



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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**COOK ISLANDS**

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**SESSION IX**

**ETHICAL GOVERNANCE: ACCOUNTABILITY, TRANSPARENCY**  
**AND RESPONSIBILITY IN PARLIAMENTS**

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***In a democracy, political institutions depend ultimately on public confidence in their efficiency and integrity. Confidence in these institutions is not maintained solely by the ballot box. The discipline of the party system, control over the selection of candidates and the ephemeral nature of electoral issues and promises place a limit on the effective accountability of political institutions to the general public.***

***The efficiency and integrity of political institutions are functions of the qualifications and character of those in whom political power is reposed and of the manner in which that power is exercised. The public expects that certain standards will be maintained and, provided those standards are maintained, accepts and peacefully submits to the exercise of political power. The maintenance of proper standards underpins the peace, order and good government of society.***<sup>1</sup>

## INTRODUCTION

As can be seen from the quote above, ethical governance underpins the peace, order and good government in democracies across the world. Ethical governance with its themes of accountability, transparency and responsibility in parliaments forms a large part of the Latimer House Principles which were adopted by the Commonwealth Heads of Government meeting in Nigeria in 2003. This paper seeks to outline what steps the Legislative Assembly for the Australian Capital Territory in Australia has taken to address those issues of ethical governance. It also looks at other Australian jurisdictions' progress on some of the accountability structures that are common across the Commonwealth.

## BACKGROUND

Each parliament adopts its own procedures and practices to ensure that their jurisdiction operates in an open and transparent way as well as ensuring that the government is accountable and responsible to the parliament. It has been suggested that, to ensure that ethical governance operates at its best, what is needed is:

... a combination of the three components – ethical standard setting, legal regulation and institutional design. None are sufficient by themselves but together they provide a powerful trinity – what I have called an “ethics and integrity regime” and what Transparency International calls an “integrity system.”<sup>2</sup>

And while parliaments can have codes of conduct and lobbyist laws etc to address the first two, getting institutional design correct is more difficult.

The ACT Legislative Assembly adopted the Latimer House Principles in December 2008 as a continuing resolution. Ten principles are embodied in Latimer and for this paper I have chosen four of them—ethical governance, accountability mechanisms, the law-making process and oversight of government—to discuss how the ACT Legislative Assembly seeks to operate in a state of “Ethical Governance”.

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<sup>1</sup> Sir Gerard Brennan AC KBE QC, *Members of Parliament: law and ethics by Gerard Carney*, 2000, Foreword, p iii.

<sup>2</sup> Charles Sampford, *Parliament, Political Ethics and National Integrity Systems*, Papers of Parliament No 55, February 2011.

## LATIMER HOUSE PRINCIPLE 6 – ETHICAL GOVERNANCE

*Ministers, members of parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.*

Like most legislatures across Australia, the Assembly has adopted a range of measures to have guidelines for ethical conduct addressing matters of conflict of interest. Table 1 summarises those measures.

**Table 1 Measures for guiding ethical conduct in the ACT Legislative Assembly**

Measures	Details
Code of Conduct for MLAs	Adopted 25 August 2005
Resolution during each Assembly whereby Members agree to abide by the code of conduct	This was suggested in a review of the code of conduct in 2012 by the Ethics and Integrity Adviser. On 24 October 2013, the Legislative Assembly agreed to a motion “That we, the Members of the Eighth Legislative Assembly for the Australian Capital Territory, having adopted a Code of Conduct for Members, reaffirm our commitment to the principles, obligations and aspirations of the code.” <sup>3</sup>
Establishment of Ethics and Integrity Adviser	A resolution of continuing effect adopted by the Assembly on 10 April 2008. The Adviser’s role is to advise MLAs, when asked to do so, on ethical issues concerning the exercise of his or her role as a Member (including the use of entitlements and potential conflicts of interest). The Adviser is appointed by the Speaker following consultation with party leaders.
Establishment of Commissioner for Standards	A resolution of continuing effect adopted by the Assembly on 31 October 2013. The Commissioner’s role is to investigate complaints that a Member has breached the code of conduct or the rules relating to the registration or declaration of interests. The Commissioner is appointed by the Speaker following consultation with party leaders.
Declaration of Members’ Interests	A resolution of continuing effect adopted by the Assembly on 7 April 1992. Since 2009, all declarations are placed on the Assembly website <a href="http://www.parliament.act.gov.au/members/declarations-of-interest">http://www.parliament.act.gov.au/members/declarations-of-interest</a> .

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<sup>3</sup> Minutes of Proceedings of the Legislative Assembly No 37, 24 October 2013, p 378.

Measures	Details
Register of Lobbyists	<p>An ACT Lobbying Code of Conduct and ACT Lobbyist Regulation Guidelines were adopted as resolutions of continuing effect on 20 September 2014. The resolution requires that Members must not meet with lobbyists unless they are on the lobbyist register.</p> <p>The parliamentary agreement between the ACT Labor Party and the ACT Greens for the Ninth Assembly has committed the parties to expanding the scope of the Register to capture in-house government relations staff, industry associations and project management liaison officers and companies, and that the Assembly would review its effectiveness after one year.</p>
Anti corruption body	<p>The ACT Labor Party and ACT Greens have indicated that, during the Ninth Assembly, they intend to establish an independent integrity commission broadly structured on those operating in similarly sized jurisdictions, following a parliamentary committee inquiry into the most effective model for the ACT.</p>

## LATIMER HOUSE PRINCIPLE 7 – ACCOUNTABILITY MECHANISMS

### (i) Executive Accountability to Parliament

*Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business. Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to parliament.*

Executive accountability to the parliament is a fundamental part of ethical governance. As one commentator pointed out:

In parliamentary systems, the government has to govern and the Parliament has to check whether the government is governing well. When governments try to avoid parliamentary controls or when governments consider parliamentary controls as mere obstacles for the effectiveness of the government action, governments have a rather imperfect understanding of the principle of accountability.<sup>4</sup>

Table 2 details some of the actions that are taken in relation to executive accountability in the ACT Legislative Assembly.

<sup>4</sup> R Stapenhurst, R Pelizzo and K Jacobs, *Following the Money*, CPA/WBI, 2014, p 13.

**Table 2 Action taken in relation to executive accountability in the ACT Legislative Assembly**

Actions	Details
Effective Question Time procedure	Each non-Executive MLA can ask up to four questions without notice per sitting day. The Speaker is able to ensure that: (a) answers are relevant to the questions asked; and (b) that Ministers don't use the answer to make a ministerial statement.
Full sitting day for each sitting week devoted solely to private Members' business	On every sitting Wednesday up to six items per day are debated (either a bill or a motion). Almost two-thirds of those are moved by Opposition or Crossbench Members.
Public Accounts Committee (PAC) has Opposition chair as well as other committees	Since 1989, it has become the practice that the PAC chair is an Opposition MLA. Also, up to half the Assembly committees are chaired by Opposition MLAs.
Government advertising is scrutinised by a person whose appointment was agreed to by a two-thirds majority of the Legislative Assembly	In 2009 the Assembly enacted the <a href="#">Government Agencies (Campaign Advertising) Act 2009</a> which has, as its objective, to prevent the use of public funds for advertising or other communications for party political purposes.
Independent arbiter able to determine claims of privilege on documents ordered to be provided by the Assembly	On 22 March 2012, the Assembly adopted standing order 213A which provides that, where a document is requested by the Assembly and the executive claims privilege on it, an independent legal arbiter shall be appointed by the Speaker to adjudicate the competing claims.
Auditor-General, Electoral Commission and Ombudsman became Officers of the Parliament.	In 2013, the Auditor-General, the Electoral Commission and the Ombudsman became, by virtue of the passing of the Officers of the Assembly Legislation Amendment Bill 2013, Officers of the Assembly. The Speaker now has the power to appoint, suspend or end the Officers' appointment (in consultation with others).
Independent statutory support agency for the legislature with sufficient funding arrangements	In 2012 the Assembly enacted the Legislative Assembly (Office of the Legislative Assembly) Bill 2012 which established the independence of the Clerk and the Office of the Legislative Assembly (OLA) from the executive. In addition, in 2014 the Chief Minister and the Speaker agreed to a set of budget protocols which set out requirements as to how the central Treasury directorate and the OLA preserve the exclusive role of the Parliament.

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Actions	Details
Autonomous parliamentary committees	All Assembly committees have the ability to self-refer matters within their terms of reference. In addition, all annual reports of executive agencies are referred to committees every year for inquiry and report.

## LATIMER HOUSE PRINCIPLE 8 – THE LAW-MAKING PROCESS

*In order to enhance the effectiveness of law-making as an essential element of the good governance agenda:*

- (i) there should be adequate parliamentary examination of proposed legislation;*
- (ii) where appropriate, opportunity should be given for public input into the legislative process.*

The ability of each legislature to make laws for the peace, order and good governance of the jurisdiction they represent is also a fundamental part of ethical governance. For most legislatures, this role takes up the majority of their sitting periods.

Table 3 details some of the law-making processes of the ACT Legislative Assembly that enhance good governance.

**Table 3 Law-making processes that enhance good governance in the ACT Legislative Assembly**

Law-making processes	Details
The Members have sufficient time to examine and debate bills	As can be seen in Attachment A, in 2015 the average time taken between the introduction and the passage of bills was 62 days, with each bill, on average, being debated for 43 minutes.
Opportunities for public input	As can be seen in Attachment A, although all bills are examined by the Scrutiny of Bills Committee, only seven percent of bills had been referred to Assembly general purpose committees in 2015. The Speaker of the Eighth Assembly has recently <sup>5</sup> flagged that there would be merit in an approach where all legislation is referred to the relevant Assembly standing committee for review.
There are opportunities to debate or enact private Members' bills	As can be seen in Attachment A, in 2015 six percent of all Bills enacted were private Members' bills, which, although not high, still enables the legislature to have an effective law making capacity.
There are opportunities for non-Executive amendments to bills	As can be seen in Attachment A, 14 percent of amendments to Bills in 2015 were from non-executive Members.

<sup>5</sup> Vicki Dunne MLA and David Skinner, *Embracing Latimer: The ACT Experience*, The Parliamentarian 2016, Issue 3, p 230.

## LATIMER HOUSE PRINCIPLE 9 – OVERSIGHT OF GOVERNMENT

*A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process. Steps which may be taken to encourage public sector accountability include:*

- (i) *The establishment of scrutiny bodies and mechanisms to oversee government, enhances public confidence in the integrity and acceptability of government’s activities. Independent bodies such as public accounts committees, ombudsmen, human rights commissions, auditors-general, anti-corruption commissions, information commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances.*

*Parliaments and governments should recognise the role that civil society plays in the implementation of the Commonwealth’s fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for lawful participation in the democratic process.*

The establishment of independent scrutiny bodies and mechanisms to oversee government is an important part of ensuring ethical governance. Most legislatures across Australia have such bodies as can be seen in Table 4.

**Table 4 Independent scrutiny bodies and mechanisms in Australian legislatures**

Jurisdiction	Cwth	NZ	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
Ethics adviser	No	No	Yes	No	Yes	No	Yes	Yes	No	Yes
Officers of parliament	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Commissioner for standards	No	No	Under review	No	No	No	No	Yes	No	Yes
ICAC or equivalent	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Under Review	Under Review
Code of conduct	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Lobbyist register	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Under Review	Yes
Register of interests – members	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

## CONCLUSION

This paper has outlined numerous methods whereby parliaments can operate within an ethical governance framework. And as one commentator noted, there are not just one or two significant measures that result in such accountability measures—rather it can be imagined as:

... a birds nest. Several weak reeds which hold the egg of integrity, and the thing about that which is actually good is that none of them are really strong because they themselves aren't going to be the problem, but collectively, if they do the right thing, they can actually preserve integrity.<sup>6</sup>

Taking the analogy further, it is up to Members and parliamentary officers to ensure that these "weak reeds" are maintained, strengthened and enhanced. And conferences such as these assist in that process.

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<sup>6</sup> C. Sampford and D Wood, *From Greek Temple to bird's nest; towards a theory of coherence and mutual accountability for national integrity systems*, Australian Journal of Public Administration, Vol 64, No 2, 2005, p 96.

# Parliamentary performance report card

## Legislative Assembly for the Australian Capital Territory, 2015

Measure	Score	Rating				
<b>Legislation</b>						
1. a) Average time taken between introduction and passage of bills	62 days					
b) Average time each bill is debated	43 mins					
c) Number of closure motions on bills agreed to (percentage of bills passed)	Nil (0%)					
d) Number of bills introduced and passed on the same day (percentage of bills passed)	Nil (0%)					
2. a) Percentage of bills considered by scrutiny of bills committee	100%					
b) Percentage of bills referred to committees	7% (4/57)					
<b>Scrutiny</b>						
3. Number of non-executive bills enacted (percentage of bills enacted)	3/53 (6%)					
4. Number of non-government amendments to bills agreed to (percentage of all amendments)	15/105 (14%)					
5. Percentage of questions on notice answered	83%					
6. Percentage of committee reports responded to by government	48%					
7. Average number of questions without notice asked of each minister per year	233					
8. Percentage of time spent on non-government business	42%					
9. Number of non-government chairs of committees (percentage of all committees)	4/8 (50%)					
<b>Representation/Accessibility</b>						
10. a) Number of submissions and witnesses per Committee inquiry	11/25					
b) Average number of constituent matters dealt with by each Member in a year	98					
<b>Symbol</b>						
<b>Rating</b>	<b>Very unhealthy</b> Completely dominated by government					<b>Very healthy</b> Highly democratic and balanced