

17. Committees

- 17.1. The systematic use of committees to scrutinise proposed legislation, monitor the activities of the executive and inquire into public policy issues in detail—but 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. Despite the ACT being a small jurisdiction, the combination of both state and municipal-type functions at a single level of government has resulted in both the executive and the legislative arms of government having a very broad range of responsibilities. Among other matters, the ACT Government is responsible for education, health, social welfare, housing, justice and policing, land management, licensing, public transport, water and power supply, and household waste management. Assembly committees play a critical role in exercising the Assembly's inquiry power to scrutinise the work of ministers and their directorates and to hold the government accountable.
- 17.2. The power of inquiry is a longstanding power of parliaments.¹
- 17.3. The authority of the Legislative Assembly to establish committees can be said to flow from the combined effects of s 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', and s 24(3) of the Self-Government Act, which 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'.
- 17.4. There are two types of Assembly committees—standing committees and select committees.² Standing committees are usually created at the commencement of an Assembly, while select committees may be created at any time by the Assembly to consider specific matters, generally within specified time frames.
- 17.5. Standing committees fall into the following categories:
- there is an internal administrative committee, the Standing Committee on Administration and Procedure, which is the only standing committee created directly under the standing orders; and

1 See Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, under the heading 'Power to conduct inquiries'.

2 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 which ceases to exist once it has reported.

- there are general-purpose committees which are created by resolution in each Assembly with responsibility for examining a broad range of government activity, including certain statutory responsibilities.
- 17.6. 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, as well as other matters provided for in standing order 16.
- 17.7. General-purpose standing committees consider a range of matters allocated across specified portfolio areas. These matters are determined by a committee's resolution of appointment, while specific terms of reference apply to individual inquiries that are undertaken by a standing committee. Over the years, differing committee structures have been established, but some committees are longstanding. Assembly standing committees also have significant statutory responsibilities, particularly the Standing Committee on Public Accounts and the standing committee responsible for planning.
- 17.8. The Assembly may also establish select committees to inquire into topical matters that the Assembly regards as requiring specific and timely consideration and which may not fall neatly within the ambit of a standing committee. Prior to the Tenth Assembly, a select committee on estimates was established each year to consider the annual appropriation bills and budget estimates.³
- 17.9. The titles and areas of responsibility given to 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 for committees to take responsibility for particular areas of public policy; broadly align with ministerial portfolios established by government; and focus on key areas of government activity. In practice, no one system has been routinely adopted.
- 17.10. The Office of the Legislative Assembly provides administrative support and procedural advice to all Assembly committees.

3 In the Tenth Assembly, the resolution appointing standing committees provided that 'the committees so established are required to examine the expenditure proposals contained in the main appropriation bills for the Territory and any revenue estimates proposed by Government in the annual budget and prepare a report to the Assembly within 60 days of the presentation of budget bills'. See MoP, No 2, 2 December 2020, p 18.

Committees in the First Assembly

- 17.11. 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, claiming that there was no consensus about 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.
- 17.12. Three general-purpose standing committees were established on 23 May 1989⁴ (the second sitting day), each comprising 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 consist of only three members. The mover stated 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 impacts on 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
- 17.13. In August 1989, the 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
- 17.14. 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, which was to 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 delineated areas of inquiry. There was no discussion of the possible impacts of the proposals on

4 Standing Committee on Public Accounts, Standing Committee on Planning, Development and Infrastructure and Standing Committee on Social Policy.

5 Assembly Debates, 25 May 1989, p 167.

6 Standing Committee on Administration and Procedures, *Restructuring the committee system*, March 1990, p 14.

7 Standing Committee on Administration and Procedures, *Restructuring the committee system*, March 1990, pp 15-17.

members' time or on the staffing and financial resources of the then Legislative Assembly Secretariat.

- 17.15. 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 committees⁹ 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.¹⁰ The standing committees would also have individual responsibility for the estimates function (scrutinising appropriation bills), for considering legislation, and 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 regarding the membership of standing committees to accommodate the interests of individual members who wished to participate in a particular inquiry.
- 17.16. In response to pressure from members, a Standing Committee for the Scrutiny of Bills and Subordinate Legislation was established on 18 October 1989, consisting of three members.¹¹ It was noted that this was an interim measure 'pending Government consideration of suggestions for a broad reorganisation of standing committees'.¹²
- 17.17. The Australian Labor Party, by then in opposition, responded to the Speaker's paper on 8 February 1990, broadly supporting the proposed structure. The new Chief Minister provided the government's view 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.
- 17.18. 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

8 Standing Committee on Administration and Procedures, *Restructuring the committee system*, March 1990, pp 18-19.

9 At that time there was a single government backbench member.

10 Education and Community Affairs; Legal Affairs (including the scrutiny of bills and delegated legislation function); Public Accounts; Planning, Environment and Infrastructure; and Social Policy.

11 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.

12 Chief Minister, Assembly Debates, 19 October 1989, p 1863.

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.

- 17.19. 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. There was a concern that a bipartisan approach could be placed in jeopardy were scrutiny and delegated legislation functions to be combined with public policy consideration, which could potentially lead down ‘more controversial paths’.¹³
- 17.20. Three characteristics of the Assembly’s committee system were already apparent and of concern to members. They were:
- the limited number of members available to serve on standing and select committees¹⁴ 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 alignment between the committees’ remit and the portfolio responsibilities of ministers limited the effectiveness with which the executive could be scrutinised.

Committees of later Assemblies

- 17.21. 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

13 Standing Committee on Administration and Procedures, *Restructuring the committee system*, March 1990, p 9.

14 There were 11 select committees in the First Assembly.

Economic Development and Tourism, which took on some of the functions of the discontinued committees, with other functions being allocated to other standing committees.

- 17.22. 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, among other things, 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 that:

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.¹⁵

- 17.23. At the commencement of the Fourth Assembly, the motion proposed to establish the standing committees cited the Pettit review and proposed that the committees track ministerial portfolios. In practice, given the small number of ministers¹⁶ and their diverse responsibilities in the ACT system, this proposal replaced one broad-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. On this basis, five general-purpose standing committees were established, with the public accounts function being subsumed into a new Standing Committee for the Chief Minister's Portfolio (renamed the 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.
- 17.24. The Standing Committee on Public Accounts was restored in the Fifth Assembly and, as at the Tenth Assembly, has been formed in every subsequent Assembly. While the names of committees have changed over time, the areas of responsibility have been less subject to variation. Responsibilities for health and community services have sometimes been divided between two separate committees¹⁷ and sometimes have been placed under a single committee.¹⁸ While environmental matters have usually been considered by the same committee responsible for planning, they were considered by a separate committee in the Seventh and Ninth Assemblies.

15 Philip Pettit, *Review of the Governance of the Australian Capital Territory*, Canberra, 1998, pp 48-50.

16 At the beginning of the Fourth Assembly, there were five ministers.

17 As in the Fifth Assembly.

18 From the Sixth Assembly onwards.

- 17.25. It is arguable that the Assembly's early history, which was characterised by minority governments, a diverse range of 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 considered deliberations about the institution's long-term needs.
- 17.26. 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, which has also discharged the specific legislative requirement that variations to the ACT's land use plan be referred to a relevant committee of the Legislative Assembly.¹⁹ 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. The Ninth Assembly introduced a new oversight committee—the Standing Committee on the Integrity Commission.²⁰

19 Section 73(2) of the Planning and Development Act:

The Minister must, within 5 working days after the day the public availability notice for the draft plan variation is notified, refer the draft plan variation documents to an appropriate committee of the Legislative Assembly, together with a request that the committee decide whether it will prepare a report on the draft plan variation.

20 MoP, No 82, 29 November 2018, p 1187. The committee was not established as a standalone committee in the Tenth Assembly.

Table 4: Legislative Assembly for the Australian Capital Territory committee structure up to and including the Ninth Assembly

Assembly	Standing Committees	Select Committees
First	Administration and Procedures ²¹	Cultural Activities and Facilities
	Conservation, Heritage and the Environment	Establishment of a Casino
	Legal Affairs	Estimates 1989-90
	Planning Development and Infrastructure	Estimates 1990-91
	Public Accounts	Estimates 1991-92
	Scrutiny of Bills and Subordinate Legislation	HIV, Illegal Drugs and Prostitution
	Social Policy	Hospital Bed Numbers
		Occupational Health and Safety Bill 1989
Second	Administration and Procedures	Police Offences (Amendment) Bill 1989
	Conservation, Heritage and Environment	Self-Government
	Legal Affairs	Tenancy of Commercial Premises
	Planning Development and Infrastructure	Amalgamation of Tertiary Institutions
	Public Accounts	Budget Performance and Outcomes for 1993-94
	Public Sector	Community Initiated Referendums
	Scrutiny of Bills and Subordinate Legislation	Drugs
	Social Policy	Establishment of an ACT Public Service
	Tourism and ACT Promotion	Estimates 1992-93
		Estimates 1993-94
	Estimates 1994-95	
	Euthanasia	

21 An amendment to the resolution of appointment combining the Standing Committees on Administration, Procedures and Business to the Standing Committee on Administration and Procedures was agreed to on 23 May 1989.

Assembly	Standing Committees	Select Committees
Third	Administration and Procedure	Additional Estimates 1995-96
	Economic Development and Tourism ²²	Competition Policy Reform
	Legal Affairs	Estimates 1995-96 and Budget Review
	Planning and Environment	Estimates 1996-97
	Public Accounts	Estimates 1997-98
	Scrutiny of Bills and Subordinate Legislation	Establishment of a New Private Hospital
	Social Policy	Petrol Pricing Workers' Compensation Provisions
Fourth	Administration and Procedure	2001-2002 Budget
	Education, Community Services and Recreation ²³	Estimates 1998-99 Estimates 1999-2000
	Finance and Public Administration (incorporating the Public Accounts Committee) ²⁴	Estimates 2000-2001 Estimates 2001-2002
	Health and Community Care	Gambling
	Justice and Community Safety (also performing the duties of a scrutiny of bills and subordinate legislation committee)	Government Contracting and Procurement Processes Public Housing
	Planning and Urban Services ²⁵	Report of the Review of Governance Territory's Superannuation Commitments Workers' Compensation System

22 An amendment to the 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, No 13, 22 June 1995, pp 96-97.

23 An amendment to the resolution of appointment changing the name of the committee from Standing Committee on Education was agreed to on 25 November 1999; MoP, No 70, 25 November 1999, p 622.

24 An amendment to the resolution of appointment changing the name of the committee from Standing Committee on the Chief Minister's Portfolio was agreed to on 25 November 1999; MoP, No 70, 25 November 1999, p 622.

25 An amendment to the resolution of appointment changing the name of the committee from Standing Committee on Urban Services was agreed to on 25 November 1999; MoP, No 70, 25 November 1999, p 622.

Assembly	Standing Committees	Select Committees
Fifth	Administration and Procedure	Estimates 2001-2002
	Community Services and Social Equity	Estimates 2002-2003
	Education	Estimates 2003-2004
	Health	Estimates 2003-2004 (No 2)
	Legal Affairs (also performing the duties of a scrutiny of bills and subordinate legislation committee)	Estimates 2003-2004 (No 3) Estimates 2004-2005
	Planning and Environment	Privileges 2002
	Public Accounts	Privileges 2003 Privileges 2004
		The Status of Women in the ACT
Sixth	Administration and Procedure	Estimates 2005-2006
	Education, Training and Young People	Estimates 2006-2007
	Health and Disability	Estimates 2007-2008
	Legal Affairs (also performing the duties of a scrutiny of bills and subordinate legislation committee)	Estimates 2008-2009 Privileges
	Planning and Environment	Working Families in the Australian Capital Territory
	Public Accounts	
Seventh	Administration and Procedure	ACT Supermarket Competition Policy
	Climate Change, Environment and Water	Campaign Advertising
	Education, Training and Youth Affairs	Election Commitments Costing Bill 2011 Exposure Draft
	Health, Community and Social Services	Estimates 2009-2010 Estimates 2010-2011
	Justice and Community Safety (also performing the duties of a scrutiny of bills and subordinate legislation committee)	Estimates 2011-2012 Estimates 2012-2013
	Planning, Public Works and Territory and Municipal Services	Privileges 2009 Privileges 2010
	Public Accounts	Privileges 2011

Assembly	Standing Committees	Select Committees
Eighth	Administration and Procedure	Amendments to the <i>Electoral Act 1992</i>
	Education, Training and Youth Affairs	Estimates 2013-2014
	Health, Ageing, Community and Social Services	Estimates 2014-2015 Estimates 2015-2016
	Justice and Community Safety (also performing a Legislative Scrutiny Role)	Estimates 2016-2017
	Planning, Environment and Territory and Municipal Services	Legislative Assembly (Parliamentary Budget Officer) Bill 2016
	Public Accounts	Regional Development
Ninth	Administration and Procedure	2016 ACT Election and Electoral Act
	Economic Development and Tourism	COVID-19 pandemic response
	Education, Employment and Youth Affairs	End of Life Choices in the ACT Estimates 2017-2018
	Environment and Transport and City Services	Estimates 2018-2019
	Health, Ageing and Community Services	Estimates 2019-2020 Fuel Pricing
	Integrity Commission	Independent Integrity Commission
	Justice and Community Safety (also performing a Legislative Scrutiny Role)	Independent Integrity Commission 2018
	Planning and Urban Renewal	Privileges 2018
	Public Accounts	Privileges 2019
Tenth (As at 30 June 2021)	Administration and Procedure	Drugs of Dependence (Personal Use) Amendment Bill 2021
	Planning, Transport and City Services	
	Environment, Climate Change and Biodiversity	
	Economy and Gender and Economic Equality	
	Education and Community Inclusion	
	Justice and Community Safety (also performing a Legislative Scrutiny Role)	
	Public Accounts	
	Health and Community Wellbeing. ²⁶	

Committee workload

- 17.27. 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 resolution of appointment. Between the Second and Eighth Assemblies, the planning committee averaged 36 reports per Assembly, mainly on variations to the ACT's Territory Plan.²⁷ The public accounts committee averaged 23 reports per Assembly over the same period, largely in response to reports by the Auditor-General. The scrutiny of bills and subordinate legislation committee, which averaged 58 reports, is required to consider all legislation introduced into the Assembly, proposed amendments²⁸ and all disallowable legislative instruments made under ACT legislation.
- 17.28. The need to undertake responsibilities dictated by particular statutory and procedural demands has produced two responses in committees. On the one hand, the committee responsible for planning variations—a matter of ongoing community interest—has tended to devote the bulk of its time and energy to those inquiries, arguably at the expense of other matters within the committee's remit.²⁹ 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 justice issues.
- 17.29. In some parliaments, two separate committees are responsible for the scrutiny of bills and the scrutiny of delegated legislation. In the Assembly, such an approach has not proven practicable, and combining the performance of the two functions in a single committee has become accepted practice.³⁰
- 17.30. Similarly, the Standing Committee on Administration and Procedure has carriage of a number of functions, which in larger parliaments would typically be performed by multiple committees; for example, inquiring into the Assembly's practices and standing orders and arranging the order of some business on the *Notice Paper*.³¹

27 This average is lowered by the Seventh and Eighth Assemblies, during which the legislation gave the minister discretion on whether or not to refer draft variations to the Territory Plan to the committee.

28 From the Seventh Assembly onwards.

29 For an example, see under the heading 'Statements and discussion papers' below in this chapter, where the planning and environment committee discharged an inquiry into an environmental issue, citing the workload imposed by its planning responsibilities.

30 In the first three Assemblies, these scrutiny of bills and subordinate legislation functions were performed by a single committee, while more recent practice has been for the standing committee with responsibility for justice issues generally—law reform, the administration of justice, policing—to perform these additional scrutiny functions.

31 Standing order 16.

Powers of committees

- 17.31. As noted above, the Assembly has the power to establish committees which share its powers and privileges. The Assembly's devolved inquiry powers, including those of its committees, might be limited to matters within its legislative responsibility, but this has not been tested.³² 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,³³ move from place to place, publish evidence,³⁴ and present reports to the Assembly.³⁵ The real power of committees, which underpins their inquiry function, lies in standing order 239, 'A committee shall have power to send for persons, papers and records', which enables committees to require the attendance of witnesses and the production of documents.
- 17.32. The extent of these powers, so far as the Commonwealth Parliament is concerned, has been the subject of debate and judicial comment.³⁶ However, the question is unresolved. 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.³⁷
- 17.33. In the Legislative Assembly, there have been few occasions where the powers of committees to conduct inquiries, call witnesses or require the production of papers have been queried.³⁸ Nor has the Assembly explored the limits of its committees' powers to call for the production of documents.
- 17.34. Additional discussion on the Assembly's power of inquiry is in Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, under the heading 'Power to conduct inquiries' and below in this chapter, under the heading 'Power to send for persons, papers and records'.

32 *Odgers*, pp 78-79. For a general discussion of the inquiry power see Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly.

33 Standing order 229C.

34 Standing order 241.

35 Standing order 253.

36 For a thorough consideration of this question, see *House of Representatives Practice*, pp 645-648 and *Odgers*, Chapter 16 (powers of committees) and pp 581-589 (orders for the production of documents).

37 *Odgers*, p 548.

38 Various claims have been made; for example, based on 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. Continuing resolution 8B sets out the process for raising public interest immunity claims before a committee.

Statutory requirements

- 17.35. Certain Acts require Assembly committees to undertake tasks. For instance, the Human Rights Act requires a committee nominated by the Speaker to report to the Assembly about human rights issues raised by bills presented to the Assembly.³⁹ The Planning and Development Act requires a committee nominated by the Speaker to report on certain draft plan variations and draft plans of management.⁴⁰

Statutory appointments

- 17.36. The Legislation Act 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.⁴¹ 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. The consultation requirement 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 an appointment if the committee does not respond to the initial consultation within 30 days.⁴²
- 17.37. In practice, committees' role in the consultation process has not involved an expansive consideration of the merits of each proposed appointment. The Speaker has issued procedural guidelines that set out the information that committees expect to receive as part of consultation from ministers. The 2021 guidelines state that a minister's correspondence to standing committee regarding an appointment should include (to the extent that it applies):

- (a) The Act under which the appointment is to be made and the criteria for appointment;
- (b) The term of the appointment;
- (c) Current membership of a board or committee to which the proposed appointment relates;
- (d) The proposed appointee's current Curriculum Vitae and the basis on which the appointment is being made (that is, the appointee's claim to the position);

39 Human Rights Act, s 38.

40 Planning and Development Act, s 73.

41 Legislation Act, division 19.3.3, s 228. The Auditor-General Act (s 8(3)(b)) goes further and provides the Standing Committee on Public Accounts with an effective veto over the appointment of an Auditor-General.

42 Legislation Act, s 228(3).

- (e) Advice as to the circumstances of the appointment (that is, whether it is a new appointment or a re-appointment, full-time or part-time, whether the appointment is as Chair, Deputy Chair or member). If a new appointment, who the proposed appointee is replacing and how the vacancy has arisen. If a re-appointment, the number and duration of all previous appointments; and
 - (f) Any remuneration payable.⁴³
- 17.38. Committees will often simply ‘note’ that the appointment of a person has been proposed. There have also been occasions where a committee has questioned the gender composition of a government board or panel.
- 17.39. Continuing resolution 5A, introduced in 2012, provides for both executive and committee members to keep proposed appointments confidential until an appointment is made. It also establishes six-monthly reporting by committees to the Assembly of the statutory appointments that have been considered.⁴⁴
- 17.40. Certain committees are also given, under statutory provisions, an effective power of veto of the appointment of the Clerk of the Legislative Assembly, the Auditor-General, and members of the Electoral Commission.⁴⁵ Under the Integrity Commission Act, the Speaker is required to consult with the relevant Assembly committee in appointing the Integrity Commissioner. For more information see Chapter 5: The Speaker and other officers, under the headings ‘The Clerk and the Office of the Legislative Assembly’ and ‘Officers of the Assembly’.

Standing orders relating to committees

- 17.41. The standing orders relating to committees are expressed in general terms. To understand fully the areas of responsibility, membership, reporting requirements and powers of individual committees it is necessary to read the standing orders in conjunction with the resolution of appointment of individual committees, 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 and the Senate should also be considered.

43 *Statutory Appointments – Consulting with Legislative Assembly committees 10th Assembly Procedural Guidelines – 2021.*

44 Assembly Debates, 23 August 2012, pp 3329-3330.

45 Following the passage of the *Legislative Assembly Legislation Amendment Act 2017*, common language was inserted in relevant statutes to provide that the Speaker must not appoint these officers unless the relevant committee agrees to the appointment.

Appointment of standing committees

- 17.42. Standing order 215 requires that standing committees are to be established and members appointed as soon as practicable after the commencement of each Assembly. The practice of the Legislative Assembly is to appoint general-purpose standing committees on the second sitting day of a 'new' Assembly. In the first Assembly, standing committees were created at various times as the Assembly developed a clearer view of how it would proceed.
- 17.43. In the Second Assembly, 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 strengthen the Assembly's commitment to continuing oversight of the newly established ACT Public Service. However, the committee was not re-established in subsequent Assemblies.
- 17.44. In the Ninth Assembly, the Assembly acted on the recommendation of the Select Committee on an Independent Integrity Commission 2018 that a new standing committee, the Standing Committee on the Integrity Commission, be established to oversee the Integrity Commission.⁴⁶
- 17.45. The number of standing committees has varied between seven and 10. In six of the 10 Assemblies, 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 that committee to be established, defines its responsibilities, specifies the membership and appoints the Speaker as its presiding member.
- 17.46. The Assembly's standing orders are silent on the number of committees to be established, their areas of responsibility and initially provided little guidance on membership. Standing orders now provide for no more than five committee members unless otherwise ordered.⁴⁷ They also require membership of committees to be, as near as practicable, proportional to party groupings in the Assembly. The Assembly has developed the practice of adopting a comprehensive resolution at the start of each Assembly establishing general-purpose standing committees, setting out their areas of responsibility, defining their membership (by party) and specifying some of their powers.

46 MoP, No 82, 29 November 2018, p 1187. In the Tenth Assembly, the Standing Committee on the Integrity Commission was not established. The Standing Committee on Justice and Community Safety was instead given the relevant oversight and other functions (see MoP, No 2, 2 December 2020, pp 17-22).

47 Standing order 220.

Tenth Assembly

- 17.47. In a departure from previous practice, the resolution of appointment establishing standing committees in the Tenth Assembly imposed two new requirements on the Assembly's standing committees.
- 17.48. Firstly, all bills presented to the Assembly stand referred to the relevant standing committee for inquiry and report.⁴⁸ It is open to committees whether or not they wish to pursue an inquiry. However, where the referral is accepted by a committee, it has two months from the date of presentation to inquire into and report on the relevant matters.⁴⁹
- 17.49. Secondly, each standing committee is required to examine the expenditure proposals contained in the main appropriation bills for the Territory and any revenue estimates proposed by the government in the annual budget and prepare a report to the Assembly within 60 days of the presentation of the budget bills. Previously, the Assembly established an annual select committee on estimates to examine budget estimates and appropriation bills.
- 17.50. In addition, the resolution of appointment in the Tenth Assembly set out a listing of the relevant 'areas of responsibility' for each standing committee, including which directorates and other agencies fell within each committee's remit.⁵⁰

Joint inquiries

- 17.51. There has been one example, in 2001, of an attempt to have two standing committees 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 the Standing Committee on Public Accounts should examine the proposal.⁵¹ 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.

48 This was done on a trial basis, pursuant to the recommendation of the Standing Committee on Administration and Procedure in its report *Inquiry into possible structures of the committee system for the 10th Legislative Assembly for the Australian Capital Territory*, Report Number 17, 2020, which was adopted by the Assembly. See MoP, No 138, 20 August 2020, p 2101.

49 Except for bills presented during the last sitting week of a calendar year, for which the committee has three months to report.

50 It also set out 'primary wellbeing indicators' for each committee, which broadly specified the relevant subject matter to which each committee would attend; see MoP, No 2, 2 December 2020, pp 17-22.

51 MoP, No 22, 6 June 2002, pp 198-199; MoP, No 25, 27 June 2002, p 227; MoP, No 28, 22 August 2002, pp 275-276. If authorised by the Assembly, such a committee could be established and have access to the papers of both the constituent committees.

- 17.52. 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 was rejected after receiving advice.⁵² Any such proposal for a joint inquiry 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' inquiry would not be properly constituted.
- 17.53. In practical terms, the need for joint inquiries has usually been obviated, the committee that has started the inquiry writing to the other committee noting the possible overlap, seeking comment and inviting participation by members in public hearings.

Inquiries by standing committees

- 17.54. Inquiry references come from four main sources:
- a recurring requirement imposed in resolutions of appointment or in the practices of the Assembly—for example, to review reports of the Auditor-General;⁵³
 - legislation—for example, the consideration of planning variations;
 - a reference from the Assembly (including inquiries conducted pursuant to standing order 174 in connection with the referral of a bill); and
 - self-referral by the standing committee.
- 17.55. 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.⁵⁴
- 17.56. In March 2008, the Assembly amended standing order 216 to explicitly give the committees the power to self-refer.⁵⁵ This is a more extensive power than is available to committees of either the House of Representatives or the Senate,

52 Assembly Debates, 23 August 2007, pp 1923-1924.

53 In the Tenth Assembly, the resolution establishing general-purpose standing committees included requirements that the committees would inquire into and report on budget estimates (a departure from the previous practice whereby a select committee had been established to undertake this task), to examine and suggest improvements to bills, and to review annual reports of government agencies. See MoP, No 2, 2 December 2020, pp 17-21.

54 MoP, No 2, 7 December 2004, p 12.

55 See standing order 216.

which do not have the power of self-referral.⁵⁶ Self-referral is used extensively by Legislative Assembly committees.

- 17.57. Petitions may be referred to committees, either by motion or automatically if they have at least 500 signatures.⁵⁷ Petitions are referred for ‘consideration’ and, accordingly, committees are not obliged to inquire into and report on them, though they may choose to do so.⁵⁸
- 17.58. Referral by the Assembly of a specific matter within a standing committee’s general remit is uncommon (apart from the referral of budgetary and financial statements, annual reports and bills).
- 17.59. There has sometimes been debate as to which committee might be best suited to undertake a particular 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.⁵⁹ It is open to committees to negotiate formally and informally, both before a reference is adopted and after an inquiry has been referred.
- 17.60. The referral 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 as it then stood, refer the bill to the same committee. In fact, the bill was taken through all its stages in the Assembly and passed.⁶⁰

56 The House of Representatives standing committees may inquire into any matter referred by the House or a minister, audit reports, 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 25-20) sets out the detailed responsibilities of committees with regard to annual reports.

57 Standing order 99A.

58 For example, in the Ninth Assembly the seventh report of the Standing Committee on Education, Employment and Youth Affairs noted on page 2 that it ‘self-referred this Inquiry on 9 April 2019, following the referral of petition 18-18 from the ACT Legislative Assembly...’.

59 Assembly Debates, 13 December 2001, pp 203-205 and 219-220.

60 Assembly Debates, 27 June 1996, p 2374.

- 17.61. The question was again raised in the Ninth Assembly when a private member's motion addressed matters under consideration by the Standing Committee for Planning and Urban Renewal. The matter was eventually referred to the Standing Committee on Administration and Procedure, which reported to the Assembly that there was nothing to prevent members from discussing the matter. The administration and procedure committee noted that:

If a member wishes to lodge a notice of motion or a bill that closely relates to a subject matter that is currently under inquiry by an Assembly committee, the Assembly is free to debate the matter if it so chooses. However, if the Assembly does debate such a matter, such debate should not pre-empt the findings or possible recommendations of a committee nor reveal private deliberations of the committee or evidence given in-camera.⁶¹

- 17.62. Referrals to committees by either the Assembly or the committees themselves should relate to matters within the legislative remit of the Assembly or matters for which the executive is responsible. However, it is ultimately for the Assembly to interpret whether or not a particular matter falls within these parameters.

Select committees

- 17.63. 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 provide the Assembly with the capacity to respond to issues that fall outside the remit of an existing standing committee or are of such importance or urgency that a specific committee is considered necessary to examine them.
- 17.64. The Legislative Assembly has made extensive use of select committees,⁶² particularly to consider the annual appropriation bill and budget estimates. In the Tenth Assembly, the resolution appointing standing committees included the examination of appropriation bills and budget estimates by standing committees (see under the heading 'Tenth Assembly' above in this chapter). In earlier Assemblies, privilege matters had been considered by the Standing Committee on Administration and Procedures, but since the Fifth Assembly a select committee has been established for each privilege matter referred.⁶³

61 Standing Committee on Administration and Procedure, *Provisions and Conventions around Committee Inquiries*, July 2019, p 7.

62 First Assembly, 11 reports; Second Assembly, seven reports; Third Assembly, eight reports; Fourth Assembly, 12 reports; Fifth Assembly, 10 reports, Sixth Assembly, six reports; Seventh Assembly, 10 reports; Eighth Assembly, seven reports, and Ninth Assembly, 16 reports.

63 In the Fifth Assembly there were three Select Committees on Privileges established; Sixth Assembly, one privileges committee; Seventh Assembly, three privileges committees; Eighth Assembly, no privileges committees; Ninth Assembly, two privileges committees.

17.65. It may be unrealistic, in practice, for a select committee to avoid matters within the competence of standing committees. The wide scope of standing committees' responsibilities is such that virtually any matter relevant to the ACT which could be referred to a select committee will likely fall within the competence of at least one of the Assembly's standing committees. The Assembly has sought to avoid establishing select committees to inquire into matters that overlap 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.⁶⁴

Report from select committees

17.66. A distinguishing feature of select committees is that they have a fixed reporting date.⁶⁵ While standing committees may seek an extension of time to report, Assembly select committees have generally completed their inquiries within the time limits set in their resolutions of appointment.

First meeting

17.67. Standing order 219 provides that the secretary of a committee, under the general direction of the Speaker, shall fix the time and date of the first meeting of a committee within seven days of its establishment. 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.

17.68. 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.⁶⁶

17.69. 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.

17.70. The Senior Director, Committee Support, organises and supports a committee until the appointment of individual secretaries by the Clerk.

17.71. A number of standard resolutions are adopted at the first meeting by all committees, including:

64 See standing order 217.

65 An exception to this was the Ninth Assembly's Select Committee on the COVID-19 pandemic response. It was established on 2 April 2020 without a reporting date, and it was not until 18 June 2020 that the Assembly amended the resolution establishing the committee to include a reporting date.

66 *House of Representatives Practice*, p 670.

- authorising the publication of transcripts of evidence taken in public;
- setting a regular meeting time;
- authorising the secretary to write on its behalf to request documents and ask follow-up questions;
- authorising the chair to provide public comment on inquiry related matters but requiring the chair to ensure other members are informed of any such comments; and
- incorporating the witness privilege statement into the beginning of committee hearing transcripts.

Membership

- 17.72. 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.⁶⁷ 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. Since the Sixth Assembly (although also used in the Third Assembly), resolutions appointing committees have specified the number of members and the grouping within the Assembly that would nominate them to each committee.⁶⁸ In the Second Assembly, the motion to establish standing committees was followed immediately by a motion appointing the membership, which had been agreed in prior negotiation.⁶⁹
- 17.73. 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.⁷⁰ It appeared that the Assembly had settled into three-member committees as the standard, but the Eighth Assembly had four-member standing committees. This approach saw, in the absence of any provision for a casting vote, some committees unable to

67 The resolutions establishing committees often include a 'catch all' clause: 'the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders'. See, for example, MoP, No 6, 20 May 1998, pp 50-51.

68 MoP, No 1, 9 March 1995, pp 10-11; MoP, No 2, 7 December 2004, p 14.

69 MoP, No 1, 27 March 1992, pp 7-8, though one member refused to accept his nomination. See Assembly Debates, 27 March 1992, pp 21-25.

70 MoP, No 2, 23 May 1989, p 9. Note 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, No 40, 14 December 1989, pp 164-165. The Standing Committee on Legal Affairs was established on 27 March 1990 with three members and on the same day the membership of the Standing Committee on Conservation, Heritage and the Environment was increased to four; see MoP, No 50, 27 March 1990, p 204.

reach agreement on reports. Part way through the Ninth Assembly, the motion establishing general-purpose standing committees was amended to revoke all existing memberships and re-establish all but the Standing Committee on Public Accounts as three-member committees.⁷¹ In the Tenth Assembly, all general-purpose standing committees had three members.⁷² 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.

- 17.74. Select committees also generally have three members (although the membership of estimates committees has varied considerably over the years).⁷³ 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. Accordingly, the committee comprised every member of the Assembly other than the Speaker and the four ministers. This approach was replicated at times throughout the early Assemblies. Later Assemblies settled on a more restricted membership, with non-committee members frequently attending estimates public hearings to ask questions in their areas of interest.⁷⁴
- 17.75. A major influence on the membership of committees has been the small size of the Assembly. With the government backbench typically comprising between three or four members, it can be difficult for the governing party to maintain representation on all committees, potentially undermining the representative character of the committee system.⁷⁵ This problem was compounded, particularly in early Assemblies, by an electoral system which tended to favour the election of minor parties and independent members and to produce minority governments.⁷⁶ As in most other Australian parliaments, ministers generally do not serve on Assembly committees. However, from the Fifth Assembly onwards it has not been

71 MoP, No 73, 20 September 2018, pp 1028-1029.

72 See MoP, No 2, 2 December 2020, pp 17-21.

73 For example, in the Seventh Assembly, the estimates committees consisted of five members. In the Eighth Assembly, the estimates committees comprised four members. The Select Committee on Estimates 2006-2007 consisted of six members and the Select Committee on Estimates 2020-2021 had three members.

74 Standing order 234.

75 Ministers do not typically serve on committees (although this is not always the case) and there is a general convention that the Speaker is to be only the Chair of the Standing Committee on Administration and Procedure.

76 The Sixth Assembly is the first, and to date only, occasion on which an ACT Government formed by a single party has held a majority in the Assembly.

uncommon for a minister to be appointed as a member of the Select Committee on Privileges. An inquiry by the Standing Committee on Public Accounts of the Eighth Assembly was conducted with a minister on the committee, as the referral motion required that a member of the crossbench (of which the minister was the sole member) was to be appointed to the committee for the inquiry.⁷⁷ The Ninth Assembly's Select Committee on an Independent Integrity Commission 2018 had two ministers out of a membership of five.⁷⁸ The select committee's report noted that the ministers 'informed the Committee that they excluded themselves from any Cabinet deliberations on the matters before the Committee for the life of the Committee'.⁷⁹

- 17.76. 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.⁸⁰ 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.
- 17.77. Complying with standing order 221⁸¹ 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.⁸² Thus, it was not easy to accommodate the full range of views on committees composed 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—the select committees on estimates comprised all or almost all the available members.

77 MoP, No 96, 26 March 2015, pp 1072-1073.

78 One member was appointed while a non-executive member but was appointed to cabinet during the inquiry.

79 *Inquiry into the establishment of an Integrity Commission for the ACT*, Select Committee on an Independent Integrity Commission 2018, October 2018, p 8.

80 This occurred 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.

81 Standing order 221 requires that 'Overall membership of committees shall comprise representatives of all groups and parties in the Assembly as nearly as practicable proportional to their representation in the Assembly'.

82 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, the 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 March 1992, pp 21-25 and 53.

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 crossbench 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.

- 17.78. Standing order 221 was amended in 2008 to state that overall membership of committees shall comprise representatives of all groups and parties in the Assembly as nearly as practicable proportional to their representation in the Assembly. Not every committee will be capable of producing a membership that is precisely proportional to the broader membership of the Assembly, but overall committee membership should be representative of the membership of the Assembly.
- 17.79. At the beginning of the Sixth Assembly, when there was only 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.⁸³ She argued that those committees—education, training and young people; health and disability; and planning and the environment—were her party’s particular areas of 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.⁸⁴

Membership reported

- 17.80. Standing order 222⁸⁵ 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.⁸⁶ Ballots were more common in earlier Assemblies, with a number of independent members competing for a limited number of places.⁸⁷ In recent Assemblies, with larger representation of the major parties, committee

83 MoP, No 2, 7 December 2004, p 15.

84 Assembly Debates, 7 December 2004, pp 52-55.

85 Standing order 222 provides that ‘Nominations for membership of each committee shall be notified in writing to the Speaker who shall report nominations to the Assembly and those Members so nominated shall be appointed to the committee on motion without notice moved by a Minister as soon as practicable. If more nominations are received than there are places, the Assembly shall proceed to a ballot to determine the committee membership’.

86 The rules with regard to balloting are set out in standing orders 265-267.

87 See, for example, MoP, No 7, 1 June 1989, p 27, describing a situation where ballots were conducted to decide the membership of the Standing Committee on Public Accounts and Standing Committee

membership has tended to be resolved by negotiation prior to the establishment of the committees, rather than by ballot.

Discharge of members and replacement

- 17.81. There are many reasons for changes in committee membership; for example, appointment to ministerial office, shifting ‘shadow’ responsibilities, extended periods of leave on the part of a member, 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 party 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 they consider 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.⁸⁸

Pecuniary interest

- 17.82. 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’ in its broadest meaning may include a large range of interests such those that arise by reason of being a ratepayer, home owner or parent of school-age children attending schools that receive public funding. However, requiring that MLAs declare such a broad range of interests—which may be properly regarded as a general class of interests that are likely to be possessed the majority of ACT residents—would produce few benefits in terms of transparency.
- 17.83. 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

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, No 75, 19 September 1990, p 307.

issues.⁸⁹ The chair of a 2010 inquiry into the Financial Management (Ethical Investment) Legislation Amendment Bill informed the Assembly that, as was public knowledge, she held shares in a firm specialising in ethical investments. The committee agreed there was no possible financial benefit the member could accrue from the inquiry and no contravention of the standing order but, to avoid any perception of a conflict, accepted the chair's offer to relinquish her role to the deputy chair for that inquiry.⁹⁰

- 17.84. The application of this standing order must be read in the context of the provisions of standing order 156 and s 15 of the Self-Government Act, which relate to conflict of interest of Members of the Legislative Assembly.⁹¹

Conflict of interest

- 17.85. 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, or potential for, a conflict of interest. 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.⁹²
- 17.86. It is relevant that the code of conduct for members provides that members should 'Actively seek to avoid or prevent any conflict of interest, or the perception of a conflict, arising between their duties as a Member and their personal affairs and interests [and] take all reasonable steps to resolve any such conflict of perception of conflict that does arise ...'⁹³
- 17.87. 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.

89 Note Continuing resolution 5 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', which requires disclosure of interests members may hold, or be perceived to hold 'other than as a member of the public or of a broad class of persons'.

90 Assembly Debates, 28 October 2010, pp 5258-5259.

91 See Chapter 4: Membership of the Assembly, under the heading 'Conflict of interest'.

92 *House of Representatives Practice*, p 657.

93 Continuing resolution 5.

- 17.88. As noted above in this chapter, committees are consulted about proposed appointments to statutory offices in the ACT and may comment on them.⁹⁴ Members have on occasion not taken part in such consideration because of personal acquaintances with proposed appointees. Should this situation arise, a member should declare the conflict at the first available committee meeting. Members frequently consult with the Ethics and Integrity Adviser on such matters prior to committee meetings.⁹⁵
- 17.89. 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.⁹⁶
- 17.90. In the Sixth Assembly, a report of the Standing Committee on Planning and Environment raised a more substantial issue of pecuniary interest.⁹⁷ 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 was also a significant donor to the ACT Branch of the Australian Labor Party.⁹⁸ 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.
- 17.91. The Clerk's advice put the matter back to the committee. If members considered 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.

94 Legislation Act, s 228.

95 See continuing resolution 6A.

96 Assembly Debates, 17 December 1992, p 4118.

97 Standing Committee on Planning and the Environment, Draft Variation to the Territory Plan No 258—Belconnen Labor Club Section 48 Belconnen, June 2005.

98 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.

- 17.92. However, 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.⁹⁹
- 17.93. 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 conflict of interest that impacts on the prevailing work of a committee. 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 and would need to be addressed in a manner that complies with both the letter and the spirit of the members' code of conduct.
- 17.94. In practice, however, this situation is a further example of the problems confronting a small legislature. On this occasion, the members with a declared interest constituted the 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 possible conflicts was impossible.
- 17.95. The course that was followed was that the members acknowledged the possible apprehension of a conflict of interest and proceeded to conduct the inquiry with a degree of transparency, affording reasonable access to dissenting views and, on occasion, including details of their private deliberation in the report in an effort to demonstrate that the committee's approach to the matter had been even-handed. In this way, it was argued that any public concern about the process was assuaged.
- 17.96. During the Eighth Assembly, a minister stood down from her cabinet positions and became a non-executive member. Her subsequent appointment to a number of committees raised questions about conflict of interest, as she had been the minister responsible for matters that were being examined by committees. The member sought to avoid creating any apprehension of a potential conflict of interest by recusing herself from deliberations in connection with the relevant matters.¹⁰⁰ Also during the Eighth Assembly, a member moved a motion removing themselves from the Standing Committee on Administration and Procedure for the duration of that committee's consideration of a citizen's right of reply on the

99 Assembly Debates, 16 August 2005, pp 2708-2710.

100 Standing Committee on Public Accounts, *Review of Selected Auditor-General Reports*, September 2016, p 4; Standing Committee on Education, Training and Youth Affairs, *Inquiry into Vocational Education and Youth Training in the ACT*, extract of minutes, 18 February 2016.

grounds that the member was the source of the comments to which the citizen was seeking to respond.¹⁰¹

- 17.97. In order to maintain the confidence of MLAs and members of the ACT community, it is also essential that staff who are employed by the Office to support the work of Assembly committees promptly declare real, apparent or potential conflicts of interest, and take appropriate steps to manage such conflicts where they are identified.¹⁰² This requires that committee secretaries and associated support staff raise such conflicts of interest immediately with their supervisor, who may seek the advice of the Clerk. How possible staff conflicts are to be managed to ensure the integrity of committee processes is a matter for the Clerk of the Assembly to determine.

Election of chair and deputy chair

- 17.98. Generally, the decision about which party will provide the chairs and deputy chairs of committees is decided by negotiation before committees first meet and is specified in the resolution establishing committees. 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, it is typical for committees' presiding members to be drawn from government, opposition and crossbench members.¹⁰³
- 17.99. Where the motion establishing a committee specifies that a certain party will hold the chair, and only one representative of the party is a member of that committee, that member is declared chair and no vote is held.

101 The motion, which was passed, also provided for a replacement for the member; MoP, No 57, 14 May 2014, p 606.

102 These requirements are reflected in s 9 of the Public Sector Management Act and the Office's Code of Conduct and apply to all staff of the Office.

103 House of Representatives standing order 232(a) specifies that committee chairs shall be government members. Senate standing order 25(9) requires that:

- (a) Each legislation committee shall elect as its chair a member nominated by the Leader of the Government in the Senate, and as its deputy chair a member nominated by the Leader of the Opposition in the Senate or by a minority group or independent senator.
- (b) Each references committee shall elect as its chair a member nominated by the Leader of the Opposition in the Senate or a member of a minority group in the Senate, and as its deputy chair a member nominated by the Leader of the Government in the Senate.
- (c) The chairs and deputy chairs to which members nominated by the Leader of the Opposition in the Senate and members of minority groups and independent senators are elected shall be determined by agreement between the opposition and minority groups and independent senators, and, in the absence of agreement duly notified to the President, any question of the allocation of chairs and deputy chairs shall be determined by the Senate.

- 17.100. Standing order 225 also requires the election of a deputy chair. While the motion establishing committees usually specifies which party will hold the chair, it is typically silent on the deputy chair. It has been the practice of committees to elect deputy chairs from a different party to the party to which the chair belongs.
- 17.101. A rare example of a dispute about who would hold the position of committee chair 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 (that is, the government member nominated by the opposition) 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.
- 17.102. 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.¹⁰⁴
- 17.103. As a result of this action, a select committee on privileges was established, which found that the Chair of the Standing Committee on Planning and Environment was in contempt of the Assembly.¹⁰⁵ Subsequently, a member of that standing 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.¹⁰⁶
- 17.104. 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. As a result, the opposition went from holding two committee chair positions to one.

104 See 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*, 19 March 2004.

105 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*, 19 March 2004, p 16.

106 Standing Committee on Planning and Environment, Minutes of Meeting No 93, 2 April 2004.

- 17.105. Standing order 225B covers the procedure for the resignation of a chair or deputy chair (which is sometimes prompted by a member being appointed to cabinet). After a resignation, the first order of business at the next meeting of a committee is electing a replacement.

Absence of chair and/or deputy chair

- 17.106. Standing order 226 provides for the deputy chair of a committee to perform the duties of the chair if the chair is absent. Standing order 227 provides that a committee may appoint an acting chair if both the chair and deputy chair are absent. While committees do undertake business in the absence of the chair, it is rare for standing order 227 to be invoked. Most Assembly committees have three members and would be unable to form a quorum were two members to be absent. In cases where both the absence of the chair and deputy chair would not result in the loss of a quorum (for example, in an estimates committee, which typically has five members), the remaining members of the committee may decide not to continue proceedings in the absence of its two most senior members.

Committee chairs

- 17.107. 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.¹⁰⁷ The state parliaments accord various combinations of deliberative and casting votes.
- 17.108. 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 under the heading 'Election of chair and deputy chair' above, where the Select Committee on Estimates 2006-2007 had an even number of members and the possibility of a tied vote was 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. The four-member committees of the Eighth Assembly again raised the question of a casting vote, particularly around the 2013 estimates committee, discussed further under the heading 'Reports' below in this chapter.

¹⁰⁷ 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.

- 17.109. The membership of most Ninth Assembly standing committees had the chair belonging to the party with the minority on the committee. Where a committee fails to reach consensus, this may result in the chair tabling and speaking to a report with which they substantially disagree.¹⁰⁸

Committee of chairs

- 17.110. The chairs of all committees usually meet twice a year to advise the Speaker on matters relating to committees, including developments in committee practice and opportunities to ensure that consistent procedures are being applied across the Assembly's committee system. The committee consists of every chair of a standing committee and the Speaker is chair of the committee.¹⁰⁹

Sittings, adjournments and suspensions of committees

- 17.111. Committees of the Assembly cannot meet while the Assembly is sitting without the specific authority of the Assembly. This is rarely sought. While members are generally physically present in the ACT, the problem for Assembly committees is the limited availability of members. Committees generally adopt the practice of fixing a regular meeting time (typically weekly, excluding sitting weeks and school holidays) 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 on sitting days 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.¹¹⁰

Chair may adjourn or suspend sitting of a committee

- 17.112. 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.¹¹¹ 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.
- 17.113. The chair of a committee is responsible for the overall management of committee proceedings and ensures order during its meetings and hearings. In general, the power of the chair of a committee is, subject to the standing orders, similar to

108 For example, see the dissenting report by the chair of the Standing Committee on Justice and Community Safety in relation to the committee's inquiry into the exposure draft of the Motor Accident Insurance Bill 2018, or the chair's 'recommendations not agreed to by the committee' appended to the Standing Committee on Economic Development and Tourism's report on its inquiry into Government Procurement (Secure Local Jobs) Amendment Bill 2018.

109 This previously informal practice was formalised with the introduction of standing order 228A in 2018.

110 See standing order 229.

111 Assembly Debates, 20 March 1999, pp 542-545.

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, accordingly, more limited. Generally, committees resolve issues of procedure by negotiation rather than by formal motions of dissent or by taking points of order. Where a point of procedure arises during a public hearing, the chair may suspend the hearing so that the committee is able to consider the matter in a private meeting.

- 17.114. The role of the chair to maintain order was highlighted in a hearing in the Ninth Assembly, when a minister appearing as a witness claimed that language used by the chair in questioning was unparliamentary. The chair ruled the language in order. Subsequent advice noted that while that was within the chair's power, when 'in the role of Chair, and ruling on your own conduct, erring on the side of caution is generally preferred'.¹¹²
- 17.115. Where the committee is unable to satisfactorily resolve a matter, it may raise the matter with the Assembly. While the Speaker's rulings offer strong precedent for chairs to consider, the Speaker's power to intervene on committee matters is limited.¹¹³

Audio and audiovisual links

- 17.116. Members who are travelling or ill may participate in private meetings by phone from time to time. Witnesses sometimes attend private hearings by phone or via various remote audiovisual technologies.
- 17.117. The question has arisen as to whether a would-be submitter to an inquiry could make a submission via video rather than in writing. Such an approach may be useful to submitters with disabilities or language difficulties. With standing orders being silent, this is a question for individual committees to resolve on a case-by-case basis. Standing order 229B, which governs the use of audio and audiovisual links, was amended in 2020 to facilitate committee proceedings.¹¹⁴ The amendments extended the order to cover all committee proceedings and removed the need for the chair to be present for the meeting to proceed.

112 Standing Committee on Economic Development and Tourism, *Inquiry into Annual and Financial Reports 2016-17*, Appendix C.

113 Standing Committee on Economic Development and Tourism, *Inquiry into Annual and Financial Reports 2016-17*, Appendix C, and see *House of Representatives Practice*, pp 661-612.

114 This occurred during the COVID-19 pandemic, when committees were unable to physically meet due to physical distancing requirements.

Constituting a quorum

- 17.118. 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.¹¹⁵ The absence of a quorum at a public hearing of a committee means that what is said by committee members and witnesses does not attract the freedom of speech protections of parliamentary privilege.
- 17.119. 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. 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. Standing order 231 does not differentiate between oral and written evidence, so two is a quorum both for public hearings and for private meetings when the authorisation of submissions for publication is the sole item of business.
- 17.120. Standing order 232 stipulates that, if a meeting quorum is not present within 15 minutes of the time of a scheduled committee meeting, the members shall retire, and their names shall be entered in the minutes. The reference in standing order 232 to the minutes refers to the secretary's notes, since there will be no minutes of a meeting where a quorum cannot be formed.¹¹⁶
- 17.121. 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 vicinity of the committee room, it is not necessary to suspend the committee meeting. It is important that committee members and the committee staff are alert to any such brief absences and do not allow them to persist for extended periods. 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.
- 17.122. If a committee is travelling away from the Assembly and finds itself inquorate due to the physical absence of members, the committee may choose to enable the participation of those MLAs through electronic means, pursuant to standing order 229B. It is also open to a committee to have informal discussions with any 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.

115 An improperly constituted committee meeting is not regarded as a proceeding of the Assembly.

116 *House of Representatives Practice*, p 674.

Proceedings and sittings of committees

17.123. Private meetings and hearings with witnesses, whether public or in camera,¹¹⁷ contribute to the vast majority of committee proceedings. Standing order 229C also provides for other proceedings that are in accordance with standing orders. Site visits by committees to ACT facilities or other jurisdictions are occasionally undertaken. Committees with statutory referrals have at times adopted the practice of obtaining private briefings from the agencies responsible for the preparation of material that stands referred.¹¹⁸ These briefings have been used to assist committees in deciding whether or not to conduct an inquiry but potentially have the drawback of providing information to the committee that may later need to be given in public.

Admission of other members

17.124. Committee inquiries, particularly in a small 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 to question witnesses. As the standing orders make clear, such participation requires the unanimous consent of the committee. However, permission is usually given. There have been occasions where a committee member has objected to a line or style of questioning taken by a non-member and required them to withdraw.¹¹⁹

17.125. 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. Many chairs keep an informal tally of questions asked to ensure that questions are fairly distributed, and committee members sometimes give ‘their question’ to a visiting member to allow that member to pursue a line of questioning (for example, where a visiting member is the shadow minister).

17.126. The participation of non-committee members in committee hearings has been most common in select committees on estimates and during standing committees’ consideration of annual reports of ACT agencies. Prior to the Tenth Assembly,¹²⁰ estimates committees examined the appropriation bills for the

117 See under the heading ‘Publication of evidence and other documents’ below in this chapter.

118 For example, the Auditor-General in the case of the public accounts committee, and the planning minister and relevant officials in the case of the committee with responsibility for planning.

119 See, for example, the transcript of the Standing Committee on Health, Ageing and Community Services, 1 March 2017, pp 104-105 and the transcript of the Standing Committee on Economic Development and Tourism, 12 September 2018, pp 45-46. On both occasions, the member invoking standing order 256 claimed that the visiting member’s line of questioning was off-topic and disruptive.

120 The resolution establishing general-purpose standing committees in the Tenth Assembly conferred responsibility for inquiring into and reporting on budget estimates and appropriation bills to standing

forthcoming financial year and provided the Assembly with an opportunity to examine virtually all activities and decisions of government. Accordingly, these committees were useful to opposition and crossbench members in scrutinising the government's proposed budget appropriations and budget estimates, and the financial and performance outcomes of ACT Government agencies reported in annual reports.

- 17.127. 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 shadow spokespersons have participated as non-committee members. Non-committee members must withdraw when the committee is deliberating.

Admission of visitors

- 17.128. So far as is practicable, committees gather their evidence at public hearings and publish transcripts of them. Standing order 236 provides that 'When a committee is examining witnesses, visitors may be admitted, but shall be excluded at the request of any Member, or at the discretion of the Chair of the committee, and shall always be excluded when the committee is deliberating'.
- 17.129. 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 about the proceedings of a committee but, to date, there have been no disruptions that have required a committee to exclude a member of the public.
- 17.130. Private deliberative meetings of a committee are open only to members, committee staff, or relevant senior parliamentary officials, such as the Clerk, Deputy Clerk, or senior director of the committee support function, when those officials are involved in advising a committee on a matter relating to its operations or proceedings.¹²¹ Such officials are not regarded as visitors.

Minutes of proceedings

- 17.131. The minutes of a committee are the official record of a committee's proceedings. They should record the time, place and date of a 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 about a committee's business—for example, what was resolved; who was present; whether documents were

committees, on a trial basis.

121 That is to say that a parliamentary official, who is performing a parliamentary advisory function in respect of an Assembly committee, is not a 'visitor' for the purposes of standing order 236.

authorised for publication—the minutes provide the definitive answer. The proper conduct of committees requires that minutes are carefully recorded by the committee secretary, written up promptly after a meeting and confirmed by the committee at the next available opportunity.

- 17.132. 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. Extracts of minutes, or complete minutes for select committees, are tabled when reports are presented.¹²² The status of these tabled minutes was clarified in 2018, when the Assembly amended standing order 212A to state that committee minutes or extracts of minutes are authorised for publication upon presentation to the Assembly.

Specialist advisers

- 17.133. The use of specialist advisers by parliamentary committees is a well-established practice and is enabled for Assembly committees by standing order 238.¹²³ Since its inception, the scrutiny committee has retained specialist legal advisers on a long-term basis to analyse and prepare advice on legislation that comes before the committee.
- 17.134. The Legislative Assembly's general-purpose standing committees and select committees have made occasional use of specialist advisers. In 2009, an inquiry into a parliamentary budget officer concluded that appointing a temporary adviser during the estimates period, an approach used for the 2009-2010 budget estimates process, provided greater flexibility.¹²⁴ Since then, motions establishing select committees on estimates included a requirement that funds be made available to engage a specialist budget adviser to facilitate analysis of the budget.
- 17.135. When specialist advisers are appointed, their terms and conditions of appointment are determined by the Speaker.¹²⁵

122 Standing order 253. Where extracts of minutes are tabled, the complete minutes remain confidential.

123 Under standing order 238, the Speaker may appoint persons with specialist knowledge either to supply information which is not readily available or to explain matters of complexity within a committee's inquiry.

124 Standing Committee on Administration and Procedure, *The Merit of Appointing a Parliamentary Budget Officer*, August 2009.

125 In the Tenth Assembly, the Speaker engaged former Clerk of the Australian Senate Dr Rosemary Laing to review committee support arrangements operating within the Office of the Legislative Assembly. The terms of reference for the review were those adopted pursuant to a resolution of the Standing Committee on Administration and Procedure. See MoP, No 11, 22 April 2021, p 136 and Assembly Debates, 22 April 2021, pp 1034-1035.

Power to send for persons, papers and records

- 17.136. Standing order 239, which empowers committees to send for persons, papers and records, is the basis of Assembly committees' evidence-gathering power. It is a very extensive power. It is supported by standing order 240, which enables committees to summon witnesses. Committees can also order the production of documents.¹²⁶ 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.¹²⁷ In practice, committees of the Assembly have relied on cooperation and negotiation in gathering evidence and their powers have rarely been tested.¹²⁸
- 17.137. However, in the Ninth Assembly, the Assembly referred a number of matters concerning the ACT's care and protection system to the Standing Committee on Health, Ageing and Community Services for inquiry and report. During the inquiry, the executive expressed concerns in relation to the potential disclosure of protected or sensitive information under the *Children and Young People Act 2008* (CYP Act). In the relevant report, the committee stated that:

... the Minister and Director-General were willing to make information available to it but that this was to the extent that any such sharing was within the terms of the CYP Act.

For the purposes of this inquiry, it was the Committee's disposition to not use its powers to order that the protected and sensitive information be provided to it but rather that it request access to such information pursuant to a proceeding of the Assembly.

126 As noted above, the Assembly regards a 'document' as encompassing a broad class of recorded information. The House of Representatives standing orders define a document as being:

... a paper or any record of information, and includes:

- (i) anything on which there is writing;
- (ii) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (iii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (iv) a map, plan, drawing or photograph.

127 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 Self-Government Act, s 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, s 7.

128 The summons power has been used twice by Assembly committees: the Seventh Assembly's Standing Committee on Justice and Community Safety issued a summons during its inquiry into the delay in the commencement of operations at the Alexander Maconochie Centre, while the Ninth Assembly's Standing Committee on Public Accounts issued a summons as part of its inquiry into Attorney-General's Report No 3 of 2018: Tender for the sale of block 30 (formerly block 20) Section 34 Dickson.

As a way of moving forward, it was with great reluctance, the Committee resolved pursuant to Standing Order 239 to order that it be provided with the information it was seeking. The Committee thanks the Minister and Directorate officials for making this information available and for meeting with it in-camera to discuss the information.¹²⁹

- 17.138. The committee received advice from Professor Richard Herr OAM, University of Tasmania, which outlines a useful summary of the relevant issues. Professor Herr advised the committee that:

The Parliament has the powers and privileges it has because it has the responsibility to oversee Executive actions and agencies, on behalf of the people, to guarantee transparency and accountability from the Government. While the Parliament's right is absolute, there are circumstances where exercising this right may be imprudent and/or disruptive to good order and governance ...

The constitutional supremacy of Parliament is why any option for resolving a dispute over the production of documents must rest on the presumption that the onus of proof against producing documents ordered by the Parliament rests entirely on the Executive. It is the Executive arm of government which must demonstrate why it is attempting to refuse parliamentary transparency and accountability; in short resisting its constitutional obligation to be responsible to parliament. It is not adequate to have a reason to prefer not to hand over documents. The Executive must have a compelling reason – one that is persuasive to the Parliament. Importantly, this matter has already been litigated in the *Egan v Willis* and *Egan v Chadwick* cases. The courts found in favour of the Parliament, ruling that the Government had to respect its responsibility under Westminster conventions to be accountable to Parliament ...

There appears to be no evidence that Parliament intended the Act's statutory secrecy provisions to frustrate parliamentary scrutiny of Government policy and its implementation. The Act establishes the CYPS [Child and Youth Protection Services] as a regulatory body and as such is subordinate to the Assembly which has the power to disallow its regulations. The [Child and Young People] Act's provisions cannot fundamentally take precedence over the Assembly's powers to demand information from the CYPS or circumscribe its Article 9 privileges with regard to the information given to the Committee.¹³⁰

129 Standing Committee on Health, Ageing and Community Services, *Final Report on Child and Youth Protection Services (Part 1)*, Report 12, August 2020, pp 12-13.

130 Standing Committee on Health, Ageing and Community Services, *Final Report on Child and Youth Protection Services (Part 1)*, Report 12, August 2020, Appendix A, pp 1, 2, 5.

17.139. In its report, the committee stressed the importance of executive government agencies developing a proper understanding of the basis for their accountability obligations to the Assembly and its committees. It recommended that:

... the ACT Executive Government strengthen its understanding of: (i) the procedures available to the ACT Legislative Assembly for obtaining information as required to carry out its constitutional obligations to scrutinise Government policy and/or the operation of its agencies; and (ii) the powers and privileges from which the authority for these procedures are sourced.¹³¹

17.140. The government response to that recommendation stated that:

The Government notes that there was a difference of view between the Executive and the Committee regarding the provision of sensitive and protected information, which the Executive consistently sought to resolve in a constructive manner. The Government notes that the Committee appropriately used the powers available to it to access the relevant information.¹³²

17.141. As discussed in Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, 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 these 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.

17.142. 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, as follows:

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.¹³³

131 Standing Committee on Health, Ageing and Community Services, *Final Report on Child and Youth Protection Services (Part 1)*, Report 12, August 2020, p 19.

132 Government Response to Standing Committee on Health, Ageing and Community Services, *Final Report on Child and Youth Protection Services (Part 1 and 2)*, p 6.

133 *Odgers’*, p 467.

- 17.143. Continuing resolution 8B sets out the procedures to be followed where a public interest immunity claim is to be made, including requiring the minister to provide a statement specifying the harm to the public interest that could arise from the disclosure of the information in question. Where a committee does not accept a claim of immunity, it may report the matter to the Assembly. If the Assembly chooses to order the production of the documents, the procedures under standing order 213A would apply.¹³⁴
- 17.144. 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 through a minister to the legislature; 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.¹³⁵

Publication of evidence and other documents

- 17.145. 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 written submissions and giving oral evidence as part of public inquiries. Standing orders seek to balance the competing demands between the public interest in necessary confidentiality and the public interest in public access and openness in the conduct of committee proceedings.
- 17.146. Evidence and documents formally received by committees attract parliamentary privilege.¹³⁶ Witnesses and authors have protection and immunity for anything in evidence and the particular documents they present to, and that are formally accepted by, an Assembly committee. A committee and its individual members cannot be sued for publishing such evidence or documents. To ensure that privilege attaches to committees' evidence and reports, the publication of committee material must accord with standing orders and be based on an explicit decision of a committee or the Assembly. A committee is not obliged to agree to receive every

134 See Chapter 14: Papers and documents of the Assembly and Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, under the heading 'Standing order 213A—Arbitration of privilege claims'.

135 See the discussion on documents held by Icon Water sought during the Ninth Assembly. See Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, under the heading 'Icon Water Contracts with ActewAGL'.

136 Standing order 241(a) provides that 'A committee may receive and authorise publication of evidence given before it or documents presented to it ...'.

document that is provided to it in the course of an inquiry or other proceedings.¹³⁷ For example, a committee may ‘resolve to return a submission or other document lodged with it if ... the submission was considered irrelevant to the committee’s inquiry or if it contained offensive or potentially scurrilous material’.¹³⁸

- 17.147. 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. For additional discussion, see Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly.
- 17.148. 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.¹³⁹ Hearings to gather evidence from witnesses are normally conducted in public.
- 17.149. There are, however, circumstances where a witness requests the opportunity to provide a submission in confidence or to give evidence in private, or where a committee forms the considered view that a private hearing is necessary for the committee to undertake its work. Examples include when a committee is considering matters where genuine concerns about individual privacy or commercial confidentiality exist. However, a committee should consider the matter very carefully before taking evidence in camera¹⁴⁰ and should take evidence in this way only when it is considered absolutely necessary to the conduct of its business. Committees should be particularly wary of requests to give evidence in camera if that evidence may involve allegations against other persons.
- 17.150. 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, at some later point in time, be authorised

137 Determining the question, by a resolution of the committee, as to whether or not a committee will formally accept a submission or document separately from the question of whether or not the committee will publish a submission or document under its hand, is a procedurally significant step as it enables a committee to receive and consider, but not make public, a particular submission or document. It enables, for instance, the consideration of certain material by a committee as part of its deliberative process, while avoiding the public airing of material that was judged not to be in the public interest. *House of Representatives Practice*, p 688, notes that ‘Anyone who published a submission which had not been authorised for publication would not have the protection this would confer, and would therefore not be immune from any legal proceedings for such publication’.

138 *House of Representatives Practice*, p 688.

139 Committees do seek to ensure that submissions containing adverse reflections on named individuals, information to which confidentiality should apply or other inappropriate material is not published with the protection of parliamentary privilege. Adverse mention procedures, provided for in standing order 264B, are directed towards ensuring a measure of procedural fairness to a person who may be adversely affected by certain evidence.

140 ‘In camera’ simply means ‘in chamber’ or in private.

for publication by a simple vote of either the committee or the Assembly. If so advised, witnesses may consider that the protection offered by the committee is insufficient and decline to give evidence. Occasionally, committees have heard evidence in camera where there was concern that a witness would be unable to provide evidence without inadvertently revealing sensitive information, with the transcript subsequently published when the witness successfully managed to skirt the area of sensitivity. The Select Committee on Privileges 2018 noted in its report that given ‘the serious nature of the allegations levelled at the MLAs and the Committee’s desire to conduct its inquiry in an environment free from partisan politics, all three MLAs individually met with the Committee at hearings held in camera. However, the committee later authorised publication of the evidence taken in its entirety’.¹⁴¹

- 17.151. 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 provided in camera may support a general conclusion or recommendation by a committee, but it is preferable for such supporting evidence to be public.¹⁴²
- 17.152. In the Ninth Assembly, the Assembly referred an inquiry on school-related bullying and violence with a requirement in the motion that the committee take evidence in-camera if the evidence ‘would allow for individual people or schools party to bullying or violence to be identified’. In its report, the committee commented on the difficulties this created for the public trying to follow the inquiry and discouraged the Assembly from including such provisions in future referrals.¹⁴³

141 Select Committee on Privileges 2018, *Newsletter circulated by two MLAs with links to a Third-party website*, p 7.

142 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 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.

143 Standing Committee on Education, Employment and Youth Affairs, *The management and minimisation of bullying and violence in ACT schools*, September 2019, p 2.

- 17.153. 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).
- 17.154. 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)¹⁴⁴ 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.
- 17.155. In the first case of this type in 1990, the chair of the Standing Committee on Conservation, Heritage and the Environment wrote to the Speaker advising a possible breach of privilege.¹⁴⁵ 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 chair to refer the matter to the Standing Committee on Administration and Procedure.¹⁴⁶ The committee chair 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.¹⁴⁷

144 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 '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, s 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.

145 Assembly Debates, 13 February 1990, pp 17-18.

146 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 a select committees established for that purpose.

147 Assembly Debates, 13 February 1990, p 18; from *House of Representatives Practice*, Second edn, p 615.

17.156. 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. On the other two occasions, motions to refer the matters of privilege to a committee were moved by leave. On all four occasions, no further action was taken.¹⁴⁸

17.157. The first 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 ...¹⁴⁹

17.158. 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 ...¹⁵⁰

17.159. 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.¹⁵¹

17.160. The motion to appoint the Select Committee on Estimates to consider the Appropriation Bill 1993-1994 included a provision similar to that used by the planning committee earlier that year to release embargoed copies of its report. The precedent of the planning committee was cited in support of its inclusion:

148 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.

149 Assembly Debates, 18 May 1993, p 1540.

150 Assembly Debates, 18 May 1993, p 1541.

151 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.

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 ...¹⁵²

- 17.161. Four copies of the draft report were provided to journalists under embargo on 12 November 1993.¹⁵³ On the same day, a local newspaper, *The Canberra Times*, carried an 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 the journalist.
- 17.162. 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 2001.¹⁵⁴ Embargoed reports have not been a feature of subsequent Assemblies. If a committee believes that it requires further expert advice, the committee is able to table an interim report and invite comment before producing a final report.
- 17.163. In the Eighth Assembly, following an unsuccessful attempt to create a privileges committee to consider a matter of an unauthorised disclosure of confidential proceedings of a committee, the Standing Committee on Administration and Procedure considered the standing orders around the disclosure of committee proceedings. The sole change proposed by that committee, and subsequently adopted by the Assembly, was the creation of standing order 241(ba), permitting committee members to discuss proceedings with non-members after deliberations have substantially concluded.¹⁵⁵
- 17.164. Committee reports can be tabled in the Assembly at any time and may be presented to the Speaker (or Deputy Speaker) when the Assembly is not sitting.¹⁵⁶ 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

152 MoP, No 67, 17 June 1993, p 378.

153 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.

154 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.

155 Standing Committee on Administration and Procedure, *Inquiry into standing order 241—disclosure of proceedings, evidence and documents of committees*, September 2014.

156 Standing order 254C.

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.

- 17.165. 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.¹⁵⁷ In August 2019, following the recommendations of a privileges committee,¹⁵⁸ it was further amended to place obligations on the committee concerned about an unauthorised disclosure to report to the Assembly the steps it had taken to investigate the disclosure and the impact upon the committee.

Disclosure to Assembly employee

- 17.166. Importantly, the standing orders make provision for the disclosure of committee materials, including evidence, documents, proceedings and reports to Assembly employees in the course of their duties, even in the absence of an authorisation of the Assembly or a committee.¹⁵⁹
- 17.167. It is not uncommon for Assembly officials such as committee secretaries, Hansard staff, certain administrative staff, the Clerk and other senior officers of the Office of the Legislative Assembly to gain access to such materials in order to prepare procedural advice, undertake drafting or research tasks, produce transcripts, effectively manage committee secretariat support, or initiate the publication of a report.
- 17.168. The provision of information to Assembly officers in such a way is not a breach of the standing orders.

Access to older committee records and documents

- 17.169. In March 2008, the Assembly adopted a standing order authorising the Speaker to permit any person to examine and copy any evidence submitted to, or documents of, committees that has not been published and has been in the custody of the Assembly for at least 10 years, or 15 years in the case of in camera or confidential evidence.¹⁶⁰

157 See standing order 242.

158 Select Committee on Privileges 2019, *Unauthorised release of committee documents*.

159 Standing order 241(b)

160 See standing order 243.

Examination of witnesses and witnesses' right to advice

- 17.170. Standing order 245 provides a formal statement of the procedure that must be adopted by each committee when examining 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, notwithstanding that not all members may wish to avail themselves of those opportunities. For example, public hearings of select committees on estimates (and, in the Tenth Assembly, standing committee inquiries into annual appropriations and budget estimates), which scrutinise government expenditure, provide non-government members with their best opportunity to examine the policies and decisions of the executive and are among the most explicitly party-political committee hearings; accordingly, government committee members may be less likely to use the estimates process to question ministers aggressively and occasionally cede their time to other members.¹⁶¹
- 17.171. 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 members of the public the opportunity to come to the Assembly and speak to their elected representatives would be diminished were organisations and individuals to be represented by paid counsel, advisers, or lobbyists. Nor is there any great need for such representation.
- 17.172. Assembly committees, while formally having some procedural similarities to the courts, are 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.
- 17.173. 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 before a committee to give evidence on the subject matter that is before the committee on the basis of their expertise, and not to 'represent' a client in a manner analogous to representation in judicial proceedings.

¹⁶¹ 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.

- 17.174. 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 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 subject matter for which professional expertise is regarded as assisting the committee.
- 17.175. There are some, albeit rare, occasions on which the Assembly may consider allowing a witness to be accompanied by legal counsel or other advisers. 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 have made his continued employment in that capacity untenable. In those circumstances, the committee had to be judicious in its conduct of the inquiry. The committee and the staff member discussed the appropriateness of the staff member appearing with a legal representative at the public hearing. Ultimately, however, the staff member appeared at the hearing without counsel.
- 17.176. Witnesses sometimes appear before committees in order to communicate personal experiences or touch on matters of personal sensitivity or trauma. Committees have accommodated such witnesses by allowing them to have a support person with them at the table in a non-witness capacity.
- 17.177. Members appearing as witnesses, for instance when discussing a referred private members' bill, have on occasion had staff from their offices sit beside them in order to assist in the same manner as counsel. Although there is no procedural barrier, it has suited all parties to avoid setting a precedent of having members' staff appear as witnesses in their own right.¹⁶²

162 An exception to this practice has been members' staff appearing before privileges committees as required.

Statements and discussion papers

- 17.178. 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.¹⁶³ Discussion papers can also be a useful means by which a committee can present key issues associated with a complex area of policy to inform potential submitters.
- 17.179. 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. In the Ninth Assembly, approximately 40 standing order 246A statements were made each year.¹⁶⁴
- 17.180. 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 a statement of the reasons for the decision. When an inquiry arises from an Assembly reference, a brief report is expected.¹⁶⁵ 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.¹⁶⁶
- 17.181. In this case, 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 concerning planning matters necessitated that either a separate environment committee be set up or that the subject be referred to a select committee.¹⁶⁷

163 See, for example, MoP, No 131, 1 December 1994, p 797.

164 See, for example, MoP, No 137, 13 August 2020, p 2080.

165 The Assembly could decline to accept the reasoning in the statement and direct the committee to complete its inquiry.

166 Assembly Debates, 24 August 2004, pp 4017-4018.

167 Assembly Debates, 24 August 2004, pp 4017-4019.

- 17.182. Statements made in accordance with standing order 246A have also alerted the Assembly to matters that have arisen in the course of an inquiry and that a committee has considered were of sufficient urgency that immediate attention was required.¹⁶⁸ Committees regularly make use of standing order 246A to update the Assembly on statutory appointments considered¹⁶⁹ and petitions that the Assembly has referred for consideration.
- 17.183. Standing order 246A also provides for a formal process for the preparation and presentation of discussion papers to the Assembly. The main reason for a committee to produce a discussion paper is to canvass various community views on a matter that it believes requires further inquiry, while also keeping the Assembly adequately informed about the relevant activities of the committee. Discussion papers are most frequently used to help guide submissions in areas of technical complexity. For example, the Select Committee on an Independent Integrity Commission produced a substantial issues paper comparing Australian public sector integrity frameworks in order ‘to assist individuals and organisations to prepare submissions to its inquiry’.¹⁷⁰
- 17.184. 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.¹⁷¹ 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 the next Assembly – as a starting point for a comprehensive review and possible changes to the standing orders.¹⁷²

Reports

- 17.185. 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. Referrals from the Assembly to standing committees normally have reporting dates, while self-referred inquiries usually do not.

168 Assembly Debates, 13 March 2003, pp 1020-2023.

169 Continuing resolution 5A requires six monthly reporting by committees of statutory appointments considered.

170 Select Committee on an Independent Integrity Commission, *Issues paper - Australian public sector integrity frameworks*, March 2017, p 1.

171 MoP, No 118, 26 August 2004, p 1713.

172 Assembly Debates, 26 August 2004, p 4316.

- 17.186. 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 typically table many more reports than those exercising their general inquiry role. Thus, their reports tend to adopt a standard format.
- 17.187. In practice, the draft report is usually prepared by the committee secretariat, utilising a standard template, for the chair. Committee chairs have discretion on the degree to which they seek input from other committee members prior to presenting a draft to the committee. However, there is no set form in which a committee is required to report.¹⁷³
- 17.188. Standing order 249 provides that any member, other than the chair, may submit an alternative draft report, and the committee must then decide which report it will consider. If a committee cannot agree, the chair's draft will have precedence. Given the burden of producing an alternative report without secretariat support, this standing order is rarely used, with members instead seeking to amend the chair's draft or seeking the committee's agreement for further reworking by the committee secretary.
- 17.189. During the Eighth Assembly, some of the four-member committees experienced considerable difficulty reaching agreement on their reports. Where two members of a committee are drawn from government ranks and two members are drawn from opposition ranks, the prospect for an impasse is only increased.¹⁷⁴ In response to these difficulties, the Assembly amended standing order 249 and inserted standing orders 250A and 250B. The changes required the chair of a committee to move that the report be agreed to, thereby avoiding the situation where motions were contorted to try and avoid the effects of the automatic negating caused by a stalemate. If a report cannot be agreed to, the committee must make a statement to that effect.¹⁷⁵ The term 'statement' was deliberately selected by the Assembly as it wished to avoid single-page reports stating that 'no report could be agreed upon' with lengthy dissenting and additional comments attached.¹⁷⁶
- 17.190. Committee members who do not 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. Members may also make alternative

173 Reports may be a single page or a substantial volume. For example, it has not been unusual for the scrutiny committee to note that it has no comment to make on a particular piece of legislation where that legislation does not enliven the issues that are provided for in the committee's resolution of appointment.

174 It is Assembly practice that, where there is a motion before a committee (such as 'that the report be agreed to'), which results in a tied vote, the question is negated. See Standing Committee on Administration and Procedure, *Inquiry into Standing Orders relating to the consideration of committee reports*, March 2014, p 1.

175 See MoP, No 53, 6 May 2014, p 561.

176 Standing Committee on Administration and Procedure, *Inquiry into Standing Orders relating to the consideration of committee reports*, March 2014, p 3.

recommendations in dissent or as additional comments. 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, or members, dissenting. The reports or additional comments are not made available to, or considered by, the committee prior to tabling. Generally, 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 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 (typically, a digital word processing format).

- 17.191. In recent Assemblies, some committees adopted the practice of using recommendations that began, 'The majority of the committee recommends..' and then using a footnote to state the minority view. Another practice has been to include an annex to the report listing recommendations proposed by a member or members but that have not been agreed to by the committee. These approaches do not appear to offer any advantages over appending dissenting or additional comments and indeed may only serve to obscure the differences in opinion.¹⁷⁷
- 17.192. The content of reports is a matter for committee members. However, committees should seek to ensure that their reports, and particularly their recommendations, 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. Where the responsibility lies with a federal or interjurisdictional body, recommendations may propose that a particular position is advanced by the ACT Executive to these bodies.

Government responses

- 17.193. Successive governments in the ACT took upon themselves the responsibility of responding to all Assembly committee reports within three months of their tabling. The Ninth Assembly introduced standing order 254B, which required the government to provide a response within four months.¹⁷⁸ It is the practice that government responses indicate which, if any, of a committee's recommendations the government has accepted and will implement. The Legislative Assembly has also adopted procedures to facilitate follow-up of committee recommendations. 'Implementation of Committee Recommendations in Annual Reports', continuing resolution 8, calls on the Chief Minister to require executive agencies

177 It is also questionable as to whether the standing orders require a government response to a minority committee recommendation.

178 The standing orders were amended in the Tenth Assembly to exempt the government from having to comply with standing order 254B in relation to reports of the Assembly's scrutiny committee. See MoP, No 7, 30 March 2021, p 87, and Standing Committee on Administration and Procedure, *Review of Standing Orders for the Tenth Assembly*, March 2021, Report 4, p 6.

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’,¹⁷⁹ and has been accepted by successive governments.

- 17.194. Should the government fail to respond within four months, standing order 254A permits members to, without notice, ask the relevant minister for an explanation or a statement in relation to the government’s response to a committee report. The member may then move, without notice, a motion taking note of the explanation. If the minister does not provide an explanation or statement to the satisfaction of the member, that member may, without notice, move a motion with regard to the minister’s failure to provide a government response, explanation or statement.
- 17.195. In 2007, the Speaker commenced a practice of tabling a schedule of government responses every six months.¹⁸⁰

Tabling of reports

- 17.196. The chair, or the deputy chair in the absence of the chair, may 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 report may be presented ‘by order’ of the Assembly.
- 17.197. Standing order 253 requires the tabling of minutes or extracts of relevant minutes along with the report. Select committees table their entire minutes, while standing committees table extracts of minutes relevant to the particular inquiry.
- 17.198. Upon presentation of the report, the member presenting it moves one of the motions set out in standing order 254.¹⁸¹ Debate can follow on the motion moved. The most common motion moved in relation 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.
- 17.199. Committees occasionally seek authorisation to present their reports to the Speaker, rather than to the Assembly, when faced with a significant gap between sittings.¹⁸² The addition of standing order 254C in 2019 allows all committees to present their reports to the Speaker when the Assembly is not sitting.

179 ‘Implementation of Committee recommendations in annual reports’, continuing resolution 8, MoP, No 12, 10 April 2002, pp 114-115.

180 MoP, No 89, 20 February 2007, p 933.

181 In March 2008, the Assembly adopted a new standing order 212A that authorised for publication all committee reports presented in the Assembly.

182 MoP, No 87, 10 February 2004, p 1089. Prior to the adoption of standing order 254C, the Standing Committee on Justice and Community Safety (legislative scrutiny role) and the committee responsible for planning have at various times been granted, in their resolutions of appointment, the ability to report

- 17.200. 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 and to make consideration of the report an order of the day for a later hour or a subsequent day.
- 17.201. Reports of the scrutiny committee are generally not debated upon tabling. No motions are moved regarding these reports and instead the chair, by leave, makes a brief statement. These reports normally cover several items of legislation. When the content of a report is relevant to a particular bill, the scrutiny committee's comments are referred to when the Assembly considers the relevant bill.¹⁸³
- 17.202. Motions are rarely moved to agree to—that is to adopt—particular recommendations or to adopt committee reports. A motion in those terms in effect throws the weight of the Assembly behind a committee's findings and is a much stronger statement by the Assembly than is expressed by 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 general issues are simply noted.¹⁸⁴
- 17.203. 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 negated.¹⁸⁵

Questions arising from committee hearings

- 17.204. A witness at a committee hearing may respond to a question by saying that they will 'take it on notice'. Questions taken on notice must be answered within five business days of receiving the uncorrected proof Hansard.¹⁸⁶ At the conclusion of a hearing, a member may have questions that they did not have an opportunity to ask or that did not occur to them during the hearing. Members have five business days to place such questions on notice and they must be answered within five

when the Assembly is not sitting in order to accommodate the pattern of Assembly sittings, and meet the requirements of the Planning and Development Act, respectively.

183 See MoP, No 21, 21 June 2005, pp 185-187.

184 See MoP, No 47, 20 February 2003, p 561, and MoP, No 78, 18 November 2003, p 1002, for examples of reports proposing changes to standing orders being adopted. MoP, No 80, 20 November 2003, p 1019, shows a Standing Committee on Administration and Procedure report into information technology services in the Assembly being noted. See also MoP, No 82, 29 November 2018, p 1173, which records that the Assembly variously 'adopted' and 'noted' recommendations of a report of the Standing Committee on Administration and Procedure concerning major changes to the standing orders and continuing resolutions of the Assembly.

185 MoP, No 115, 19 August 2004, pp 1654 and 1658.

186 Standing order 254D(a). The day after receipt of the uncorrected proof Hansard is considered day one.

business days of receipt.¹⁸⁷ Questions on notice may be lodged by any MLA for any hearing, although a committee may rule questions out of order for the same reasons as questions in the chamber may be ruled out of order.¹⁸⁸

- 17.205. While questions on notice and questions taken on notice may be used during any hearing, they are a significant feature of estimates committees and standing committees' hearings on annual reports. Hundreds of questions are frequently lodged during these periods.

187 Standing order 254D(b). The day after receipt of the question is considered day one. The time limits in standing order 254D did not apply to questions related to proceedings of the Ninth Assembly's Select Committee on the COVID-19 pandemic response, as their operation was specifically suspended by the Assembly in the motion establishing the committee.

188 Committee questions are not bound by the standing orders governing chamber questions but those orders, and in particular standing order 117, provide useful guidance to committees.