the Legislative Assembly at a meeting of the Commonwealth Parliamentary Association outside Australia proposed that the Assembly adopt a temporary order similar in wording to the relevant Senate standing order to permit this.⁷²

16.95 The Member in question was a crossbench Member of the Assembly and also the chair of a select committee facing a tight reporting deadline. Because the Member was a crossbench Member with no party colleagues, it was not practical to appoint a temporary replacement on the committee for the duration of her absence, nor was it possible to delay the committee's work.

16.96 In debate various objections were raised, principally that the ACT, as a small and compact jurisdiction, did not require such a procedure because the circumstances in which it would be required were both rare and foreseeable. Hence, allowances could be made to accommodate a Member's needs. Questions were also raised with regard to the definition of the circumstances that would constitute an acceptable reason for being unable to attend a meeting.

16.97 After debate, in which an amendment to refer the proposal to the Standing Committee on Administration and Procedure was defeated, a temporary order was adopted. It was used on a small number of occasions in the Fifth Assembly but was not renewed at the beginning of the Sixth Assembly.⁷³

72 Senate standing order 30(3) applies to both public hearings and deliberative meetings; thus subparagraph 30(3)(b) of that standing order was omitted from the motion moved in the Assembly.

73 MoP 2001-04/296. Temporary Order 230A stated: 'A committee may resolve to conduct deliberative meetings by electronic communications without the members of the committee being present in one place, *only when face to face meetings are impossible*, provided that:

- (a) when a committee deliberates, members of the committee constituting a quorum are able to speak to, and hear, each other contemporaneously; and
- (b) the Presiding Member of such a meeting takes care to ensure that a quorum is maintained during the meeting and that the standing orders and rules of the Assembly are observed.'

The words in italics were inserted into the original motion by amendment.

16.98 In May 2007 the Assembly again considered the issue following difficulties in a committee when a Member was absent overseas on Assembly business. An order was adopted for the life of the Sixth Assembly which went further than the previous temporary order. It allowed for both deliberative and public hearings to be conducted electronically.⁷⁴ There had previously been occasions in the Sixth Assembly when Members who were not in Canberra were precluded from participating in committee activity. The resolution also permits committees to hear from witnesses remotely. In March 2008 the Assembly adopted a new standing order 229B which allows committees to meet using electronic communication.

ADMISSION OF OTHER MEMBERS

16.99 Committee inquiries, particularly in a small and geographically compact jurisdiction such as the ACT, are often of interest to all Members of the Assembly. The standing orders enable Members who are not committee members to participate in committee hearings and question witnesses. As the standing orders make clear, such participation requires the unanimous consent of the committee. However, permission is usually given.

16.100 Non-committee Members participating in hearings should not do so to the disadvantage of committee members—for example, by taking up the time available for questioning thus denying committee members the opportunity to ask questions. It is the responsibility of the chair of a committee to ensure that committee members are given priority in asking questions.

16.101 The participation of non-committee Members in committee hearings is most common in the select committee on estimates and standing committees considering annual reports of ACT agencies. The estimates committees examine the appropriation bills for the forthcoming financial year and thus provide the Assembly with an opportunity to scrutinise virtually all activities of government. Accordingly, these committees are particularly useful to all Members, particularly opposition and crossbench Members, to fulfil their parliamentary responsibility of scrutinising the executive government's budget appropriations and the outcomes of ACT Government agencies as reported in their annual reports. As noted above, the First and Second Assemblies experimented with estimates committees composed of all (or almost all) the non-ministerial Members of the Assembly but the more usual practice has been to have a five- or six-member committee with extensive participation by non-committee Members, particularly in public hearing sessions where the non-committee Members are shadow spokespersons. Non-committee Members must withdraw when the committee is deliberating.

ADMISSION OF VISITORS

16.102 As far as is practically possible, committees gather their evidence at public hearings and publish transcripts of these hearings. Visitors would be excluded from a public hearing only if their behaviour threatened to disrupt the hearing. There have been occasions when members of the public have been asked to desist from making sotto voce comments on the proceedings of committees but disruption requiring a committee to exclude members

⁷⁴ Assembly Debates (3.5.2007) 913-5. The resolution read as follows:

- (1) when a public meeting or deliberative meeting is being conducted, an Assembly committee may resolve to conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place;
- (2) if an audio visual or audio link is used, committee members and witnesses must be able to speak to and hear each other at the same time regardless of location; and
- (3) if the Chair is not present when the public hearing or deliberative meeting is being conducted, the Deputy Chair shall chair the meeting in accordance with standing order 226.

of the public has not occurred. Private deliberative meetings of a committee are open only to members and committee staff.

MINUTES OF PROCEEDINGS

16.103 The minutes of a committee are, like the Minutes of Proceedings of the Legislative Assembly, the legal record of the committee. They should record the time, place and date of meeting and the names of those present. The minutes should also record the business discharged and all decisions taken by the committee. If any question arises with regard to the committee's business—for example, what was resolved; who was present; whether documents were authorised for publication—the minutes provide the definitive answer. The proper conduct of committees requires that minutes are carefully recorded by the secretary, written up promptly after a meeting and confirmed by the committee at the next available opportunity.

16.104 Minutes should not record extraneous information. The content of discussion in reaching a decision is not recorded unless a member or members request that their views on a particular matter, where they are not reflected in a committee's decision, be recorded.

SPECIALIST ADVISERS

16.105 The use of specialist advisers by parliamentary committees is a well-established practice. Since its inception, the scrutiny committee has retained specialist legal advisers on a long-term basis to consider and report to the committee on legislation before it.

16.106 The Legislative Assembly's general purpose standing committees and select committees have not made great use of specialist advisers. The Select Committee on the Territory's Superannuation Commitments (1998 to 1999) did retain an adviser to provide actuarial advice, but in most cases where complex or technical advice is required by committees, it is obtained through the ordinary process of seeking written submissions and taking evidence at hearings.

16.107 When specialist advisers are appointed, their terms and conditions of appointment are determined by the Speaker.

POWER TO SEND FOR PERSONS, PAPERS AND RECORDS

16.108 Standing order 239, which empowers committees to send for persons, papers and records, is the basis of Assembly committees' evidence-gathering power. This is a very extensive power. It is supported by standing order 240, which enables committees to summon witnesses. They can also order the production of documents.⁷⁵ A refusal to appear as a witness, to provide a document or to answer a question may be found to be a contempt of the committee and be punishable by the Assembly.⁷⁶ In practice, committees of the Assembly have relied on cooperation and negotiation in gathering evidence and their powers have rarely been tested.

⁷⁵ The term 'document' is interpreted widely, see *Odgers*, p. 436.

⁷⁶ Committees do not make findings of contempt. Where a committee believes that a contempt may have occurred, the matter is reported to the Assembly, which decides the matter. Note that there are limitations to the power of the Assembly to punish contempts. The *Australian Capital Territory (Self-Government) Act 1988*, subsection 24(4), denies the Assembly the power to impose fines or imprison a person. These powers are available to the Houses of the Commonwealth Parliament; see *Parliamentary Privileges Act 1987* (Cwth), section 7.

16.109 As discussed in Chapter 2, a range of claims may be made by parties who do not wish to comply with a committee's request for documents. It is necessary for committees to deal with them on a case-by-case basis. The most common situation in which such claims arise is when a Minister of the ACT executive declines to provide a committee with documents or other information, claiming 'public interest immunity'. As the term suggests, the claim argues that it would not be in the public interest to make available the information in question. Issues such as the confidentiality of Cabinet deliberations, potential prejudice to law enforcement investigations, damage to commercial interests and unreasonable invasion of privacy can underpin such claims.

16.110 The Assembly and its committees should always consider whether there is a competing, and greater, public interest in information being made available. *Odgers'* summarises the issues concisely:

While the public interest and the rights of individuals may be harmed by the enforced disclosure of information, it may well be considered that, in a free state, the greater danger lies in the executive government acting as the judge in its own cause, and having the capacity to conceal its activities, and, potentially, misgovernment from public scrutiny.⁷⁷

16.111 Committees should, at the very least, require a Minister to provide a clear statement of the grounds on which a claim of immunity is being made. Where a committee decides that the grounds are reasonable it should explore with the Minister alternative means of gaining access to the information—for example, by editing out names or personal details and protecting or receiving material in confidence.

16.112 Where a committee does not accept a claim of immunity, it may persist with its request but the practical reality is that, in conflict with the executive, the coercive powers of committees and the Assembly are limited. The adverse publicity surrounding a Minister's refusal to cooperate with a committee or the threat of proceedings in the Assembly for contempt may lead the Minister to reconsider his or her position, but the outcome of such a dispute will often be determined by political circumstances rather than obscure considerations of the public interest.⁷⁸ It is always open for the committee to report the matter to the Assembly and recommend either that the executive provide the documents or that the chair move the appropriate motion.

16.113 A further area of contention in the ACT Legislative Assembly, and other parliaments, has been the capacity of the legislature and its committees to examine the management and operations of statutory authorities, government business enterprises and the like. These bodies operate at arm's length from government; they may not be accountable to the legislature through a responsible Minister; and the commercial areas of their activities may give rise to claims that they are not required to answer questions or provide documents in relation to their activities. These claims should be resisted by committees. If an agency is in public ownership, operates under a statutory scheme or is underwritten by the public revenue, its activities should be open to public scrutiny.⁷⁹

⁷⁷ *Odgers'*, p. 485.

⁷⁸ The Assembly has made a finding of contempt against a Minister for refusal to answer a question in an Estimates committee; see, Select Committee on Privileges, *Possible unauthorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document*, 3 November 2003. Note that in the Fifth Assembly the government did not have a majority.

⁷⁹ *Odgers'*, p. 309.

PUBLICATION OF EVIDENCE AND OTHER DOCUMENTS

16.114 Providing public access to parliament and informing the public are two of the most significant roles of parliamentary committees. Public participation in committee inquiries takes place primarily through the provision of submissions and participation in public hearings. Standing orders seek to balance the competing demands of necessary confidentiality and desirable public access and openness in the conduct of committee business.

16.115 Evidence and documents received by committees attract parliamentary privilege. Witnesses and authors have protection and immunity for anything in evidence and documents they present to committees, and committees collectively, and their individual members, cannot be sued for publishing such evidence or documents. To ensure that privilege attaches to the evidence received by, or reports of, committees, the publication of committee material must be in accord with standing orders and based on a decision of a committee or the Assembly. Committees are not obliged to receive all material sought to be submitted as evidence.⁸⁰

16.116 However, both committee members and witnesses should be aware of the limits of the protection provided. What the courts have described as ‘effective repetition’—saying something in a parliamentary meeting to which privilege applies and repeating it even by implication outside the privileged environment—may not attract the protection of absolute parliamentary privilege.

16.117 Committees should conduct their business in public as far as is possible. Written submissions are normally authorised for publication by the committee as soon as is practicable after receipt.⁸¹ Hearings to gather evidence from witnesses are normally conducted in public.

16.118 There are, however, circumstances where witnesses may request the opportunity to provide a submission in confidence or to give evidence in private or where committees may wish this to be the case. Examples include when a committee is considering matters in relation to national security, where genuine concerns about individual privacy or commercial confidentiality exist or where the witness requires the protection of confidentiality. However, a committee should consider the matter very carefully before taking evidence in camera and should take evidence in this way only when it is considered absolutely necessary to its inquiries. As a general rule committees should be particularly wary of requests to give evidence in camera if that evidence involves allegations against other persons.

16.119 Taking evidence in private may create problems for both committees and witnesses. Before taking evidence in camera, committees should ensure that witnesses are aware that in camera evidence can be authorised for publication by a simple vote of either the committee or the Assembly. If so advised, witnesses may feel that the protection offered by the committee is insufficient and decline to give evidence.

16.120 Committees that take evidence in camera, are then faced with the question of how it can be used. It cannot be quoted extensively without defeating the object of taking private evidence in the first place. It is also unsatisfactory to put forward a significant argument or reach a conclusion on the basis of evidence that cannot be revealed. Detailed evidence

80 *House of Representatives Practice*, p. 667.

81 Committees do seek to ensure that submissions containing adverse reflections on named individuals, information to which confidentiality should apply or other inappropriate material are not published with the protection of parliamentary privilege.

provided in camera may support a general conclusion or recommendation by a committee but it is preferable for such supporting evidence to be public.⁸²

16.121 A committee's deliberations on its draft report and the contents of that report should remain confidential until the report is tabled in the Assembly or presented to the Speaker and its publication authorised. Confidentiality allows a committee to reach conclusions and negotiate necessary compromises free from external pressure, particularly where a matter is politically sensitive. This underpins the trust and goodwill that must exist among members if a committee is to function effectively. Confidentiality prior to tabling is also a mark of respect to the Assembly, given that the committee is a creation of the Assembly, its powers are derived from the Assembly and its report is directed to the Assembly.

16.122 Unauthorised release of documents or publication of evidence or drafts of reports may be found to be a contempt (and might also be considered a breach of privilege)⁸³ and may be punished by the Assembly. There have been a number of instances where unpublished submissions or details of the content of draft reports of committees have been released, usually to the media. When such matters have been drawn to the attention of the Speaker, precedence has been given to have them referred to a committee for investigation as a possible contempt. However, the establishment of a privilege inquiry to investigate the unauthorised release of documents by the Assembly is rare.

16.123 In the first case of this type in 1990, the chairman of the Standing Committee on Conservation, Heritage and the Environment wrote to the Speaker advising a possible breach of privilege.⁸⁴ In a statement to the Assembly, the Speaker indicated that the complaint had substance and that he was prepared to give precedence to a motion by the committee chairman to refer the matter to the Standing Committee on Administration and Procedure.⁸⁵ The committee chairman then advised the Assembly that, as a result of discussion among committee members, he did not wish to proceed with the matter, noting that the unauthorised release was probably the result of 'insufficient understanding' and that no 'major damage' had been done. He also noted the comment in *House of Representatives Practice* that:

Committees have chosen, from time to time, to take no action on press articles partially disclosing the contents of their reports or commenting on committee deliberations during the drafting of reports. It has been thought counter-productive to give further publicity and credence to such articles.⁸⁶

⁸² The Senate faced the specific issue of the use of in camera evidence by senators lodging dissenting reports and in 1997 adopted a revised standing order 37 to address the issue. It is worth quoting at length because it illustrates the factors a committee may have to consider in using such evidence either in a report or a dissent:

37 (2) A senator who wishes to refer to in camera evidence or unpublished committee documents in a dissenting report shall advise the committee ... and all reasonable effort shall be made by the committee to reach agreement on the disclosure of the evidence or documents ... If agreement is not reached, the senator may refer to the in camera evidence ... only to the extent necessary to support the reasoning of the dissent. Witnesses who gave the evidence or provided the documents ... shall, if practicable, be informed in advance of the proposed disclosure ... and shall be given reasonable opportunity to object ... The committee shall give careful consideration to any objection by a witness ... Consideration shall be given to disclosing the evidence or documents in such a way as to conceal the identity of persons who gave the evidence ... or who are referred to in the evidence or documents.

⁸³ A breach of privilege relates to the specific rights or immunities of the Assembly and its Members—for example, the right of freedom of speech in a parliament free of the threat of legal action. An action may constitute a contempt if it is 'an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties' (*Parliamentary Privileges Act 1987* (Cwth), section 4). For example, the leaking of a draft report of a committee, particularly where the purpose of the leak was to bring pressure to bear on committee members to change their position with regard to a committee's conclusions, would be considered a contempt.

⁸⁴ Assembly Debates (13.2.1990) 17-8.

⁸⁵ Prior to March 1995, standing order 71 required privilege matters to be referred to the Standing Committee on Administration and Procedure. The standing order was amended to provide for privilege matters to be considered by select committees established for that purpose.

⁸⁶ Assembly Debates (13.2.1990) 18; from *House of Representatives Practice*, Second edn, p. 615.

16.124 On four subsequent occasions in 1990, matters relating to the unauthorised release of committee proceedings or evidence came before the Assembly. On two occasions the Speaker gave precedence to the relevant motion and on the other occasions motions to refer the matter of privilege to a committee were moved by leave. On all four occasions no further action was taken.⁸⁷

16.125 The first actual privilege inquiry in relation to the unauthorised release of a committee report occurred in 1993. The context of that inquiry is important. Sometimes, the desire to gain the maximum amount of exposure for a committee report or to facilitate public debate has resulted in a blurring of the requirements of the standing orders. In 1993 the Standing Committee on Planning, Development and Infrastructure sought, and received, the Assembly's approval:

... to release, prior to its presentation in the Assembly and pursuant to embargo conditions and to persons to be determined by that Committee, copies of its Report No 12 ...⁸⁸

16.126 The rationale for this was that the proposed changes to ACT planning which the committee was examining were of fundamental importance to the people of the ACT and the committee wished:

... to ensure that the widest and best informed views about the report are able to be made by the media [sic], it is proposed that we provide these copies on an embargoed basis ... that will include a requirement that the report not be reproduced, transmitted, distributed or in any way broadcast prior to the formal tabling ...⁸⁹

16.127 The Assembly, while noting that what was proposed was 'a little unusual', agreed to the motion. No questions were subsequently raised in the committee or the Assembly with regard to this procedure; thus, it must be assumed that the embargo conditions were complied with.⁹⁰

16.128 Later that year the motion to appoint the Select Committee on Estimates to consider the Appropriation Bill 1993-1994 included a similar provision to release embargoed copies and the precedent of the planning committee was cited in support of its inclusion.

... (6) the Committee is authorised to release copies of its report, prior to the Speaker or Deputy Speaker authorising its printing and circulation and pursuant to embargo conditions and to persons to be determined by the Committee ...⁹¹

16.129 Four copies of the draft report were provided to journalists under embargo on 12 November 1993.⁹² On the same day, a local newspaper, *The Canberra Times*, carried an

87 Two motions were defeated; one debate was adjourned and later discharged from the *Notice Paper*; and in the last no action was taken. In this case the Speaker deferred giving precedence to a motion to refer the matter to the Administration and Procedure Committee and proposed that the Assembly establish a select committee to consider the matter because of an overlap between the members of the committee in which the leak had occurred and the Administration and Procedure Committee.

88 Assembly Debates (18.5.1993) 1540.

89 Assembly Debates (18.5.1993) 1541.

90 It is debatable whether this 'unusual' procedure was either necessary or useful, given that the motion authorising release under embargo was agreed to on the evening of 18 May 1993 and the report in question was tabled on the morning of 20 May 1993.

91 MoP 1992-94/378.

92 Again, the rationale for this process is not apparent. The report of the Select Committee on Estimates was presented to the Deputy Speaker (pursuant to the committee's resolution of appointment) on the same day. Thus any advantage to media organisations in receiving an embargoed copy of the report must have been minimal.

article clearly reflecting the conclusions of the select committee contained in the draft report. A subsequent privilege inquiry by the Standing Committee on Administration and Procedure concluded that the unauthorised release of the committee's conclusions constituted a contempt but failed to identify the source of the leaked draft report. It found that the journalist who published the report was in contempt of the Assembly but, since the person responsible for providing him with the material could not be identified, the committee did not recommend any action against that person.

16.130 The practice of authorising select committees on estimates (though not other select committees) to release draft committee reports under embargo continued throughout the Second, Third and Fourth Assemblies but lapsed in 2001.⁹³ The adoption of a similar procedure was recommended in a report of the Select Committee on Privileges in December 2003.⁹⁴ In proposing a revision of standing order 241, that committee argued that committees should have a power of 'limited publication' of draft reports, evidence and other papers:

- to facilitate access to expert advice; and
- to facilitate informed debate by enabling Members who were not members of a committee, Ministers and the media to be aware of the contents of a report when it is tabled.

16.131 The first of these points is valid but the practice of seeking expert comment on evidence or possible conclusions can generally be accommodated within the existing rules. The second point is debatable. It was the practice of the ACT's House of Assembly, an advisory body that preceded self-government. But, as the report notes, that House sat only once a month, so the opportunity for Members to make informed comment on a report might be considerably delayed if pre-tabling confidentiality was strictly adhered to.

16.132 The House of Representatives has specific provision for committees to release reports under embargo.⁹⁵ There may be a requirement for the practice in the Commonwealth because Members, including committee members, are dispersed to their electorates when the House is not sitting; thus, the optimum use should be made of their time during sitting periods in Canberra. However, given that the ACT Legislative Assembly sits regularly and all Members live in Canberra, the need for such a procedure in the ACT for those reasons seems unnecessary.

16.133 Committee reports can be tabled in the Assembly at any time and may on specified occasions be presented to the Speaker (or Deputy Speaker) when the Assembly is not sitting.⁹⁶ There need be no unnecessary delay between a committee adopting a report and its publication. The Assembly has, in practice, been generous in providing time for debate on committee reports. Thus, tabling a report and then deferring debate for a period of time to enable other members to read it or the media to make comment on it is not difficult. There appears to be no great need for general provisions to release reports under embargo; to do so merely undermines the requirement that committee reports should be confidential until published by the Assembly.

16.134 There may be specific cases where providing Members and Ministers with some advance knowledge of a committee's conclusions is desirable. For example, where

⁹³ It has been permitted in the House of Representatives since 1998. See *House of Representatives Practice*, p. 688. A committee may resolve to release a report or other material under embargo prior to its tabling in the House.

⁹⁴ Select Committee on Privileges, *Possible unauthorised dissemination of committee material, standing order 71 (privilege). Ministerial refusal to answer questions in committee hearing and distribution of ACT Health document*, 3 November 2003, pp. 9-11.

⁹⁵ See footnote 93.

⁹⁶ The authority to do this may be provided by the resolution of the Assembly or by specific terms in a select committee's resolution of appointment.

the completion of the inquiry by a Select Committee on Estimates is close to the deadline for passage of the appropriation bills, the time available to the Assembly to debate the committee's report and to the government to consider and respond to its recommendations may be limited. Such cases are better handled by specific orders of the Assembly on a case-by-case basis.

16.135 In March 2008 the Assembly amended standing order 242 to make provision for committees to take certain action in the event that there appeared to be an unauthorised disclosure of proceedings, documents or evidence.⁹⁷

ACCESS TO OLDER COMMITTEE RECORDS AND DOCUMENTS

16.136 In March 2008 the Assembly adopted a new standing order authorising the Speaker to permit any person to examine and copy any evidence submitted to, or documents of, committees which has not been published and has been in the custody of the Assembly for at least 10 years.⁹⁸

EXAMINATION OF WITNESSES AND WITNESSES' RIGHT TO ADVICE

16.137 Standing order 245 provides a very formal statement of the procedure that may be adopted by a committee when questioning witnesses. The salient points are that the committee should agree on the practices to be followed at hearings and that during the hearings the chair will ensure that the practices are followed. It is important to ensure that all members have equal opportunity to ask questions, though they may not avail themselves of those opportunities. For example, the public hearings of select committees on estimates scrutinising government expenditure provide non-government Members with their best opportunity to pursue the policies and decisions of the executive and are the most explicitly party-political committee hearings. Government committee members may be less likely to use the estimates process to question ministers aggressively.⁹⁹

16.138 Standing order 246 restricts the right of witnesses before committees to be represented by counsel or advisers. It is the duty of both committee staff in preparing for a hearing and the chair at a hearing to ensure that witnesses are aware of their rights and obligations when appearing before a committee. Generally, committees wish to hear from witnesses in their own words. The role of committees in offering the public the opportunity to come to parliaments and speak to their elected representatives would be diminished if organisations and individuals were represented by paid counsel, advisers or lobbyists. Nor is there any great need for such representation.

16.139 Parliamentary committees, while formally having some procedural similarities to the courts, are, for the most part, not judicial processes. Witnesses are generally providing information and opinions on a voluntary basis about matters of public concern. Representation by paid advisers could make committee processes unnecessarily legalistic and bias access to the committee in favour of those with the resources to retain professional advisers.

16.140 The reference in the standing orders to witnesses being represented by counsel or consulting with advisers should be interpreted narrowly. Committees do need to hear expert advice in all sorts of areas and that expert advice may be available only from legal counsel or other professionals. Such people could, however, appear to give evidence on the subject

⁹⁷ See standing order 242.

⁹⁸ See standing order 243.

⁹⁹ Senate estimates committees are an even clearer example of this; government members frequently appear to be present to ensure that a quorum is formed and to support the chair if any issues arise requiring a decision of the committee.

before the committee on the basis of their expertise, and not to 'represent' a client in a manner analogous to representation in judicial proceedings.

16.141 In regard to planning issues, for example, the expertise which the planning committee requires to inform itself may lie not with the principals of a development proposal or their opponents but with their advisers—lawyers, engineers, architects and planners. A residents group concerned about a planning decision may retain advisers in town planning or the law in relation to property development to assist it in its campaign by providing expert knowledge which is not available within the membership of the group itself. If that residents group was invited to appear before the committee, it would be a disservice to both the committee and the residents group to prevent their specialist advisers from appearing as witnesses in their own right and giving evidence to the committee. Planning is the area in which this issue arises most commonly in the Legislative Assembly. However, it can arise in any area when a committee is examining a question involving a specific body of professional expertise.

16.142 There are some, albeit rare, occasions on which the Assembly may consider allowing a witness to be accompanied by legal counsel or other adviser. If an inquiry is likely to have an adverse effect on a person's reputation or career, a committee will wish to ensure procedural fairness. For example, in 2002 the Assembly set up a Select Committee on Privileges to inquire into the unauthorised diversion and receipt of a Member's emails. The person who received the emails, without the authority or knowledge of the intended recipient, was a member of the staff of a Member of the Assembly. An adverse finding would clearly make his continued employment in that capacity untenable. In those circumstances, the committee had to be extremely careful in its conduct of the inquiry. Discussion did take place within the committee and between the person under investigation and the committee with regard to his being legally represented before the committee. In the event, the person in question did appear at hearings of the committee but was not accompanied by a legal adviser.

STATEMENTS AND DISCUSSION PAPERS

16.143 Committees can inform the Assembly of their activities in a variety of ways. In early Assemblies committee chairs, by leave, made statements with regard to committee business or, occasionally, presented discussion papers to the Assembly summarising the progress of an inquiry. Discussion papers tended to be presented towards the end of the life of an Assembly. This suggests that committees that did not have time to complete inquiries and produce comprehensive reports, presented discussion papers instead.¹⁰⁰ In presenting discussion papers, committees were explicitly trying to ensure that an issue was taken up in the subsequent Assembly.

16.144 In 1995 the Standing Committee on Administration and Procedure recommended the adoption of new standing orders to provide a formal procedure for the making of statements and the presentation of discussion papers. At the same time, the proposed standing orders would ensure that any such statements or discussion papers had been properly considered and adopted by the committee.¹⁰¹

¹⁰⁰ See, for example, MoP 1992-94/797, Standing Committee on Tourism and ACT Promotion, Discussion Paper on Options for a Future Inquiry; p. 784, Standing Committee on Conservation, Heritage and Environment, Discussion Paper on Container Deposits; 8 December 1994, p. 821, Statement by the chair of the Standing Committee on Conservation, Heritage and Environment.

¹⁰¹ Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply*, May 1995.

16.145 Standing order 246A provides a formal mechanism for committees to communicate decisions about potential inquiries or other activities within their terms of reference to the Assembly. This mechanism is used by all committees to advise the Assembly about the adoption of new inquiries, decisions not to proceed with inquiries, conference attendance and any other matter which the committee considers should be notified to the Assembly.

16.146 A committee may wish to advise the Assembly that it has decided not to proceed with an inquiry. If this occurs after a committee has self-referred a matter, a statement advising of a decision not to proceed with an inquiry is normally accompanied by an explanation or the reasons for the decision. When the inquiry resulted from an Assembly reference, a brief report would be expected.¹⁰² For example, in the Fifth Assembly the chair of the Standing Committee on Planning and Environment provided the following advice to the Assembly with regard to its inquiry into renewable energy and sustainability:

Although the committee has invested considerable time and effort into this inquiry, the terms of reference were ultimately too wide ranging. Considering the committee's heavy workload of draft variations and other matters, it was not able to produce a comprehensive report on the matter.¹⁰³

16.147 The chair also cited the rapid and significant changes in the subject as a reason why the committee would not be reporting. Another member of the committee suggested that the demands of the committee's responsibilities with regard to planning matters necessitated that either a separate environment committee be set up or the subject be referred to a select committee.¹⁰⁴

16.148 Statements made in accordance with standing order 246A have also alerted the Assembly to matters that have come to the attention of committees during inquiries or through their review of annual reports that committees consider to be of such urgency they should be addressed immediately. For example, the chair of the Standing Committee on Health made a statement to the Assembly with regard to the Aboriginal Health Service in the ACT which 'Despite all the public statements and commitments ... is still inadequately accommodated ... They need action.' The statement went on to note that the committee would maintain a watching brief on the Service and 'keep members informed of its work in this area'.¹⁰⁵ A brief report to the Assembly would also have served the same purpose.

16.149 The main reason for a committee to produce a discussion paper is to canvass various views on a matter that it believes requires further inquiry. The general purpose standing committees are more likely to direct such questions to the public, participants in an inquiry or potential witnesses than to the Assembly itself, although it is important for committees to keep the Assembly informed of all its activities.

16.150 The Standing Committee on Administration and Procedure has, on occasion, presented a discussion paper to the Assembly seeking the views of Members on proposed changes to procedures.¹⁰⁶ In one case, in moving that the paper be noted, a Member commented that:

The committee has not made any decisions ... on any of these submissions, but we have provided a discussion paper for this Assembly – and, we hope, for

¹⁰² The Assembly could decline to accept such a report and direct the committee to complete its inquiry.

¹⁰³ Assembly Debates (24.8.2004) 4017-8.

¹⁰⁴ Assembly Debates (24.8.2004) 4017-9.

¹⁰⁵ Assembly Debates (13.3.2003) 1020-3.

¹⁰⁶ MoP 2001-04/1713.

the next Assembly – as a starting point for a comprehensive review and possible changes to the standing orders.¹⁰⁷

However, the Speaker, as chair of this committee, can present a report or other paper to the Assembly in any break in proceedings without the requirement to seek leave and thus does not need to utilise this standing order.

REPORTS

16.151 The terms of reference for a committee inquiry normally charge it with inquiring into, investigating or examining, and reporting on a particular subject. The report is the culmination of an inquiry. In the case of a select committee, the presentation of the report normally marks the dissolution of the committee, although, as mentioned above, select committees may seek extensions of time and may present interim reports. Standing committees do not normally have reporting dates for particular inquiries set by the Assembly, although they may adopt them for their own internal management reasons. They can also determine their own program to a greater degree than select committees can.

16.152 An inquiry might result in a series of reports or interim and final reports though the general practice is to produce a single report. Standing committees charged with scrutinising legislation, reviewing the reports of the Auditor-General or commenting on planning variations table many more reports than those exercising their general inquiry role. Thus, their reports tend to adopt a standard format.

16.153 In practice, the draft report is usually prepared by the secretariat to the committee in consultation with the presiding member and other members. However, there is no set form in which a committee is required to report. Standing order 249 provides that any Member, other than the chair, can submit an alternative draft report, and the committee must then decide which report it will consider.

16.154 Reports may be a single page or a substantial volume. For example, it is not unusual for the scrutiny committee to note that it has no comment to make on a particular piece of legislation where it does not offend against any of the criteria that the committee applies to its review. Similarly, the Assembly committee responsible for planning variations may, in the case of uncontroversial changes, do no more than note that it has considered the variation and make no further comment.

16.155 Committee members who cannot agree with all or part of a report may dissent from it and present their own report or additional comments to the Assembly explaining the reasons for their dissent and, if they wish, make alternative recommendations. As standing order 251 states, any dissenting report or additional comments 'shall be added to the report agreed to by the committee'. The preparation of a dissenting report or additional comments is the responsibility of the member(s) dissenting. The reports or additional comments are not made available to, or considered by, the committee prior to tabling. The committee's secretariat is not involved in the preparation of a dissenting report. Members preparing a dissenting report must ensure that it is made available to the committee's secretary in a form that enables it to be added to the majority report of the committee and tabled in accordance with the committee's schedule.

16.156 The content of reports is a matter for committee members. However, committees should seek to ensure that their reports, and particularly their recommendations,

¹⁰⁷ Assembly Debates (26.8.2004) 4316.

deal with matters within the legislative competence of the Assembly. Recommendations in general purpose standing and select committee reports are usually directed to the executive and propose that some action be taken. Thus, the action proposed should clearly be within the legal competence of the executive.

16.157 Successive governments in the ACT have taken upon themselves the responsibility to respond to all Assembly committee reports within three months of their tabling. Such responses normally indicate which, if any, of the committee recommendations the government has accepted and will implement. The Legislative Assembly has also adopted procedures to enable it to follow up the recommendations of its committees. The resolution *Implementation of Committee Recommendations in Annual Reports* calls on the Chief Minister to require executive agencies to include in their annual reports details of progress made in the implementation of recommendations from committees that have been accepted by the government of the day. This resolution, adopted in 2002, is of continuing effect 'until amended or repealed',¹⁰⁸ and has been accepted by successive governments.

16.158 In 2007 the Speaker commenced a practice of tabling a schedule of government responses every six months.¹⁰⁹

Tabling of reports

16.159 The chair, or in the absence of the chair, the deputy chair, can present a committee report to the Assembly at any time (given a break in proceedings). Where a committee has been given a reporting date, as is usually the case with select committees and occasionally with specific inquiries of general purpose standing committees, the presentation of the report may be 'by order' of the Assembly.

16.160 Prior to March 2008, upon presentation of the report, the member presenting it would move one of the motions set out in standing order 254.¹¹⁰ Debate can follow on the motion moved. The most common motion moved with regard to the presentation of committee reports is 'that the report be noted'. A motion to take note of the report is the procedural trigger that provides the Assembly with the opportunity to debate the report.

16.161 When the Legislative Assembly does not sit for a long period, committees occasionally seek authorisation to present their reports to the Speaker rather than to the Assembly.¹¹¹ The Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) and the Standing Committee on Planning and Environment have the ability to report out of session in order to meet the requirements of the *Planning and Development Act 2007* and the pattern of Assembly sittings.

16.162 When debate has taken place but is not complete or it is the wish of the Assembly to defer debate, a motion is moved to adjourn the debate or to make consideration of the report an order of the day for a later hour or a subsequent day.

16.163 Reports of the scrutiny committee are generally not debated on tabling. No motions are moved with regard to them and the chair, by leave, makes a brief statement.

¹⁰⁸ MoP 2001-04/114.

¹⁰⁹ MoP 2004-08/1933.

¹¹⁰ In March 2008 the Assembly adopted a new standing order that authorised for publication all committee reports presented in the Assembly.

¹¹¹ MoP 2001-04/1089.

These reports normally cover a number of pieces of legislation. When the content of a report is relevant to a particular bill, it is debated when the Assembly considers that bill.¹¹²

16.164 Motions to agree to—that is to adopt—particular recommendations or to adopt committee reports are rarely moved. A motion in those terms in effect throws the weight of the Assembly behind a committee's findings and, as such, represents a much stronger statement by the Assembly than merely noting the report. Reports from the administration and procedure committee proposing specific changes to the Assembly's procedures or management which the Assembly wishes to endorse are commonly adopted whereas reports from the same committee that discuss issues are merely noted.¹¹³

16.165 In 2004 the administration and procedure committee, pursuant to the citizen's right of reply procedure, presented a report recommending that a person referred to in the Assembly not be granted an opportunity to reply. On the motion 'That the recommendation be agreed to' an amendment was moved that the Assembly reject the majority report of the Standing Committee' and reconsider the applicant's request. The proposed amendment was negatived.¹¹⁴

¹¹² See MoP 2004-08/185-7 on the tabling of a number of committee reports and a range of the procedures followed.

¹¹³ See MoP 2001-04/561, 1002 for examples of reports proposing changes to standing orders being adopted;

MoP 2001-04/1019 shows a Standing Committee on Administration and Procedure report into information technology services in the Assembly being noted. See also Chapter 11, Legislation, footnote 39.

¹¹⁴ MoP 2001-04, 1654, 1658.

INTRODUCTION

17.1 The Legislative Assembly and its committees have the general power to call for persons, papers and records, that being a power assumed from the House of Representatives under the Self-Government Act. The Assembly can invite or even summon witnesses to appear at the Bar to contribute to its inquiries or deliberations, but has done so on only one, largely formal, occasion. Although both the Senate and the House of Representatives have examined witnesses at the Bar of their respective chambers, it is now very unusual for a parliamentary chamber to bring witnesses before it when acting in an inquisitorial role.¹

BEFORE THE LEGISLATIVE ASSEMBLY CHAMBER

17.2 The only occasion on which the Assembly invited members of the public to appear before it was in 1997 after the publication of the report *Bringing Them Home*, a report into the removal of Aboriginal children from their families. The Assembly adopted a motion with regard to that report.² Subsequent to that motion, a further motion was passed by the Assembly to invite representatives of the ACT's Aboriginal community to address the Assembly on the report and related matters. The motion was in two parts: the first part contained the invitation to the representatives to appear and the second part dealt with procedures for the actual meeting.³ On the day on which the representatives of the local Aboriginal community appeared, a further motion was passed authorising the recording of proceedings by television networks.⁴ The meeting took the form of a series of statements by the representatives. No questions were asked and no debate took place.

17.3 A proposal in 1995 to invite the Secretary of the Trades and Labour Council of the ACT (the peak trade union body) to appear before the Assembly and answer questions with regard to an enterprise bargaining agreement put forward by the government was not pursued. If this were ever to occur, matters that would need to be considered in this type of situation would be the questioning procedure to be followed, the witness's right to consult counsel or advisers and the status of any documents presented by the witness. Under the 1995 proposal, all Members were to be permitted to question the witness; the witness was to be allowed to consult counsel during the hearing and any document produced by the witness was to be deemed to have been tabled.

¹ In 1975 the Senate summoned a number of senior public servants to the Bar of the Senate to answer questions and provide documents in connection with the Senate's examination of what became known as the overseas loans affair. In the event all those summoned cited prior ministerial claims of Crown privilege on their behalf and declined to answer any substantive questions. See *Odgers*, pp. 471-3. Note that the power of the Senate to summon witnesses was not at issue. The only occasion on which the House summoned witnesses to the Bar was in 1955 in connection with a privilege matter—the Browne and Fitzpatrick case. See *House of Representatives Practice*, pp. 111-2. An interesting precedent comes from the House of Commons in the early 19th century when the former mistress of the then Duke of York was summoned before the House to be questioned with regard to claims that the Duke, then Commander in Chief [the 'Grand Old Duke of York'], had been involved in corruptly selling commissions in the Army. As a result of the details revealed in her lengthy cross-examination—she was described by William Wilberforce as '... elegantly dressed, consummately impudent and very clever... [she] clearly got the better of the tussle'—the Duke resigned his position; see A. Wright and P. Smith, London, 1902, *Parliament Past and Present*, p. 391.

² MoP 1995-97/687; Assembly Debates (17.6.1997) 1602-17. The terms of the motion contained an apology to the Ngun(n)awal people and other Aboriginal and Torres Strait Islander people in the ACT.

³ MoP 1995-97/705-6.

⁴ MoP 1995-97/735-6.

17.4 In the 1990s there was some discussion about introducing the practice of regularly inviting representatives of community groups to address the Assembly from the Bar on matters of public interest. The proposal was an election commitment of the then government, which was elected in 1995. The government remained undecided about whether the ACT should take a strictly 'parliamentary' approach to its conduct of business or develop a less formal model by adopting aspects of municipal council practice. It is common in local government for members of the public to address their local councils from the floor.

17.5 In 1996 proposed amendments to the standing orders to allow such a procedure were referred to the Standing Committee on Administration and Procedure.⁵ It was proposed that time be set aside in every second sitting week for addresses from the public. The administration and procedure committee would consider applications to appear and recommend to the Assembly groups that were to be invited. The committee noted in its report that such a procedure was unheard of in other parliaments.⁶ In view of this:

The Committee's prime consideration ... was whether there was a need to establish such a procedure. It was of the view that there was already an effective avenue through which the community's interests can be voiced – the Committee system.⁷

17.6 The standing committee noted that the committee system provided for a diverse range of inquiries to be undertaken and offered a variety of avenues for public access. In its view the proposal did not address the needs of a 'clientele that is currently disenfranchised'. It concluded that the proposal 'did not offer any advantage ... over the existing committee system and ... might detrimentally impact on the effectiveness of the work done by Assembly committees'.⁸

17.7 A number of other objections were raised during consideration of the proposal. It was argued as a matter of principle that such a proceeding would diminish the role of Members as representatives of their constituents. The question of extending absolute privilege to the content of addresses that might subsequently be shown to be misleading and the potential for disorder were of great concern. It was noted that witnesses invited to appear before parliamentary committees are responding to specific terms of reference and usually make some written submission in the first instance, thus enabling the committee to have a good idea of the likely content of their oral evidence.

17.8 A member of the committee dissented from the report and supported the proposal. The member argued that the proposed procedure would offer members of the community who were dissatisfied with a committee report the opportunity to take their case to the whole Assembly and that, generally, additional avenues of communication between the community and the Assembly would tend to strengthen the institution. He also disputed whether the practical difficulties of ensuring responsible use of privileged freedom of speech and maintaining order were likely to be any greater for members of the public addressing the Assembly than for the elected Members.⁹ The committee's report and the dissenting report were tabled in the Assembly in September 1996 and debated, but no further action was taken on the proposal.

5 MoP 1995-97/298.

6 Where individuals have been invited to address a legislative chamber it has been in exceptional circumstances, not as a regular procedure.

7 Standing Committee on Administration and Procedure, *Addresses to the Assembly—Proposed temporary orders*, 25 September 1996, p. 3.

8 Standing Committee on Administration and Procedure, *Addresses to the Assembly—Proposed temporary orders*, 25 September 1996, p. 5.

9 Standing Committee on Administration and Procedure, *Addresses to the Assembly—Proposed temporary orders*, 25 September 1996, Dissenting Report.

SUMMONING OF WITNESSES, INCLUDING MEMBERS

17.9 Standing orders 255 and 256 embody the authority of the Assembly and its committees to compel the attendance of witnesses and punish any failure to attend. These powers were powers of the House of Representatives when the Self-Government Act was passed and are, therefore, powers of the Legislative Assembly. The form of a summons is not specified but the Assembly could follow precedents in other parliaments. There is limitation on the Assembly's powers to impose penalties—for example, it may not impose fines or order imprisonment. Failure to appear before a committee and to give evidence, having been ordered to do so, constitutes a contempt and the committee must report the matter to the Assembly. The committee has no authority to punish contempts.

17.10 Neither the Assembly nor its committees has ever used these powers. As noted in paragraph 17.2, the Assembly has invited members of the public to appear before it on only one occasion and Assembly committees rely on cooperation and negotiation when gathering evidence. Both House of Representatives and Senate committees have ordered witnesses to appear, but only rarely. A witness who is reluctant to appear will usually accept an invitation when the power to order an appearance is explained. Witnesses have occasionally asked to be 'ordered' to appear for their own protection. They wanted to make it clear that they were required to give evidence—for example, where their evidence related to 'matters subject to a requirement of confidentiality'.¹⁰

17.11 The Assembly has never required a Member to 'attend in the Member's place' to be examined by the Assembly (see standing order 257). It is possible that a legislature might wish to do so in the event of an egregious breach of its rules. However, that need has not arisen. Committees have invited Members to appear on numerous occasions, particularly in their capacity as Ministers, but also with regard to questions of privilege and other matters. Again, the issue of compulsion has not arisen. Standing orders 256, 258 and 259 confirm that committees do not have the power to reach decisions on matters relating to the refusal of Members or witnesses to appear and answer questions. These matters must be reported to the Assembly, which then decides on a course of action.

17.12 The House of Representatives and the Senate have the power (via section 49 of the Constitution) to administer oaths or affirmations to witnesses appearing before committees and thus the Assembly also has that power (via the Self-Government Act). The practice of swearing witnesses before committees has been declining in the Commonwealth Parliament since the 1980s and the practice was never adopted in the Legislative Assembly. When Assembly committees take evidence, the chair of the committee reads a brief statement concerning privilege at the commencement of the hearing reminding witnesses of the protection afforded by committee procedures and the witnesses' obligation to tell the truth.

PROTECTION OF WITNESSES

17.13 Witnesses appearing before the Assembly and its committees receive the same protection as that provided by the Commonwealth Parliament. Witnesses are protected against legal action in the courts for anything said in meetings of the Assembly and its committees. This protection also applies to submissions presented to committees and documents prepared incidental to witnesses' appearances before committees.¹¹ It is important that witnesses be properly advised about the extent of the protections afforded to them and, equally, that those protections not be abused.

¹⁰ *House of Representatives Practice*, pp. 651-2; Odgers', p. 423.

¹¹ *Parliamentary Privileges Act 1987* (Cwth), section 16.

17.14 The Parliamentary Privileges Act sets out clearly that witnesses may not be subjected to pressure or penalty in relation to evidence they may give to committees.¹² These matters are discussed more fully in the Chapter 2: Immunities and powers of the Assembly (Privilege).

17.15 As discussed in this chapter little use has been made of the procedures with regard to the appearance of witnesses before the Assembly Chamber. On those occasions when a witness did appear or such an appearance was contemplated, the Assembly prepared resolutions setting out the specific procedures to be adopted.

17.16 The draft motion to invite the Secretary of the Trades and Labour Council to appear before the Assembly (see paragraph 17.3) proposed to vary the procedure set out in standing order 262 by naming a Member other than the Speaker who would be given the call to ask the first questions of the witness and stating that all Members would have the right to direct questions to the witness. This serves as a reminder that the Assembly may vary the application of standing orders as it sees fit.

17.17 In general, committees have a more informal approach to questioning. The chair may open the questioning of a witness before inviting other members to put questions or may invite a Member with a particular interest in the matter before the committee to ask questions. The chair must ensure that Members have equal opportunity to question witnesses.

17.18 Committees would normally resolve any differences of opinion in private. When a committee member or a witness objects to a question or to the way in which the committee is conducting its business or when a procedural matter arises in the course of a hearing, unless the question can be resolved quickly and amicably, the committee must adjourn its public session and meet in private to resolve the matter.¹³

17.19 Parliamentary privilege protects a legislature from having its proceedings questioned in any other tribunal. Standing order 264 is an expression of part of that protection. Officers of the Assembly cannot be summoned before any court or other tribunal to give evidence in relation to the proceedings of a committee or the evidence it may have received without the express authorisation of the Assembly. To date no authorisation has been given.¹⁴

PUBLIC SERVANTS APPEARING AS WITNESSES BEFORE COMMITTEES

17.20 Public servants are a special category of witness. They play a key role in the accountability of the executive to the legislature. Public servants should be familiar with the content of the *Handbook for ACT Government Officials on Participation in Assembly and other inquiries*. The handbook specifically provides the following advice to public servants appearing before Assembly committees:

The duty of the public servant is to assist ministers to fulfil their accountability obligations by providing *full and accurate information to the legislature* about the factual and technical background to policies and their administration. [emphasis added].¹⁵

¹² *Parliamentary Privileges Act 1987* (Cwlth), section 12:

¹³ Standing order 263.

¹⁴ And see paragraphs 2.59 and 2.60.

¹⁵ Cabinet Office, ACT Chief Minister's Department, *Handbook for ACT Government Officials on Participation in Assembly and Other Inquiries*, June 2004, p. 4.

17.21 It is accepted that public servants cannot be asked questions that require them to offer an opinion on the merits or otherwise of government policy or on the advice that they have given in the formulation of policy.¹⁶ They may be asked to explain a policy or describe alternatives that have been considered but not to canvass the relative merits of various policies. Questions seeking opinions on the merits of policies should be directed to Ministers.

17.22 Public servants should also be given the opportunity to take questions on notice or to refer them to senior officers or their Minister where:

- they are unsure of the status of the information that would be disclosed in the answer;
- they lack sufficient information to provide a complete answer;
- they believe that the question should, properly, be directed to another agency; or
- they believe that the question relates to matters outside the committee's terms of reference.¹⁷

However, individual public servants should not, of their own volition, decline to provide information to Assembly committees. Such a decision should be made in consultation with the responsible Minister and the reasons for it provided to the committee.

17.23 As mentioned in Chapter 16: Committees, there are a number of grounds on which Ministers, public servants and citizens generally may seek to withhold information from an Assembly committee or to provide that information or evidence in private. These grounds generally relate to public interest immunity, claims to confidentiality based on commercial sensitivity and concerns about individual privacy.

17.24 In a small community like the ACT, it is not uncommon for public servants to appear in a personal capacity to give evidence on some issue of concern to them as citizens. As the government's handbook makes clear, there can be no objection to such a practice. However, public servants should be reminded prior to their giving evidence that when appearing in a 'personal' capacity on matters that are within their professional responsibility as public servants, they should be aware of the potential conflict that may arise with their duties under the Public Sector Management Act, which sets out their responsibilities as public servants.¹⁸

17.25 There may be circumstances where a public servant wishes to appear before a committee to give evidence in relation to his or her responsibilities as a public servant—for example, as a 'whistleblower' exposing some misuse of executive power. While committees can take such evidence and it would receive the protection of the Assembly, committees should seek to ensure that alternative 'internal' avenues of dealing with the matter have been exhausted and that the issue is of such importance that the breaching of the public servant's obligations under the Act is justified. Regard should also be had to the *Public Interest Disclosure Act 1994*.

17.26 The Assembly would protect a witness from any overt attempt to impose a penalty in these circumstances. However, its capacity to prevent the giving of such evidence having a detrimental effect on a public servant's career in the long term clearly may be limited.

17.27 Public servants appearing before Assembly committees, particularly estimates committees, which tend to be wide ranging and adversarial, will often find themselves defending their agencies. It is perfectly acceptable to represent a departmental or agency

¹⁶ Odgers', p. 428.

¹⁷ Estimates committees are a special case. It is accepted practice that these committees may range over all aspects of government activity and are not limited by the provisions of the appropriation bills.

¹⁸ Cabinet Office, ACT Chief Minister's Department, *Handbook for ACT Government Officials on Participation in Assembly and Other Inquiries*, June 2004, p. 21.

'position' as long as that does not involve misleading the committee or withholding information. It is also reasonable to take advantage of the protections available to public service witnesses. However, agencies should not 'coach' public service witnesses to seek to manipulate the protections available to them—for example, taking questions on notice when the information is readily available and there is no valid reason for not providing it to the committee. Nor should witnesses be drawn into 'political' debates—for example, by offering gratuitous information about the practice of a previous government.

17.28 The Assembly's estimates committee faced these types of issues in 2003 when a Minister declined to answer questions from members, although the information was available to him and no issues of confidentiality arose with regard to it. The Minister acknowledged that he simply wished to present the information in a forum and manner of his own choosing, which he did at a later time on the same day. A subsequent privileges committee inquiry made a finding of contempt against the Minister. The Minister acknowledged during the course of the inquiry that he had an obligation to provide the information to the committee.

17.29 At the same hearings a document came to light on the letterhead of an agency appearing before the committee. The document had been widely circulated within the agency. It contained a list of 'suggested tactical approaches' in dealing with questions in the estimates committee's hearings. Some parts of the document were unexceptionable, merely reminding public servants of their rights and obligations when appearing before a committee. However, it also included advice, characterised as 'flippant and glib', on how to seek to manipulate the proceedings, avoid answering questions, present information selectively and make party political points. A finding of contempt of the Assembly was made against agency officers who were the authors of the document.¹⁹ They were subject to internal agency disciplinary proceedings and seminars were conducted within the agency to familiarise officers with their obligations to the Assembly. The Assembly itself imposed no penalty on the officers.

17.30 To date, the procedural questions associated with summoning public service witnesses in the face of opposition by a Minister and the scope of ministerial claims to public interest immunity have not been tested in the Assembly.

MEMBERS OF THE JUDICIARY CALLED AS WITNESSES

17.31 The independence of the courts from executive or legislative interference is an important aspect of the democratic doctrine of the separation of powers. One manifestation of this separation is the care with which the relationship between the legislature and the judiciary is managed. Legislative Assembly standing order 54 prohibits the use of offensive language against a member of the judiciary and, by convention, Members of the Assembly do not reflect on specific decisions of courts. The Assembly has also tended to adopt a narrow interpretation of the *sub judice* convention by avoiding references to matters before the courts. (See Chapter 10: Rules of debate and the maintenance of order.)

17.32 It is accepted that parliaments may scrutinise the administration of the courts that come within their jurisdiction. For example, it is common practice for officers of the courts to appear before Assembly estimates committees. Committees have also received submissions from ACT magistrates on matters relating to both the administration of the courts and the interaction of the courts with government services in the ACT. The accepted practice of the Assembly is that members of the judiciary or magistracy may be invited, but are not required, to participate in committee inquiries.

¹⁹ Both these matters were dealt with in *Possible unauthorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document*, Select Committee on Privileges, November 2003.

17.33 The public accounts committee of the Sixth Assembly, when examining an Auditor-General's report into the administration of the courts, sought submissions from both the Chief Justice of the ACT Supreme Court and the ACT Chief Magistrate. The Chief Justice declined to provide a submission but the Chief Magistrate and another magistrate did; they also appeared and gave evidence at hearings of the committee.

17.34 The Standing Committee on Justice and Community Safety, when inquiring into the Children's Services (Amendment) Bill 1998, received a submission and heard evidence from the Chief Magistrate on the issue of whether the ACT should have special magistrates for hearing cases in the Children's Court.

17.35 Australian legislatures are empowered to call for the removal of judges within their jurisdiction on the grounds of misconduct or incapacity, usually by way of an address to the Governor-General or a state governor. However, the requirement to establish evidence of misconduct or incapacity, while avoiding any suggestion of a politically motivated interference in the judiciary, has presented various Australian parliaments with complex challenges.

17.36 Most notably, the Senate established two select committees to inquire into the conduct of a High Court judge in the 1980s. The second of those committees was assisted by two retired judges, acting as commissioners to give advice to the committee as to both the conduct of its inquiries and its findings. The committee also adopted complex procedures designed to ensure the fairness of its proceedings. The judge in question declined to appear before either select committee and no attempt was made to compel him to appear (the second committee was explicitly denied the power to summon him).

17.37 Despite two parliamentary inquiries and criminal proceedings relating to some of the matters under investigation, the position of the judge remained unresolved and a parliamentary commission, analogous to a royal commission but reporting to the parliament, was established. The ill health and subsequent death of the judge meant that the matters under investigation remained unresolved.²⁰

17.38 Other Australian legislatures—for example, Queensland and New South Wales—have adopted the practice of appointing independent commissions to inquire into complaints against members of the judiciary prior to the legislature considering the issue of their removal from office. However, in both cases the judges under investigation appeared before the legislatures when they deliberated on whether to request their removal from office.

17.39 Section 48D of the Self-Government Act gives the Assembly a role in the removal of a judge of the ACT Supreme Court. However, the role is restricted to making a determination as to whether the facts adduced by a judicial commission established to examine 'complaints concerning the conduct or the physical or mental capacity of a judicial officer' amount to grounds for the removal of the person from office, and passing a motion to that effect. In making that determination, the Assembly might choose to hear discussion on what constitutes grounds for removal and might conceivably wish to invite the judge to appear before it before reaching a decision; but the procedure has not been used and the issue has not arisen.

17.40 The provisions in the ACT Self-Government Act requiring the appointment of a judicial commission to determine the facts of a complaint against a member of the judiciary appear to have been informed by the experience of the Commonwealth Parliament referred to in paragraph 17.36 and 17.37.

20 See *Odgers*, Chapter 20, for a full discussion of these issues.

ADVERSE MENTION PROCEDURES

17.41 In March 2008 the Assembly adopted adverse mention procedures that were based on resolutions similar to those agreed to by the Senate. These procedures allow witnesses certain rights where they believe that evidence has been given which reflects adversely on them.

CONDUCT OF PRIVILEGE INQUIRIES

17.42 In common with all other legislatures the Assembly possesses certain privileges and immunities from the ordinary law (see also Chapter 2: Immunities and powers of the Assembly (Privilege)). It also has the power to determine and, if necessary, punish actions which constitute breaches of those privileges or contempt of the Assembly. With the passage of time, Australian legislatures, while still jealously guarding their privileges, have become more circumspect in pursuing matters of contempt. It is generally accepted that the dignity of a legislature is better served by this approach than by the aggressive pursuit of possible contempts. The *Parliamentary Privileges Act 1987* (Cwlth) has also made the defence of the privileges of the Commonwealth Parliament, and by extension the Legislative Assembly, a matter for the courts in the first instance.

17.43 Speakers of the Assembly have followed the example of the Commonwealth Parliament in their reluctance to invoke privilege or contempt procedures in cases other than those where it is considered imperative to do so in order to protect the Assembly, its Members and its committees.²¹ Speakers have made various alternative suggestions to ensure that the Assembly operates successfully. They have included dealing with an issue by way of an apology;²² reminding Members of the need to ensure that the rules and standing orders of the Assembly are adhered to; that fair and proper processes are followed; and that confidentiality is maintained.²³

17.44 On one occasion, there was a question about whether a Minister had offered a Member a position on a proposed select committee in return for her vote to secure a government chair on the committee. The Speaker reminded Members that, in coming to a decision as to whether a matter merited precedence, he had to distinguish between the ordinary cut and thrust of political life in a legislature and attempts to influence Members improperly in the way they perform their duties.²⁴

17.45 The Assembly has also been aware that it should consider the possible consequences of acting in defence of its privileges and be sensitive to community attitudes on the issue. On one occasion, a committee inquiring into a possible breach of privilege declined to call departmental officers to give evidence even though there was a high probability that the officials could have thrown some light on the matter under investigation. The committee commented that:

Whilst it felt it had a legitimate right to obtain this information, that right had to be balanced against the possibility that the Committee's inquiry could be viewed as a witch hunt and if successful could damage careers.²⁵

21 Assembly Debates (12.9.1990) 3160.

22 Assembly Debates (18.9.1991) 3462-5. The Member who was the subject of a complaint having made a statement by leave, as did the Member who raised the matter, the Speaker considered the issue resolved.

23 Assembly Debates (16.2.1999) 152-3.

24 Assembly Debates (7.4.2005) 1485.

25 Standing Committee on Administration and Procedures, *Report on the Government Response to the Report of the Select Committee on Estimates 1993-94*, April 1994, paragraph 28.

17.46 The low-key approach to consideration of privilege questions is reflected in the number of matters which have lapsed after an explanation has been offered by the relevant Member or the matter has been thoroughly debated.²⁶ The overwhelming majority of privilege matters raised in the Assembly relate to the actions of Members or the unauthorised release of committee material and are resolved 'in-house'.

17.47 Matters of privilege and, more particularly, contempt still arise and have to be examined by the Legislative Assembly. Standing order 276 provides that:

Upon a matter of privilege arising:

- (a) a Member shall give written notice of the alleged breach to the Speaker as soon as reasonably practicable after the matter has come to the Member's attention;
- (b) if the matter arises from a statement published in a newspaper, book or other publication, the Member is required to provide the Speaker with a copy of the newspaper, book or publication; ...²⁷

17.48 The responsibility then rests with the Speaker to determine whether the matter has substance and should be taken further.²⁸ If the Speaker so decides, the matter is given priority over all other business of the Assembly and the Member who raised it is given the opportunity to move a motion to refer it to a select committee for examination and report. Should the Speaker grant precedence, the Member who raised the matter is not obliged to move a motion of referral, and on occasions motions have not been moved. It is not uncommon for the matter to have been resolved between the giving of written notice to the Speaker and the Speaker making a decision.²⁹ In March 2008 the Assembly adopted new standing orders 277, 278 and 279. They set out what constitutes a contempt and what criteria the Speaker will use to determine whether a matter merits precedence. The Assembly also adopted new standing order 280 that established procedures for the protection of witnesses before a privileges committee.

17.49 In the early years of the Assembly, privilege matters were referred to the Standing Committee on Administration and Procedures. However, this proved unsatisfactory since on occasion members of the committee were themselves the subject of complaints about possible contempt. In 1995 the standing orders were amended to create the current process. Investigations are now undertaken by select committees on privileges rather than by the standing committee. This ensures that none of the Members involved in the inquiry has any involvement in the matter under examination.

26 Appendix 15 summarises the 29 matters of privilege that have been raised in the Assembly to the end of the Sixth Assembly. Fourteen were found by the Speaker to merit precedence; after debate no further action was taken on eight of those matters, while five were referred to privilege inquiries. Thirteen matters were adjudged by the Speaker not to merit precedence, though one was nevertheless referred back to the standing committee where the issue originated. In two cases a Member moved for the establishment of a Select Committee on Privileges without reference to the procedures set out in standing order 71.

27 *Legislative Assembly standing orders and other orders of the Assembly*, August 2005.

28 Two Members have given separate notices concerning the same matter. The notices being similar, the Speaker considered them together. See Assembly Debates (17.10.1990) 3753.

29 For example, see Assembly Debates (13.2.1990) 17-8. The matter related to the premature release of a committee report: the Member who raised the matter (the presiding member of the committee) advised that he had consulted with colleagues on the committee and believed that no major damage was done nor was the committee's performance unduly affected; see Assembly Debates (17.10.1990) 3735-7; Assembly Debates (18.9.1991) 3462-5. In these cases the Speaker suggested the matter could best be dealt with by way of an apology; see also Assembly Debates (17.5.1994) 1549-52 and (19.5.1994) 1769-70. The matters concerned submissions made to a board of inquiry inviting the board to have regard to debates in the Assembly. In advising the Assembly on each occasion the Speaker stated that she would be alerting the Board to her statements; see also Assembly Debates (25.9.1997) 3229-30. The Member who raised the matter stated that he would not be moving a motion as the Member complained of was not present to defend himself. He was absent on Assembly business; see also Assembly Debates (9.8.2001) 2828-36.

17.50 While privilege matters have generally been raised using the procedures set out in former standing order 71,³⁰ it is open to the Assembly to establish a privileges inquiry directly by motion. In 2002 it came to light that a Minister's emails were being interfered with and an inquiry was undertaken by the police.³¹ At the completion of the inquiry, the Director of Public Prosecutions advised that no criminal charges would be laid.

17.51 The Minister affected by the interference then moved a motion to establish a select committee on privileges to examine the matter, 'notwithstanding the provisions of standing order 71'. In moving the motion the Minister noted that:

It has been explained to me there is no[thing] ... in the statutes that would allow a criminal charge to be undertaken. That brings the matter back into this Assembly, because I think it is pretty clear that an offence has been committed – not just to me but to the whole Assembly.³²

The motion was debated at length and passed. It is a useful reminder that contempt of the Assembly is separate from offences under the ordinary criminal law.

17.52 If the Speaker decides that a matter does not merit precedence, he or she must inform the Member who raised the issue, in writing, of this decision. The Speaker may also advise the Assembly of the decision. The Speaker has generally informed the Assembly when matters did not merit precedence. On one occasion, the Speaker having informed the Assembly that a matter did not merit precedence, the Assembly granted leave to a Member to move a motion to refer the matter to the Standing Committee on Administration and Procedures.³³ On a later occasion, a motion proposing the appointment of a select committee to examine a matter was moved pursuant to notice.³⁴

17.53 Many possible contempt issues arise in committees, particularly with regard to the release of confidential material, including draft reports. Before invoking the privilege procedures, House of Representatives practice is to ask a committee in the first instance to examine whether the matter complained of has had a substantial impact on the committee's work. This can be seen as a further demonstration of that house's desire to avoid invoking privilege in a heavy handed way. The Assembly has occasionally adopted the same course.³⁵

17.54 The Standing Committee on Administration and Procedures recommended the formal adoption of such a practice based on House of Commons and House of Representatives precedents. However, consideration of that report was adjourned and the matter lapsed at the expiration of the Second Assembly.³⁶

30 New standing order 276.

31 Information technology services in the Legislative Assembly (and Ministers' offices) are provided under contract by an external supplier. The breach of the email system was reported to the service provider who took the view that it was a matter for police inquiry; acting on this advice and with the concurrence of the Minister whose email was affected, the Clerk of the Assembly called in the police.

32 Assembly Debates (6.6.2002) 2012. For the debate on the motion, see Assembly Debates (6.6.2002) 2011–4, 2049–62.

33 Assembly Debates (12.9.1990) 3159–64. The motion was negatived. An earlier motion in similar terms had been considered and negatived; see Assembly Debates (16.8.1990) 3018–22.

34 The motion (alleging improper influence of a witness in respect of evidence to be given to a standing committee) was agreed to (Assembly Debates (25.5.2000) 1776–94, 1834–47). However, the resolution on the referral was later rescinded and the original motion was amended to refer the matter to the committee in question (Assembly Debates (25.5.2000) 1897–1924).

35 A motion to appoint a Select Committee on Privileges to examine a matter that had arisen in a committee was agreed to after debate (MoP 1998–2001/879–80, 882–3; Assembly Debates (25.5.2000) 1776–94, 1834–46). Later, the motion was rescinded and reconsidered. The Assembly resolved that the Standing Committee on Planning and Urban Services should inquire into the matter (MoP 1998–2001/891–93).

36 Standing Committee on Administration and Procedures, *Article in the Canberra Times dated 12 November 1993 concerning the Draft Report of the Select Committee on Estimates 1993–94*, 16 December 1993), paragraph 28, recommendation 2.

PROCEEDINGS IN COMMITTEE

17.55 When considering matters referred to them, select committees on privileges are governed by the same standing orders as committees generally and they must have regard to any specific terms in their resolutions of appointment. Privileges committees are usually inquiring into the behaviour of a person or persons. They have the capacity to make findings and to recommend the imposition of penalties that may have an adverse effect on the individuals concerned. Therefore they need to ensure that their proceedings are conducted with a maximum of procedural fairness.³⁷

PENALTIES FOR CONTEMPT

17.56 Select committees inquiring into privilege matters may be of the view that a contempt of the Assembly has occurred. The committees may also recommend penalties. The Select Committee of Privileges inquiry into the unauthorised diversion and receipt of a Member's emails³⁸ made a finding of contempt and recommended that the person involved be required to make a 'prompt and unreserved apology' to the Assembly. Between the tabling of the report and completion of debate on it that person resigned his position as an adviser to a Member of the Assembly. The Assembly did not pursue the matter of the apology.

17.57 The general tendency of Assembly privileges committees has been to avoid recommending the imposition of penalties even where they have made findings of contempt. For example, a committee inquiring into the conduct of estimates committee hearings³⁹ made findings of contempt against a Minister for refusing to answer questions in the hearing while releasing the relevant material publicly shortly thereafter. The committee also made an adverse finding against two departmental officers. In both cases, the committee accepted that apologies and, in the case of the officials, departmental disciplinary action were sufficient response.

17.58 A privileges committee report on the actions of a committee chair⁴⁰ also made a finding of contempt against the committee chair. Again, it imposed no penalty. It is worth quoting the committee's reasons for this as they embody what has been the attitude of the Assembly to the issue of punishment of contempt:

[The Chair] has admitted her 'mistake' in confusing her roles in both the committee and the Assembly and did disqualify herself from further involvement in the ... [committee's] inquiry.

This admission ... together with the ordeal of having to undergo this privileges inquiry has prompted this committee to recommend no further action be taken ...⁴¹

17.59 The recommendations of the inquiries discussed in paragraphs 17.57 and 17.58 reflect a trend in the Assembly's handling of privileges matters. It is to avoid imposing punitive penalties, particularly where the person in question makes a prompt apology. In part,

37 See also Chapter 16: Committees, paragraph 16.142 with regard to the availability of legal advice to witnesses. See also Chapter 16: Committees, 16.139 and 16.140.

38 Select Committee on Privileges, *Unauthorised diversion and receipt of a Member's e-mails*, 13 November 2002.

39 Select Committee on Privileges, *Possible unauthorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document*, 3 November 2003.

40 Select Committee on Privileges, *Report on whether the actions of the Chair of the Standing Committee on Planning and Environment with regard to the distribution of a flyer in her name at the Belconnen Markets did constitute a contempt of the Assembly*, March 2004.

41 Select Committee on Privileges, *Report on whether the actions of the Chair of the Standing Committee on Planning and Environment with regard to the distribution of a flyer in her name at the Belconnen Markets did constitute a contempt of the Assembly*, March 2004, p. 15, paragraphs 5.6 and 5.7.

this reflects an acceptance that most inquiries that result in findings of contempt against individuals indicate that they did not have a clear understanding of the issues involved. There may also be an appreciation on the part of the Assembly that the community would be unlikely to support harsh penalties for what often appear to be obscure or technical breaches.

17.60 Privileges committees are not restricted to the specific issue of breach of privilege or contempt in conducting their investigations. A number of committees have made recommendations or comments on the need for a better understanding of parliamentary privilege and contempt by both Members of the Assembly and witnesses, particularly public servants, appearing before Assembly committees. For example, in 1993 a committee investigating the leaking of a committee draft report recommended that:

... at the new Members seminar conducted at the commencement of each Assembly new members (and their staff) be advised of their obligations and responsibilities as a member of a committee, with particular regard to the confidentiality of draft reports.⁴²

17.61 In response to a more recent report, *Possible unauthorised dissemination of Committee material*, the government department involved initiated training for its officers 'on appropriate committee preparation, behaviour and service from the department'. That privileges committee recommended that the Assembly make seminars on this subject a continuing part of training for departmental officers.⁴³

17.62 Privilege committees have also made recommendations with regard to other matters that have contributed to the issues that they have considered. For example, the Select Committee on Privileges that investigated the unauthorised diversion and receipt of a Member's emails identified the management of the Assembly's information technology services as an important contributing factor to the breach of email security and recommended that they be reviewed. The committee also recommended that the status, rights and obligations of volunteers working in Members' offices be clarified and that the code of conduct for Members' and Ministers' staff be strengthened.

17.63 The range of penalties that the Assembly may impose where a finding of contempt is made does have limits. The Self-Government Act excludes the imposition of fines or custodial sentences (subsection 24(4)). The most serious penalty that can be imposed on a Member is suspension from the service of the Assembly.⁴⁴ The Assembly could ban a person, including a Member, from the precincts of the Assembly. This would be a serious punishment in the case of a Member's staff or public servants whose responsibilities required regular access to the executive or the Assembly and its committees.

17.64 When considering the appropriate penalty to apply, the committee examining the unauthorised diversion of a Member's emails was aware that to exclude a staff member from the Assembly precincts would make it extremely difficult for that person to continue in his or her position. Indeed, the committee was aware that the practical impact of a finding of contempt against an MLA's staff member would be severe, irrespective of any additional penalty imposed:

42 Standing Committee on Administration and Procedures, *Article in The Canberra Times dated 12 November 1993 concerning the Draft Report of the Select Committee on Estimates 1993-94*, 16 December 1993, paragraph 28, recommendation 2.

43 Select Committee on Privileges, *Possible unauthorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document*, 3 November 2003, pp. 12-3.

44 As a consequence of section 8 of the Parliamentary Privileges Act, the Assembly cannot expel a Member. Were the Assembly to suspend a Member for an extended period or for the duration of the Assembly, it would be open to that Member to invoke section 8 and invite a court to decide whether the suspension was *de facto* expulsion and therefore beyond the Assembly's power.

In view of the adverse effect that this finding of contempt will have on [the person's] professional reputation the committee makes no further recommendation for the imposition of a penalty⁴⁵

PROCEEDINGS FOLLOWING REPORTS

17.65 The Assembly has a number of options when a committee report is tabled. The current practice is to move that the Assembly 'note' a committee report.⁴⁶ This allows the report to be debated. It does not imply support for the findings or recommendations of the report or require any action on the part of the Assembly or any other party.⁴⁷

17.66 In the case of a privileges committee report which recommended that penalties be imposed, a motion to take note of the report would be insufficient to ensure that any further action was taken. The person or persons against whom penalties were recommended might, with justice, argue that the Assembly had reached no decision on either the substance of the contempt or the merit of the penalty⁴⁸ and, until it did so, decline to respond to the committee report. Where the Assembly wishes to ensure that the committee's recommendations are implemented, a motion 'That the report be adopted' or a specific motion either 'That the recommendation be adopted'⁴⁹ or that a person or persons 'be required to apologise to the Assembly' would have to be moved and passed.

17.67 In 1993 two related matters arising from the Select Committee on Estimates were referred to the Standing Committee on Administration and Procedure as potential breaches of privilege. The committee produced a report in response to each reference. Neither report made a finding against any named person and both reports recommended administrative action on the part of the Assembly and the executive. The motion with regard to the first report was that it be adopted whereas the motion relating to the second was merely that it be noted. The records do not reveal any reason for these different approaches.

17.68 In the case of the second report, the executive did in fact respond to the recommendations relevant to it, but this was in line with standard executive practice to respond to all relevant committee reports. It was not a response to any demand from the Assembly.

17.69 As noted above, the Assembly rarely imposes penalties. In the only recent case where one has done so, the matter was resolved by the resignation of the person in question.⁵⁰ Thus, the question of enforcing a penalty has not arisen. Were an individual to decline to accept the penalty imposed, the Assembly would have to consider further action, such as bringing the person before the Bar of the Chamber.

17.70 In practice, serious offences against the Assembly, its Members and committees that may involve penalties beyond admonishment or apology are likely to be dealt with by the

⁴⁵ Select Committee on Privileges, *Unauthorised diversion and receipt of a Member's e-mails*, 13 November 2002, p. 29.

⁴⁶ Standing order 254 provides four options when presenting a committee report: that the report be noted, that the recommendations be adopted, that the report be adopted or that consideration of the report be made an order of the day for the next sitting (when a specific motion without notice in connection therewith may be moved). See Chapter 16: Committees.

⁴⁷ Where committee reports make recommendations with regard to the ACT Executive, the executive has adopted the practice of responding to recommendations within three months. This is not a requirement of the Assembly.

⁴⁸ There is no requirement on the Assembly to agree with the findings of a committee. In the Strauss case in Britain the House of Commons declined to accept the conclusion of its privileges committee that a Member's correspondence with a Minister constituted a proceeding in parliament.

⁴⁹ For example, in 1994 the Standing Committee on Administration and Procedure recommended that standing orders 200 and 201 be amended and the committee provided amended texts. The motion before the Assembly, that the report be adopted, was put and passed and as a result the amended texts were included in the standing orders. MoP 1992-94/633.

⁵⁰ Select Committee of Privileges, *Unauthorised diversion and receipt of a Member's e-mails*, 13 November 2002.

ordinary law. Intimidation or corruption of Members, witnesses or Assembly staff and serious disruption of the Assembly's proceedings⁵¹ could all constitute offences.

17.71 Advice from the ACT Government Solicitor on the application of the Parliamentary Privileges Act argues that only those parts of the Act 'which may properly be described as declaratory of the "powers, privileges and immunities of the House of Representatives and its committees and Members"' would apply to the Assembly. Sections which 'relate to enforcement or administrative detail' would not apply. Thus, for example, sections 12 and 13 of the Act, which create offences in relation to interference with witnesses and unauthorised publication of documents would not, on this view, apply to the Assembly. However, it is open to the Assembly to legislate to make provision for similar penalties in the ACT.

RECORDS OF PRIVILEGES COMMITTEES

17.72 The records of all select committees, including those inquiring into privilege matters, pass into the custody of the Clerk of the Legislative Assembly after they have reported to the Assembly and ceased to exist.

51 For example, the *Legislative Assembly Precincts Act 2001* and the *Crimes Act 1900*, section 154. The former Act applies to the Assembly precincts and provides extensive authority for the removal of persons from the Assembly precincts. It creates offences of obstruction, behaving in an offensive or disorderly manner and refusal to leave premises when requested to do so. The *Criminal Code 2002*, Chapter 3, includes Members, Ministers and Assembly staff within its definition of 'public official' and includes offences relating to abuse of public office and intention to dishonestly influence a public official.



18 CHAMBER AND ASSEMBLY PRECINCTS

18.1 Parliamentary precincts have been defined as ‘any place *de facto* occupied by Members for their parliamentary duties’.¹ The Commonwealth Parliament’s precincts were not defined in a statute until 1988, with the move from the Provisional Parliament House to the current building.² Prior to that time, the precincts were taken to be the provisional building, its annexes, verandahs and entrances. Similarly, the precincts of the Houses of Parliament in Westminster are not defined in statute.

18.2 As *Odgers*’ makes clear, the definition of the parliamentary precincts is ‘an administrative matter, which has no connection with the operation of either the ordinary law or the law of parliamentary immunities’.³ Essentially, the parliamentary precincts, whether defined in a statute or defined by convention, are those areas over which the Presiding Officer(s) exercise administrative authority.

18.3 Section 15 of the *Parliamentary Privileges Act 1987* makes it absolutely clear that any law in force in the ACT applies within the precincts of the Commonwealth Parliament. The ordinary criminal law applies within the precincts of parliament and equally the immunity of proceedings in parliament applies wherever those proceedings occur. For example, parliamentary committees frequently meet in a variety of venues and locations away from parliament buildings.⁴

18.4 It is, however, a long-established practice that:
... police do not conduct any investigations, make arrests, or execute any process (eg, search warrants) in the parliamentary precincts without consultation with the Presiding Officers.⁵

18.5 The Legislative Assembly precincts are governed by similar principles. The Clerk of the Assembly has advised the ACT police not to serve a summons on a Member within the Assembly building⁶ and police investigations have been conducted within the Assembly at the invitation of the Clerk and after consultation with the Speaker. On 6 March 2002 the Speaker made the following statement to the Assembly:

As indicated in the letter [to all Members], certain actions have been taken following the receipt of information by the Clerk on Wednesday, 27 February. Arising out of a complaint, subsequent investigations and consultation with me, a matter was referred to the Australian Federal Police by the Clerk.

A police investigation was commenced and is still in progress. Two search warrants were executed this morning within the Assembly building. The matters relate to computer security.

1 *House of Representatives Practice*, First edn, p. 156.

2 *Parliamentary Precincts Act 1988* (Cwth) expanded the traditional definition to include adjacent parks, gardens and car parks.

3 *Odgers*’, p. 76.

4 An element of some minor contempts is that they occur within the precincts—for example, the service of a summons on a Member of parliament on a sitting day.

5 *Odgers*’, p. 76.

6 In the First Assembly police entered the building with the intention of serving a summons on a Member but after discussions with the Acting Clerk did not do so.

As stated in my letter, I can assure members that the Australian Federal Police are aware of the situation in regard to the privileges and immunities that this Assembly and its members enjoy. Suitable arrangements have been put in place in relation to police access to this building.⁷

18.6 This statement summarises the practical situation with regard to the precincts of the Assembly. The police were advised of the grounds for suspecting that a criminal offence may have occurred in the Assembly building. An investigation was commenced in full consultation with the Presiding Officer. The police were thoroughly briefed with regard to parliamentary privilege and the immunities of Members, and processes were put in place to deal with any issues of privilege that might arise during the investigation.

18.7 A protocol between the Australian Federal Police and the Legislative Assembly was tabled by the Speaker on 29 May 2007.⁸ It essentially formalises the arrangements that were developed on an ad hoc basis to deal with past incidents and sets out how the police will operate in the Assembly precincts in the conduct of investigations, the execution of warrants and the seizure of documents.

18.8 The ACT Legislative Assembly's precincts were not defined statutorily until 2001. After the establishment of self-government in 1989 the Assembly met in temporary accommodation in a converted office building. The precincts of the Assembly were taken to be that part of the building occupied by the Assembly, its Members and supporting services.

18.9 In February 1996 (the Assembly having moved to its new building in 1994) the sittings of the Assembly were suspended on two occasions because of disorder in the public gallery.⁹ Arising from these incidents, various questions with regard to the Speaker's powers and responsibilities in maintaining order were referred to the Standing Committee on Administration and Procedure. That committee's report considered the legal position of Assembly officials directed to remove a person from the Chamber and stated:

The Committee therefore recommends that Parliamentary Precincts legislation be enacted by the Assembly to clearly define the precincts and make appropriate provision for their control and management.¹⁰

18.10 In response to the committee's report, the government introduced the Legislative Assembly (Privileges) Bill 1997. It defined the precincts of the Assembly and created certain offences in relation to failure to comply with a direction to leave the precincts. This bill lapsed with the expiration of the Third Assembly but the provisions in relation to the precincts were reintroduced in largely the same form in a private Member's bill—the Legislative Assembly (Privileges) Bill 1998—in the Fourth Assembly.

18.11 This bill was, in turn, referred to the Standing Committee on Administration and Procedure. That committee's report endorsed, with minor proposed amendments, those parts of the bill relating to the precincts of the Assembly. However, other parts of the bill which sought to define certain of the Assembly's privileges and immunities did not meet with its

⁷ Assembly Debates (6.3.2002) 593. The police inquiry did not find that an offence had been committed. However, the circumstances revealed by the inquiry did result in the Legislative Assembly establishing a privilege inquiry. (See Chapter 2: Immunities and powers of the Assembly (Privilege) and paragraphs 17.42 to 17.72 on the conduct of privilege inquiries.)

⁸ MoP 2004-08/1017, *Memorandum of Understanding between the Speaker of the Legislative Assembly for the Australian Capital Territory and the Chief Police Officer for the Australian Capital Territory*, dated 9 November 2006, together with an ACT Policing Practical Guide entitled *Execution of search warrants where parliamentary privilege may be applied and execution of search warrants and interviews with Members of the Legislative Assembly*, June 2006.

⁹ MoP 1995-97/259.

¹⁰ Standing Committee on Administration and Procedure, *Standing Order 207*, February 1997, p. 8.

approval.¹¹ The bill was then passed by the Assembly, having been heavily amended, and was retitled the *Legislative Assembly (Precincts) Act 2001*.¹²

LEGISLATIVE ASSEMBLY (PRECINCTS) ACT 2001

18.12 The Assembly precincts are defined in section 5 of the Precincts Act to be:

- (a) block 3, section 19, division of City, Canberra Central District; and
- (b) that part of Civic Square under the public entrance canopy; and
- (c) that part of section 19, division of City, Canberra Central District under the members' entrance canopy.

The Speaker may also declare that other Territory land can be treated as being part of the Assembly precincts.¹³ To date no declaration has been made.

18.13 Section 7 of the Act gives the Speaker responsibility for the control and management of the Assembly precincts and empowers the Speaker to take any action necessary subject to any resolutions of the Assembly which give directions for the discharge of that responsibility. The Speaker must comply with any such direction.

18.14 Under section 9 of the precincts Act, the Speaker may direct a person (other than a Member) to leave the Assembly precincts, or not to enter the Assembly precincts. The Speaker may use any necessary and reasonable force and assistance to enforce such a direction. In 2003 the Speaker exercised these powers to have a person who was disrupting the proceedings of the Assembly removed from the public gallery and in a subsequent statement provided the following advice to Members:

I wish to inform members that, following the removal of a person from the public gallery on Tuesday during question time for disorderly conduct, I have ordered that the person concerned not be readmitted to the precincts as that person has disturbed Assembly proceedings on three occasions.

I have instructed that she not be readmitted until she signs a written undertaking to abide by the relevant standing orders and not create disorder in the precincts. The person attempted to enter the precincts today, but was refused entry. In the event that the person attempts to contact members or their staff for entry, I ask that they abide by my order.¹⁴

18.15 The Speaker's authority under the Act is confirmed in standing order 209 and encompasses the meeting of any committee of the Assembly. Under this standing order the chair of a committee may 'require a person to leave ... the place of meeting of the committee and may authorise the removal of the person'.

18.16 The Speaker, and anyone acting under his or her direction, does not incur civil or criminal liability for an act or omission done honestly and without negligence pursuant to the Act. The Speaker's functions under section 9 have been delegated to the Serjeant-at-Arms and the Principal Attendant.¹⁵ Contravention of a direction given by the Speaker under this section constitutes an offence punishable by a fine or imprisonment.

¹¹ Standing Committee on Administration and Procedure, *Legislative Assembly (Privileges) Bill 1998*, Report No. 9, August 2001.

¹² MoP 1998-2001/1827. See Schedule 2 to the minutes for the amendments adopted by the Assembly.

¹³ *Legislative Assembly Precincts Act 2001*, subsection 6(2).

¹⁴ MoP 2001-04/866; *Assembly Debates* (21.8.2003) 3035.

¹⁵ *Legislative Assembly Precincts Amendment Act 2002*, section 4 and Notifiable Instrument NI2003-162.

18.17 The Legislative Assembly building, in common with many Australian parliaments, includes offices for the members of the ACT Executive. The executive area is defined by a written agreement between the Speaker and the Chief Minister. The Precincts Act requires the Speaker to exercise his or her powers with regard to the executive area subject to any 'limitations and conditions' contained in a written agreement with the ACT Chief Minister.

18.18 The current agreement, which has been in force since 2002, defines the executive area to include Ministers' offices and those of their advisers and officials but not adjacent corridors or other 'general areas'. The security arrangements and rules governing access to the executive area are the same as those applying in the rest of the Assembly building and the Speaker is responsible for procedures to manage any emergencies within that area.

18.19 Pursuant to the agreement the Speaker undertakes to provide a range of services to the executive area, including ordinary building maintenance; curatorial services in relation to artworks; sound and vision, including Assembly and committee broadcasts; access to radio and television services; and mail services. The funding of these services is taken from the Legislative Assembly's appropriation. Minor works within the executive area require the approval of the Speaker.

18.20 In 2006 the Precincts Act was further amended to clarify the Speaker's authority over the precincts.¹⁶ Included in the Assembly building are two areas frequently made available to individuals, organisations and groups for meetings, exhibitions, etc. Prior to the passage of the amendments the use of these spaces and the fees to be charged were the responsibility of the Minister responsible for the management of Territory property. The Speaker now has the authority to grant a licence for the use of any part of the Assembly building and to set the conditions and fees which will apply to any such use.

PLACE OF MEETING

18.21 The Legislative Assembly first met on 11 May 1989 in shared and rented accommodation in the ACT Administration Centre. The time and date for the meeting was set by the Commonwealth Minister for the Arts and Territories pursuant to paragraph 17(3)(a) of the Self-Government Act.¹⁷ The notice did not specify in detail the place of meeting, which was merely described as 'Chamber of the Legislative Assembly, Canberra, Australian Capital Territory' in the *Commonwealth Gazette* notice.¹⁸

18.22 On 9 April 1992 the Assembly agreed to refer the provision of new premises for the Legislative Assembly to the Standing Committee on Administration and Procedures for inquiry and report by the last sitting day of the 1992 Autumn sittings.¹⁹ The committee's report *Provision of New Assembly Premises* was presented on 8 September 1992 and was adopted by the Assembly on 10 September 1992.²⁰ The committee's first recommendation was that the South Building²¹ be modified and refurbished as the new Assembly premises. Work began

16 *Legislative Assembly Precincts Amendment Act 2006*, sections 7A and 11A.

17 This section provides that where the office of Presiding Officer is vacant, the Commonwealth Minister shall, by notice published in the *Commonwealth Gazette*, convene the meeting of the Legislative Assembly.

18 *Commonwealth Gazette*, No. S 158, Monday, 8 May 1989.

19 MoP 1992-94/22.

20 MoP 1992-94/137.

21 The South Building was one of two government office buildings flanking Civic Square in the centre of Canberra. It had previously housed the Commonwealth Department of the Interior, which had had responsibility for the administration of the ACT prior to self-government. Its central location, potential for redevelopment and availability made it an attractive option for a permanent Assembly building.

on the refurbishment in April 1993 and the first meeting of the Assembly in the new premises occurred on 12 April 1994.²²

18.23 The Legislative Assembly building includes, in addition to the Chamber, office suites for all Members, including Ministers of the ACT Executive and their staff, committee rooms and public areas. The Assembly Secretariat (the procedural and administrative staff that support the Assembly and its committees), and a library are also housed in the building.

CHAMBER

18.24 The South Building, which was originally constructed in the late 1950s was adapted for the Assembly's use by the addition of a legislative chamber placed diagonally across the internal courtyard of the building. The Chamber of the Legislative Assembly is thus a modern structure. The furniture is made from Australian timbers and the carpet decoration is based on *Wahlenbergia gloriosa* (Royal Bluebell), which is the floral emblem of the ACT. The Assembly has not adopted the traditional green colour scheme of 'lower' houses.

Seating

18.25 The Chamber was designed to accommodate up to 22 Members (there are only 17 at present) but allowance was made at the planning stage for space for another six Members if the need ever arose. The Chamber's seating follows contemporary practice, with Members seated around a horseshoe-shaped arrangement of desks. Members, including Ministers, have individual seats behind their own desks and do not sit on open benches, as is the practice for the 'front benches' in the Australian House of Representatives and the British House of Commons.

18.26 The Speaker sits at the head of the Chamber at a raised desk; to the right are seated government Members and to the left opposition Members.²³ Members of minor parties and independent Members sit on the curve of the horseshoe—the crossbenches.

18.27 For the first meeting of the First Assembly, initial seating arrangements were determined by ballot and were not regarded as permanent. The Speaker subsequently wrote to each party leader indicating allocation of seats to party groups once the composition and groupings within the Assembly became clear.

Table

18.28 The Clerk and Deputy Clerk are located at a desk immediately in front of the Speaker at the head of the Table of the Assembly. The Clerk sits to the right of the Speaker and the Deputy Clerk to the left. A speech timing clock is located on the Clerk's desk and is connected to two digital timing clocks located on opposite walls of the Chamber, thus allowing them to be seen by all Members. These indicate to Members how much speaking time is allocated to them and how much remains. When two minutes remain, a chime lets Members know they are near the end of their time allocation. Copies of all ACT legislation and the Assembly debates are kept on the Table.

22 Standing Committee on Administration and Procedure, *Provision of New Assembly Premises*, September 1992, p. 15.

23 This traditional seating was transposed for a period in the original temporary accommodation because the structure of the Chamber made access for Ministers to and from their offices more convenient if they were placed to the left of the Speaker.

18.29 The Deputy Clerk controls the ringing of the division bells from the Clerk's desk. Bells are rung in the Assembly for the following times and reasons:

- for five minutes before the time fixed for the commencement of each sitting and the resumption of a sitting after a suspension; and
- for four minutes:
 - when a ballot is to be taken, for example, for the election of Speaker, Deputy Speaker or Chief Minister;²⁴
 - to summon Members to the Chamber for the purpose of a vote of the Assembly;²⁵ and
 - to summon Members to the Chamber for the purpose of obtaining a quorum.²⁶

18.30 The broadcasting and audio reticulation buttons are also located on the Clerk's desk. These buttons control the broadcasting of proceedings throughout the building and to ACT Government agencies. Hansard staff are located at the rear of the Chamber in a booth to the right of the Speaker. The microphones on each Member's desk and sound reinforcement in the Chamber are also controlled from the booth.

Mace

18.31 Originally the mace was a weapon. By the 14th century the mace carried by the Serjeants-at-Arms of the English King's bodyguard had become a symbol of Royal authority. As the Monarch's council evolved into the parliament so the mace became identified with the authority of the parliament. Since the 17th century the mace and the position of the Serjeant-at-Arms have become exclusive to parliament. Today's mace is a symbol of the authority of the Speaker.

18.32 Australian colonial parliaments did not generally adopt the use of a mace at their establishment. The Victorian Parliament was first to adopt the practice in 1857,²⁷ followed, over the years, by the Commonwealth and other state and territory parliaments. The mace is obviously part of the traditional trappings of a parliament, not something necessary for its actual functioning. However, by 2004 the Legislative Assembly for the Australian Capital Territory was the only mainland legislature without a mace.

Mace of the Legislative Assembly for the ACT

18.33 The Assembly's mace was a gift from the Australian Region of the Commonwealth Parliamentary Association and was officially presented to the Speaker of the Legislative Assembly on 9 July 2004 at the 35th Presiding Officers and Clerks Conference held in Melbourne.

Ceremonial use of the mace

18.34 Traditionally the Serjeant-at-Arms is custodian of the mace. The Speaker is preceded by the Serjeant-at-Arms, bearing the mace upon the right shoulder, when the Speaker enters and leaves the Chamber at the beginning and end of each sitting. When the Speaker is in the Chair the mace is placed on brackets on the Table, with its head pointing to the government side of the Chamber. The mace remains in its position on the Table during all suspensions.

²⁴ Standing orders 2, 3 and 266.

²⁵ Standing order 158.

²⁶ Standing order 33. The four-minute sandglass is also located on the Clerk's desk and is used in addition to the bells when a division is called. Members have that amount of time to make their way to the Chamber for the vote.

²⁷ The Victorian Legislative Assembly's mace was stolen in 1891 and never recovered.

Bar of the Assembly

18.35 The Bar of the Assembly is situated at the rear of the Chamber between the public gallery and the Chamber proper. When the Assembly is sitting, only elected Members or Chamber Support Staff may venture beyond the Bar, thus excluding the entry of 'strangers'. The Bar is also the place to which persons may be brought to be addressed by the Speaker or to address the Assembly (see paragraph 17.2).

Public gallery

18.36 Visitors may view proceedings in the Assembly Chamber from the public gallery at any time when the Assembly is sitting. The public gallery has seating for approximately 80 people. The public gallery provides an opportunity for public observation of Assembly proceedings, not participation. Though visitors are welcome to watch proceedings of the Assembly, they must not interject, attempt to communicate with Members, display notices or cause a disturbance. It has been necessary on several occasions when disturbances have occurred in the public gallery for the Speaker to direct that those involved cease their actions or be removed from the gallery altogether.²⁸ On 13 May 2004 during debate on a bill, the Speaker suspended the sitting for approximately 14 minutes after an incident had occurred in the public gallery.²⁹

18.37 The first two rows of the gallery are usually reserved for Members' advisers to enable them to provide advice quickly to Members should the need arise. At the back of the gallery is the 'press box'. This area may be used only by representatives from newspapers and radio and television stations to report proceedings of the Assembly.

Visitors

18.38 Standing order 210 states that while the Assembly is sitting Members may not bring any visitor into, nor may any visitor be present in, any part of the Chamber appropriated to the Members of the Assembly. On 13 March 2003 the standing order was amended to clarify that the word 'visitor' did not apply to an infant being breastfed by a Member.³⁰ In March 2008 the standing order was further amended to include the words 'other than a nursing infant'.³¹

18.39 Distinguished visitors, such as delegations from other parliaments who wish to view Assembly proceedings, are invited to sit in the Chamber, usually in chairs placed in front of the seats reserved for Members' advisers. As in other parliaments, proceedings are interrupted at a convenient time to allow the Speaker to draw Members' attention to the fact that the visitors are present. Visitors are then welcomed by the Speaker on behalf of the Assembly.

28 For example on 23 June 2004 the Speaker asked an individual in the public gallery to stop filming as that was not allowed. On 19 August 2003 the Speaker ordered that a member of the public leave the gallery as they were holding a sign and making a protest.

29 MoP 2001-04/1333.

30 MoP 2001-04/634-5.

31 See standing order 210.

Lobbies

18.40 Doors on either side of the Chamber lead to the government and opposition lobbies. This is where Members may make telephone calls, send facsimiles and meet with staff and/or departmental officials while still being able to view proceedings in the Chamber by television. The opposition lobby is also used by crossbench Members. In the First Assembly the Speaker considered a proposal to make telephones available at Members' desks but rejected it as inappropriate in a debating chamber. Mobile phones are not permitted in the Chamber.

Dress code

18.41 The Legislative Assembly does not have a dress code for Members while they are in the building precincts and in the Chamber. Male Members are permitted to remove their jackets in the Chamber.

Computers

18.42 In June 1998, after consideration by the Standing Committee on Administration and Procedure, permission was given to the Chief Minister to trial the use of a laptop computer in the Chamber for a week during questions without notice. The outcomes of that trial were reported to the committee by the Chief Minister in a letter dated 24 August 1998. The Chief Minister indicated that she would not be seeking to use the laptop computer during forthcoming sittings and suggested that other software options be investigated. Since then no further trials have been undertaken.

APPENDICES



APPENDIX 1: ASSEMBLIES

Assembly	General Election	Poll declared by Electoral Commissioner	First Sitting	Last Sitting	Length of Assembly¹
First	04.03.1989	08.05.1989	11.05.1989	17.12.1991	2 yrs, 9 mths, 5 days
Second	15.02.1992	20.03.1992	27.03.1992	08.12.1994	2 yrs, 10 mths, 23 days
Third	18.02.1995	02.03.1995	09.03.1995	11.12.1997	2 yrs, 11 mths, 13 days
Fourth	21.02.1998	17.03.1998	19.03.1998	30.08.2001	3 yrs, 7 mths, 2 days
Fifth	20.10.2001	05.11.2001	12.11.2001	26.08.2004	2 yrs, 11 mths, 5 days
Sixth	16.10.2004	29.10.2004	04.11.2004	28.08.2008	3 yrs, 11 mths, 15 days
Seventh	18.10.2008	29.10.2008	05.11.2008		

¹ See Chapter 7: Sittings and Adjournment of the Assembly, paragraph 7.5.

APPENDIX 2: SPEAKERS

Name	Party	Assembly	Period of office	Length of term
PROWSE, David John	No Self Government Party ¹	First Assembly	11.05.1989 ² — 27.03.1992	2 yrs, 10 mths, 17 days
McRAE, Roberta, OAM	Australian Labor Party	Second Assembly	27.03.1992 ³ — 09.03.1995	2 yrs, 11 mths, 11 days ⁴
CORNWELL, Greg	Liberal Party	Third Assembly and Fourth Assembly	09.03.1995 ⁵ — 12.11.2001	6 yrs, 8 mths, 4 days
BERRY, Wayne Bruce	Australian Labor Party	Fifth Assembly and Sixth Assembly	12.11.2001 ⁶ — 05.11.2008	6 yrs, 11 mths, 25 days
RATTENBURY, Shane	ACT Greens	Seventh Assembly	05.11.2008 ⁷ —	

1 Resigned from No Self Government Party on 3.12.1989 and became a member of the Independents Group; resigned from Independents Group and became an Independent from 1.5.1990, became a member of the Liberal Party from 31.7.1990.

2 Elected opposed by Dr Kinloch and Mr Stefaniak, see MoP 1989-91/2.

3 Elected unopposed, see MoP 1992-94/2.

4 Ms Grassby was elected as Acting Speaker for one day on 22.10.1992 due to the absence of both the Speaker and Deputy Speaker, see MoP 1992-94/181.

5 Elected opposed by Ms McRae, see MoP 1995-97/2. Re-elected on 19.3.1998 unopposed, see MoP 1998-2001/2.

6 Elected unopposed, see MoP 2001-04/2-3. Re-elected on 4.11.2004 unopposed, see MoP 2004-2008/2.

7 Elected opposed by Mrs Dunne, see MoP 2008-12/2-3

APPENDIX 3: DEPUTY SPEAKERS

Name	Party	Assembly	Period of office	Length of term
STEFANIAK, Bill	Liberal Party	First Assembly	23.05.1989 ¹ —15.02.1992 ²	2 yrs, 8 mths, 24 days
CORNWELL, Greg	Liberal Party	Second Assembly	27.03.1992 ³ —18.02.1995 ⁴	2 yrs, 10 mths, 23 days
McRAE, Roberta, OAM	Australian Labor Party	Third Assembly	09.03.1995 ⁵ —21.02.1998 ⁶	2 yrs, 11 mths, 13 days
WOOD, Bill	Australian Labor Party	Fourth Assembly	19.03.1998 ⁷ —20.10.2001 ⁸	3 yrs, 7 mths, 2 days
CORNWELL, Greg	Liberal Party	Fifth Assembly	12.11.2001 ⁹ —16.10.2004 ¹⁰	2 yrs, 11 mths, 5 days
PRATT, Steve	Liberal Party	Sixth Assembly	04.11.2004 ¹¹ —18.10.2008	3 yrs, 11 mths, 15 days
PORTER, Mary AM	Australian Labor Party	Seventh Assembly	05.11.2008 ¹² —	

1 Elected opposed by Mr Jensen, see MoP 1989-91/7.

2 Date of general election for Second Assembly.

3 Elected unopposed, see MoP 1992-94/3.

4 Date of general election for Third Assembly.

5 Elected unopposed, see MoP 1995-97/3.

6 Date of general election for Fourth Assembly.

7 Elected unopposed, see MoP 1998-2001/3.

8 Date of general election for Fifth Assembly.

9 Elected unopposed, see MoP 2001-04/3.

10 Date of general election for Sixth Assembly.

11 Elected unopposed, see MoP 2004-08/3.

12 Elected opposed by Mrs Dunne, see MoP 2008-12/3-4.

APPENDIX 4: ASSISTANT SPEAKERS¹

Assembly	Name	Party	Period of office	Length of term
First Assembly	JENSEN, Norman Arthur	Residents Rally	01.06.1989 — 15.02.1992 ²	2 yrs, 8 mths, 15 days
	WOOD, Bill	Australian Labor Party	01.06.1989—15.02.1992 ²	2 yrs, 8 mths, 15 days
	GRASSBY, Ellnor Judith	Australian Labor Party	07.08.1991—15.02.1992 ²	6 mths, 9 days
Second Assembly	GRASSBY, Ellnor Judith	Australian Labor Party	08.04.1992—18.02.1995 ³	2 yrs, 10 mths, 11 days
	WESTENDE, Lou V	Liberal Party	08.04.1992—18.02.1995 ³	2 yrs, 10 mths, 11 days
Third Assembly	KAINE, Trevor Thomas	Liberal Party	04.05.1995—21.02.1998 ⁴	2 yrs, 9 mths, 18 days
	WOOD, Bill	Australian Labor Party	04.05.1995—21.02.1998 ⁴	2 yrs, 9 mths, 18 days
	HIRD, Harold James	Liberal Party	25.02.1997—21.02.1998 ⁴	11 mths, 28 days
Fourth Assembly	BERRY, Wayne	Australian Labor Party	30.04.1998—20.10.2001 ⁵	3 yrs, 5 mths, 21 days
	HIRD, Harold James	Liberal Party	30.04.1998—20.10.2001 ⁵	3 yrs, 5 mths, 21 days
	TUCKER, Kerrie	ACT Greens	30.04.1998—20.10.2001 ⁵	3 yrs, 5 mths, 21 days

¹ Assistant Speakers were called temporary Deputy Speakers up until March 2008

² Date of general election for Second Assembly.

³ Date of general election for Third Assembly.

⁴ Date of general election for Fourth Assembly.

⁵ Date of general election for Fifth Assembly.

APPENDIX 4: ASSISTANT SPEAKERS¹ CONTINUED

Assembly	Name	Party	Period of office	Length of term
Fifth Assembly	CROSS, Helen	Liberal Party ⁶	20.02.2002—16.10.2004 ⁷	2 yrs, 7 mths, 27 days
	TUCKER, Kerrie	ACT Greens	20.02.2002—16.10.2004 ⁷	2 yrs, 7 mths, 27 days
	HARGREAVES, John	Australian Labor Party	20.02.2002—16.10.2004 ⁷	2 yrs, 7 mths, 27 days
Sixth Assembly	GENTLEMEN, Mick	Australian Labor Party	07.12.2004—18.10.2008 ⁸	3 yrs, 10 mths, 12 days
	BURKE, Jacqui	Liberal Party	07.12.2004—19.10.2005 ⁹ 06.06.2006—15.11.2006 ¹⁰	10 mths, 13 days 5 mths, 10 days
	DUNNE, Vicki	Liberal Party	19.10.2005—06.06.2006 ¹¹ 15.11.2006—18.10.2008 ⁸	7 mths, 19 days 1 yr, 11 mths, 4 days
Seventh Assembly	BURCH, Joy	Australian Labor Party	09.12.2008—	
	DUNNE, Vicki	Liberal Party	09.12.2008—	
	LE COUTEUR, Caroline	ACT Greens	09.12.2008—	

6 Independent Member from 27 September 2002.

7 Date of general election for the Sixth Assembly.

8 Date of general election for the Seventh Assembly.

9 Nomination revoked, see MoP 2004-08/417.

10 Nomination revoked, see MoP 2004-08/869.

11 Nomination revoked, see MoP 2004-08/717-8.

APPENDIX 5: CHIEF MINISTERS

Name	Party	Period of office	Length of term
FOLLETT, Rosemary	Australian Labor Party	11.05.1989 ¹ —05.12.1989	6 mths, 25 days
KAINE, Trevor	Liberal Party	05.12.1989 ² —06.06.1991	1 yr, 6 mths, 2 days
FOLLETT, Rosemary	Australian Labor Party	06.06.1991 ³ —27.03.1992 27.03.1992 ⁴ 09.03.1995	3 yrs, 9 mths, 4 days
CARNELL, Kate	Liberal Party	09.03.1995 ⁵ —19.03.1998 19.03.1998 ⁶ —17.10.2000	5 yrs, 7 mths, 9 days
HUMPHRIES, Gary	Liberal Party	18.10.2000 ⁷ —12.11.2001	1 yr, 26 days
STANHOPE, Jon	Australian Labor Party	12.11.2001 ⁸ —04.11.2004 04.11.2004 ⁹ —05.11.2008 05.11.2008 ¹⁰ —	7 yrs, 1 mth, 20 days ¹¹

1 Elected opposed by Mr Collaery, see MoP 1989-91/3.

2 Elected opposed by Ms Follett, see MoP 1989-91/158 (after a motion of want of confidence in Ms Follett, Chief Minister had been passed by the Assembly, see MoP 1989-91/157).

3 Elected opposed by Mr Kaine, see MoP 1989-91/469 (after a motion of want of confidence in Mr Kaine, Chief Minister had been passed by the Assembly, see MoP 1989-91/469).

4 Elected opposed by Mr Kaine, see MoP 1992-94/2.

5 Elected opposed by Ms Follett, see MoP 1995-97/3.

6 Elected opposed by Ms Tucker and Mr Stanhope, see MoP 1998-2001/3.

7 Elected opposed by Mr Stanhope, see MoP 1998-2001/1013 (after resignation of Ms Carnell, Chief Minister on 17 October 2000, see MoP 1998-2001/1013).

8 Elected opposed by Mr Humphries, see MoP 2001-04/3.

9 Elected opposed by Mr Smyth, see MoP 2004-08/3.

10 Elected opposed by Mr Seselja, see MoP 2008-12/3.

11 As at 31 December 2008.

APPENDIX 6: LEADERS OF THE OPPOSITION

Name	Party	Period of office	Length of term
KAINE, Trevor	Liberal Party	11.05.1989 ¹ —05.12.1989	6 mths, 25 days
FOLLETT, Rosemary	Australian Labor Party	05.12.1989 ² —06.06.1991	1 yr, 6 mths, 2 days
KAINE, Trevor	Liberal Party	06.06.1991—21.06.1991 ³	16 days
DUBY, Craig	Independents Group	21.06.1991 ⁴	1 day
HUMPHRIES, Gary	Liberal Party	21.06.1991 ⁵ —22.07.1991	1 mth, 2 days
KAINE, Trevor	Liberal Party	22.07.1991—15.02.1992 ⁶ 27.03.1992—21.04.1993	6 mths, 25 days 1 yr, 26 days
CARNELL, Kate	Liberal Party	21.04.1993—18.02.1995 ⁷	1 yr, 9 mths, 29 days
FOLLETT, Rosemary	Australian Labor Party	09.03.1995—05.03.1996	11 mths, 26 days
WHITECROSS, Andrew	Australian Labor Party	05.03.1996—19.08.1997	1 yr, 5mths, 15 days

1 Elected opposed by Mr Collaery, see MoP 1989-1991/4.

2 Elected unopposed, see MoP 1989-1991/158.

3 Mr Kaine resigned as Leader of the Opposition on 21.6.1991, see MoP 1989-1991/473.

4 Elected opposed by Mr Humphries after second ballot, see MoP 1989-1991/473.

5 Consented to appointment as Leader of the Opposition after standing orders were amended by Assembly, see MoP 1989-1991/479-81.

6 Date of general election for Second Assembly.

7 Date of general election for Third Assembly.

Name	Party	Period of office	Length of term
BERRY, Wayne Bruce	Australian Labor Party	19.08.1997—21.02.1998 ⁸	6 mths, 3 days
STANHOPE, Jon	Australian Labor Party	19.03.1998—20.10.2001 ⁹	3 yrs, 7 mths, 2 days
HUMPHRIES, Gary	Liberal Party	12.11.2001—25.11.2002	1 yr, 14 days
SMYTH, Brendan	Liberal Party	25.11.2002—16.10.2004 ¹⁰ 04.11.2004—16.05.2006	1 yr, 10 mths, 22 days 1 yr, 6 mths, 13 days
STEFANIAK, Bill	Liberal Party	16.05.2006—13.12.2007	1 yr, 6 mths, 28 days
SESELJA, Zed	Liberal Party	13.12.2007—18.10.2008 ¹¹ 05.11.2008—	10 mths, 6 days

8 Date of General Election for Fourth Assembly.

9 Date of General Election for Fifth Assembly.

10 Date of General Election for Sixth Assembly.

11 Date of General Election for Seventh Assembly.

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES

	Ministry	Name of Minister	Ministerial title	Period of office
1	FOLLETT (First)	Rosemary Follett Paul Whalan Wayne Berry Ellnor Grassby	Chief Minister Treasurer Attorney-General Deputy Chief Minister Minister for Industry, Employment and Education Minister for Community Services and Health Minister for Housing and Urban Services	16.05.1989—05.12.1989
2	KAINE (First)	Trevor Kaine	Chief Minister Treasurer Attorney-General Minister for Industry, Employment and Education Minister for Community Services and Health Minister for Housing and Urban Services	05.12.1989—13.12.1989
3	KAINE (Second)	Trevor Kaine Bernard Collaery Craig Duby Gary Humphries	Chief Minister Treasurer Deputy Chief Minister Attorney-General Minister for Housing and Community Services Minister for Finance and Urban Services Minister for Health, Education and the Arts	13.12.1989—04.07.1990

	Ministry	Name of Minister	Ministerial title	Period of office
4	KAINE (Third)	Trevor Kaine Bernard Collaery ¹ Craig Duby Gary Humphries	Chief Minister Treasurer Deputy Chief Minister Attorney-General Minister for Housing and Community Services Minister for Finance and Urban Services Minister for Health, Education and the Arts	04.07.1990—29.05.1991
5	KAINE (Fourth)	Trevor Kaine Craig Duby Gary Humphries	Chief Minister Treasurer Attorney-General Minister for Housing and Community Services Minister for Finance and Urban Services Minister for Health, Education and the Arts	29.05.1991—06.06.1991
6	FOLLETT	Rosemary Follett	Chief Minister Treasurer Attorney-General Minister for Housing and Community Services Minister for Finance and Urban Services Minister for Health, Education and the Arts	07.06.1991—18.06.1991

¹ Mr Collaery was dismissed as a Member of the Executive on 29 May 1991, see Assembly Debates (29.5.1991) 2125.

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
7	FOLLETT (Second)	Rosemary Follett Wayne Berry Bill Wood Terence Connolly	Chief Minister Treasurer Deputy Chief Minister Minister for Health Minister for Sport Minister for Education and the Arts Minister for the Environment, Land and Planning Attorney-General Minister for Housing and Community Services Minister for Urban Services	18.06.1991—20.12.1991
8	FOLLETT (Second Revised)	Rosemary Follett Wayne Berry Bill Wood Terence Connolly	Chief Minister Treasurer Deputy Chief Minister Minister for Health Minister for Industrial Relations Minister for Sport Minister for Education Minister for the Arts Minister for the Environment, Land and Planning Attorney-General Minister for Housing and Community Services Minister for Urban Services	20.12.1991—06.04.1992

	Ministry	Name of Minister	Ministerial title	Period of office
9	FOLLETT (Third)	Rosemary Follett	Chief Minister Treasurer	06.04.1992—13.04.1994
		Wayne Berry	Deputy Chief Minister Minister for Health Minister for Industrial Relations Minister for Sport	
		Bill Wood	Minister for Education and Training Minister for the Arts Minister for the Environment, Land and Planning	
		Terence Connolly	Attorney-General Minister for Housing and Community Services Minister for Urban Services	
10	FOLLETT (Fourth)	Rosemary Follett	Chief Minister Treasurer	13.04.1994—20.05.1994
		David Lamont	Deputy Chief Minister Minister for Housing and Community Services Minister for Urban Services Minister for Industrial Relations Minister for Sport	
		Bill Wood	Minister for Education and Training Minister for the Arts Minister for the Environment, Land and Planning	
		Terence Connolly	Attorney-General Minister for Health	

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
11	FOLLETT (Fifth)	Rosemary Follett	Chief Minister Treasurer	20.05.1994—09.03.1995
		David Lamont	Deputy Chief Minister Minister for Housing and Community Services Minister for Urban Services Minister for Industrial Relations Minister for Sport	
		Bill Wood	Minister for Education and Training Minister for the Arts and Heritage Minister for the Environment, Land and Planning	
		Terence Connolly	Attorney-General Minister for Health	

	Ministry	Name of Minister	Ministerial title	Period of office
12	CARNELL (First)	Kate Carnell	Chief Minister Treasurer Minister for Health and Community Care	15.03.1995—28.06.1996
		Tony De Domenico	Deputy Chief Minister Minister for Urban Services Minister for Industrial Relations Minister for Business, Employment and Tourism	
		Gary Humphries	Attorney-General Minister for Arts and Heritage Minister for the Environment, Land and Planning Minister for Police Minister for Emergency Services Minister for Consumer Affairs	
		Bill Stefaniak	Minister for Education and Training Minister for Housing and Family Services Minister for Sport and Recreation Minister for Children's and Youth Services	
	CARNELL (Additional Ministerial Title)	Tony De Domenico	Minister for Regulatory Reform	26.03.1996—28.06.1996

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
13	CARNELL (Second)	Kate Carnell	Chief Minister Treasurer Minister for Health and Community Care	28.06.1996—09.01.1997
		Tony De Domenico	Deputy Chief Minister Minister for Industrial Relations Minister for Urban Services Minister for Business, Employment and Tourism Minister for Regulatory Reform	
		Gary Humphries	Attorney-General Minister for Arts and Heritage Minister for the Environment, Land and Planning Minister for Consumer Affairs Minister for Police and Emergency Services	
		Bill Stefaniak	Minister for Education and Training Minister for Housing and Family Services Minister for Sport and Recreation Minister for Children's and Youth Services	

	Ministry	Name of Minister	Ministerial title	Period of office
14	CARNELL (Third)	Kate Carnell	Chief Minister Treasurer Minister for Health and Community Care	09.01.1997—31.01.1997
		Tony De Domenico ²	Minister for Industrial Relations Minister for Urban Services Minister for Business, Employment and Tourism Minister for Regulatory Reform	
		Gary Humphries	Deputy Chief Minister Attorney-General Minister for Arts and Heritage Minister for the Environment, Land and Planning Minister for Consumer Affairs Minister for Police and Emergency Services	
		Bill Stefaniak	Minister for Education and Training Minister for Housing and Family Services Minister for Sport and Recreation Minister for Children's and Youth Services	

2 Resigned as Member of the Legislative Assembly for the Australian Capital Territory on 30 January 1997, see MoP 1995-97/575.

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
15	CARNELL (Fourth)	Kate Carnell	Chief Minister Treasurer Minister for Health and Community Care Minister for Business and Employment	31.01.1997—17.02.1997
		Trevor Kaine	Deputy Chief Minister Minister Assisting the Treasurer Minister for Industrial Relations Minister for Urban Services Minister for Tourism Minister for Regulatory Reform	
		Gary Humphries	Attorney-General Minister for Arts and Heritage Minister for the Environment, Land and Planning Minister for Fair Trading Minister for Police and Emergency Services	
		Bill Stefaniak	Minister for Education and Training Minister for Housing and Family Services Minister for Sport and Recreation Minister for Children's and Youth Services	

	Ministry	Name of Minister	Ministerial title	Period of office
16	CARNELL (Fifth)	Kate Carnell	Chief Minister Treasurer Minister for Health and Community Care Minister for Business and Employment	17.02.1997—31.03.1998
		Trevor Kaine	Minister Assisting the Treasurer Minister for Industrial Relations Minister for Urban Services Minister for Tourism Minister for Regulatory Reform	
		Gary Humphries	Deputy Chief Minister Attorney-General Minister for Arts and Heritage Minister for the Environment, Land and Planning Minister for Fair Trading Minister for Police and Emergency Services	
		Bill Stefaniak	Minister for Education and Training Minister for Housing and Family Services Minister for Sport and Recreation Minister for Children's and Youth Services	

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
17	CARNELL (Sixth)	Kate Carnell Gary Humphries Brendan Smyth Bill Stefaniak	Chief Minister Treasurer Deputy Chief Minister Attorney-General Minister for Justice and Community Safety Minister for Health and Community Care Minister for Urban Services Minister for Education	31.03.1998—27.04.1998
18	CARNELL (Seventh)	Kate Carnell Gary Humphries Brendan Smyth Bill Stefaniak Michael Moore	Chief Minister Treasurer Deputy Chief Minister Attorney-General Minister for Justice and Community Safety Minister Assisting the Treasurer Minister for Urban Services Minister for Education Minister for Health and Community Care	27.04.1998—07.08.1999

	Ministry	Name of Minister	Ministerial title	Period of office
19	CARNELL (Eighth)	Kate Carnell ³ Gary Humphries Brendan Smyth Bill Stefaniak Michael Moore	Chief Minister Deputy Chief Minister Treasurer Attorney-General Minister for Justice and Community Safety Minister for Urban Services Minister for Education Minister for Health and Community Care	07.08.1999—18.10.2000
20	HUMPHRIES	Gary Humphries Brendan Smyth Michael Moore Bill Stefaniak Kate Carnell ⁴	Chief Minister Minister for Community Affairs Attorney-General Treasurer Deputy Chief Minister Minister for Urban Services Minister for Health, Housing and Community Care Minister for Education Minister Assisting the Attorney-General Minister for Business, Tourism and the Arts	19.10.2000—15.12.2000

3 Resigned as Chief Minister for the Australian Capital Territory on 17 October 2000, see MoP 1998-2001/1013.

4 Resigned as Member of the Legislative Assembly for the Australian Capital Territory on 13 December 2000, see MoP 1998-2001/1145.

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
21	HUMPHRIES	Gary Humphries	Chief Minister Minister for Community Affairs Treasurer	15.12.2000—12.11.2001
		Brendan Smyth	Deputy Chief Minister Minister for Urban Services Minister for Business, Tourism and the Arts Minister for Police and Emergency Services	
		Bill Stefaniak	Minister for Education Attorney-General	
		Michael Moore	Minister for Health, Housing and Community Services	
22	STANHOPE	Jon Stanhope	Chief Minister Attorney-General Minister for Health Minister for Community Affairs Minister for Women	13.11.2001—26.06.2002
		Ted Quinlan	Deputy Chief Minister Treasurer Minister for Economic Development, Business and Tourism Minister for Sport, Racing and Gaming Minister for Police, Emergency Services and Corrections	
		Bill Wood	Minister for Urban Services Minister for the Arts	
		Simon Corbell	Minister for Education, Youth and Family Services Minister for Planning Minister for Industrial Relations	

	Ministry	Name of Minister	Ministerial title	Period of office
23	STANHOPE	Jon Stanhope	Chief Minister Attorney-General Minister for Health Minister for Community Affairs Minister for Women	26.06.2002—23.12.2002
		Ted Quinlan	Deputy Chief Minister Treasurer Minister for Economic Development, Business and Tourism Minister for Sport, Racing and Gaming Minister for Police, Emergency Services and Corrections	
		Bill Wood	Minister for Urban Services Minister for Disability, Housing and Community Services Minister for the Arts	
		Simon Corbell	Minister for Education, Youth and Family Services Minister for Planning Minister for Industrial Relations	

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
24	STANHOPE	Jon Stanhope	Chief Minister Attorney-General Minister for Environment Minister for Community Affairs	23.12.2002—26.05.2004
		Ted Quinlan	Deputy Chief Minister Treasurer Minister for Economic Development, Business and Tourism Minister for Sport, Racing and Gaming	
		Bill Wood	Minister for Disability, Housing and Community Services Minister for Urban Services Minister for Police and Emergency Services Minister for Arts and Heritage	
		Simon Corbell	Minister for Health Minister for Planning	
		Katy Gallagher	Minister for Education, Youth and Family Services Minister for Women Minister for Industrial Relation	

	Ministry	Name of Minister	Ministerial title	Period of office
25	STANHOPE	Jon Stanhope	Chief Minister Attorney-General Minister for Environment Minister for Community Affairs	26.05.2004—04.11.2004
		Ted Quinlan	Deputy Chief Minister Treasurer Minister for Economic Development, Business and Tourism Minister for Sport, Racing and Gaming	
		Bill Wood	Minister for Disability, Housing and Community Services Minister for Urban Services Minister for Police and Emergency Services Minister for Arts and Heritage	
		Simon Corbell	Minister for Health Minister for Planning	
		Katy Gallagher	Minister for Education and Training Minister for Children, Youth and Family Support Minister for Women Minister for Industrial Relations	

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
26	STANHOPE	Jon Stanhope	Chief Minister Attorney-General Minister for Environment Minister for Arts, Heritage and Indigenous Affairs	04.11.2004—02.03.2005
		Ted Quinlan	Deputy Chief Minister Treasurer Minister for Economic Development	
		Simon Corbell	Minister for Health Minister for Planning	
		Katy Gallagher	Minister for Education and Training Minister for Children, Youth and Family Support Minister for Women Minister for Industrial Relations	
		John Hargreaves	Minister for Disability, Housing and Community Services Minister for Urban Services Minister for Police and Emergency Services	

	Ministry	Name of Minister	Ministerial title	Period of office
27	STANHOPE	Jon Stanhope	Chief Minister Attorney-General Minister for the Environment Minister for Arts, Heritage and Indigenous Affairs	02.03.2005—20.04.2006
		Ted Quinlan ⁵	Deputy Chief Minister Treasurer Minister for Economic Development and Business Minister for Tourism Minister for Sport and Recreation Minister for Racing and Gaming	
		Simon Corbell	Minister for Health Minister for Planning	
		Katy Gallagher	Minister for Education and Training Minister for Children, Youth and Family Support Minister for Women Minister for Industrial Relations	
		John Hargreaves	Minister for Disability, Housing and Community Services Minister for Urban Services Minister for Police and Emergency Services	
	STANHOPE (Additional Ministerial Title and Minister)	Katy Gallagher Andrew Barr	Deputy Chief Minister Minister without portfolio	06.04.2006—20.04.2006

5 Resigned as Member of the Legislative Assembly for the Australian Capital Territory on 21 March 2006, see MoP 2004-08/595.

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
28	STANHOPE	Jon Stanhope	Chief Minister Treasurer Minister for Business and Economic Development Minister for Indigenous Affairs Minister for the Arts	20.04.2006—17.04.2007
		Katy Gallagher	Deputy Chief Minister Minister for Health Minister for Disability and Community Services Minister for Women	
		Simon Corbell	Attorney-General Minister for Police and Emergency Services Minister for Planning	
		John Hargreaves	Minister for the Territory and Municipal Services Minister for Housing Minister for Multicultural Affairs	
		Andrew Barr	Minister for Education and Training Minister for Tourism, Sport and Recreation Minister for Industrial Relations	

	Ministry	Name of Minister	Ministerial title	Period of office
29	STANHOPE	Jon Stanhope	Chief Minister Treasurer Minister for Business and Economic Development Minister for Indigenous Affairs Minister for the Environment, Water and Climate Change Minister for the Arts	17.04.2007—05.11.2008
		Katy Gallagher	Deputy Chief Minister Minister for Health Minister for Children and Young People Minister for Disability and Community Services Minister for Women	
		Simon Corbell	Attorney-General Minister for Police and Emergency Services	
		John Hargreaves	Minister for Territory and Municipal Services Minister for Housing Minister for Multicultural Affairs	
		Andrew Barr	Minister for Education and Training Minister for Planning Minister for Tourism, Sport and Recreation Minister for Industrial Relations	

APPENDIX 7: CHRONOLOGICAL LIST OF MINISTRIES *CONTINUED*

	Ministry	Name of Minister	Ministerial title	Period of office
30	STANHOPE	Jon Stanhope	Chief Minister Minister for Transport Minister for Territory and Municipal Services Minister for Business and Economic Development Minister for Indigenous Affairs Minister for the Arts and Heritage	10.11.2008—
		Katy Gallagher	Deputy Chief Minister Treasurer Minister for Health Minister for Community Services Minister for Women	
		Simon Corbell	Attorney-General Minister for the Environment, Climate Change and Water Minister for Energy Minister for Police and Emergency Services	
		John Hargreaves	Minister for Disability and Housing Minister for Ageing Minister for Multicultural Affairs Minister for Industrial Relations Minister for Corrections	
		Andrew Barr	Minister for Education and Training Minister for Children and Young People Minister for Planning Minister for Tourism, Sport and Recreation	

APPENDIX 8: PARTY AFFILIATIONS IN THE LEGISLATIVE ASSEMBLY

Year of election	Abolish Self-Government Coalition	ACT Greens	Australian Democrats	Australian Labor Party	Independent	Liberal Party	Michael Moore Independent Group ¹	No Self Government Party	Osborne Independent Group	Residents Rally	Total
1989	1	-	-	5 ²	-	4 ³	-	3 ⁴	-	4 ⁵	17
1992	1	-	-	8	-	6 ⁶	2	-	-	-	17
1995	-	2	-	6 ⁷	1	7 ⁸	1	-	-	-	17
1998	-	1	-	6	-	7 ⁹	1	-	2 ¹⁰	-	17
2001	-	1 ¹¹	1	8	-	7 ¹²	-	-	-	-	17
2004	-	1	-	9 ¹³	-	7 ¹⁴	-	-	-	-	17
2008	-	4	-	7	-	6	-	-	-	-	17

1 Michael Moore Independent Group was known as the Moore Independents from the 1995 general election.

2 Mr Whalan resigned as a Member of the Legislative Assembly on 30 April 1990 and Mr Connolly was appointed as his replacement on 1 May 1990.

3 Mrs Nolan resigned from the Liberal Party on 17 October 1991 and sat as an Independent from 22 October 1991. She became a Member of the New Conservative Group on 19 November 1991.

4 Mr Prowse resigned from No Self Government Party on 3 December 1989 and became a Member of the Independents Group from 4 December 1989. He became an Independent from 1 May 1990, and a Member of the Liberal Party on 31 July 1990. Mr DUBY resigned from the No Self Government Party and sat as a Member of the Independents Group from 4 December 1989. He became a Member of the Hare-Clark Independence Party on 19 November 1991. Ms Maher resigned from the No Self Government Party and sat as a Member of the Independents Group from 4 December 1989.

5 Mr Moore resigned as a Member of the Residents Rally on 24 October 1989 and became an Independent from that date.

6 Mr Westende resigned as a Member of the Legislative Assembly on 25 July 1994 and Mr Stefaniak was appointed as his replacement on 23 August 1994.

7 Mr Connolly resigned as a Member of the Legislative Assembly on 19 February 1996 and Ms Reilly was declared elected to fill the casual vacancy on 21 March 1996 following a recount of ballot papers received by Mr Connolly at the 1995 election. Mrs Follett resigned as a Member of the Legislative Assembly on 12 December 1996 and Mr Corbell was declared elected to fill the casual vacancy on 9 January 1997 following a recount of ballot papers received by Mrs Follett at the 1995 election.

8 Mr De Domenico resigned as a Member of the Legislative Assembly on 30 January 1997 and Ms Littlewood was declared elected to fill the casual vacancy on 13 February 1997 following a recount of ballot papers received by Mr De Domenico at the 1995 election.

9 After the 1998 election Mr Kaine resigned from the Liberal Party on 13 May 1998 and formed the United Canberra Party. This party was registered on 30 July 1998 and was deregistered at the request of the party on 30 June 2001. Mr Kaine sat in the Assembly as an Independent from that date. The Kaine Independent Group was registered on 13 August 2001 and Mr Kaine sat as a Member of that ballot group until the 2001 election. Mrs Carnell resigned as a Member of the Legislative Assembly on 13 December 2000 and Mrs Burke was declared elected to fill the casual vacancy on 18 January 2001.

- 10 Osborne Independent Group was deregistered at the request of the party on 15 February 1999. Mr Osborne and Mr Rugendyke sat in the Assembly as Independents from that date to 12 August 2001. On 13 August 2001 Mr Osborne was registered as a ballot group name as was Mr Rugendyke. Both men sat as Members of their respective ballot groups until the 2001 election.
- 11 Ms Tucker resigned as a Member of the Legislative Assembly on 14 September 2004. As the 2004 pre-election period had begun the casual vacancy was not filled.
- 12 Mrs Cross resigned from the Liberal Party in September 2002 to become an Independent from 27 September 2002. Mr Humphries resigned as a Member of the Legislative Assembly on 24 January 2003 and Mrs Burke was declared elected to fill the casual vacancy on 10 February 2003.
- 13 Mr Quinlan resigned as a Member of the Legislative Assembly on 21 March 2006 and Mr Barr was declared elected to fill the casual vacancy on 5 April 2006.
- 14 Mr Mulcany resigned from the Liberal Party on 12 February 2008 to become an Independent.

APPENDIX 9: CLERKS

Name	Period of office	Length of term
PIPER, Donald Marden (Acting)	11.05.1989— 08.11.1989	5 mths, 29 days
McRAE, Mark Joseph	09.11.1989— 06.06.2003	13 yrs, 6 mths, 29 days
DUNCAN, Thomas ¹	25.09.2003—	5 yrs, 3 mths, 7 days ²

¹ Prior to his appointment as Clerk, Thomas Duncan acted in the position from 7 June 2003.

² As at 31 December 2008.

APPENDIX 10: SITTINGS OF THE ASSEMBLY

Year	No of sitting weeks	No of sitting days	No of sitting hours¹	No of sittings after midnight
1989	15	40	238	-
1990	18	51	357	2
1991	20	54	399	1
1992	16	46	310	-
1993	15	45	312	-
1994	15	43	320	-
1995	12	34	237	2
1996	14	42	322	3
1997	14	42	348	-
1998	12	34	274	2
1999	16	39	302	1
2000	15	37	298	3
2001	12	34	304	4
2002	13	39	317	-
2003	15	43	368	1
2004	14	36	347	7
2005	14	45	328	-
2006	13	39	315	1
2007	14	38	304	1
2008	13	35	312	2

1 Includes meal breaks and suspensions of sitting and rounded to the nearest hour.

APPENDIX 11: LEGISLATION CONSIDERED IN THE ASSEMBLY

Year	No of Executive Bills introduced	No of Private Members' Bills introduced	No of Executive Members' Bills introduced ¹	Total no of Bills introduced	No of Bills considered in detail ²	No of Bills referred to committee	No of Bills declared urgent	No of Executive Bills passed	No of Private Members' Bills passed	No of Bills passed ¹
1989	31	6	-	37	16	3	1	22	3	25
1990	72	16	-	88	29	1	-	65	1	66
1991	138	33	-	171	46	1	2	113	9	122
1992	87	24	-	111	43	4	3	72	9	81
1993	107	21	-	128	42	5	1	97	5	102
1994	92	18	-	110	51	7	-	101	11	112
1995	70	10	-	80	26	4	-	53	4	57
1996	80	21	-	101	37	2	1	82	6	88
1997	112	28	-	140	62	4	-	102	25	127
1998	87	31	2	120	21	8	1	64	8	73 ³
1999	72	33	2	107	57	8	-	73	17	91 ⁴
2000	83	26	3	112	49	6	-	69	16	86 ⁵
2001	70	24	-	94	55	2	-	81	17	99 ⁶
2002	62	23	-	85	27	4	-	47	10	57
2003	72	21	-	93	38	7	-	60	3	63
2004	60	20	-	80	50	3	-	67	7	74
2005	62	16	-	78	36	3	-	62	2	64
2006	61	8	-	69	25	1	-	58	1	59
2007	44	12	-	56	22	2	1	43	2	45
2008	49	24	-	73	31	1	-	50	4	54

1 On 24 September 1998, standing orders were amended for the remainder of the Fourth Assembly to make provision for Executive Members' business, see MoP 1998-2001/186-7.

2 The year that debate in the detail stage took place.

3 Includes the passing of one Executive Members' bill.

4 Includes the passing of one Executive Members' bill.

5 Includes the passing of one Executive Members' bill.

6 Includes the passing of one Executive Members' bill.

**APPENDIX 12: PRIVATE MEMBERS' BILLS PASSED INTO LAW
(NOT INCLUDING SPEAKER'S BILLS)**

Assembly	Bill Name	Act No	Introduced by
First (12 Bills)	Police Offences (Amendment) 1989 [No 2]	A1989-9	Mr Stefaniak
	Water Supply (Chemical Treatment) 1989	A1989-16	Mr Kaine
	Sexually Transmitted Diseases (Amendment) 1990	A1990-61	Mr Berry
	Subordinate Laws (Amendment) 1991	A1991-15	Mr Connolly
	Police Offences (Amendment) 1991	A1991-30	Mr Stefaniak
	Liquor (Amendment) 1991	A1991-76	Mr Stefaniak
	Interim Planning (Amendment) (No 2) 1991	A1991-77	Mr Jensen
	Crimes (Amendment) (No 2) 1991	A1991-78	Mr Collaery
	Magistrates Court (Amendment) (No 2) 1991	A1991-79	Mr Collaery
	Crimes (Amendment) (No 4) 1991	A1991-120	Mr Collaery
	Litter (Amendment) 1991	A1991-121	Mr Jensen
	Crimes (Amendment) (No 5) 1991	A1991-122	Mr Collaery
Second (25 Bills)	Freedom of Information (Amendment) 1992	A1992-4	Mr Humphries
	Electricity and Water (Amendment) 1992	A1992-21	Ms Carnell
	Epidemiological Studies (Confidentiality) 1992	A1992-26	Mr Moore
	Motor Traffic (Amendment) 1992	A1992-44	Mr Westende
	Drugs of Dependence (Amendment) (No 2) 1992	A1992-52	Mr Moore
	Drugs of Dependence (Amendment) 1992	A1992-62	Ms Carnell
	Prostitution 1992	A1992-64	Mr Moore
	Prostitution (Consequential Amendments) 1992	A1992-65	Mr Moore
	Epidemiological Studies (Confidentiality) (Amendment) 1992	A1992-78	Mr Moore
	Discrimination (Amendment) 1993	A1993-25	Mr Moore
	Dog Control (Amendment) 1993	A1993-29	Ms Szuty
	Dog Control (Amendment) (No 2) 1993	A1993-72	Mr Westende
	Stamp Duties and Taxes (Amendment) (No 4) 1993	A1993-99	Mr Kaine
	Long Service Leave (Building and Construction Industry) (Amendment) (No 2) 1993	A1993-102	Mr DeDomenico
	Discrimination (Amendment) (No 4) 1993	A1994-11	Mr Moore
	Subordinate Laws (Amendment) 1993	A1994-12	Mr Moore
	Statutory Appointments 1994	A1994-32	Mr Moore
	Poisons and Drugs (Amendment) 1993	A1994-40	Ms Carnell

Assembly	Bill Name	Act No	Introduced by
Second cont'd	Land (Planning and Environment) (Consequential Provisions) (Amendment) 1994	A1994-41	Ms Szuty
	Medical Treatment 1994	A1994-72	Mr Moore
	Health Complaints (Amendment) 1994	A1994-89	Mr Moore
	Drugs of Dependence (Amendment) 1994	A1994-90	Mr Moore
	Limitation (Amendment) 1994	A1994-91	Mr Humphries
	Government Contractual Debts (Interest) 1994	A1994-107	Mr Humphries
	Public Interest Disclosure 1994	A1994-108	Ms Carnell
Third (35 Bills)	Proportional Representation (Hare-Clark) Entrenchment 1994 (This Bill required both passing by the Assembly and endorsement at a referendum. Whilst the Bill was passed on 8 December 1994, the referendum was not held until 18 February 1995, in conjunction with the general election. The referendum result was declared on 16 March 1995 with 56.68% in favour, and the Bill became Act No. 1 of 1995.)	A1995-1	Mr Humphries
	Motor Traffic (Amendment) 1995	A1995-8	Mr Moore
	Discrimination (Amendment) 1995	A1995-9	Ms Follett
	Oaths and Affirmations (Amendment) 1995	A1995-34	Ms Follett
	Liquor (Amendment) 1996	A1996-8	Mr Osborne
	Fair Trading (Amendment) 1996	A1996-9	Ms Follett
	Crimes (Amendment) 1996	A1996-6	Ms Follett
	Domestic Violence (Amendment) 1996	A1996-37	Ms Follett
	Statutory Appointments (Amendment) 1996	A1996-52	Ms Follett
	Long Service Leave (Building and Construction Industry) (Amendment) 1996	A1996-80	Mr Berry
	Holidays (Amendment) 1997	A1997-2	Mr Berry
	Legislative Assembly (Members' Staff) (Amendment) 1997	A1997-6	Mr Whitecross
	Landlord and Tenant (Amendment) 1997	A1997-16	Ms Reilly
	Trading Hours (Repeal) 1997	A1997-17	Mr Whitecross
	Schools Authority (Amendment) 1996	A1997-18	Mr Moore
	Education (Amendment) 1996	A1997-19	Mr Moore
	Legislative Assembly (Broadcasting of Proceedings) 1997	A1997-31	Mr Moore
	Electoral (Amendment) (No 2) 1996	A1997-38	Mr Moore
	Animal Welfare (Amendment) 1996	A1997-45	Ms Horodny
	Food (Amendment) 1996	A1997-46	Ms Horodny

**APPENDIX 12: PRIVATE MEMBERS' BILLS PASSED INTO LAW
(NOT INCLUDING SPEAKER'S BILLS) CONTINUED**

Assembly	Bill Name	Act No	Introduced by
Third cont'd	Health and Community Care Services (Validation of Fees and Charges) 1997 (Title of Bill amended, during detail stage, to the Fees and Charges (Validation) Bill 1997.)	A1997-64	Mr Berry
	Domestic Violence (Amendment) (No 3) 1997	A1997-65	Ms Tucker
	Medical Treatment (Amendment) 1996	A1997-76	Mr Moore
	Auditor-General (Amendment) 1997	A1997-90	Ms Tucker
	Gaming Machine (Amendment) 1996	A1997-103	Ms Tucker
	Administration (Interstate Agreements) 1997	A1997-115	Mr Moore
	Land (Planning and Environment) (Amendment) 1997	A1997-116	Ms Horodny
	Crimes (Amendment) (No 3) 1997	A1997-117	Mr Moore
	Territory Owned Corporations (Amendment) (No 4) 1997	A1997-118	Mr Whitecross
	Annual Reports (Government Agencies) Amendment 1997	A1997-119	Mr Whitecross
	Tenancy Tribunal (Amendment) 1997	A1997-120	Mr Moore
	Energy Efficiency Ratings (Sale of Premises) 1997	A1997-121	Ms Tucker
	Residential Tenancies (Amendment) 1997	A1997-122	Ms Tucker
	Motor Traffic (Amendment) (No 6) 1997	A1997-123	Mr Osborne
	Financial Management (Amendment) 1997	A1997-124	Mr Whitecross
Fourth (58 Bills)	Territory Owned Corporations (Amendment) 1998	A1998-20	Mr Corbell
	Crime Prevention Powers 1998	A1998-21	Mr Osborne
	Crimes (Amendment) (No 3) 1998	A1998-22	Mr Rugendyke
	Gaming Machine (Amendment) (No 2) 1998	A1998-23	Ms Tucker
	Building (Amendment) 1998	A1998-48	Ms Tucker
	Limitation (Amendment) 1998	A1998-58	Mr Osborne
	Health Regulation (Maternal Health Information) 1998	A1998-62	Mr Osborne
	Liquor (Amendment) 1998	A1998-69	Mr Osborne

Assembly	Bill Name	Act No	Introduced by
Fourth cont'd	Territory Owned Corporations (Amendment) (No 2) 1998	A1999-10	Mr Quinlan
	Motor Traffic (Alcohol and Drugs) (Amendment) 1998	A1999-11	Mr Hargreaves
	Children's Services (Amendment) 1998	A1999-12	Mr Osborne
	Energy Efficiency Ratings (Sale of Premises) (Amendment) 1999	A1999-13	Ms Tucker
	Casino Control (Amendment) 1999	A1999-19	Mr Kaine
	Occupational Health and Safety (Amendment) 1999	A1999-24	Mr Berry
	Dangerous Goods (Amendment) 1999	A1999-25	Mr Berry
	Building and Construction Industry Training Levy 1999	A1999-30	Mr Berry
	Fair Trading (Fuel Prices) (Amendment) 1999	A1999-45	Mr Osborne
	Financial Management Amendment (No 2) 1999	A1999-58	Mr Quinlan
	Discrimination Amendment 1999	A1999-60	Mr Stanhope
	Children's Services Amendment (No 2) 1999	A1999-61	Mr Rugendyke
	Holidays Amendment 1999	A1999-67	Mr Berry
	Occupational Health and Safety (Amendment) (No 2) 1999	A1999-82	Mr Berry
	Long Service Leave (Cleaning, Building and Property Services) 1999	A1999-85	Mr Berry
	Motor Traffic (Amendment) (No 4) 1998	A1999-86	Mr Rugendyke
	Land (Planning and Environment) Amendment (No 4) 1999	A1999-87	Mr Corbell
	Road Transport Legislation Amendment (No 2) 1999	A2000-4	Mr Rugendyke
	Agents (Amendment) 1998	A2000-9	Mr Berry
	Children's Services Amendment 1999	A2000-10	Mr Stanhope
	Children and Young People Amendment 2000	A2000-11	Mr Stanhope
	Environment Protection Amendment (No 2) 1999	A2000-12	Ms Tucker
	Land (Planning and Environment) Amendment (No 2) 1998	A2000-15	Ms Tucker
	Occupational Health and Safety (Amendment) 2000	A2000-20	Mr Berry
	Liquor Amendment (No 2) 1999	A2000-54	Mr Quinlan
	Environment Protection Legislation Amendment 2000	A2000-55	Ms Tucker
	Crimes Amendment 2000	A2000-56	Mr Rugendyke
	Magistrates Court Amendment 2000	A2000-60	Mr Berry
	Occupational Health and Safety Amendment 2000 (No 3)	A2000-62	Mr Berry
	Dangerous Goods Amendment 2000	A2000-63	Mr Berry

**APPENDIX 12: PRIVATE MEMBERS' BILLS PASSED INTO LAW
(NOT INCLUDING SPEAKER'S BILLS) CONTINUED**

Assembly	Bill Name	Act No	Introduced by
Fourth cont'd	Subordinate Laws Amendment 2000	A2000-71	Mr Hargreaves
	Workers' Compensation Amendment 1999	A2000-74	Mr Osborne
	Public Access to Government Contracts 2000	A2000-75	Mr Osborne
	Land (Planning and Environment) Amendment 2000 (No 5)	A2001-1	Mr Corbell
	Financial Management (Amendment) 1998	A2001-4	Mr Osborne
	Administrative Appeals Tribunal (Amendment) 1998	A2001-5	Ms Tucker
	Coroners (Amendment) 1998	A2001-6	Ms Tucker
	Supreme Court (Amendment) (No 2) 1998	A2001-7	Ms Tucker
	Occupational Health and Safety Amendment 2000 (No 4)	A2001-21	Mr Berry
	Fair Trading (Fuel Prices) Amendment 2001	A2001-50	Mr Osborne
	Education Amendment 2001	A2001-51	Mr Berry
	Auditor-General Amendment 2000	A2001-52	Mr Osborne
	Land (Planning and Environment) Amendment 2001 (No 4)	A2001-73	Mr Rugendyke
	Gaming Machine Amendment 2000 (No 2)	A2001-74	Mr Rugendyke
	Crimes Amendment 2001	A2001-75	Mr Osborne
	Olympic Events Security Amendment 2000	A2001-76	Mr Osborne
	Eggs (Labelling and Sale) 2001	A2001-83	Mr Corbell
	Pharmacy Amendment 2001	A2001-84	Ms Tucker
	Legislative Assembly (Privileges) 1998	A2001-85	Mr Osborne
	Road Transport (Safety and Traffic Management) Amendment 2001 (No 2)	A2001-86	Mr Rugendyke
Fifth (16 Bills)	Discrimination Amendment 2002	A2002-19	Mrs Cross
	Medical Practitioners (Maternal Health) Amendment 2002	A2002-26	Ms Gallagher
	Fair Trading Amendment 2002	A2002-31	Ms Tucker
	Magistrates Court (Refund of Fees) Amendment 2002	A2002-36	Ms Tucker
	Land (Planning and Environment) Amendment 2002	A2002-37	Ms Tucker
	Public Place Names Amendment 2002	A2002-54	Ms Dundas
	Bushfire Inquiry (Protection of Statements) 2003	A2003-13	Mr Stefaniak
	Smoking (Prohibition in Enclosed Public Places) 2003	A2003-51	Mrs Cross
	Government Procurement (Principles) Guideline Amendment 2003	A2003-63	Ms Dundas
	Pharmacy Amendment 2004	A2004-31	Mrs Cross

Assembly	Bill Name	Act No	Introduced by
Fifth cont'd	Hemp Fibre Industry Facilitation 2004	A2004-48	Mrs Burke
	Tobacco (Vending Machine Ban) Amendment 2004	A2004-49	Ms Dundas
	Animal Legislation (Penalties) Amendment 2004	A2004-50	Mr Stefaniak
	Corrections Reform Amendment 2003	A2004-61	Mr Smyth
	Residential Property (Awareness of Asbestos) Amendment 2004 (Title of Bill amended, during detail stage, to the Dangerous Substances (Asbestos) Amendment Bill 2004.)	A2004-66	Mrs Cross
	Water and Sewerage Amendment 2004	A2004-67	Mrs Dunne
Sixth (6 Bills)	Limitation Amendment 2005	A2005-64	Mr Stefaniak
	Gaming Machine Amendment 2007	A2007-14	Mr Stefaniak
	Guardianship and Management of Property Amendment 2005	A2007-23	Mr Stefaniak
	Electricity Feed-in (Renewable Energy Premium) 2008	A2008-21	Mr Gentleman
	Road Transport (Third-Party Insurance) Amendment 2008	A2008-39	Mr Stefaniak
	Protection of Public Participation 2008	A2008-48	Dr Foskey

BILLS INTRODUCED BY THE SPEAKER AND PASSED BY THE LEGISLATIVE ASSEMBLY

Assembly	Bill Name	Act No	Introduced by
First (1 Bill)	Electricity and Water (Amendment) (No 2) 1989	A1989-13	Speaker Prowse
Fifth (4 Bills)	Crimes (Abolition of Offence of Abortion) 2001	A2002-24	Speaker Berry
	Health Regulation (Maternal Health Information) Repeal 2001	A2002-25	Speaker Berry
	Legislative Assembly (Broadcasting) Amendment 2002	A2002-52	Speaker Berry
	Legislative Assembly Precincts Amendment 2002	A2002-53	Speaker Berry
Sixth (3 Bills)	Public Sector Management Amendment 2005 (No 2)	A2005-42	Speaker Berry
	Legislative Assembly Precincts Amendment 2006	A2006-20	Speaker Berry
	Legislative Assembly (Members' Staff) Amendment 2008	A2008-38	Speaker Berry

APPENDIX 13: STATISTICS ON ASSEMBLY PROCEEDINGS

Year	Adjournment debates	Closures agreed to	Divisions	Matter of public importance discussed	Petitions presented	Questions on notice	Questions without notice	Supplementary Questions
1989	28	10	81	13	23	75	532	129
1990	40	18	114	35	28	250	694	216
1991	33	27	146	34	29	323	353	156
1992	32	5	113	33	35	502	416	128
1993	24	2	72	30	18	641	403	143
1994	22	2	53	26	9	361	423	207
1995	18	2	75	8	32	137	377	259
1996	34	3	109	10	46	242	474	352
1997	32	1	95	13	27	97	443	321
1998	26	1	78	7	20	79	344	287
1999	28	-	83	8	17	156	662	552
2000	24	2	119	2	6	108	344	283
2001	24	3	118	6	15	105	363	291
2002	31	-	62	21	20	334	295	335
2003	31	-	94	18	38	868	438	370
2004	30	1	125	19	14	624	330	274
2005	42	10	92	26	9	776	442	349
2006	37	9	92	24	37	622	392	308
2007	33	10	75	19	16	356	353	289
2008	29	7	95	24	28	451	332	262

APPENDIX 14: COMMITTEES

Assembly	Committees	Formed
First	Standing—	
	Administration and Procedures ¹	11.05.1989
	Conservation, Heritage and the Environment	25.05.1989
	Legal Affairs	27.03.1990
	Planning Development and Infrastructure	23.05.1989
	Public Accounts	23.05.1989
	Scrutiny of Bills and Subordinate Legislation	19.10.1989
	Social Policy	23.05.1989
	Select—	
	Cultural Activities and Facilities	23.08.1989
	Establishment of a Casino	25.05.1989
	Estimates 1989-90	28.09.1989
	Estimates 1990-91	18.09.1990
	Estimates 1991-92	08.08.1991
	HIV, Illegal Drugs and Prostitution	28.09.1989
	Hospital Bed Numbers	16.10.1991
	Occupational Health and Safety Bill 1989	25.05.1989
	Police Offences (Amendment) Bill 1989	05.07.1989
	Self-Government	04.07.1989
	Tenancy of Commercial Premises	26.07.1989
	Amalgamation of Tertiary Institutions	01.06.1989
Second	Standing—	
	Administration and Procedures	07.04.1992
	Conservation, Heritage and Environment	27.03.1992
	Legal Affairs	27.03.1992
	Planning, Development and Infrastructure	27.03.1992
	Public Accounts	27.03.1992
	Public Sector	16.06.1994
	Scrutiny of Bills and Subordinate Legislation	27.03.1992
	Social Policy	27.03.1992
	Tourism and ACT Promotion	27.03.1992

¹ An amendment to the resolution of appointment combining the Standing Committee on Administration, the Standing Committee on Procedures and the Standing Committee on Business into the Standing Committee on Administration and Procedures was agreed to on 23 May 1989.

APPENDIX 14: COMMITTEES CONTINUED

Assembly	Committees	Formed
Second cont'd	Select—	
	Budget Performance and Outcomes for 1993-94	15.09.1994
	Community Initiated Referendums	14.09.1994
	Drugs	27.03.1992
	Establishment of an ACT Public Service	17.06.1993
	Estimates 1992-93	11.08.1992
	Estimates 1993-94	17.06.1993
	Estimates 1994-95	19.04.1994
	Euthanasia	16.06.1993
Third	Standing—	
	Administration and Procedure	09.03.1995
	Economic Development and Tourism ²	09.03.1995
	Legal Affairs	09.03.1995
	Planning and Environment	09.03.1995
	Public Accounts	09.03.1995
	Scrutiny of Bills and Subordinate Legislation	09.03.1995
	Social Policy	09.03.1995
	Select—	
	Additional Estimates 1995-96	16.04.1996
	Competition Policy Reform	24.10.1995
	Estimates 1995-96 and Budget Review	21.06.1995
	Estimates 1996-97	28.08.1996
	Estimates 1997-98	08.04.1997
	Establishment of a New Private Hospital	15.05.1997
	Petrol Pricing	27.06.1996
	Workers' Compensation Provisions	31.05.1995
Fourth	Standing—	
	Administration and Procedure	19.03.1998
	Education, Community Services and Recreation ³	28.04.1998
	Finance and Public Administration (incorporating the Public Accounts Committee) ⁴	28.04.1998

2 An amendment to resolution of appointment changing the name of the committee from Standing Committee on Tourism and A.C.T. Promotion was agreed to on 22 June 1995, MoP 1995-97/96-7.

3 An amendment to resolution of appointment changing name of committee from Standing Committee on Education was agreed to on 25 November 1999, MoP 1998-2001/622.

4 An amendment to resolution of appointment changing name of committee from Standing Committee on the Chief Minister's Portfolio was agreed to on 25 November 1999, MoP 1998-2001/622.

Assembly	Committees	Formed
Fourth cont'd	Standing cont'd—	
	Health and Community Care	28.04.1998
	Justice and Community Safety (also performing the duties of a scrutiny of bills and subordinate legislation committee)	28.04.1998
	Planning and Urban Services ⁵	28.04.1998
	Select—	
	2001-2002 Budget	18.10.2000
	Estimates 1998-99	26.05.1998
	Estimates 1999-2000	22.04.1999
	Estimates 2000-2001	11.05.2000
	Estimates 2001-2002	01.05.2001
	Gambling	20.05.1998
	Government Contracting and Procurement Processes	06.05.1999
	Public Housing	01.07.1999
	Report of the Review of Governance	28.04.1998
	Territory's Superannuation Commitments	26.11.1998
	Workers' Compensation System	01.07.1999
Fifth	Standing—	
	Administration and Procedure	11.11.2001
	Community Services and Social Equity	11.12.2001
	Education	11.12.2001
	Health	11.12.2001
	Legal Affairs (also performing the duties of a scrutiny of bills and subordinate legislation committee)	11.12.2001
	Planning and Environment	11.12.2001
	Public Accounts	11.12.2001
	Select—	
	Estimates 2001-2002	19.02.2002
	Estimates 2002-2003	06.06.2002
	Estimates 2003-2004	03.04.2003
	Estimates 2003-2004 (No 2)	19.08.2003
	Estimates 2003-2004 (No 3)	11.03.2004
	Estimates 2004-2005	01.04.2004

5 An amendment to resolution of appointment changing name of committee from Standing Committee on Urban Services was agreed to on 25 November 1999, MoP 1998-2001/622.

APPENDIX 14: COMMITTEES CONTINUED

Assembly	Committees	Formed
Fifth cont'd	Select cont'd —	
	Privileges 2002	06.06.2002
	Privileges 2003	26.06.2003
	Privileges 2004	10.02.2004
	The Status of Women in the ACT	11.12.2001
Sixth	Standing—	
	Administration and Procedure	04.11.2004
	Education, Training and Young People	07.12.2004
	Health and Disability	07.12.2004
	Legal Affairs (also performing the duties of a scrutiny of bills and subordinate legislation committee)	07.12.2004
	Planning and Environment	07.12.2004
	Public Accounts	07.12.2004
	Select—	
	Estimates 2005-2006	07.04.2005
	Estimates 2006-2007	04.05.2006
	Estimates 2007-2008	03.05.2007
	Estimates 2008-2009	10.04.2008
	Privileges	01.07.2008
	Working Families in the Australian Capital Territory	05.05.2005

APPENDIX 15: MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY

Matter	Action by Speaker	Action by Assembly
<p>27 June 1989 Possible breach of privilege concerning the use by members of the Assembly press gallery of the 5th floor media room for the purposes of interviewing Members of the Assembly (MoP 1989-91/29; Assembly Debates (27.6.1989) 395-6).</p>	<p>Speaker stated that the matter did not merit precedence as the 5th floor media room is not directly under the Assembly's control and the request for use of the room had not come from a Member but directly from the press. The matter was therefore an administrative matter not a breach of privilege.</p>	<p>No action taken.</p>
<p>13 February 1990 Possible breach of privilege concerning the premature and unauthorised release of information from a draft report of the Standing Committee on Conservation, Heritage and Environment in articles and an editorial published in <i>The Canberra Times</i> on 20, 21 and 25 January 1990 (MoP 1989-91/167; Assembly Debates (13.2.1990) 17).</p>	<p>Speaker stated that the matter did merit precedence as publication of draft reports of committees before their presentation have been pursued as matters of contempt by the House of Representatives, and the Assembly, its members and committees have the same powers, including privileges and immunities as those held by the House of Representatives, its members and committees, pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).</p>	<p>Chair of the Standing Committee on Conservation, Heritage and Environment, by leave, made a statement indicating that the Committee no longer wished to proceed with the matter (MoP 1989-91/167; Assembly Debates (13.2.1990) 18).</p> <p>No further action taken.</p>
<p>3 May 1990 Alleged breach of privilege concerning the alleged disclosure of proceedings of the Standing Committee on Conservation, Heritage and Environment in a radio interview given by Mr Moore MLA on 27 April 1990 (MoP 1989-91/235; Assembly Debates (3.5.1990) 1612-3).</p>	<p>Speaker stated that the matter did merit precedence as the unauthorised publication of private deliberations of a committee before their presentation have been pursued as matters of contempt in the House of Representatives, and the Assembly, its members and committees have the same powers, including privileges and immunities as those held by the House of Representatives, its members and committees, pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).</p>	<p>Motion moved to refer matter to Standing Committee on Administration and Procedures as a matter of privilege debated and adjourned (MoP 1989-91/236; Assembly Debates (3.5.1990) 1627-29). Item discharged from the Notice Paper on 12 September 1990 (MoP 1989-91/295-6; Assembly Debates (12.9.1990) 3164-5).</p>

APPENDIX 15: MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY *CONTINUED*

Matter	Action by Speaker	Action by Assembly
<p>16 August 1990 Alleged breach of privilege by Mr Collaery MLA for divulging unpublished evidence to the Public Accounts Committee (MoP 1989-91/289-90; Assembly Debates (16.8.1990) 3018-22).</p>		<p>Motion moved, by leave, to refer matter to the Standing Committee on Administration and Procedures debated and negatived (MoP 1989-91/289-90; Assembly Debates (16.8.1990) 3018-22).</p> <p>(See other references to matter Assembly Debates (16.8.1990) 2980, 3016 and 3030.)</p>
<p>12 September 1990 Alleged breach of privilege raised on 16 August 1990 concerning the unauthorised release of evidence provided to the Standing Committee on Public Accounts (MoP 1989-91/295; Assembly Debates (12.9.1990) 3159-60).</p>	<p>Speaker stated that the matter did not merit precedence as he was unable to find a precedent directly relevant to the presentation of information in the Assembly, which is the superior body to the committee.</p>	<p>Motion moved, by leave, to refer matter to Standing Committee on Administration and Procedures debated and negatived (MoP 1989-91/295; Assembly Debates (12.9.1990) 3160-3164).</p>
<p>17 October 1990 Alleged breach of privilege concerning the unauthorised release of a draft report of the Standing Committee on Planning, Development and Infrastructure as published in an article in <i>The Canberra Times</i>, dated 27 September 1990 (MoP 1989-91/319-20; Assembly Debates (17.10.1990) 3735-7).</p>	<p>Speaker stated that the matter did merit precedence as publication of draft reports of committees before their presentation have been pursued as matters of contempt by the House of Representatives, and the Assembly, its members and committees have the same powers, including privileges and immunities, as those held by the House of Representatives pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwth).</p> <p>The Speaker proposed that a select committee be established to consider matter.</p>	<p>No action taken.</p>

Matter	Action by Speaker	Action by Assembly
<p>6 August 1991 Possible breach of privilege concerning letters received by Mr Stevenson, MLA (MoP 1989-91/483; Assembly Debates (6.8.1991) 2379).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>No action taken.</p>
<p>18 September 1991 Possible breach of privilege concerning the contents of a letter from the Deputy Chief Minister (Mr Berry) to Mr Humphries MLA relating to the introduction of the Trading Hours (Amendment) Bill 1991. The letter required that the Bill be withdrawn until public consultation had taken place on a recently released report on ACT trading hours (MoP 1989-91/530; Assembly Debates (18.9.1991) 3462-5).</p>	<p>Speaker stated that the matter did merit precedence as he had concluded that a contempt may have occurred. The Speaker went on to suggest that the matter may be best dealt with by way of an apology.</p>	<p>The Deputy Chief Minister (Mr Berry) and Mr Humphries MLA, by leave, made statements in relation to the matter (MoP 1989-91/530; Assembly Debates (16.9.1991) 3463-5). No further action taken.</p>
<p>8 December 1992 Alleged breach of privilege concerning the circulation of a copy of the uncorrected proof <i>Hansard</i> (MoP 1992-94/235; Assembly Debates (8.12.1992) 3600).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>No action taken.</p>
<p>24 November 1993 Alleged breach of privilege concerning the premature and unauthorised release of information relating to the recommendations of the Select Committee on Estimates 1993-94. The information was contained in an article published in <i>The Canberra Times</i> on 12 November 1993 (MoP 1992-94/480; Assembly Debates (24.11.1993) 4083-4).</p>	<p>Speaker stated that the matter did merit precedence as the publication of draft reports of committees before their presentation to the House of Representatives have been pursued as matters of contempt, and the Assembly, its members and committees have the same powers, including privileges and immunities, as those held by the House of Representatives, its members and committees pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).</p>	<p>Motion was agreed to referring matter to the Standing Committee on Administration and Procedures (MoP 1992-94/480; Assembly Debates (24.11.1993) 4084). Report presented 16 December 1993; motion that report be adopted debated and adjourned (MoP 1992-94/523; Assembly Deb (16.12.1993) 4743); order of the day lapsed at the end of Second Assembly.</p>

APPENDIX 15: MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY *CONTINUED*

Matter	Action by Speaker	Action by Assembly
<p>7 December 1993</p> <p>Possible breach of privilege concerning the premature and unauthorised release of information in the Government's response to the Estimates Committee 1993-94 report (MoP 1992-94/495; Assembly Debates (7.12.1993) 4342-3).</p>	<p>Speaker stated that the matter did merit precedence and that the Assembly, its members and committees have the same powers, including privileges and immunities, as those held by the House of Representatives, its members and committees pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).</p>	<p>Motion was agreed to referring matter to the Standing Committee on Administration and Procedures (MoP 1992-94/495; Assembly Debates (7.12.1993) 4343). Report presented 14 April 1994; motion that report be noted debated and agreed to (MoP 1992-94/559; Assembly Debates (14.4.1994) 838-42). A Government response to the report in the form of a ministerial statement was made on 15 June 1994 (MoP 1992-94/627; Assembly Debates (15.6.1994) 2019-20).</p>
<p>17 May 1994</p> <p>Alleged breach of privilege concerning a submission lodged by the ACT Opposition with the Board of Inquiry examining the ACTTAB/VITAB Agreement. The submission invited the inquiry to have regard to debates in the Assembly (MoP 1992-94/605; Assembly Debates (17.5.1994) 1549-52).</p>	<p>Speaker stated that the matter did merit precedence as freedom of speech and debates or proceedings in Parliament should not be impeached or questioned in any court or place out of Parliament.</p>	<p>No action taken.</p>

Matter	Action by Speaker	Action by Assembly
<p>19 May 1994 Alleged breach of privilege concerning a submission lodged by the Board of Management of the Australian Capital Territory Totalisator Administration Board to the Board of Inquiry examining the ACTTAB/MITAB Agreement. The submission invited the inquiry to have regard to debates in the Assembly (MoP 1992-94/615; Assembly Debates (19.5.1994) 1769-70).</p>	<p>Speaker stated that the matter did merit precedence as freedom of speech and debates or proceedings in Parliament should not be impeached or questioned in any court or place out of Parliament.</p>	<p>No action taken.</p>
<p>25 September 1997 Possible breach of privilege concerning the action by a member of the Standing Committee on Legal Affairs in making public a number of recommendations of the Committee's conclusions on the issue of the establishment of a correctional facility in the ACT (MoP 1995-97/819; Assembly Debates (25.9.1997) 3329-30).</p>	<p>Speaker stated that the matter did merit precedence as the publication of draft reports of committees before their presentation to the House of Representatives have been pursued as matters of contempt, and the Assembly, its members and committees have the same powers, including privileges and immunities, as those held by the House of Representatives pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).</p>	<p>No action taken.</p>
<p>16 February 1999 Possible breach of privilege concerning certain aspects of the conduct of the proceedings of the Select Committee on the Territory's Superannuation Commitments (MoP 1998-2001/305; Assembly Debates (16.2.1999) 152-6).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>Mr Wood, Mr Hird, Mr Moore and Mr Quinlan, by leave, made statements in relation to the matter (MoP 1998-2001/305; Assembly Debates (16.2.1999) 152-6).</p>

APPENDIX 15: MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY CONTINUED

Matter	Action by Speaker	Action by Assembly
<p>23 May 2000 Possible breach of privilege raised by Mr Corbell MLA relating to an alleged improper influence on a witness in respect of evidence given to the Standing Committee on Planning and Urban Services on its inquiry into Gungahlin Drive (MoP 1998-2001/858; Assembly Debates (23.5.2000) 1596-7).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>Mr Corbell, by leave, made a statement in relation to the matter (MoP 1998-2001/859; Assembly Debates (23.5.2000) 1598-1600).</p> <p>Motion to appoint Select Committee on Privileges was agreed to after debate (MoP 1998-2001/879-80, 882-3; Assembly Debates (25.5.2000) 1776-94, 1834-46). Later, the motion was rescinded and reconsidered. Assembly resolved that the Standing Committee on Planning and Urban Services inquire into matter (MoP 1998-2001/889-93; Assembly Debates (25.5.2000) 1897-1903, 1905-24). Report presented 18 October 2000; motion that report be noted debated and agreed to (MoP 1998-2001/1025; Assembly Debates (18.10.2000) 3194-7).</p>

Matter	Action by Speaker	Action by Assembly
<p>9 August 2001 Possible breach of privilege in respect of the release to the public of confidential information discussed at a meeting of the Standing Committee on Planning and Urban Services on 7 August 2001 in relation to its report on Draft Variation No 138 (MoP 1998-2001/1589; Assembly Debates (9.8.2001) 2828-30).</p>	<p>Speaker stated that the matter did merit precedence as the premature publication or disclosure of committee proceedings have been pursued as matters of contempt.</p>	<p>Mr Hird, Mr Kaine and Mr Smyth addressed the Assembly in relation to the matter (MoP 1998-2001/1589; Assembly Debates (9.8.2001) 2829-30). No further action taken.</p>
<p>9 August 2001 Publication of the deliberations of the Standing Committee on Planning and Urban Services on the timing of the presentation of its proposed report on the duplication of Fairbairn Avenue (MoP 1998-2001/1589; Assembly Debates (9.8.2001) 2828-9).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>No action taken.</p>
<p>6 June 2002 Unauthorised receipt of emails from the office of Mr Wood MLA was a breach of privilege and whether a contempt was committed (MoP 2001-04/199-200, 201-3; Assembly Debates (6.6.2002) 2011-14, 2049-62).</p>		<p>Motion to appoint Select Committee on Privileges was passed by the Assembly on 6 June 2002 (MoP 2001-04/199-200, 201-203; Assembly Deb (6.6.2002) 2011-14, 2049-62). Report presented 14 November 2002; motion that report be noted adjourned (MoP 2001-04/381-2; Assembly Debates 14.11.2002/3605-3620); debate resumed, adjourned (MoP 2001-04/399-401; Assembly Debates 19.11.2002/3697-3709); debate resumed, motion agreed to (MoP 2001-04/427-8; Assembly Debates (21.11.2002) 3936-46).</p>

APPENDIX 15: MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY CONTINUED

Matter	Action by Speaker	Action by Assembly
<p>18 June 2003 Matter of privilege raised by Mr Wood in relation to the unauthorised disclosure of the reports of the Select Committee on Estimates 2003-2004 and the Standing Committee on Public Accounts (MoP 2001-04/749; Assembly Debates (18.6.2003) 2024-5).</p>	<p>Speaker stated that the matter did merit precedence as the publication of draft reports of committees before their presentation to the House of Representatives and the Legislative Assembly have been pursued as matters of contempt, and the Assembly, its members and committees have the same powers, including privileges and immunities, as those held by the House of Representatives, its members and committees pursuant to section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).</p>	<p>Motion to appoint a Select Committee on Privileges was agreed to by the Assembly on 26 June 2003. (The original motion moved was amended to include whether the refusal of Mr Corbell to answer questions of the Select Committee on Estimates and whether the creation and distribution of a document known as 'Budget Estimates 2003' by persons within ACT Health constituted contempt of the Assembly) (MoP 2001-04/749-50, 792, 802-4; Assembly Debates (18.6.03) 2025-32, (26.6.03) 2536-7, 2635-63). Report presented 18 November 2003; motion that report be noted debated and agreed to (MoP 2001-04/995; Assembly Debates (18.11.2003) 4163-70).</p>

Matter	Action by Speaker	Action by Assembly
<p>10 February 2004 Alleged breach of privilege or possible contempt raised by Mr Hargreaves MLA regarding the release of a flyer relating to a matter before the Standing Committee on Planning and Environment. (MoP 2001-04/1088; Assembly Debates (2.2.2004) 2)</p>	<p>Speaker stated that the matter did merit precedence.</p>	<p>Motion to appoint a Select Committee on Privileges was agreed to by the Assembly on 10 February 2004 (MoP 2001-04/1088; Assembly Debates (10.2.2004) 2-19). Report presented 30 March 2004; motion that report be noted debated and adjourned (MoP 2001-04/1248; Assembly Deb (30.3.2004) 1247-53); debate resumed, motion agreed to (MoP 2001-04/1296; Assembly Deb (1.4.2004) 1538).</p>
<p>4 May 2004 Alleged breach of privilege or possible contempt raised by Mr Smyth MLA in relation to comments made in the Chamber by Mrs Cross MLA on 1 April 2004 (MoP 2001-04/1313; Assembly Debates (4.5.2004) 1700).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>No action taken.</p>
<p>22 June 2004 Alleged breach of privilege raised by Mrs Burke in relation to the non-provision of an answer by the Minister for Planning to a question on notice (MoP 2001-04/1403; Assembly Debates (22.6.2004) 2259).</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>No action taken.</p>

APPENDIX 15: MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY *CONTINUED*

Matter	Action by Speaker	Action by Assembly
<p>7 April 2005 Alleged breach of privilege raised by Mrs Dunne MLA in relation to improper interference in the proposed chairmanship and membership of a Select Committee on Estimates. (MoP 2004-08/139; Assembly Debates (7.4.2005) 1485)</p>	<p>Speaker stated that the matter did not merit precedence.</p>	<p>Motion to suspend standing orders was moved by Mrs Dunne to allow her to move that the decision of the Speaker not to give precedence to the matter of privilege be disagreed with. The suspension of standing orders was negated after a vote of the Assembly (MoP 2004-08/139; Assembly Debates (7.4.2005) 1485-90.</p>
<p>16 August 2006 Alleged breach of privilege raised by Mr Smyth MLA and Mr Pratt MLA concerning certain aspects of the conduct of Ms MacDonald MLA, Ms Porter MLA and Mr Gentleman MLA concerning the absence of Ms MacDonald at a scheduled meeting of the estimates committee (MoP 2004-08/770; Assembly Debates (16.8.2006) 2210)</p>	<p>Speaker stated that the matter did not merit precedence as the evidence presented was not conclusive as to whether or not the committee had been misled.</p>	<p>No action taken.</p>
<p>21 August 2007 Alleged breach of privilege raised by Mr Pratt MLA in relation to the conduct of the Minister for Territory and Municipal Services during his appearance before the Select Committee on Estimates 2007-2008 on 26 June 2007 and the Minister's practice of only following up on matters raised by Mr Pratt if the names and address of constituents were provided (MoP 2004-08/1065-6; Assembly Debates (21.8.2007) 1681-2)</p>	<p>Speaker stated that the matter did merit precedence.</p>	<p>Motion to appoint a Select Committee on Privileges was moved and negated after a vote of the Assembly (MoP 2004-08/1066-7; Assembly Debates (21.8.2007) 1682-93)</p>

Matter	Action by Speaker	Action by Assembly
<p>17 June 2008 Alleged breach of privilege raised by Ms Gallagher MLA in relation to certain aspects of the conduct of Mr Smyth MLA in relation to the proof <i>Hansard</i> of the Select Committee on Estimates 2008-2009 (MoP 2004-08/1542; Assembly Debates (17.6.1008) 1866-7)</p>	<p>Speaker stated that the matter did not merit precedence but had raised concerns regarding a possible breach of the <i>Legislative Assembly (Broadcasting) Act 2001</i> and that he had requested the Clerk to seek legal advice. The Speaker indicated that he would report back to the Assembly on receipt of the legal advice.</p>	<p>No action taken.</p>
<p>1 July 2008 Alleged breach of privilege raised by Ms Porter MLA in relation to the private deliberations of the Select Committee on Estimates 2008-2009. (MoP 2004-08/1569; Assembly Debates (1.7.2008) 2427)</p>	<p>Speaker stated that he did not believe the matter warranted precedence under standing order 276(d).</p>	<p>No action taken.</p>
<p>1 July 2008 Alleged breach of privilege raised by Mr Corbell MLA in relation to the conduct of Mr Stefaniak, Chair of the Standing Committee on Legal Affairs, during the Committee's inquiry into ACT fire and emergency services arrangements. (MoP 2004-08/1569; Assembly Debates (1.7.2008) 2428)</p>	<p>Speaker stated that he was prepared to allow precedence to a motion under standing order 276(e).</p>	<p>Motion to appoint a Select Committee on Privileges was agreed to by the Assembly on 1 July 2008. (The original motion moved was amended to include how Mr Corbell became aware of the fact that the Committee had not authorised the letter) (MoP 2004-08/1570-1; Assembly Debates (1.7.2008) 2428-46). Report presented 26 August 2008; motion that report be noted debated and agreed to (MoP 2004-08/1750; Assembly Deb (26.8.2008) 3567-72).</p>

APPENDIX 16: COMMITTEE REPORTS ON MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY

Report title	Committee	Date matter referred	Date report tabled	Findings / recommendations
<p>Report on article in The Canberra Times dated 12 November 1993 concerning the draft report of the Select Committee on Estimates 1993-94</p>	<p>Standing Committee on Administration and Procedures</p>	<p>24 November 1993 (MoP 1992-94/480)</p>	<p>16 December 1993 (MoP 1992-94/523)</p>	<p>Although the committee considered that a contempt had been committed by a person or persons who made available, either directly or indirectly the findings and recommendations of the draft report, the Committee was unable to ascertain the identities of the person or persons who disclosed the information. In the absence of such information the Committee was unable to recommend that the Assembly take any further action. With regard to the journalist that published the article, the Committee considered that even though they had committed a contempt, it was not a primary contempt but a secondary one and that it would be unfair to recommend action be taken against the journalist involved as the Committee was unable to ascertain the identity of the person or persons who caused the primary contempt.</p>

Report title	Committee	Date matter referred	Date report tabled	Findings / recommendations
Report on the Government Response to the Report of the Select Committee on Estimates 1993-94 on the Appropriation Bill 1993-94	Standing Committee on Administration and Procedures	7 December 1993 (MoP 1992-94/495)	14 April 1994 (MoP 1992-94/559)	The Committee considered that although a contempt had been committed by a person or persons, whose identification was unable to be ascertained, who made available either directly or indirectly the findings and recommendations of a copy of the draft report to Treasury departmental officers or the Treasurer's personal staff, it was unable to recommend that the Assembly take any further action in relation to that person or persons. With regard to the departmental officers who had been responsible for the preparation of the Government response the committee considered that although a contempt had been committed it was of a secondary nature.
Examination of allegations of possible improper influence of a witness	Standing Committee on Planning and Urban Services	25 May 2000 (MoP 1998-2001/879-80, 882-4, 889-93)	18 October 2000 (MoP 1998-2001/1025)	The committee was unable to conclude whether an improper influence did or did not occur in relation to evidence given to it, however, it considered that there was a case for strengthening the public hearing process of the parliament by reminding witnesses of their rights and responsibilities when giving evidence to a parliamentary committee.

APPENDIX 16: COMMITTEE REPORTS ON MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY *CONTINUED*

Report title	Committee	Date matter referred	Date report tabled	Findings / recommendations
Unauthorised diversion and receipt of a Members' e-mails	Select Committee on Privileges	6 June 2002 (MoP 2001-04/199-200, 201-3)	14 November 2002 (MoP 2001-04/381-2)	The Committee found that a person's actions in knowingly receiving and without reasonable excuse retaining and using e-mails destined for a Member was an improper breach of interference with the Member's communication with his constituents and colleagues and thus his work as an MLA, and believed that the person's actions met the criteria of impropriety, seriousness and intent and was directly related to the Member's duty as a Member and having concluded that the person was guilty of contempt of the Assembly, recommended that the person make a prompt and unreserved apology for his conduct to the Assembly in writing through the Speaker.
Possible authorised dissemination of committee material, standing order 71 (Privilege), Minister's refusal to answer questions in committee hearing and distribution of ACT Health document	Select Committee on Privileges	26 June 2003 (MoP 2001-04/749-50, 792, 802-4)	18 November 2003 (MoP 2001-04/995)	The committee found that the Minister who had refused to provide answers to a select committee on a matter within his portfolio responsibility but had released the information publicly the next day was in contempt of the Assembly. The committee recommended no further action be taken and the Minister apologised to the Assembly and reiterated his apology to the committee.

Report title	Committee	Date matter referred	Date report tabled	Findings / recommendations
				Two officers of ACT Health who composed and distributed a memorandum throughout senior management of the department which suggested tactical approaches for officers appearing before the Select Committee on Estimates were found in contempt of the Assembly by the committee. Having been satisfied that proper steps had been undertaken within the department to discipline the officers, the committee recommended that no further action be taken.
Report on whether the actions of the Chair of the Standing Committee on Planning and Environment with regard to the distribution of a flyer in her name at the Belconnen Markets did constitute a contempt of the Assembly	Select Committee on Privileges	10 February 2004 (MoP 2001-04/1088)	30 March 2004 (MoP 2001-04/1248)	The committee found the Chair of the Standing Committee on Planning and Environment was in contempt of the Assembly as her actions with regard to the public distribution of a flyer in her name left no doubt as to the Chair's preferred outcome of an inquiry. The committee recommended that no further action be taken.

APPENDIX 16: COMMITTEE REPORTS ON MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE ASSEMBLY *CONTINUED*

Report title	Committee	Date matter referred	Date report tabled	Findings / recommendations
Examination of alleged misuse of position by a Committee Chair and unauthorised dissemination of committee proceedings	Select Committee on Privileges	1 July 2008 (MoP 2004-08/1570-1)	26 August 2008 (MoP 2004-08/1750)	The committee found that the Chair of the Standing Committee on Legal Affairs acted without authority when making a request to a Minister, but did not commit a contempt. The committee also found that a Member had revealed private deliberations of the committee to a Minister but that this did not meet the criteria for contempt. They also found that a Minister did not commit a contempt when conveying details about committee proceedings to the Speaker. The committee recommended that, as far as practicable, where a committee is requesting a person, paper or record, that request should be made at a properly constituted meeting of a committee exercising power under standing order 239 and that the Chair and members of the Standing Committee on Legal Affairs be reminded of appropriate practices and processes to be observed in relation to actions taken on behalf of the committee. The committee also recommended that regular training be provided to all committee secretaries on committee practice and procedures and that the Guide for Committee Secretaries be updated.

APPENDIX 17: DISALLOWANCE OF ENACTMENTS BY THE GOVERNOR-GENERAL

Pursuant to section 35 of the *Australian Capital Territory (Self-Government) Act 1988*

Name of Act	Date passed in Assembly	Date of notification on Legislation Register	Date of disallowance by the Governor-General
<i>Civil Unions Act 2006</i>	11 May 2006	19 May 2006	14 June 2006

APPENDIX 18: BROADCASTING GUIDELINES

Resolution agreed by the Assembly on 7 March 2002 (as amended 17 March 2005 and 23 June 2005)

That—

- (1) Pursuant to section 5 (2) of the *Legislative Assembly (Broadcasting) Act 2001*, the Legislative Assembly agrees to the following guidelines for the broadcasting of Assembly and committee proceedings:

Guidelines for Broadcasting the Public Proceedings of the Legislative Assembly and its Committees

These guidelines apply to the broadcasting of Legislative Assembly and committee proceedings to the public by radio, television, landline, the internet or any other electronic means.

The broadcasting of proceedings is only permitted subject to the conditions outlined below. Permission to broadcast proceedings shall be on the basis of an undertaking to observe these conditions: (See also *Legislative Assembly (Broadcasting) Act 2001*)

- (a) Persons or organisations intending to record for broadcast proceedings in the Legislative Assembly chamber must seek the approval of the Speaker in writing giving reasonable notice.
- (b) Persons or organisations intending to record for broadcast committee proceedings will be able to do so, unless a member of the committee or a witness objects.
- (c) A witness at a public hearing of a committee shall be advised in advance of appearing that the proceedings may be recorded for broadcast. A witness shall be given reasonable opportunity to object and to state the ground of the objection.
- (d) A person who has been granted access to record for broadcast the proceedings shall observe the following conditions:
 - (i) as a general principle, cameras should focus on the Member or witness with the call;
 - (ii) reaction shots of a Member are only permitted:
 - (A) if the Member is referred to in debate;
 - (B) if the Member has sought information which is being supplied by a Member having the call;
 - (iii) coverage of the Galleries is not permitted;
 - (iv) recording of protests or demonstrations is not permitted;
 - (v) panning along the Benches is not permitted;
 - (vi) close-up shots of Members' or witnesses' papers are not permitted;
 - (vii) camera positioning is not to interfere with the proceedings of the Assembly nor of the conduct of a public hearing of a committee of the Legislative Assembly;
 - (viii) the use of flash, other sources of additional light and motor driven cameras is not permitted;
 - (ix) any instruction from the Speaker/Presiding Member or their delegate is to be observed;

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- (e) Recording of public proceedings should be a fair and accurate record of events and must not be used for:
 - (i) the purpose of satire or ridicule;
 - (ii) advertising for or by political parties or electioneering; or
 - (iii) commercial advertising or sponsorship;
 - (f) A witness at a public hearing of a committee shall be advised in advance of appearing that the proceedings may be recorded and broadcast. A witness shall be given reasonable opportunity to object to the recording and/or broadcast of their evidence and state the ground of the objection;
 - (g) Persons/organisations wishing to broadcast or record for broadcast the public proceedings of the Legislative Assembly and its committees must complete the relevant form; and
 - (h) Persons/organisations intending to record visual images in the Chamber and/or Committee Rooms must seek the approval of the Speaker (in the case of the Assembly) or the Committee Chair (in the case of a Committee) in writing giving reasonable notice; and
- (2) pursuant to Section 6 of the *Legislative Assembly (Broadcasting) Act 2001*, the Legislative Assembly:
- (a) delegates to the Speaker the power to withdraw the right of a person to broadcast, or record for broadcast, public proceedings of the Legislative Assembly; and
 - (b) delegate to each committee formed by resolution or standing order of the Assembly the power to withdraw the right of a person to broadcast, or record for broadcast, public proceedings of that committee;
- (3) the Clerk is authorised to approve the transmission of public proceedings of the Assembly or a committee via landlines to public service agencies, subject to the agency agreeing to the following conditions:
- (a) they agree to provide, or arrange for the provision of, the telecommunication lines and other equipment necessary for the access (the access equipment);
 - (b) pay the costs and expenses of connecting the access equipment to the recording and transmission facilities of the Legislative Assembly;
 - (c) pay the costs and expenses of maintaining the access equipment;
 - (d) pay the costs and expenses of the Legislative Assembly secretariat in giving access to the proceedings by the access equipment;
 - (e) no broadcast of proceedings may be made for:
 - (i) the purpose of satire or ridicule;
 - (ii) advertising for or by political parties or electioneering; nor
 - (iii) commercial advertising or sponsorship;
- (f) The relevant agency seek the approval of the Clerk to gain access to the recording and transmission facilities, stating the number of employees that require access to the broadcast.

APPENDIX 19: CITIZENS' RIGHT OF REPLY**Resolution agreed by the Assembly on 4 May 1995 (as amended 6 March 2008)**

- (1) Where a person or corporation who has been referred to by name, or in such a way as to be readily identified in the Assembly, makes a submission in writing to the Speaker:
 - (a) claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and
 - (b) requesting that the person or corporation be able to incorporate an appropriate response in the parliamentary record;if the Speaker is satisfied:
 - (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Standing Committee on Administration and Procedure;
 - (d) that it is practicable for the Standing Committee on Administration and Procedure to consider the submission under this resolution; and
 - (e) that the submission has been received within three months of the making of the statement, unless there are exceptional circumstances in which case the Speaker may allow the submission to be received;the Speaker shall refer the submission to that Committee.
- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Assembly.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person or corporation who made the submission and any Member who referred in the Assembly to that person or corporation.
- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Assembly.
- (6) In considering a submission under this resolution and reporting to the Assembly the Committee shall not consider or judge the truth of any statements made in the Assembly or of the submission.
- (7) In its report to the Assembly on a submission under this resolution, the Committee may make either of the following recommendations:

-
- (a) that no further action be taken by the Assembly or by the Committee in relation to the submission; or
 - (b) that a response by the person or corporation who made the submission, in terms specified in the report and agreed to by the person or corporation and the Committee, be published by the Assembly or incorporated in Hansard;
- and shall not make any other recommendations.
- (8) A document presented to the Assembly under paragraph (5) or (7):
 - (a) in the case of a response by a person or corporation who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
 - (b) shall not contain any matter the publication of which would have the effect of:
 - (i) unreasonably adversely affecting or injuring a person or corporation, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person or corporation.
 - (9) A corporation making a submission under this resolution is required to make it under their common seal.
 - (10) This resolution has effect from the commencement of the Third Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

APPENDIX 20: CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Resolution agreed by the Assembly on 25 August 2005 (as amended 16 August 2006)

That—

(1) Preamble

Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society, and maintain their loyalty to the Commonwealth of Australia and the people of the Australian Capital Territory.

In so doing, Members agree to respect and uphold the law, not to discredit the institution of Parliament, and maintain their commitment to the public good through personal honesty and integrity in all their dealings.

(2) Duties as Members of the Assembly

Members should avoid any decision or action which may depreciate the reputation of the Assembly and endeavour to reasonably adhere to the Assembly's code of conduct to ensure that their personal conduct meets generally accepted standards and does not discredit or call into question their office or the Assembly.

Members acknowledge that they have an obligation to electors to make decisions on their behalf and as such place emphasis on their dedication to this obligation. As elected representatives, Members will act honestly in all their dealings to maintain the public trust placed in them.

Code of Conduct

(3) Conflict of interest

Members have an obligation to use the influence conferred upon them in the public's interest and not for personal gain.

Notwithstanding the provisions set out in section 15 of the *Australian Capital Territory (Self-Government) Act 1988* and standing order 156 of the Legislative Assembly, Members are individually responsible for preventing personal conflicts of interest or the perception of a conflict of interest, and must endeavour to arrange their private affairs to prevent such conflicts arising or take all reasonable steps to resolve any conflict that does arise.

- (a) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private interest or will improperly and dishonestly further the private interest of another person.
- (b) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or a broad class of persons.

(4) Disclosure of pecuniary interests

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Members' actions and decisions should be transparent and bolster public confidence in the Assembly and the legislative process. In accordance with

this transparency, Members are required to disclose their pecuniary interests pursuant to the resolution of the Assembly "Declaration of Private Interests of Members" agreed to on 7 April 1992 (as amended 27 August 1998 and 17 March 2005).

(5) Receipt of any gifts, payments, fees or rewards

Members must register all gifts, payments, fees or rewards valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources. This does not include gifts, payments, fees or rewards received by Members, the Member's spouse, immediate family or personal friends in a purely personal capacity, unless it may pose a conflict of interest. Registration should be made in accordance with the Member's Statement of Registrable Interests.

(6) Advocacy/bribery

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1988*, Members must not solicit, accept or receive any remuneration, benefit or profit in exchange for services rendered in the Assembly or one of its committees other than the remuneration and allowances provided for pursuant to section 73 of the Act.

(7) Use of confidential information

Members are reminded of their obligations pursuant to the standing orders concerning the publication of confidential information.

Members in the course of their duties often are also the recipients of information which is either confidential or unavailable to the general public. Members are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised.

Members are not to misuse any confidential information received, particularly for personal gain or the personal gain of others.

(8) Conduct as employers

Members will observe the obligations placed on them as employers with respect to the terms and conditions of those who work for them. Members should extend these obligations to contractors and consultants (however employed or recruited). Members need to be aware of the requirements of the following policies: occupational health and safety; discrimination, harassment and bullying; equal employment opportunity; acceptable use of information technology and any other relevant policies and legislation.

Members should not appoint close relatives to positions in their own offices or any other place of employment where the Member's approval is required.

Members must ensure that their staff are aware of and abide by the relevant codes of conduct applicable to Members' staff.

Members must ensure that, where relevant, their staff also comply with the Members' Code of Conduct and that they are aware that they are obliged to support the Member's compliance with the code.

(9) Conduct toward Assembly staff

It is expected that Members and their staff will extend professional courtesy and respect to all staff of the Assembly. Members should ensure that through their own conduct and that of their staff, reasonable employment conditions for all building occupants are maintained.

If problems or concerns with the performance or conduct of an Assembly staff member arise, these should be dealt with through appropriate policies and procedures.

(10) Use of entitlements

Members have a personal duty to ensure that entitlements and allowances of office pursuant to Remuneration Tribunal Determinations and as summarised in the Members' Guide are used appropriately in the service of the people of the Australian Capital Territory and not for personal gain.

Members should familiarise themselves with the entitlements available and must ensure the accuracy of all claims made in accordance with the guidelines outlined in the Members' Guide. Members should be aware that items purchased using a Member's allowance remain the property of the Assembly.

(11) Use of public resources/property or services

Members must ensure that the resources provided to them at public expense as Members of the Legislative Assembly for the Australian Capital Territory, are only used for legitimate parliamentary and electorate purposes. Members must not misuse or permit the misuse by any other person or body of these resources.

Members shall not misuse monies allocated for official purposes.

(12) Continuing support

This code of conduct has been established to assist Members as they serve and represent the people of the Australian Capital Territory. The Legislative Assembly respectfully requests that former Members support the spirit of this code as private citizens.

This resolution has effect from the date of its passage in the Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

APPENDIX 21: DECLARATION OF PRIVATE INTERESTS OF MEMBERS**Resolution agreed by the Assembly on 7 April 1992 (amended 27 August 1998, 17 March 2005 and 6 March 2008)**

That—

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly on 17 March 2005 and shall notify any alteration of those interests to the Clerk within 28 days of that alteration occurring;
- (2) under the general direction of the Speaker, the Clerk shall store the declarations of private interests made by each Member in a secure manner and shall include all declarations made by each Member. When a Member vacates his or her seat and is not re-elected at the next general election for the Assembly, the Clerk shall destroy all declarations made by that Member in his/her custody;
- (3) any declaration stored by the Clerk be made available for perusal to any person on request subject to the Member concerned being advised by the Speaker of the name of the person to whom the information is made available and the reasons why it has been requested, in each case; and
- (4) that this resolution has effect from the commencement of the Second Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.



Legislative Assembly for the Australian Capital Territory
Register of Members' Interests

Statement of Registrable Interests

Particulars of my private interests and those of my immediate family of which I am aware are set out below.

This information is supplied subject to my being advised by the Speaker of the ACT Legislative Assembly of the name of all persons to whom the information is made available and the reasons why it was requested in each case.

Signature:

Name:

Date:

It is suggested that the *Explanatory Notes* accompanying each section be read before completing.

Revised 17 March 2005

Legislative Assembly for the Australian Capital Territory
Register of Members' Interests

Explanatory Note

General

The purpose of the Statement of Registrable Interests form is to place on the public record Members' and Ministers' interests which may conflict, or may be seen to conflict, with their public duty.

No form can cover all possible circumstances and Members and Ministers should consequently bear in mind the purpose and spirit of the return in deciding which matters should be registered.

Ministers should complete a Statement in their capacity as a Minister and another Statement in their capacity as a Member of the ACT Legislative Assembly. These guidelines apply to both documents, and references made to the "Member" should be read as applying also to the Minister.

Note: There is the need to include under all headings interests to the extent to which the Member is aware of them, of the Member's spouse (including de facto spouse), and any who are wholly or mainly dependent on the Member for support.

When interests are held jointly with a spouse or dependants, the interests need to be included only as interests of the Member with an appropriate notation such as "*jointly owned with spouse*".

Where interests could be included under more than one heading, it is suggested they need be included only under the most specific heading unless two aspects need to be disclosed (e.g. real estate, plus a mortgage liability on that real estate).

Statement of Registrable Interests

1. Shareholdings in public and private companies (including holding companies) indicating the name of the company or companies

	Name of company (including holding and subsidiary companies if applicable)
Self	
Spouse	
Dependants	

Explanatory Notes:

- Notify any relevant interest in any shares (as defined in Corporations Law) including equitable as well as legal interest, whether held directly or indirectly, which enables a Member, the Member's spouse or dependants to exercise control over the right to vote or dispose of those shares.
- Where interests are held in a private holding company (i.e. a proprietary company formed for the purpose of investing in subsidiary companies) all such subsidiary companies, and any subsidiary companies held by those subsidiary companies, should be named.

2. Family and business trust and nominee companies

i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest

	Name of Trust / nominee company	Nature of Operation	Beneficial interest
Self			
Spouse			
Dependants			

ii) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest.

	Name of Trust / Nominee company	Nature of operation	Beneficial interest
Self			
Spouse			
Dependants			

Explanatory Notes:

Family and business trust and nominee companies

- (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
- (ii) in which the Member, the Member's spouse, or dependant is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Member, the Member's spouse or dependant), indicating the name of the trust, the nature of its operation and the beneficiary of the trust.

Note: That both beneficial interest and trustee responsibilities (except as trustee of a deceased estate where neither the Member, the Member's spouse nor dependants are beneficiaries of the estate) should be specified.

3. Real estate, including the location and the purpose for which it is owned

	Location	Purpose for which owned
Self		
Spouse		
Dependants		

Explanatory Note:

- Members should specify the precise location of the property and purpose for which the property is owned (members are not required to list the address of their principal place of residence).

4. Registered directorships of companies

	Name of company	Activities of company
Self		
Spouse		
Dependants		

Explanatory Note:

- Indicate the name of the Company and the activities of the Company.

5. Partnerships, indicating the nature of the interests and the activities of the partnerships

	Name	Nature of Interests	Activities of Partnership
Self			
Spouse			
Dependants			

Explanatory Notes:

- Under “*nature of the interests*” specify level of current involvement in partnerships (e.g. “financial (non-working partner), consultant”, etc).
- Specify the purpose or operations of the partnerships (e.g. investment, consultancy, etc).

6. Liabilities, indicating the nature of the liability and the creditor concerned

	Nature of Liability	Creditor
Self		
Spouse		
Dependants		

Explanatory Notes:

- Include all liabilities (e.g. mortgages, hire-purchase arrangements, personal loans and overdrafts).
- Liabilities incurred on a department store account need not be disclosed.

- Liabilities incurred on a credit card need not be disclosed unless the credit card has been used to obtain a cash advance in excess of \$5,000 and the advance is outstanding for a period in excess of 60 days.

7. The nature of any bonds, debentures and like investments

	Type of investment	Body in which investment is held
Self		
Spouse		
Dependants		

Explanatory Note:

- “Investments” mean all investments including placement of monies, which attract interest or other benefits.

8. Savings or investment accounts, including their nature and the name of the bank or other institutions concerned

	Nature of Account	Name of bank / institution
Self		
Spouse		
Dependants		

Explanatory Note:

- Ordinary, non-interest-bearing cheque accounts should not be included, but savings accounts and investment accounts should be included.

9. The nature of other assets (excluding household and personal effects) each valued at over \$5,000

	Nature of other assets
Self	
Spouse	
Dependants	

Explanatory Notes:

- List all personal possessions of value other than ordinary household or personal effects.
- Motor vehicles for personal use need not to be included.
- Collections should be included.
- Items which might be listed under more specific headings (e.g. investments gifts received, etc) need not be included here.
- Private life assurance policies should be included but Assembly superannuation entitlements need not be included.
- As a general rule of thumb, items of under \$5,000 value may not require inclusion under this heading unless they are of a nature which might be sensitive to implications of conflict of interest.

10. The nature of other substantial sources of income

	Nature of income
Self	
Spouse	
Dependants	

Explanatory Notes:

- The Member's own salary and allowances as a Member of the Assembly need not be included.
- Include a spouse's income from employment or a business undertaking and any income received by the Member, the Member's spouse or dependants from investments, annuity arrangements, pensions or under governmental assistance schemes (but not including family allowances). There is no need to show the actual amount received. A simple reference to "*income for investments set out above*" is sufficient for investment income.

Note: No minimum income is specified as notifiable and Members will need to use their discretion in this regard. As a general rule of thumb, income over \$1,000 per annum might be notifiable but smaller amounts from sources which might, in the judgement of the Member, involve sensitivity or be capable of misconstruction should be included.

- 11.** Gifts valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources provided that a gift received by a Member, the Member's spouse or dependants from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist.

	Details of gifts
Self	
Spouse	
Dependants	

Explanatory Note:

- Gifts received by Members and their families from family members or personal friends in a purely personal capacity need not be disclosed unless the Member judges an appearance of conflict of interest may be seen to exist.

- 12.** Any sponsored travel or hospitality received

	Details of travel / hospitality
Self	
Spouse	
Dependants	

Explanatory Notes:

- “*Sponsored travel*” means any free or concessional travel undertaken by the Member, the Member's spouse or dependants sponsored wholly or partly by a person, organisation, business or interest group or foreign Government or its representative. It does not include the travel entitlements received by a Member, the Member's spouse or dependants under any determination by the Remuneration Tribunal nor travel undertaken as a Member of an official Assembly delegation. The purpose for which the travel was undertaken should be shown.
- “*Hospitality*” refers to free or concessional accommodation provided to the Members, the Member's spouse or dependants wholly or partly by any person, organisation, business or interest group or foreign Government or its representative. It includes the provision of free or concessional meals provided as part of an accommodation arrangement but does not include hospitality provided in a purely social way by friends or colleagues. Entertainment received from concerned constituents and interest groups legitimately exercising their powers of political persuasion, explanation, or argument on the merits of an issue to further a particular cause or concern need not be included. There is also no need to include entertainment received in common with significant numbers of other Members or persons such as a reception or dinner hosted by a High Commissioner or Ambassador.

In all cases in deciding whether travel or hospitality should be included in a return, a Member should exercise his or her judgement having regard to any appearance of conflict of interest that may arise.

13. Membership of any organisation

	Names of Organisations
Self	
Spouse	
Dependants	

Explanatory Note:

Membership of all organisations should be disclosed. Examples might include unions, political organisations, business groups, community organisations, lobby groups and sporting or other clubs.

14. Any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise

	Nature of Interest
Self	
Spouse	
Dependants	

Explanatory Note:

- List any other interest that, in the opinion of the Member, holds the potential for a real or apparent conflict of interest with a Member's public duties to arise.

**NOTIFICATION OF ALTERATION(S) OF INTERESTS
SINCE MOST RECENT DECLARATION**

The following alteration(s) of interests have occurred since my most recent declaration (Members can also indicate Assembly accrued Frequent Flier points earned using this form).

ADDITION

<u>Item</u>	<u>Details</u>

DELETION

<u>Item</u>	<u>Details</u>

Signature **Date.....**

APPENDIX 22: BILLS FOR ENTRENCHING LAWS

Proportional Representation (Hare-Clark) Entrenchment Bill 1994

Only one entrenching law has been enacted in the Territory to date, the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*. The particular provisions, insofar as they focus on the entrenchment of the Hare-Clark electoral system, are discussed in Chapter 3. The entrenchment provisions in the Bill for the Act as agreed by the Assembly provide that:

- the principal Act (or any amendment or repeal of the Act) has no effect unless it is passed by –
 - at least a 2/3 majority of the members of the Legislative Assembly; AND
 - a majority of the electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*;
- a law to which the principal Act applies (by virtue of section 4¹) has no effect unless it is passed by –
 - the Legislative Assembly and passed by a majority of electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*; OR
 - at least a 2/3 majority of the members of the Legislative Assembly.

The 'hurdles' therefore differ – to be effective, *the principle Act or any amendment thereto*, requires approval of at least a 2/3 majority of members in the Assembly and a majority of the electors at a referendum, whilst *a law to which the Act applies* requires, to be effective, approval of the Assembly and a majority of the electors at a referendum or at least a 2/3 majority of members in the Assembly.

The Bill was presented on 30 November 1994² and agreed to, with amendments, on 8 December 1994. The question - That this Bill, as amended be agreed to – having been declared in favour of the 'Ayes' and no vote being called for, the Speaker drew attention to the requirement that the Bill must be passed by a special majority of members and directed that a vote be taken. The result of the vote being 'Ayes' 16 and 'Noes' one, the question was resolved in the affirmative by the special majority required.³

The Bill was initially certified by the Clerk as having passed the Assembly and transmitted to the Electoral Commissioner by covering letter on 22 December 1994 for submission to a referendum of the electors of the Territory.

On 16 March 1995 the Electoral Commissioner advised the Clerk that, on 18 February 1995,⁴ the Bill had been submitted to a referendum of the electors of the Territory in accordance with the provisions of the *Referendum (Machinery Provisions) Act 1994* and he had that day officially set out the number of votes cast in the election and had declared the result of the referendum by notice published in the Gazette. The notice⁵ set out the number of votes counted in the referendum and declared that, according to the results of the referendum as set out, a majority of the electors entitled to vote at the referendum had approved the entrenching law.⁶

1 Section 4 entrenches certain principles of the Hare-Clark electoral system and also provides compulsory voting and provides that the Act applies to any law made pursuant to a power at any time vested in the Legislative Assembly to make a law with respect to the number of members of the Assembly.

2 MoP 1992-94/789.

3 MoP 1992-94/824-6.

4 The general election for the Third Assembly was held on that day.

5 In accordance with the provisions of paragraph 14(4)(b) of the Act.

6 Australian Capital Territory Gazette, Special Gazette No. S59, Thursday, 16 March 1995.

Community Referendum Laws Entrenchment Bill 1995

The Bill for an entrenching law that was unsuccessful was the Community Referendum Laws Entrenchment Bill 1995 (a Bill for an Act to entrench the *Community Referendum Act 1995* and laws made after community referendums)⁷ was presented in the Assembly by the Attorney-General on 14 December 1995.⁸ However, consideration of the Bill did not proceed for 12 months as the proposed primary Act to which the proposed entrenching law was to apply, the Community Referendum Bill 1995, was negated later that day. The entrenching Bill was not further considered for two years and remained on the Notice Paper until 4 December 1997 when, the Community Referendum Bill 1996⁹ having been negated at the agreement in principle stage, the order of the day for the resumption of the debate on the question that the entrenchment Bill be agreed to in principle was put and negated.¹⁰

PROPOSED ENACTMENTS TO WHICH ENTRENCHING LAWS APPLY

Proportional Representation (Hare-Clark) Entrenchment Amendment Bill 2001

The Proportional Representation (Hare-Clark) Entrenchment Amendment Bill 2001 (A Bill for an Act to amend the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*) was presented in the Assembly by a cross bench member on 14 February 2001.¹¹ The Bill proposed to insert into the Proportional Representation Entrenchment Act the provision that any law that relates to the day on which an ordinary election of members is to be held was also entrenched.¹² As an amendment of the principal Act, the Bill was caught by the provisions of subsection 5 (1) of that Act.¹³

The Bill was debated in the Assembly on 2 May 2001 and, though the question, 'That the Bill be agreed to', was agreed to by a majority of members (7 members voting with the 'Ayes', 6 with the 'Noes'), the Bill did not progress further. The Speaker drew the attention of the Assembly to the requirement of paragraph 5(1)(a) of the Proportional Representation (Hare-Clark) Entrenchment Act that any amendment or repeal of that Act had no effect unless it was passed by at least a two-thirds majority of Members of the Legislative Assembly.

Electoral (Entrenched Provisions) Amendment Bill 2001

The Electoral (Entrenched Provisions) Amendment Bill 2001 (A Bill for an Act to amend the *Electoral Act 1992*) was presented in the Assembly on 29 March 2001. The Bill proposed to amend the *Electoral Act 1992* to increase the number of combinations of different ballot

7 The Bill proposed to entrench the proposed community Referendum Act and the laws made under that Act. A law that amended, repealed or was inconsistent with the proposed Community Referendum Act would have to be passed by at least two-thirds of the Assembly or by a majority of voters voting at a referendum. The same restrictions were to apply to laws that amended, repealed or were inconsistent with the laws made by people through the proposed referendum process for the first 12 months those laws were in operation. See Assembly Debates (14.12.1995) 3006.

8 MoP 1995-97/240. The 'special procedures for making enactments' clause contained in the Bill mirrored those contained in the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.

9 Presented on 27 June 1996 MoP 1995-97/389.

10 MoP 1995-97/931.

11 MoP 1998-2001/1159.

12 For the background to this proposal see Assembly Debates (14.2.2001) 89-9. The Bill sought to amend sections 4 and 5 of the entrenchment Act and to insert new sections into the entrenchment Act. Again, the 'special procedures for making enactments' clause contained in the amending Bill were the same as those already contained in the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.

13 That is, at least a two-thirds majority of the members of the Legislative Assembly; AND a majority of the electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*.

papers that are to be printed for the Legislative Assembly election under the Robson Rotation method.

The Bill was a law to which the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* applied by virtue of section 4 of that Act¹⁴. Changes to the Robson Rotation tables set out in the Bill were inconsistent with Schedule 2 of the Electoral Act as in force on 1 December 1994, consequently the Bill could not take effect unless it was passed by at least 2/3 of the members of the Assembly or a majority of the members of the Assembly and a majority of electors at a referendum.

The Assembly considered the Bill on 15 June 2001. The Bill having been agreed to in principle and leave having been given to dispense with the detail stage, the Speaker advised the Assembly that the Bill was a proposed law to which the *Proportional Representation (Hare-Clark) Entrenchment Act 1995* applied by virtue of section 4 of that Act and that it could not take effect unless it was passed by at least a 2/3 majority of the members of the Assembly or by a majority of members of the Assembly and a majority of electors at a referendum. The Speaker therefore directed that there be a call of the Assembly in accordance with standing orders 158 to 162. The question was resolved in the affirmative by the special majority required, the vote being Ayes, 15, Noes, 0.¹⁵

14 Pursuant to the provisions of subsection 5(2) of the principal Act.

15 MoP 2001-2004/ 1433.

APPENDIX 23: AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988**Australian Capital Territory
(Self-Government) Act 1988****Act No. 106 of 1988 as amended**

This compilation was prepared on 9 October 2006
taking into account amendments up to Act No. 109 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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An Act to provide for the Government of the Australian Capital Territory, and for related purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Australian Capital Territory (Self-Government) Act 1988*.

2 Commencement [see Note 1]

- (1) Section 1 and this section commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

3 Interpretation

In this Act, unless the contrary intention appears:

Assembly means the Legislative Assembly for the Australian Capital Territory established by section 8.

Attorney-General of the Territory means the Minister who has the responsibility for the administration of justice in the Territory.

casual vacancy means a vacancy in the membership of the Assembly occurring otherwise than because of section 10 or 16.

Chief Magistrate means the Chief Magistrate appointed under the *Magistrates Court Act 1930* of the Territory.

Chief Minister means the Chief Minister elected under section 40.

commencing day means the day on which section 22 commences.

Commissioner means a Commissioner appointed under section 16.

Commonwealth Gazette means the *Commonwealth of Australia Gazette*.

Commonwealth Minister means the Minister of State administering this Act, and has the additional meaning given by section 19A of the *Acts Interpretation Act 1901*.

Deputy Chief Minister means the Deputy Chief Minister appointed under section 44.

Deputy Presiding Officer means the person (if any) elected under subsection 21(2).

elector of the Territory means a person who is entitled to vote at a general election.

enactment means:

- (a) a law (however described or entitled) made by the Assembly under this Act; or
- (b) a law, or part of a law, that is an enactment because of section 34.

Executive means the Australian Capital Territory Executive established by section 36.

general election means a general election of members of the Assembly.

judicial commission means a body or authority established by the Assembly having the function (whether alone or together with another body or authority of the Territory) of investigating, and reporting to the Attorney-General of the Territory on, complaints concerning the conduct or the physical or mental capacity of a judicial officer.

judicial officer means:

- (a) the Chief Justice of the Supreme Court; or
- (b) a Judge (other than an additional Judge) of the Supreme Court; or
- (c) the Master of the Supreme Court; or
- (d) the Chief Magistrate; or
- (e) a Magistrate; or
- (f) any other judicial office holder or member of a tribunal specified in an enactment relating to the establishment of a judicial commission for the Territory.

Magistrate means a Magistrate (other than a Special Magistrate) appointed under the *Magistrates Court Act 1930* of the Territory.

meeting means a meeting of the Assembly.

member means a member of the Assembly.

Minister means the Chief Minister or a Minister appointed under section 41.

Presiding Officer means the officer elected under section 11, by whatever title determined by the Assembly.

public money of the Territory means revenues, loans and other money received by the Territory.

resolution of no confidence means a resolution passed in accordance with section 19.

subordinate law means an instrument of a legislative nature (including a regulation, rule or by-law) made under an enactment.

Supreme Court means the Supreme Court of the Territory existing under the *Supreme Court Act 1933* of the Territory.

Territory:

- (a) when used in a geographical sense, means the Australian Capital Territory; and
- (b) when used in any other sense, means the body politic established by section 7.

Territory authority:

- (a) except in Part VII—means a body, whether corporate or not:
 - (i) established by or under enactment; or
 - (ii) otherwise established by the Executive; or
- (b) in Part VII—means a body corporate established for a public purpose by or under enactment and having power to borrow money.

Territory Gazette means the *Australian Capital Territory Gazette*.

4 Meaning of day on which election held

A reference in this Act to the day on which an election has been, is, or is to be, held, is a reference to the polling day for that election.

5 Meaning of day on which result of election declared

Where the results of a general election are declared on different days, a reference in this Act to the day on which the result of the election is declared is a reference to the last of those days.

6 Powers includes functions and duties

In this Act, unless the contrary intention appears:

- (a) a reference to powers includes a reference to functions or duties; and
- (b) a reference to the exercise of powers includes a reference to the performance of functions or duties.

Part II—Australian Capital Territory

7 Establishment of body politic

The Australian Capital Territory is established as a body politic under the Crown by the name of the Australian Capital Territory.

Part III—Legislative Assembly

Division 1—Constitution of Assembly

8 Legislative Assembly

- (1) There shall be a Legislative Assembly for the Australian Capital Territory.
- (2) Subject to subsection (3), the Assembly shall consist of 17 members.
- (3) The regulations may fix a different number of members for the purpose of subsection (2), but regulations shall not be made for that purpose except in accordance with a resolution passed by the Assembly.

9 Oath or Affirmation of Allegiance

- (1) A member shall, before taking his or her seat, make and subscribe an oath or affirmation in accordance with the form in Schedule 1.
- (2) The oath or affirmation shall be made before the Chief Justice of the Supreme Court of the Australian Capital Territory or some person authorised by the Chief Justice.
- (3) This section has effect subject to any enactment.

10 Term of office of member

The term of office of a member duly elected begins at the end of the day on which the election of the member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.

11 Presiding Officer of Assembly

- (1) At the first meeting of the Assembly after a general election, the members present shall, before any other business, elect one of their number to be the Presiding Officer of the Assembly.
- (2) The title of the Presiding Officer shall be determined by the Assembly.
- (3) If there is a vacancy in the office of Presiding Officer (not because of a dissolution of the Assembly), then:
 - (a) if the vacancy happens at a meeting, the members present shall, before any further business, elect one of their number to be the Presiding Officer; or
 - (b) if the vacancy happens at any other time, at the next meeting the members present shall, before any other business, elect one of their number to be the Presiding Officer.
- (4) This section does not prevent the Assembly from appointing a person to preside at meetings in the absence of the Presiding Officer, but a person holding office as a Minister shall not be so appointed.

12 Vacation of office by Presiding Officer

- (1) A person holding office as Presiding Officer vacates the office:

- (a) immediately before a Presiding Officer is elected at the first meeting of the Assembly after a general election;
- (b) when the person resigns office as Presiding Officer;
- (c) when the person ceases to be a member of the Assembly (not because of a general election); or
- (d) when an absolute majority of the members of the Assembly vote in favour of the person's removal from office.

(2) A person who has vacated the office of Presiding Officer may be re-elected.

13 Resignation of members

- (1) A member may resign office as a member by written notice delivered to a person authorised by the Assembly to receive it.
- (2) The Presiding Officer may resign office as Presiding Officer by written notice delivered to a person authorised by the Assembly to receive it.
- (3) The person receiving a notice of resignation must arrange for it to be laid before the Assembly as soon as practicable after receiving that notice.

14 Disqualification of member

- (1) A member vacates office if the member:
 - (a) at any time after the beginning of the first meeting of the Assembly after a general election, is not qualified to take a seat as a member;
 - (b) is absent without permission of the Assembly from:
 - (i) such number of consecutive meetings as is specified by enactment for the purposes of this subparagraph; or
 - (ii) if no such enactment is in force—4 consecutive meetings of the Assembly; or
 - (c) takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73.
- (2) A person who has vacated an office of member may be re-elected.
- (3) Paragraph (1)(c) does not apply to a superannuation scheme:
 - (a) that is established by or under an enactment; and
 - (b) under which any or all of the following benefits are provided:
 - (i) benefits for a person upon ceasing to hold an office of member;
 - (ii) benefits for a person who is or was a member in the event of the permanent or temporary disability of the person;
 - (iii) benefits for dependants of a person who is or was a member in the event of the death of the person.
- (4) In subsection (3):

dependant has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

15 Conflict of interest

- (1) A member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part

in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

- (2) A question concerning the application of subsection (1) shall be decided by the Assembly, and a contravention of that subsection does not invalidate anything done by the Assembly.

16 Dissolution of Assembly by Governor-General

- (1) If, in the opinion of the Governor-General, the Assembly:
 - (a) is incapable of effectively performing its functions; or
 - (b) is conducting its affairs in a grossly improper manner;the Governor-General may dissolve the Assembly.
- (2) Where the Assembly is dissolved:
 - (a) the Governor-General:
 - (i) shall appoint a Commissioner for the purposes of this section; and
 - (ii) may, at any time, give directions to the Commissioner about the exercise of the powers of the Executive; and
 - (b) a general election shall be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*, being not earlier than 36 days, nor later than 90 days, after the dissolution of the Assembly.
- (3) The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.
- (4) The Commissioner:
 - (a) shall exercise all the powers of the Executive in accordance with any directions given by the Governor-General; and
 - (b) if it is necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment—may do so with the authority of the Governor-General.
- (5) The Commissioner shall be paid such remuneration and allowances as are determined by the Governor-General.
- (6) Unless sooner terminated by the Governor-General, the term of office of the Commissioner ceases at the beginning of the first meeting of the Assembly held after the next general election.
- (7) The powers of the Governor-General under this section shall be exercised by Proclamation.
- (8) The Commonwealth Minister shall cause a statement of the reasons for the dissolution to be:
 - (a) published in the *Commonwealth Gazette* as soon as practicable after the day of the dissolution; and
 - (b) laid before each House of the Parliament within 15 sitting days of that House after the day of the dissolution.
- (9) A person holding office, or acting as, Chief Executive of the Chief Minister's Department must not be appointed as a Commissioner under this section.

- (10) If the name of the office of Chief Executive, or of the Chief Minister's Department, is changed, a reference in subsection (9) to that office or Department is to be taken to be a reference to the office or Department under the new name.

Division 2—Procedure of Assembly

17 Times of meetings

- (1) Subject to subsection (3), the Assembly shall meet:
 - (a) within 7 days after the result of a general election is declared; and
 - (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.
- (2) The Presiding Officer shall, by notice published in the *Territory Gazette*, convene a meeting when it is necessary to do so to comply with subsection (1).
- (3) If the Presiding Officer is required by subsection (2) to convene a meeting within a particular period and:
 - (a) the office of Presiding Officer is vacant, whether or not a person has been previously elected to the office; or
 - (b) the Presiding Officer is unable, or refuses or fails, to convene a meeting within that period;the Commonwealth Minister shall, by notice published in the *Commonwealth Gazette*, convene the meeting within that period or, if that is not practicable, within 7 days after that period.

18 Procedure at meetings

- (1) At a meeting of the Assembly, a quorum is formed by an absolute majority of the members.
- (2) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting, unless a special majority is required by the standing rules and orders.
- (3) The member presiding at a meeting has a deliberative vote only, and, if the votes on a question are equal, the question shall pass in the negative.
- (4) Subject to subsection 15(1) and to the standing rules and orders, the Presiding Officer shall preside at all meetings of the Assembly at which he or she is present.

19 Resolution of no confidence in Chief Minister

A resolution of no confidence in the Chief Minister has no effect unless:

- (a) it affirms a motion that is expressed to be a motion of no confidence in the Chief Minister;
- (b) at least one week's notice of the motion has been given in accordance with the standing rules and orders; and
- (c) the resolution is passed by at least the number of members necessary to be a quorum.

20 Minutes of meetings

- (1) The Assembly shall cause minutes to be kept of meetings.
- (2) A copy of any minutes so kept shall, on request made by a person:
 - (a) be made available for inspection by the person; or

(b) be supplied to the person on payment of such fee (if any) as is fixed by or under enactment.

(3) Subsection (2) does not apply to minutes of a committee meeting held in private.

21 Standing rules and orders

(1) Subject to this Act, the Assembly may make standing rules and orders with respect to the conduct of business.

(2) Without limiting the generality of subsection (1), standing rules and orders may be made:

- (a) for the election of a deputy (however titled) to the Presiding Officer; and
- (b) conferring on that deputy such powers as are specified in the rules and orders (including powers of the Presiding Officer under this Act).

Part IV—Powers of Legislative Assembly

22 Power of Assembly to make laws

- (1) Subject to this Part and Part VA, the Assembly has power to make laws for the peace, order and good government of the Territory.
- (2) The power to make laws extends to the power to make laws with respect to the exercise of powers by the Executive.

23 Matters excluded from power to make laws

- (1) Subject to this section, the Assembly has no power to make laws with respect to:
 - (a) the acquisition of property otherwise than on just terms;
 - (c) the provision by the Australian Federal Police of police services in relation to the Territory;
 - (d) the raising or maintaining of any naval, military or air force;
 - (e) the coining of money;
 - (g) the classification of materials for the purposes of censorship.
- (1A) The Assembly has no power to make laws permitting or having the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.
- (1B) The Assembly does have power to make laws with respect to:
 - (a) the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient; and
 - (b) medical treatment in the provision of palliative care to a dying patient, but not so as to permit the intentional killing of the patient; and
 - (c) the appointment of an agent by a patient who is authorised to make decisions about the withdrawal or withholding of treatment; and
 - (d) the repealing of legal sanctions against attempted suicide.
- (2) The regulations may omit any of the paragraphs in subsection (1) or reduce the scope of any of those paragraphs.

24 Powers, privileges and immunities of Assembly

- (1) In this section:

powers includes privileges and immunities, but does not include legislative powers.
- (2) Without limiting the generality of section 22, the Assembly may also make laws:
 - (a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives or of its members or committees; and
 - (b) providing for the manner in which powers so declared may be exercised or upheld.
- (3) Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives and its members and committees.

- (4) Nothing in this section empowers the Assembly to imprison or fine a person.

25 Notification of enactment

- (1) Where a proposed law has been passed by the Assembly, the Chief Minister, or another person authorised by enactment to do so, shall publish in the *Territory Gazette* a notice of the proposed law having been passed and of the place or places where copies of the law can be purchased.
- (2) Where a proposed law is notified in the *Territory Gazette*, it takes effect upon the day of notification or, if the proposed law otherwise provides, as so provided.
- (3) At the time of publication of the notice under subsection (1) of the passing of a proposed law or as soon as practicable thereafter, copies of the law shall be made available for purchase at the place, or at each of the places, specified in the notice.
- (4) Where, on the day of publication of the notice under subsection (1) of the passing of a proposed law, there are no copies of the law available for purchase at the place, or at one or more of the places, specified in the notice, the Chief Minister shall cause to be laid before the Assembly, within 15 sitting days of the Assembly after that day, a statement that copies of the law were not so available and the reason why they were not so available.
- (5) Failure to comply with the requirements of subsection (3) or (4) in relation to a proposed law shall not be taken to constitute a failure to comply with subsection (1).
- (6) Subsections (1) to (5) (inclusive) cease to have effect on and after the commencement of an enactment providing for:
- (a) the publication of a notice of the passing of a proposed law by the Assembly otherwise than under subsection (1); and
 - (b) the commencement of such a proposed law.

26 Special procedures for making certain enactments

- (1) The Assembly may pass a law (in this section called the **entrenching law**) prescribing restrictions on the manner and form of making particular enactments (which may include enactments amending or repealing the entrenching law).
- (2) The entrenching law shall be submitted to a referendum of the electors of the Territory as provided by enactment.
- (3) If a majority of the electors approve the entrenching law, it takes effect as provided by section 25.
- (4) While the entrenching law is in force, an enactment to which it applies has no effect unless made in accordance with the entrenching law.
- (5) If an entrenching law includes the requirement (however expressed) that an enactment or enactments be passed by a specified majority of the members (in this subsection called a **special majority**), the same requirement shall be taken to apply to the entrenching law, so that it must be passed by:
- (a) that special majority; or
 - (b) if it specifies different special majorities for different enactments—the highest of those special majorities.
- (6) If an entrenching law passed by the Assembly:

- (a) includes the requirement (however expressed) that an enactment or enactments be submitted to a referendum of the electors of the Territory; and
- (b) includes provision (however expressed) that, to have effect, the referendum is to be passed by a specified majority of the electors (in this subsection called a **special majority**);

the same requirement shall be taken to apply to the entrenching law, so that the reference in subsection (3) to a majority of the electors shall be taken to be a reference to:

- (c) that special majority; or
- (d) if the entrenching law specifies different special majorities for different enactments—the highest of those special majorities.

27 Crown may be bound

Except as provided by the regulations, an enactment does not bind the Crown in right of the Commonwealth.

28 Inconsistency with other laws

- (1) A provision of an enactment has no effect to the extent that it is inconsistent with a law defined by subsection (2), but such a provision shall be taken to be consistent with such a law to the extent that it is capable of operating concurrently with that law.
- (2) In this section:

law means:

- (a) a law in force in the Territory (other than an enactment or a subordinate law); or
- (b) an order or determination, or any other instrument of a legislative character, made under a law falling within paragraph (a).

Note: Section 17 of the *Workplace Relations Act 1996* deals with inconsistency between awards and agreements made under that Act, and laws of the Territory.

29 Avoidance of application of enactments to Parliament

- (1) In this section:

enactment includes a part of an enactment.

Parliamentary precincts means the precincts defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.

- (2) If either House of the Parliament passes a resolution declaring that an enactment made after the commencing day does not apply:
 - (a) to that House;
 - (b) to the members of that House; or
 - (c) in the Parliamentary precincts;
 the resolution has effect according to its tenor and the enactment does not apply accordingly.
- (3) A resolution under subsection (2):
 - (a) does not have effect in respect of the application of an enactment on a day before the day on which the resolution is passed; and
 - (b) has effect, to the extent that the enactment ceases to apply, as if the enactment were repealed by another enactment.

30 Judicial notice

All courts, judges and persons acting judicially shall take judicial notice of enactments and subordinate laws.

31 Publication of enactments

The Executive shall publish copies of enactments and subordinate laws and make them available for purchase by the public.

33 Application of Acts Interpretation Act

Neither paragraph 46(1)(a) of the *Acts Interpretation Act 1901* nor paragraph 13(1)(a) or (b) of the *Legislative Instruments Act 2003* applies to:

- (a) an enactment;
- (b) a subordinate law; or
- (c) an instrument required by this Act to be published in the *Territory Gazette*.

34 Certain laws converted into enactments

- (1) In this section:

Imperial Act has the same meaning as in the *Imperial Acts Application Ordinance 1986* of the Territory.

law includes a provision of a law.

- (2) A law specified in Schedule 2 shall be taken to be an enactment, and may be amended or repealed accordingly.
- (4) A law (other than a law of the Commonwealth) that, immediately before the commencing day:
 - (a) was in force in the Territory; and
 - (b) was an Ordinance, an Act of the Parliament of New South Wales or an Imperial Act;shall be taken to be an enactment, and may be amended or repealed accordingly.
- (5) Subsection (4) does not apply to a law specified in Schedule 5.
- (9) This section does not limit the power of the Assembly to make laws with respect to the common law.

35 Disallowance of enactments

- (1) In this section:

enactment includes a part of an enactment.

- (2) Subject to this section, the Governor-General may, by legislative instrument, disallow an enactment within 6 months after it is made.
- (4) The Governor-General may, within 6 months after an enactment is made, recommend to the Assembly any amendments of the enactment, or of any other enactment, that the Governor-General considers to be desirable as a result of considering the enactment.

- (5) Where the Governor-General so recommends any amendments, the time within which the Governor-General may disallow the enactment is extended for 6 months after the date of the recommendation.
- (6) Upon publication in the *Commonwealth Gazette* of notice of the disallowance of an enactment, the disallowance has, subject to subsection (7), the same effect as a repeal of the enactment.
- (7) If a provision of a disallowed enactment amended or repealed an enactment that was in force immediately before the commencement of that provision, the disallowance revives the previous enactment from the date of publication of the notice of disallowance as if the disallowed provision had not been made.
- (8) For the purposes of this section, an enactment shall be taken to be made when it is notified in the *Territory Gazette* under this Part.

Part V—The Executive

36 Australian Capital Territory Executive

There shall be an Australian Capital Territory Executive.

37 General powers of Executive

The Executive has the responsibility of:

- (a) governing the Territory with respect to matters specified in Schedule 4;
- (b) executing and maintaining enactments and subordinate laws;
- (c) exercising such other powers as are vested in the Executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a State or another Territory; and
- (d) exercising prerogatives of the Crown so far as they relate to the Executive's responsibility mentioned in paragraph (a), (b) or (c).

38 Executive matters not limited by Schedule 4

A matter specified in Schedule 4 does not limit the generality of any other matter specified in that Schedule.

38A Executive's powers under Commonwealth Acts

An enactment may provide for the exercise by a member or members of the Executive of powers vested in the Executive by or under an Act.

39 Membership of Executive

- (1) The members of the Executive are the Chief Minister and such other Ministers as are appointed by the Chief Minister.
- (2) The exercise of the powers of the Executive is not affected merely because of a vacancy or vacancies in the membership of the Executive.

40 Chief Minister for the Territory

- (1) At the first meeting of the Assembly after a general election, the members present shall, after electing a Presiding Officer and before any other business, elect one of their number to be the Chief Minister for the Territory.
- (2) If there is a vacancy in the office of Chief Minister (not because of a dissolution of the Assembly), then:
 - (a) if the vacancy happens at a meeting, the members present shall elect one of their number to be the Chief Minister; or
 - (b) if the vacancy happens at any other time, the Presiding Officer shall, by notice published in the *Territory Gazette*, convene a meeting as soon as practicable and, at the meeting, the members present shall elect one of their number to be the Chief Minister.
- (3) If a resolution of no confidence in the Chief Minister is passed, the members present shall elect one of their number to be the Chief Minister.

41 Ministers for the Territory

- (1) The Chief Minister must appoint Ministers for the Territory from among the members of the Assembly.
- (2) The number of Ministers is to be as provided by enactment.
- (2A) Until provision is made, the number of Ministers is not to exceed 5.
- (3) A Minister may be dismissed from office at any time by a person holding office as Chief Minister at that time.

42 Presiding Officer or Deputy Presiding Officer not to be a Minister

The person for the time being holding office as Presiding Officer or Deputy Presiding Officer is not eligible to be a Minister.

43 Ministerial portfolios

- (1) A Minister shall administer such matters relating to the powers of the Executive as are allocated to that Minister from time to time by the Chief Minister.
- (2) The Chief Minister may authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister.
- (3) The Chief Minister shall publish particulars of such arrangements in the *Territory Gazette*.

44 Deputy Chief Minister for the Territory

- (1) The Chief Minister shall appoint one of the Ministers to be Deputy Chief Minister for the Territory.
- (2) The Deputy Chief Minister shall act as Chief Minister at any time when there is a vacancy in the office of Chief Minister or the Chief Minister is absent from duty or from Australia or is, for any other reason, unable to exercise the powers of Chief Minister.
- (3) While the Deputy Chief Minister is acting as Chief Minister, he or she shall exercise all the powers of the Chief Minister other than the dismissal of a Minister.
- (4) The exercise of the powers of the Chief Minister by the Deputy Chief Minister during the absence of the Chief Minister from Australia does not affect the exercise of a power by the Chief Minister.

45 Resignation of Ministers

- (1) The Chief Minister may resign office as Chief Minister by written notice delivered to the Presiding Officer.
- (2) Any other Minister may resign office as Minister by written notice delivered to the Chief Minister.

46 Vacation of office by Ministers

- (1) A person holding office as Chief Minister vacates the office:
 - (a) when the person resigns the office; or
 - (b) when the person ceases to be a member (not because of a general election); or

- (c) immediately before a Chief Minister is elected after:
 - (i) the next general election; or
 - (ii) the passing of a resolution of no confidence in the Chief Minister.
- (1A) A person holding office as a Minister (other than the Chief Minister) vacates the office:
 - (a) when the person resigns the office; or
 - (b) when the person ceases to be a member (not because of a general election); or
 - (c) when the person is dismissed from office by the Chief Minister; or
 - (d) immediately before another Chief Minister is elected after:
 - (i) the next general election; or
 - (ii) the passing of a resolution of no confidence in the Chief Minister.
- (2) A person who has vacated an office of Minister may be re-elected or re-appointed.

47 Vacancies in all Ministerial offices

- (1) If:
 - (a) at any time after the election of a Chief Minister, all the Ministerial offices (including the office of Chief Minister) have become vacant; and
 - (b) it is necessary to exercise powers of the Executive for the purpose of maintaining the provision and control of essential services;the Commonwealth Minister may exercise those powers for that purpose until a Chief Minister is elected.
- (2) Subsection (1) does not apply where the vacancies result from a dissolution of the Assembly.

48 Resolution of no confidence in Chief Minister

- (2) If:
 - (a) on a particular day, the Assembly passes a resolution of no confidence in the Chief Minister;
 - (b) the Assembly does not, within the period of 30 days after that day, elect a Chief Minister; and
 - (c) the Governor-General does not, within that period of 30 days, dissolve the Assembly under section 16;a general election shall be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*, being not earlier than 36 days, nor later than 90 days, after the end of that period of 30 days.
- (3) The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.

Part VA—The Judiciary

48A Jurisdiction and powers of the Supreme Court

- (1) The Supreme Court is to have all original and appellate jurisdiction that is necessary for the administration of justice in the Territory.
- (2) In addition, the Supreme Court may have such further jurisdiction as is conferred on it by any Act, enactment or Ordinance, or any law made under any Act, enactment or Ordinance.
- (3) The Supreme Court is not bound to exercise any powers where it has concurrent jurisdiction with another court or tribunal.

48AA ACT laws may give concurrent jurisdiction to the Federal Court of Australia

Nothing in section 48A is to be taken to imply that a law of the Australian Capital Territory may not confer on the Federal Court of Australia original or appellate jurisdiction in any matter in respect of which, by virtue of section 48A, jurisdiction is conferred on the Supreme Court.

48B Retirement age of Judges etc. of the Supreme Court

- (1) This section applies to the following offices:
 - (a) Chief Justice of the Supreme Court;
 - (b) Judge (other than additional Judge) of the Supreme Court;
 - (c) Master of the Supreme Court.
- (2) An enactment that changes the retirement age in relation to an office to which this section applies does not affect the term of office of a person who was appointed to such an office before the commencement of that enactment unless the person has consented in writing to the application of the enactment to him or her.

48C Judicial commission

- (1) An enactment relating to the establishment of a judicial commission for the Territory must provide that:
 - (a) the commission is to be constituted by persons who:
 - (i) have been Justices of the High Court or are, or have been, Judges of a superior court of record of the Commonwealth or of a State or Territory (other than persons who are Judges of the Supreme Court of the Territory appointed under subsection 7(1) of the *Supreme Court Act 1933* of the Territory); and
 - (ii) are appointed by the Executive for such terms as are determined in accordance with the enactment; and
 - (b) the commission is to have the function (whether alone or together with another body or authority of the Territory) of investigating, and reporting to the Attorney-General of the Territory on, complaints concerning the conduct or the physical or mental capacity of a judicial officer.
- (2) A judicial commission may have functions in addition to the function mentioned in paragraph (1)(b).

48D Removal of a judicial officer from office

An enactment relating to the removal from office of a judicial officer must provide that:

- (a) a judicial officer may only be removed from office if:
 - (i) a judicial commission appointed by the Executive to examine a complaint concerning the judicial officer has submitted to the Attorney-General of the Territory a report that:
 - (A) sets out the facts found by the commission in relation to the subject matter of the complaint; and
 - (B) states that, in the commission's opinion, the facts so found could amount to misbehaviour or physical or mental incapacity (as the case may be) warranting the officer's removal from office; and
 - (ii) the Assembly:
 - (A) has determined that the facts so found amount to misbehaviour or physical or mental incapacity identified by the commission; and
 - (B) has passed a motion requiring the Executive to remove the officer from office on the ground of that misbehaviour or incapacity; and
- (b) a judicial officer may only be removed from office by the Executive in writing.

Part VII—Finance

57 Public money

- (1) The public money of the Territory shall be available for the expenditure of the Territory.
- (2) The receipt, spending and control of public money of the Territory shall be regulated as provided by enactment.

58 Withdrawals of public money

- (1) Subject to subsection 16(4), no public money of the Territory shall be issued or spent except as authorised by enactment.
- (2) The public money of the Territory may be invested as provided by enactment.

59 Financial relations between Commonwealth and Territory

- (1) The Commonwealth shall conduct its financial relations with the Territory so as to ensure that the Territory is treated on the same basis as the States and the Northern Territory, while having regard to the special circumstances arising from the existence of the national capital and the seat of government of the Commonwealth in the Territory.
- (2) The Territory is not liable to bear the cost, or part of the cost, of:
 - (a) any power of the Commonwealth relating to a matter referred to in section 23;
 - (b) administering a law, or a provision of a law, referred to in Schedule 5; or
 - (c) any other power of the Commonwealth, or of a Commonwealth authority, relating to the Territory.

60 Borrowing from Commonwealth

The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Territory or to a Territory authority on such terms and conditions as that Minister determines in writing.

65 Proposal of money votes

- (1) An enactment, vote or resolution (*proposal*) for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister.
- (2) Subsection (1) does not prevent a member other than a Minister from moving an amendment to a proposal made by a Minister unless the amendment is to increase the amount of public money of the Territory to be appropriated.

Part VIII—Elections to Assembly

66 Interpretation

In this Part:

electoral enactment means an enactment described in subsection 67A(1).

66A Part to bind Crown

This Part binds the Crown in right of the Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

66B Election of members

The members are to be elected in accordance with this Part.

67 Qualifications of candidates

- (1) The qualifications of a person to be elected and take a seat as a member shall be as provided by enactment.

67A General elections

- (1) The members to be elected at a general election are to be elected as provided by sections 67, 67C and 67D and by an enactment that:
 - (a) provides for general elections; and
 - (b) complies with section 67B; and
 - (c) was made after polling day for the second general election.

67B Electoral enactment

An electoral enactment is to provide, among other things:

- (a) for the times of general elections; and
- (b) for a Roll of the electors of the Territory for the purposes of general elections; and
- (c) that every person who is entitled to be enrolled on that Roll and who is resident in the Territory is required to claim enrolment; and
- (d) if the electoral enactment provides for the distribution of the Territory into electorates—that a redistribution of the Territory into electorates is to commence not later than 6 years after the previous distribution or redistribution.

67C Qualifications of electors

- (1) At a general election held on a particular day, a person is entitled to vote if:
 - (a) on that day, the person's name is on the Roll of the electors of the Territory for the purposes of general elections; and
 - (b) the person would be entitled to vote at an election held on that day to choose a member of the House of Representatives for the Territory.
- (2) A person's name is taken not to be on the Roll for the purposes of paragraph (1)(a) if an electoral enactment so provides.

- (3) This section does not prevent an electoral enactment from providing that other persons, in addition to persons entitled under subsection (1), be entitled to vote at a general election.

67D Territory electorates

- (1) In this section:

quota, in relation to an electorate for the Territory, means the number calculated in accordance with the formula:

.....

where:

Number of Territory electors means the number of electors of the Territory.

Number of electorate members means the number of members to be elected by the electorate.

Number of Territory members means the number of members of the Assembly.

- (2) A distribution or redistribution of the Territory into electorates is not to result in any electorate having, immediately after the distribution or redistribution:
- (a) a number of electors of the Territory greater than 110% of its quota; or
 - (b) a number of electors of the Territory less than 90% of its quota.

Part IX—Miscellaneous

69A Acts that bind States to bind Territory

- (1) If an Act (whether or not by express provision) binds each of the States, or the Crown in right of each of the States, that Act binds the Territory, or the Crown in right of the Territory, by force of this subsection, unless that Act specifically provides otherwise.
- (2) Subsection (1) does not affect the application of a law of the Commonwealth in and in relation to the Territory otherwise than as provided in that subsection.

69 Trade and commerce to be free

- (1) Subject to subsection (2), trade, commerce and intercourse between the Territory and a State, and between the Territory and the Northern Territory, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, shall be absolutely free.
- (2) Subsection (1) does not bind the Commonwealth.

70 Validity of certain actions

- (1) In subsection (2):
office means the office of Chief Minister, Deputy Chief Minister, Minister, Presiding Officer, Deputy Presiding Officer or Commissioner.
- (2) Anything done by or in relation to a person who has been elected or appointed to an office, or a person purporting to act in an office, under this Act is not invalid on the ground that:
 - (a) the occasion for the election or appointment had not arisen;
 - (b) there was a defect or irregularity in connection with the election or appointment;
 - (c) the election or appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.
- (3) Anything done by or in relation to a person who has purported to sit or vote as a member at a meeting of the Assembly or of a committee is not invalid on the ground that the person:
 - (a) was not duly elected or chosen; or
 - (b) had vacated office as a member.

73 Remuneration and allowances

- (1) In this section:
office means any of the following offices:
 - (a) Chief Minister;
 - (b) Deputy Chief Minister;
 - (c) Minister;
 - (d) member;
 - (e) Presiding Officer;
 - (f) Deputy Presiding Officer;

- (fa) Chief Justice of the Supreme Court;
 - (fb) Judge of the Supreme Court;
 - (fc) Master of the Supreme Court;
 - (fd) Chief Magistrate;
 - (fe) Magistrate;
 - (g) an office declared by an enactment to be an office to which this section applies.
- (2) Subject to subsection (3A) of this section and subsection 29A(2) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, a person is, in respect of services in an office, to be paid such remuneration and allowances:
- (a) if they are determined or specified by or under an enactment—as so determined or specified; or
 - (b) in any other case—as are determined by the Remuneration Tribunal.
- (3A) The remuneration and allowances of a person holding an office specified in paragraph (1)(fa), (fb), (fc), (fd) or (fe) are not to be diminished while the person holds that office.
- (4) Where:
- (a) the term of office of a person as member ends on the polling day for a general election; and
 - (b) the person is re-elected at that general election;
- then, for the purposes of this section, the person shall be taken to have continued to serve in the office of member until the day on which the election of the person is declared.
- (5) Where:
- (a) the term of office of a person as member ends because the Assembly is dissolved under section 16; and
 - (b) the person is a candidate at the next general election;
- then, for the purposes of this section, the person shall be taken to have continued to serve in the office of member until the polling day for that general election or, if the person is re-elected, until the day on which the election of the person is declared.

74 Regulations

The Governor-General may make regulations:

- (a) prescribing matters:
 - (i) required or permitted by this Act to be prescribed; or
 - (ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
- (b) adding further matters to Schedule 4.

Schedule 1

Section 9

OATH

I, *A.B.*, swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law: So help me God!

AFFIRMATION

I, *A.B.*, solemnly affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

Schedule 2—Commonwealth Acts and provisions to become enactments

Section 34

Commonwealth Functions (Statutes Review) Act 1981, Part II

Commonwealth Teaching Service Act 1972

Removal of Prisoners (Australian Capital Territory) Act 1968

Australian Capital Territory Evidence (Temporary Provisions) Act 1971

Australian Capital Territory Supreme Court Act 1933

University of Canberra Act 1989.

Schedule 4—Matters concerning which the Executive has power to govern the Territory

Section 37

Remuneration, allowances and other entitlements in respect of services of members of the Assembly, the Chief Minister, the Deputy Chief Minister, Ministers, the Presiding Officer, the Deputy Presiding Officer, and the holders of offices established by or under Assembly Law

Territory insurance

Territory banking

Taxation

Provision of rural, industrial and home finance credit and assistance

The public service

Legal aid

Correctional and remand services

Private law

Administration of estates and trusts

Civil liberties and human rights

Inquiries and administrative reviews (including matters relating to a Territory Ombudsman)

Markets and marketing

Consumer affairs

Sales and leases of goods, supply of services, and security interests in or over goods

Control of prices and of rents

Industry, including primary production

Regulation of businesses, professions, trades and callings (excluding the legal profession)

Tourism

Printing and publishing

Industrial relations (including training and apprenticeship and workers' compensation and compulsory insurance)

Occupational health and safety

Exploration for, and recovery of, minerals in any form, whether solid, liquid or gaseous

Territory Land as defined in the *Australian Capital Territory (Planning and Land Management) Act 1988*

Use, planning and development of land

Civil aviation

Regulation of transport on land and water (including traffic control, carriers, roads, tunnels and bridges, vehicle registration and compulsory third party insurance, driver licensing and road safety)

Environment protection and conservation (including parks, reserves and gardens and preservation of historical objects and areas)

Flora and fauna

Fire prevention and control

Water resources

Use and supply of energy
Public utilities
Public works
Registration of instruments
Registration of births, deaths and marriages
Local government
Housing
Public health
Public safety
Education
Territory Archives
Welfare services
Territory museums, memorials, libraries and art galleries
Scientific research
Recreation, entertainment and sport
Community, cultural and ethnic affairs
Gambling
Liquor
Firearms, explosives and hazardous and dangerous substances
Civil defence and emergency services
Territorial censorship, except classification of materials
Landlord and tenant
Co-operative societies
The Public Trustee and the Youth Advocate
Matters in respect of which the Assembly may make laws under section 24
Matters in respect of which powers or authorities are expressly conferred on the Chief Minister, the Deputy Chief Minister, a Minister or a member of the public service by or under any law in force in the Territory (including an enactment or subordinate law) or an agreement or arrangement referred to in paragraph 37(c)
Matters provided for by or under a law made by the Assembly under another Act that expressly provides for the making of such a law
Making instruments under enactments or subordinate laws
Matters arising under instruments made under enactments or subordinate laws
Entering into, and implementing, agreements and arrangements with the Commonwealth, a State or the Northern Territory
Matters incidental to the exercise of any power of the Executive
Law and Order
Legal practitioners
Magistrates Court and Coroners Court
Courts (other than the Magistrates Court and Coroners Court)
The formation of corporations, corporate regulation and the regulation of financial products and services

Schedule 5—Laws and provisions other than those that shall become enactments

Section 34

Part 1—Ordinances of the Territory

Canberra Institute of the Arts Ordinance 1988

Classification of Publications Ordinance 1983

Companies Auditors and Liquidators Disciplinary Board Ordinance 1982

Corporate Affairs Commission Ordinance 1980

National Land Ordinance 1989

National Memorials Ordinance 1928

Ordinance Revision (Companies Amendments) Ordinance 1982

Police Pensions Ordinance 1958

Reserved Laws (Administration) Ordinance 1989

Reserved Laws (Interpretation) Ordinance 1989

The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982

The Commercial Bank of Australia Limited (Merger) Ordinance 1982

Unlawful Assemblies Ordinance 1937

Part 2—Acts of the Parliament of New South Wales in force in the Territory

Life, Fire and Marine Insurance Act 1902

Part 3—Imperial Acts in force in the Territory

Demise of the Crown	(1760) 1 Geo. 3 c. 23
Naval Prize Act	(1864) 27 and 28 Vic. c. 25
Naval Prize (Procedure) Act	(1916) 6 and 7 Geo. 5 c. 2
Prize Act	(1939) 2 and 3 Geo. 6 c. 65
Prize Courts Act	(1894) 57 and 58 Vic. c. 39
Prize Courts Act	(1915) 5 and 6 Geo. 5 c. 57
Prize Courts (Procedure) Act	(1914) 4 and 5 Geo. 5 c. 13
Territorial Waters Jurisdiction	(1878) 41 and 42 Vic. c. 73.

Notes to the *Australian Capital Territory (Self-Government) Act 1989*

Note 1

The *Australian Capital Territory (Self-Government) Act 1988* as shown in this compilation comprises Act No. 106, 1988 amended as indicated in the Tables below.

The *Australian Capital Territory (Self-Government) Act 1988* was amended by the *Australian Capital Territory (Self-Government) Regulations 1989* (1989 No. 86 as amended by 1989 No. 87; 1990 No. 405 and SLI 2006 No. 39) and the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

All relevant information pertaining to application, saving or transitional provisions prior to 30 May 1997 is not included in this compilation. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Capital Territory (Self-Government) Act 1988</i>	106, 1988	6 Dec 1988	Ss. 1 and 2: Royal Assent Ss. 3–6, 8–21, 66–68, 73 and 74: 7 Dec 1988 (see <i>Gazette</i> 1988, No. S374) S. 34(8): 31 Jan 1989 (see <i>Gazette</i> 1989, No. S39) S. 56(1): (a) Remainder: 11 May 1989 (see <i>Gazette</i> 1989, No. S164)	
<i>Arts, Territories and Environment Legislation Amendment Act 1989</i>	60, 1989	19 June 1989	Ss. 11 and 13: 7 Dec 1988 Part 5 (ss. 14, 15): 11 May 1989 (see s. 2(3) and <i>Gazette</i> 1989, No. S164) Remainder: Royal Assent	S. 8(2)
<i>Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act 1991</i>	33, 1991	21 Mar 1991	Ss. 3 (in part) and 5: 1 July 1991 Remainder: Royal Assent	S. 5
<i>Australian Capital Territory Self-Government Legislation Amendment Act 1992</i>	10, 1992	6 Mar 1992	Ss. 4, 7–9 and 11: (b) Remainder: Royal Assent	—
<i>A.C.T. Supreme Court (Transfer) Act 1992</i>	49, 1992	17 June 1992	1 July 1992	—
<i>Territories Law Reform Act 1992</i>	104, 1992	30 June 1992	S. 24: 1 July 1992 (c)	—
<i>Superannuation Industry (Supervision) Consequential Amendments Act 1993</i>	82, 1993	30 Nov 1993	Ss. 1, 2, 14, 16(2), 41, 42, 45, 46, 48(1) and 52–64: 1 Dec 1993 Remainder: 1 July 1994	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Arts, Environment and Territories Legislation Amendment Act 1993</i>	6, 1994	18 Jan 1994	S. 5: Royal Assent (d)	—
<i>Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>	92, 1994	29 June 1994	1 July 1994 (see <i>Gazette</i> 1994, No. S256)	—
<i>Australian Capital Territory Electoral Legislation Amendment Act 1994</i>	165, 1994	16 Dec 1994	16 Dec 1994	—
<i>Euthanasia Laws Act 1997</i>	17, 1997	27 Mar 1997	27 Mar 1997	—
<i>Education Legislation Amendment Act 1997</i>	66, 1997	30 May 1997	Schedule 1 (item 14): (e)	Sch. 1 (items 19–23) [see Table A]
<i>Gas Pipelines Access (Commonwealth) Act 1998</i>	101, 1998	30 July 1998	Schedule 1 (item 1): 30 July 1998 (f)	—
<i>Australian Capital Territory Legislation Amendment Act 2003</i>	1, 2003	24 Feb 2003	25 Feb 2003	—
<i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	140, 2003	17 Dec 2003	S. 4 and Schedule 1 (item 11): (g)	S. 4 [see Table A]
<i>Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006</i>	109, 2006	27 Sept 2006	Schedule 2 (items 9–11): Royal Assent	—

- (a) Subsection 56(1) of the *Australian Capital Territory (Self-Government) Act 1988* was repealed by section 22 of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* before a date was fixed for the commencement.
- (b) Subsection 2(2) of the *Australian Capital Territory Self-Government Legislation Amendment Act 1992* provides as follows:
 (2) Sections 4, 7, 8, 9 and 11 commence immediately after polling day for the second general election of members of the Legislative Assembly for the Australian Capital Territory.
 Polling day for the second general election was 15 February 1992.
- (c) The *Australian Capital Territory (Self-Government) Act 1988* was amended by section 24 only of the *Territories Law Reform Act 1992*, subsection 2(3) of which provides as follows:
 (3) The remaining provisions of this Act commence on 1 July 1992.
- (d) The *Australian Capital Territory (Self-Government) Act 1988* was amended by section 5 only of the *Arts, Environment and Territories Legislation Amendment Act 1993*, subsection 2(1) of which provides as follows:
 (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (e) The *Australian Capital Territory (Self-Government) Act 1988* was amended by Schedule 1 (Part 2) only of the *Education Legislation Amendment Act 1997*, subsection 2(4) of which provides as follows:
 (4) Parts 2, 3 and 4 of Schedule 1 commence immediately after the commencement of Part 1 of Schedule 1.
 Part 1 of Schedule 1 commenced on 1 December 1997.
- (f) The *Australian Capital Territory (Self-Government) Act 1988* was amended by Schedule 1 (item 1) of the *Gas Pipelines Access (Commonwealth) Act 1998*, subsection 2(1) of which provides as follows:
 (1) Subject to subsections (2) and (3), this Act commences at the commencement of sections 13 and 14 of the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.
 The *Gas Pipelines Access (South Australia) Act 1997* of South Australia came into operation on 30 July 1998 (see *South Australian Government Gazette* 2 April 1998, p. 1606).
- (g) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:
 (1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 3	am. No. 33, 1991; Nos. 10 and 49, 1992; Nos. 6 and 92, 1994
Part III	
Division 1	
S. 10	am. No. 6, 1994
S. 13	am. No. 6, 1994
S. 14	am. No. 33, 1991; No. 82, 1993
S. 16	am. No. 1, 2003
Division 2	
S. 17	am. No. 6, 1994
Part IV	
S. 22	am. No. 49, 1992
S. 23	am. Statutory Rules 1989 No. 86 (as am. by Statutory Rules 1989 No. 87; SLI 2006 No. 39); No. 49, 1992; No. 17, 1997
S. 25	am. No. 60, 1989; No. 6, 1994
S. 26	am. No. 6, 1994
S. 28	am. SLI 2006 No. 50
Note to s. 28(2)	ad. SLI 2006 No. 50
S. 32	rep. No. 109, 2006
S. 33	am. No. 140, 2003
S. 34	am. No. 60, 1989; No. 49, 1992; No. 6, 1994
S. 35	am. No. 109, 2006
Part V	
S. 37	am. No. 6, 1994
S. 38A	ad. No. 6, 1994
S. 41	am. No. 10, 1992
S. 46	am. No. 6, 1994; No. 1, 2003
S. 48	am. No. 165, 1994; No. 1, 2003
Part VA	
Part VA	ad. No. 49, 1992
S. 48A	ad. No. 49, 1992
S. 48AA	ad. No. 101, 1998
Ss. 48B–48D	ad. No. 49, 1992
Part VI	
Ss. 49–56	rep. No. 92, 1994
S. 59	am. No. 6, 1994
Ss. 61–63	rep. No. 33, 1991
S. 64	rep. No. 10, 1992
S. 65	am. No. 6, 1994
Part VIII	
S. 66	rs. No. 10, 1992
Ss. 66A, 66B	ad. No. 10, 1992
S. 67	am. No. 1, 2003
S. 67A	ad. No. 10, 1992 am. No. 165, 1994; No. 1, 2003
S. 67B	ad. No. 10, 1992
S. 67C	ad. No. 10, 1992 am. Nos. 6 and 165, 1994
S. 67D	ad. No. 10, 1992
S. 67E	ad. No. 10, 1992 rep. No. 1, 2003

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 68	am. No. 10, 1992; No. 165, 1994 rep. No. 1, 2003
Part IX	
S. 69A	ad. No. 6, 1994
S. 69	am. No. 104, 1992
S. 70	am. No. 1, 2003
S. 71	rep. No. 92, 1994
S. 72	rep. No. 6, 1994
S. 73	am. No. 49, 1992; Nos. 6 and 92, 1994
S. 74	am. No. 60, 1989 rs. No. 6, 1994
Schedules	
Schedule 2	am. No. 66, 1997
Schedule 3	am. Statutory Rules 1989 No. 86 rep. No. 6, 1994
Schedule 4	am. Statutory Rules 1989 No. 86 (as am. by SLI 2006 No. 39); No. 1, 2003
Schedule 5	am. Statutory Rules 1989 No. 86 (as am. by Statutory Rules 1990 No. 405)

Table A**Application, saving or transitional provisions**

Education Legislation Amendment Act 1997 (No. 66, 1997)

Schedule 1**19 Purpose of this Part**

This Part sets out transitional provisions relating to the transfer of the responsibility for the University of Canberra from the Commonwealth to the Australian Capital Territory.

20 Definitions

In this Part, unless the contrary intention appears:

ACT enactment means an enactment as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*.

transfer day means the day on which Part 1 of this Schedule commences.

University means the University of Canberra established by section 4 of the University Act.

University Act means the *University of Canberra Act 1989* as in force from time to time before the transfer day.

21 Terms and conditions of employment of University employees

If a person was employed by the University immediately before the transfer day, this Act does not affect the terms and conditions (including any accrued entitlement to benefits) of that employment.

22 Audit

If the transfer day is less than a year after the end of the last period in respect of which a report was made by the Auditor-General under subsection 37(4) of the University Act, that subsection has effect in respect of the period (the **final reporting period**) beginning immediately after the end of that last period and ending immediately before the transfer day as if the reference to a year in that subsection were a reference to the final reporting period.

23 Annual report and financial statements

If the transfer day is less than a year after the end of the last year in respect of which a report was prepared under section 39 of the University Act, that section has effect in respect of the period beginning immediately after the end of that last year and ending immediately before the transfer day as if:

- (a) a reference in that section to a year were a reference to that period; and
- (b) a reference in that section to 31 December were a reference to the transfer day.

Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003 (No. 140, 2003)

4 Transitional provisions

- (1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

- (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
- (b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*;

any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.

- (2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

- (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
- (b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*;

any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.

- (3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:

- (a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and
- (b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;

that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.

- (4) If:

- (a) legislation (the **enabling legislation**) in force immediately before the commencing day:
 - (i) authorises the making of an instrument; and
 - (ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and
- (b) an instrument is made in the exercise of that authority on or after the commencing day; and
- (c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;

the enabling legislation has effect, on and after the commencing day, as if:

- (d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and
- (e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

- (5) In this section:

commencing day means the commencing day within the meaning of the *Legislative Instruments Act 2003*.

**APPENDIX 24: AMENDMENTS MADE TO THE AUSTRALIAN CAPITAL TERRITORY
(SELF-GOVERNMENT) ACT 1988 (AS AT 30 JUNE 2007)**

Name of amending Act/Regulation	Act/Regulation Number and Year	Date of Assent/ Making
Australian Capital Territory (Self-Government) Regulations 1989	SR 1989 No. 86	09.05.1989
<i>Arts, Territories and Environment Legislation Amendment Act 1989</i>	No. 60, 1989	19.06.1989
<i>Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act 1991</i>	No. 33, 1991	21.03.1991
<i>Australian Capital Territory Self-Government Legislation Amendment Act 1992</i>	No. 10, 1992	06.03.1992
<i>A.C.T. Supreme Court (Transfer) Act 1992</i>	No. 49, 1992	17.06.1992
<i>Territories Law Reform Act 1992</i>	No. 104, 1992	30.06.1992
<i>Superannuation Industry (Supervision) Consequential Amendments Act 1993</i>	No. 82, 1993	30.11.1993
<i>Arts, Environment and Territories Legislation Amendment Act 1993</i>	No. 6, 1994	18.01.1994
<i>Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>	No. 92, 1994	29.06.1994
<i>Australian Capital Territory Electoral Legislation Amendment Act 1994</i>	No. 165, 1994	16.12.1994
<i>Euthanasia Laws Act 1997</i>	No. 17, 1997	27.03.1997
<i>Education Legislation Amendment Act 1997</i>	No. 66, 1997	30.05.1997
<i>Gas Pipelines Access (Commonwealth) Act 1998</i>	No. 101, 1998	30.07.1998
<i>Australian Capital Territory Legislation Amendment Act 2003</i>	No. 1, 2003	24.02.2003
<i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	No. 140, 2003	17.12.2003
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No 1)	SLI 2006 No. 50	17.03.2006
<i>Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006</i>	No. 109, 2006	27.09.2006

APPENDIX 25: LEGISLATIVE ASSEMBLY (BROADCASTING) ACT 2001

Australian Capital Territory

**Legislative Assembly (Broadcasting) Act
2001**

A2001-69

Republication No 5

Effective: 12 April 2007

Republication date: 12 April 2007

Last amendment made by A2007-3

Unauthorised version prepared by ACT Parliamentary Counsel's Office

About this republication

The republished law

This is a republication of the *Legislative Assembly (Broadcasting) Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 April 200. It also includes any amendment, repeal or expiry affecting the republished law to 12 April 2007.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Legislative Assembly (Broadcasting) Act 2001

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Australian Capital Territory

Legislative Assembly (Broadcasting) Act 2001

An Act about broadcasting of proceedings of the Legislative Assembly and its committees

1 Name of Act

This Act is the *Legislative Assembly (Broadcasting) Act 2001*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of the Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

5 Broadcasting of proceedings

- (1) A person may broadcast, or record for broadcast, all or part of public proceedings of the Legislative Assembly or a committee of the Assembly.
- (2) The Legislative Assembly may, by resolution, determine the way rights given by subsection (1) must be exercised.
- (3) If the Legislative Assembly makes a determination under subsection (2), a person exercising rights under subsection (1) must comply with the determination.

6 Withdrawal of rights to broadcast

- (1) The Legislative Assembly may, by resolution, withdraw the right of a person to broadcast, or record for broadcast, public proceedings of the Legislative Assembly or a committee of the Assembly.
- (2) The Legislative Assembly may, by resolution, delegate to the Speaker the power to withdraw the right of a person to broadcast, or record for broadcast, public proceedings of the Legislative Assembly or a committee of the Assembly.
- (3) The Legislative Assembly may, by resolution, delegate to a committee of the Assembly the power to withdraw the right of a person to broadcast, or record for broadcast, public proceedings of the committee.
- (4) A resolution under subsection (1), (2) or (3) may state the way in which a right to broadcast or record may be withdrawn.

7 Electronic access to proceedings given by clerk

- (1) A person may apply in writing to the clerk for access to the recording and transmission facilities of the Legislative Assembly for transmission to the applicant of public proceedings of the Legislative Assembly or a committee of the Assembly.

Note If a form is approved under s 10 (Approved forms) for an application, the form must be used.

- (2) The clerk must give the access requested in an application under subsection (1) if—

- (a) the clerk is satisfied that the recording and transmission facilities of the Legislative Assembly have the capacity to satisfactorily support the equipment the applicant proposes to connect to them; and
- (b) the clerk is satisfied the mode of access requested is reasonable for the purpose for which it is sought; and
- (c) the applicant's right to broadcast the proceedings for which the application is made has not been withdrawn under this Act; and
- (d) the applicant enters into a written agreement with the Territory to—
 - (i) comply with any determination in effect under section 5 (2); and
 - (ii) provide, or arrange for the provision of, the telecommunication lines and other equipment necessary for the access (the *access equipment*); and
 - (iii) pay the costs and expenses of connecting the access equipment to the recording and transmission facilities of the Legislative Assembly; and
 - (iv) pay the costs and expenses of maintaining the access equipment; and
 - (v) pay the costs and expenses of the Legislative Assembly secretariat in giving access to the proceedings of the Legislative Assembly and its committees by the access equipment.

8 Withdrawal of electronic access by clerk

- (1) The clerk may withdraw electronic access to proceedings given to a person under section 7 if the person—
 - (a) ceases to be entitled to broadcast, or record for broadcast, proceedings of the Legislative Assembly or a committee of the Assembly under this Act; or
 - (b) does not comply with the person's agreement under section 7 (2) (d).
- (2) If a person's electronic access to proceedings is withdrawn under subsection (1) (a), the clerk must restore the access if the person again becomes entitled to broadcast, or record for broadcast, proceedings of the Assembly or a committee of the Assembly under this Act and applies to the clerk in writing for restoration of the access.
- (3) If a person's electronic access to proceedings is withdrawn under subsection (1) (b), the clerk must restore the access if the person remedies his or her breach of the agreement and applies to the clerk in writing for restoration of the access.

8A Electronic access to proceedings given by Speaker

- (1) The Speaker may, in writing, direct that a person be given access to the recording and transmission facilities of the Legislative Assembly for transmission to the person of public proceedings of the Assembly or a committee of the Assembly.

Note The power to make a direction includes the power to amend or repeal it (see Legislation Act, s 46 (1)).

- (2) The Speaker must give a copy of the direction to the person.
- (3) The direction is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 An amendment or repeal of a direction is also a disallowable instrument (see Legislation Act, s 46 (2)).

9 Privilege for broadcasts

- (1) Neither civil nor criminal proceedings may be brought against a member of the Legislative Assembly secretariat for transmitting or broadcasting proceedings of the Legislative Assembly, or a committee of the Assembly, in carrying out the member's duties.
- (2) It is a defence to an action for defamation for matter in a broadcast of proceedings of the Legislative Assembly, or a committee of the Assembly, made in the exercise of a right given by this Act that the defamatory matter was broadcast by the defendant without adoption by the defendant of the substance of the matter and the defamatory matter was part of a fair and accurate report of the proceedings.
- (3) Subsection (2) does not deprive a person of a defence that the person has apart from this section.
- (4) Subsection (2) does not apply to a person for a broadcast made by the person while the person's right to make the broadcast was withdrawn under section 6 (Withdrawal of rights to broadcast).

10 Approved forms

- (1) The clerk may, in writing, approve forms for this Act.
- (2) If the clerk approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provision about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Dictionary

(see s 3)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- function
- Legislative Assembly
- person
- Speaker.

broadcast includes—

- (a) transmission to the public by radio, television, landline, the Internet or any other electronic means; and
- (b) rebroadcast.

clerk means the clerk of the Legislative Assembly.

Legislative Assembly secretariat—see the *Public Sector Management Act 1994*, dictionary.

public proceedings, of the Legislative Assembly or a committee of the Assembly, means proceedings of the Assembly or committee open to the public.

rebroadcast means to broadcast from a recording.

record, proceedings of the Legislative Assembly or a committee of the Assembly, means make a sound or visual recording of the proceedings.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Legislative Assembly (Broadcasting) Act 2001 No 69

notified 10 September 2001 (Gaz 2001 No S66)

s 1, s 2 commenced 10 September 2001 (IA s 10B)

remainder commenced 10 March 2002 (s 2 and LA s 79)

as amended by

Statute Law Amendment Act 2002 No 30 pt 3.41

notified LR 16 September 2002

s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))

pt 3.41 commenced 17 September 2002 (s 2 (1))

Legislative Assembly (Broadcasting) Amendment Act 2002 No 52

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

remainder commenced 21 December 2002 (s 2)

Public Sector Management Amendment Act 2005 A2005-42 sch 1 pt 1.2

notified LR 31 August 2005

s 1, s 2 commenced 31 August 2005 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 September 2005 (s 2)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.59

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.59 commenced 12 April 2007 (s 2 (1))

4**Amendment history****Commencement***s 2* *am LA s 89 (4)***Electronic access to proceedings given by clerk***s 7 hdg* *sub 2002 No 52 s 4***Withdrawal of electronic access by clerk***s 8 hdg* *sub 2002 No 52 s 5***Electronic access to proceedings given by Speaker***s 8A* *ins 2002 No 52 s 6***Approved forms***s 10* *am 2002 No 30 amdt 3.571***Repeal of Legislative Assembly (Broadcasting of Proceedings) Act***s 11* *om LA s 89 (3)***Dictionary***dict* *am 2002 No 30 amdt 3.572*
*def Legislative Assembly secretariat sub A2005-42 amdt 1.2; A2007-3 amdt 3.332***5****Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	10 March 2002
2	Act 2002 No 30	17 September 2002
3	A2002-52	21 December 2002
4	A2005-42	1 September 2005

APPENDIX 26: LEGISLATIVE ASSEMBLY PRECINCTS ACT 2001

Australian Capital Territory

Legislative Assembly Precincts Act 2001

A2001-85

Republication No 6

Effective: 18 May 2006

Republication date: 18 May 2006

Last amendment made by A2006-20

About this republication

The republished law

This is a republication of the *Error! Reference source not found.* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 18 May 2006. It also includes any amendment, repeal or expiry affecting the republished law to 18 May 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Legislative Assembly Precincts Act 2001

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Australian Capital Territory

Legislative Assembly Precincts Act 2001

An Act about the precincts of the Legislative Assembly

1 Name of Act

This Act is the *Legislative Assembly Precincts Act 2001*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 Assembly precincts

- (1) The Assembly precincts consist of the land described in subsection (2) and all buildings, structures and works on, above or under any of that land.
- (2) The land within the Assembly precincts is—
 - (a) block 3, section 19, division of City, Canberra Central District; and
 - (b) that part of Civic Square under the public entrance canopy; and
 - (c) that part of section 19, division of City, Canberra Central District under the members' entrance canopy.
- (3) In this section:

Assembly building means the building occupying block 3, section 19, division of City, Canberra Central District.

members' entrance canopy means the fixed canopy attached to the southern side of the Assembly building near the members' entrance.

public entrance canopy means the fixed canopy attached to the northern side of the Assembly building near the public entrance.

6 Premises included in Assembly precincts

- (1) This section applies to property that is leased to or managed by the Territory and is not within the Assembly precincts defined by section 5.

- (2) If the Speaker gives a written certificate that stated property is required for use by the Assembly, the regulations may declare that the property is to be treated as part of the Assembly precincts for this Act.

7 Control and management of Assembly precincts

- (1) The Speaker is responsible for the control and management of the Assembly precincts and may take any action the Speaker considers necessary for those purposes.
- (2) The Assembly may, by resolution, give the Speaker directions about the exercise of the Speaker's functions under subsection (1).
- (3) If the Legislative Assembly gives a direction under subsection (2), the Speaker must comply with the direction.

7A Licences

- (1) The Speaker may, on behalf of the Territory—
- (a) grant a licence to a person to use any part of the Assembly precincts; and
 - (b) exercise any rights of the Territory in relation to the licence.

Note 1 If a form is approved under s 11B for a licence, the form must be used.

Note 2 A fee may be determined under s 11A for this provision.

- (2) A licence under subsection (1) must—
- (a) be in writing; and
 - (b) identify the licensee; and
 - (c) state—
 - (i) the part of the Assembly precincts to which it applies; and
 - (ii) the use and period for which it applies.
- (3) A licence under subsection (1) is subject to any condition stated in the licence.
- (4) In this section:

Assembly precincts includes anything within the precincts.

8 Executive area

- (1) The Speaker's functions under section 7 must be exercised in relation to the Executive area in accordance with any limitations and conditions agreed in writing between the Speaker and the Chief Minister.
- (2) In this section:
- Executive area* means the area of the Assembly precincts reserved for the use of the Executive by a written agreement between the Speaker and the Chief Minister.

9 Removal of people

- (1) The Speaker may direct a person who is not a member—
- (a) to leave the Assembly precincts; or
 - (b) not to enter the Assembly precincts.
- (2) The Speaker may arrange for the removal or exclusion from the Assembly precincts of a person given a direction under subsection (1) using any necessary and reasonable force and assistance.

- (3) The Speaker, or a person acting under the Speaker's direction, does not incur civil or criminal liability for an act or omission done honestly and without negligence under this section.
- (4) A civil liability that would, apart from this section, attach to the Speaker, or a person acting under the direction of the Speaker, attaches instead to the Territory.
- (5) The Speaker may delegate the Speaker's functions under this section to—
 - (a) the sergeant-at-arms for the Assembly; or
 - (b) the principal attendant for the Assembly.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

10 Contravention of Speaker's direction

- (1) A person must not engage in conduct that contravenes a direction by the Speaker under section 9 (1).
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) In this section:
engage in conduct means—
 - (a) do an act; or
 - (b) omit to do an act.

11 Application of Crimes Act, s 154

The *Crimes Act 1900*, section 154 (Additional offences on territory premises) applies to the Assembly precincts as if they were government premises within the meaning of that section.

11A Determination of fees

- (1) The Speaker may determine fees for this Act.
Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).
- (2) A determination is a disallowable instrument.
Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

11B Approved forms

- (1) The Speaker may approve forms for this Act.
- (2) If the Speaker approves a form for a particular purpose, the approved form must be used for that purpose.
Note For other provision about forms, see the Legislation Act, s 255.
- (3) An approved form is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act.

12 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Dictionary

(see s 3)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- contravene
- Executive
- Legislative Assembly
- Speaker.

Assembly means the Legislative Assembly.

Assembly precincts means—

- (a) the precincts defined by section 5; and
- (b) any property to which section 6 applies.

Speaker includes the Deputy Speaker if—

- (a) the Speaker is absent from duty; or
- (b) there is a vacancy in the office of the Speaker.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

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The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Legislative Assembly Precincts Act 2001 A2001-85

notified LR 24 September 2001

s 1, s 2 commenced 24 September 2001 (LA s 75)

remainder commenced 24 March 2002 (s 2 and LA s 79)

as amended by

Statute Law Amendment Act 2002 A2002-30 pt 3.42

notified LR 16 September 2002

s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))

pt 3.42 commenced 17 September 2002 (s 2 (1))

Legislative Assembly Precincts Amendment Act 2002 A2002-53

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

remainder commenced 21 December 2002 (s 2)

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 2 pt 2.3

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 2 pt 2.3 commenced 23 November 2005 (s 2)

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.28

notified LR 27 October 2005
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))
sch 1 pt 1.28 commenced 24 November 2005 (s 2)

Legislative Assembly Precincts Amendment Act 2006 A2006-20

notified LR 17 May 2006
s 1, s 2 commenced 17 May 2006 (LA s 75 (1))
remainder commenced 18 May 2006 (s 2)

4 Amendment history

Commencement

s 2 *om LA s 89 (4)*

Dictionary

s 3 *sub A2002-30 amdt 3.574*
defs reloc to dict A2002-30 amdt 3.573

Offences against Act—application of Criminal Code etc

s 4A *ins A2005-54 amdt 1.206*

Licences

s 7A *ins A2006-20 s 4*

Removal of people

s 9 *am A2002-53 s 4*

Contravention of Speaker's direction

s 10 *sub A2005-54 amdt 1.207*

Application of Crimes Act, s 154

s 11 *sub A2005-53 amdt 2.24*

Determination of fees

s 11A *ins A2006-20 s 5*

Approved forms

s 11B *ins A2006-20 s 5*

Dictionary

dict ins A2002-30 amdt 3.575
def Assembly reloc from s 3 A2002-30 amdt 3.573
def Assembly precincts reloc from s 3 A2002-30 amdt 3.573
def Speaker reloc from s 3 A2002-30 amdt 3.573

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	24 March 2002
2	A2002-30	17 September 2002
3	A2002-53	21 December 2002

4	<u>A2005-54</u>	23 November 2005
5	A2005-54	24 November 2005

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APPENDIX 27: PARLIAMENTARY PRIVILEGES ACT 1987**Parliamentary Privileges Act 1987****Act No. 21 of 1987 as amended**

This compilation was prepared on 1 July 2003
taking into account amendments up to Act No. 24 of 2001

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

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An Act to declare the powers, privileges and immunities of each House of the Parliament and of the members and committees of each House, and for related purposes

1 Short title [see Note 1]

This Act may be cited as the *Parliamentary Privileges Act 1987*.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

committee means:

- (a) a committee of a House or of both Houses, including a committee of a whole House and a committee established by an Act; or
- (b) a sub-committee of a committee referred to in paragraph (a).

court means a federal court or a court of a State or Territory.

document includes a part of a document.

House means a House of the Parliament.

member means a member of a House.

tribunal means any person or body (other than a House, a committee or a court) having power to examine witnesses on oath, including a Royal Commission or other commission of inquiry of the Commonwealth or of a State or Territory having that power.

- (2) For the purposes of this Act, the submission of a written statement by a person to a House or a committee shall, if so ordered by the House or the committee, be deemed to be the giving of evidence in accordance with that statement by that person before that House or committee.
- (3) In this Act, a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or of the members or committees.

3A Application of the *Criminal Code*

(1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) To avoid doubt, subsection (1) does not apply the *Criminal Code* to an offence against a House.

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

5 Powers, privileges and immunities

Except to the extent that this Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of this Act, continue in force.

6 Contempts by defamation abolished

- (1) Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.
- (2) Subsection (1) does not apply to words spoken or acts done in the presence of a House or a committee.

7 Penalties imposed by Houses

- (1) A House may impose on a person a penalty of imprisonment for a period not exceeding 6 months for an offence against that House determined by that House to have been committed by that person.
- (2) A penalty of imprisonment imposed in accordance with this section is not affected by a prorogation of the Parliament or the dissolution or expiration of a House.
- (3) A House does not have power to order the imprisonment of a person for an offence against the House otherwise than in accordance with this section.
- (4) A resolution of a House ordering the imprisonment of a person in accordance with this section may provide that the President of the Senate or the Speaker of the House of Representatives, as the case requires, is to have power, either generally or in specified circumstances, to order the discharge of the person from imprisonment and, where a resolution so provides, the President or the Speaker has, by force of this Act, power to discharge the person accordingly.
- (5) A House may impose on a person a fine:
 - (a) not exceeding \$5,000, in the case of a natural person; or
 - (b) not exceeding \$25,000, in the case of a corporation;for an offence against that House determined by that House to have been committed by that person.
- (6) A fine imposed under subsection (5) is a debt due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by a House for that purpose.
- (7) A fine shall not be imposed on a person under subsection (5) for an offence for which a penalty of imprisonment is imposed on that person.
- (8) A House may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this section into effect.

8 Houses not to expel members

A House does not have power to expel a member from membership of a House.

9 Resolutions and warrants for committal

Where a House imposes on a person a penalty of imprisonment for an offence against that House, the resolution of the House imposing the penalty and the warrant committing the person to custody shall set out particulars of the matters determined by the House to constitute that offence.

10 Reports of proceedings

- (1) It is a defence to an action for defamation that the defamatory matter was published by the defendant without any adoption by the defendant of the substance of the matter, and the defamatory matter was contained in a fair and accurate report of proceedings at a meeting of a House or a committee.
- (2) Subsection (1) does not apply in respect of matter published in contravention of section 13.
- (3) This section does not deprive a person of any defence that would have been available to that person if this section had not been enacted.

11 Publication of tabled papers

- (1) No action, civil or criminal, lies against an officer of a House in respect of a publication to a member of a document that has been laid before a House.
- (2) This section does not deprive a person of any defence that would have been available to that person if this section had not been enacted.

12 Protection of witnesses

- (1) A person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence.

Penalty:

- (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
- (b) in the case of a corporation, \$25,000.

- (2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:
 - (a) the giving or proposed giving of any evidence; or
 - (b) any evidence given or to be given;before a House or a committee.

Penalty:

- (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
- (b) in the case of a corporation, \$25,000.

- (3) This section does not prevent the imposition of a penalty by a House in respect of an offence against a House or by a court in respect of an offence against an Act establishing a committee.

13 Unauthorised disclosure of evidence

A person shall not, without the authority of a House or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; or
- (b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence;

unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.

Penalty:

- (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
- (b) in the case of a corporation, \$25,000.

14 Immunities from arrest and attendance before courts

(1) A member:

- (a) shall not be required to attend before a court or a tribunal; and
- (b) shall not be arrested or detained in a civil cause;

on any day:

- (c) on which the House of which that member is a member meets;
- (d) on which a committee of which that member is a member meets; or
- (e) which is within 5 days before or 5 days after a day referred to in paragraph (c) or (d).

(2) An officer of a House:

- (a) shall not be required to attend before a court or a tribunal; and
- (b) shall not be arrested or detained in a civil cause;

on any day:

- (c) on which a House or a committee upon which that officer is required to attend meets; or
- (d) which is within 5 days before or 5 days after a day referred to in paragraph (c).

(3) A person who is required to attend before a House or a committee on a day:

- (a) shall not be required to attend before a court or a tribunal; and
- (b) shall not be arrested or detained in a civil cause;

on that day.

(4) Except as provided by this section, a member, an officer of a House and a person required to attend before a House or a committee has no immunity from compulsory attendance before a court or a tribunal or from arrest or detention in a civil cause by reason of being a member or such an officer or person.

15 Application of laws to Parliament House

It is hereby declared, for the avoidance of doubt, that, subject to section 49 of the Constitution and this Act, a law in force in the Australian Capital Territory applies according to its tenor (except as otherwise provided by that or any other law) in relation to:

- (a) any building in the Territory in which a House meets; and

(b) any part of the precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.

16 Parliamentary privilege in court proceedings

- (1) For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.
- (2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, *proceedings in Parliament* means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
- (a) the giving of evidence before a House or a committee, and evidence so given;
 - (b) the presentation or submission of a document to a House or a committee;
 - (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
 - (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.
- (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
 - (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
 - (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.
- (4) A court or tribunal shall not:
- (a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or
 - (b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence;
- unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.
- (5) In relation to proceedings in a court or tribunal so far as they relate to:
- (a) a question arising under section 57 of the Constitution; or
 - (b) the interpretation of an Act;
- neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission in evidence of a record of proceedings in Parliament published by or with the authority of a House or a committee or the making of statements, submissions or comments based on that record.

- (6) In relation to a prosecution for an offence against this Act or an Act establishing a committee, neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission of evidence, the asking of questions, or the making of statements, submissions or comments, in relation to proceedings in Parliament to which the offence relates.
- (7) Without prejudice to the effect that article 9 of the Bill of Rights, 1688 had, on its true construction, before the commencement of this Act, this section does not affect proceedings in a court or a tribunal that commenced before the commencement of this Act.

17 Certificates relating to proceedings

For the purposes of this Act, a certificate signed by or on behalf of the President of the Senate, the Speaker of the House of Representatives or a chairman of a committee stating that:

- (a) a particular document was prepared for the purpose of submission, and submitted, to a House or a committee;
 - (b) a particular document was directed by a House or a committee to be treated as evidence taken in camera;
 - (c) certain oral evidence was taken by a committee in camera;
 - (d) a document was not published or authorised to be published by a House or a committee;
 - (e) a person is or was an officer of a House;
 - (f) an officer is or was required to attend upon a House or a committee;
 - (g) a person is or was required to attend before a House or a committee on a day;
 - (h) a day is a day on which a House or a committee met or will meet; or
 - (i) a specified fine was imposed on a specified person by a House;
- is evidence of the matters contained in the certificate.

Notes to the *Parliamentary Privileges Act 1987*

Note 1

The *Parliamentary Privileges Act 1987* as shown in this compilation comprises Act No. 21, 1987 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Parliamentary Privileges Act 1987</i>	21, 1987	20 May 1987	20 May 1987	
<i>Parliamentary Precincts Act 1988</i>	9, 1988	5 Apr 1988	Ss. 1–4, 7 and 14 (in part); Royal Assent S. 11: 6 May 1988 (see <i>Gazette</i> 1988, No. S129) Remainder: 1 Aug 1988 (see <i>Gazette</i> 1988, No. S229)	S. 12
<i>Law and Justice Legislation Amendment Act (No. 3) 1992</i>	165, 1992	11 Dec 1992	Schedule (Note): Royal Assent (a)	—
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 38: (b)	S. 4(1) and (2)

- (a) The *Parliamentary Privileges Act 1987* was amended by the Schedule (Note) only of the *Law and Justice Legislation Amendment Act (No. 3) 1992*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *Parliamentary Privileges Act 1987* was amended by Schedule 38 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<u>Provision affected</u>	<u>How affected</u>
S. 3A	ad. No. 24, 2001
Heading to s. 14	am. No. 165, 1992
S. 15.....	am. No. 9, 1988

Table A**Application, saving or transitional provisions**

Parliamentary Precincts Act 1988 (No. 9, 1988)

12 Saving of powers, privileges and immunities

Nothing in this Act shall be taken to derogate from the powers, privileges and immunities of each House, and of the members and committees of each House, under any other law.

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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