

**Review of the Performance of the Three Branches of Government in the
Australian Capital Territory against Latimer House Principles**

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Preface and Acknowledgements

This is a period of major change and development in the Australian Capital Territory and of greater complexities in and demands on the system of government. It is timely therefore that this quadrennial review of the application of Latimer House Principles should be undertaken because it allows consideration of core questions about accountabilities and relationships within and among the three branches of the ACT government as well as other matters regarding the quality of governance.

The Australian Capital Territory governance system derives from a unique combination of features, at least in Australian terms. It is a fusion of two levels of government and is therefore responsible for an extensive range of functions. The ACT has been something of a developmental site with the parameters for action evolving in its 30 years as an independent but comparatively small jurisdiction. It is a mixture of governing models producing a hybrid approach to Westminster. It is also a capital territory that lacks the standing of the Australian states. There has been a decade of significant development with regard to the individual branches and their relationships.

This report examines the roles and interplay of the elements that contribute to ACT's hybrid character, the ways in which functioning government has emerged in practice through institutionalisation, and the results and contradictions of the hybrid governance model. Over time, the ACT system of government has become more complex and its environment more demanding.

Associate Professor Benedict Sheehy, a legal specialist, has been responsible for the review of the judicial branch.

We appreciate the willingness and enthusiasm of those who are part of the ACT government and Canberra community in contributing ideas and views that form an important basis to this report. In particular, we would also like to thank the Speaker of the Assembly, ministers and MLAs, and members of the judiciary who made themselves available. The Clerk of the Legislative Assembly and the Chief Executive of ACTPS and other senior executives in the ACT system of government were most supportive.

Applying Latimer House Principles to the Australian Capital Territory

The Latimer House Principles provide a framework for government that reflect what are seen as Commonwealth values concerning: independence of the branches of government, accountability, ethical governance, law-making process, oversight of government, public office holders, and the place of civil society (see Attachment A). There are also Guidelines that address the implementation of the principles and give attention to questions such as gender imbalance.¹

¹ <http://www.cpahq.org/cpahq/cpadocs/Commonwealth%20Latimer%20Principles%20web%20version.pdf>
There is also a handbook: Commonwealth Secretariat 2017.

Following up on the spirit and substance of the Latimer House Principles, the Commonwealth Parliamentary Association has produced a set of benchmarks for democratic legislature that extends the principles and which are regularly updated (currently 2018).² These benchmarks are inclined to focus on the requirements for a democratic legislature, but not necessary those for higher levels of performance and effectiveness.

There is a number of other reviews internationally that address fundamental questions about performance and accountability, the functioning of the core institutions of systems of government and good governance in general. For example, two recent reports from a relatively small system take different approaches: one examines states of democracy resulting from different models of resourcing for a parliament;³ another explores new institutional roles for improving governance through parliamentary scrutiny.⁴

In preparing the report, consideration has also been given to a range of approaches employed in other jurisdictions internationally in reviews of aspects of government. The ACT sits astride local and state government and has a national role through its capital city status. Beyond the basic principles, there are matters concerning the level of adherence and commitment, which may entail resourcing.

The review is based on extensive discussions with senior persons in the Assembly, Executive and the Judiciary and advice from other participants inside and outside the ACT system of government. Document analysis was important as was the growing body of statistics available, notably for the Legislative Assembly, which is particularly conscious of its performance and the public availability of indicators.

There is a caveat. Within this present review, there are limits to how comprehensive it can be in breadth and depth. At one level it can attest to the extent to which the ACT fulfils the basic precepts of Latimer House Principles, recording strong areas of conformity as well as shortcomings, and areas for potential development. Much relevant activity can be reported but more detailed analysis is necessary to determine its substance (e.g. the impact of aspects of scrutiny and oversight, and engagement). The complexity of the ACT system means that there must be some selectivity in the depth to which topics are examined while ensuring that the basic elements of Latimer are covered.

² http://www.cpahq.org/cpahq/Main/Programmes/Benchmarks_for_democratic_Legislatures.aspx

For the application of these benchmarks to the ACT Legislative Assembly, see Duncan 2019.

³ Moran et al., (2018) *Towards a World-Leading Democracy*, Report of the Seventh Triennial Appropriations Review Committee, House of Representatives, Wellington, 17 August 2018.

⁴ Boston et al., (2019) *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*, 2019. This is a collaboration between academics and the Office of the Clerk of the New Zealand House of Representatives.

Recommendations and Observations

Executive Branch

Across a range of areas, the Executive branch has been sensitive to Latimer House Principles. It has demonstrated a willingness to respond to the need for strengthening the Legislative Branch in areas such as Officers of the Legislative Assembly and the development of budget protocols.

Recommendation 1: The Executive should seek a better balance between principles of portfolio allocation so that there is greater alignment of ministers and directorates and more stability in the arrangements in the interests of clarity for accountability purposes.

Recommendation 2: There be an ongoing role for the ACT Executive, the Auditor-General and the Legislative Assembly in reviewing the efficacy of performance indicators and accountability.

Parliamentary Branch

The Parliamentary Branch continues to rate very well against Latimer House Principles in terms of its relative independence from the Executive Branch, the opportunities for non-executive members, and concern with enhancing the institution. Independence is indicated by opportunities for private members, and the attention given to enhancing the institution. The concern with institution enhancement is expressed through the continual focus on performance measures, and discussion of them in various forums.

Recommendation 3: There is a case for reviewing the roles of committees including:

- the language used should be sharpened by referring to scrutiny of the Executive and investigation of public policy matters
- greater use should be made of standing committees for the examination of bills
- standing committees should more explicitly reflect directorates, and be clearly subject matter committees
- some subjects incorporated in committee titles that are not given obvious attention in committee activity should be dropped
- some select committee activity might be incorporated in standing committees
- the work of estimates committees should become part of standing committees

Recommendation 4: That the Legislative Assembly should review the purpose and operation of the Public Accounts Committee with reference to how they operate in comparable jurisdictions, and whether the resources available should be increased.

Recommendation 5: The low recent percentages for Executive responses to committee recommendations indicate that the reasons for the rates of response need to be clarified and this task should be undertaken by the Executive.

Recommendation 6: The capacity needs of the Assembly should be reviewed holistically to determine where weaknesses in support can be best addressed. This ranges from resources for MLAs particularly the opposition members, committee work particularly investigative activities, more in-depth scrutiny of the Executive, and the level of research staff in the Office of the Legislative Assembly that can be drawn on. This should be done in conjunction with the review of how standing committees are performing as a strengthened committee system is likely to require greater supporting expertise. The optimal approach is an independent review process that considers the roles of the Assembly and the resources required.

Judicial Branch

Recommendation 7: A regular review of the work and needs of the courts be instituted in consultation with both the courts and the executive for the purposes of determining appropriate resourcing and accountability.

Recommendation 8: The relationship between the Registrar, the courts and JACS has been described as ‘structurally awkward’ and may be an area where reform should be considered.

Recommendation 9: The ACT review the operation of the Integrity Commission Act to see whether it is introducing unnecessary and costly redundancy with respect to providing oversight of judicial officers.

Recommendation 10: The executive with the different parts of the Judiciary, namely, judicial officers, ACT Law Society and ACT Bar Association separately establish what appropriate time frames are for consultation and provide proposed legislation within those time frames.

Governance and ACT Futures

The intergovernmental context: the place and standing of the Australian Capital Territory. The ACT remains an unfulfilled system of governance in that it continues to operate under rules set by another level of government with lack of agreement on some questions.

Recommendation 11: The Officers of the Legislative Assembly should be profiled on its website.

Recommendation 12: A priority issue for the Executive is to address the continuing shortfall in representative capacity. The two main alternatives are either to increase the number of MLAs and Ministers (as recommended by previous reviews) which can be accomplished within the existing legislation; or to reassign functions and responsibilities within a new structure, which would involve reviewing the legislation and the appointment of an expert reference group to undertake the task.

Recommendation 13: In view of the Executive’s interest in deliberative engagement, the potential for a citizens’ council should be explored as a structure that complements and

supplements the Legislative Assembly (variations being either electorate-based mechanisms for providing a real recognition or a local government focus).

Executive Branch

The Executive Branch has been distinguished by three features: an integrated ACTPS structure with a strong central agency presiding; a set of directorates that have evolved in the 2010s; and an expanded Ministry that commenced in 2016 with the 9th Assembly.

Ministry

A fundamental weakness in the early terms of ACT government was the small size of the Ministry, with five (at times four) Ministers shouldering the complex requirements of a city state. The five ministers under the 17-member Legislative Assembly, rose to seven under the 25-member Assembly with an eighth minister appointed in 2018, and following a reduction to seven in mid-2019 after the resignation of a Minister, there are now eight again.

A standard limitation of the smaller ministry has been the number and range of demands on ministers. Interviews indicate that a larger ministry has not necessarily solved the workload questions as ministers have numerous and diverse portfolios (Table 1).⁵ Two principles are important in developing ministries: the first relates to purpose; the second to the client. Two models are discernible: one focuses on primary subject area portfolios, which means that ministers may conventionally have one portfolio (or possibly two); the other is to acknowledge a range of specific clients and specialised fields of public interest. The first can achieve coordination by internalising closely related fields in one portfolio. The second has to find other means of coordination. In practice, there may be a combination of both models. At the national level, another principle has also become significant. An overall trend in OECD countries has been from single-focus siloed departments with specialised skills and approaches (e.g. defence and justice) ‘towards non-siloed approaches, combining connected functions (as with agriculture, environment and business)’ (White and Dunleavy 2010, 25).

The expansion in the number of ACT Ministers seems to have been associated with more specification. The average number of portfolios is higher than other states and the Northern Territory. While the current position to some extent reflects the reversion to a seven-minister cabinet, there are nevertheless three Ministers with six portfolio assignments, one has five, two have four, and the newest Minister, three. The only competitor for numerous portfolios would appear to be the NT Chief Minister. NSW and Qld keep their allocations to under four portfolios, as does Victoria with several exceptions. Tasmania and WA have more ministers with four or five portfolios. Most ministers in NSW have a single portfolio (but they may be conglomerates of fields that elsewhere are differentiated).

⁵ The table was completed while there were seven Ministers.

Table 1 Ministers' Portfolios and Directorates

Minister (Portfolios)	Portfolios	Directorates (N per Minister)
Andrew Barr (6)	Chief Minister* Treasurer* Minister for Social Inclusion and Equality Minister for Tertiary Education Minister for Tourism and Special Events Minister for Trade, Industry and Investment	Chief Minister, Treasury & Economic Development Environment, Planning & Sustainable Development (2)
Yvette Berry (5)	Minister for Education and Early Childhood Development* Minister for Housing and Suburban Development Minister for the Prevention of Domestic and Family Violence Minister for Sport and Recreation Minister for Women	Education Community Services Environment, Planning & Sustainable Development Justice & Community Safety Chief Minister, Treasury & Economic Development Transport Canberra & City Services (6)
Mick Gentleman (4)	Minister for the Environment and Heritage Minister for Planning & Land Management Minister for Police and Emergency Services Minister assisting the Chief Minister on Advanced Technology and Space Industries	Environment, Planning and Sustainable Development Justice & Community Safety Chief Minister, Treasury & Economic Development (3)
Rachel Stephen-Smith (6)	Minister for Aboriginal and Torres Strait Islander Affairs Minister for Children, Youth and Families Minister for Disability Minister for Employment & Workplace Safety Minister for Health* Minister for Urban Renewal	Community Services Chief Minister, Treasury & Economic Development ACT Health Environment, Planning & Sustainable Development (4)
Gordon Ramsay (6)	Attorney-General* Minister for the Arts and Cultural Events Minister for Building Quality Improvement Minister for Business & Regulatory Services Minister for Government Services and Procurement Minister for Seniors and Veterans	Justice & Community Safety Chief Minister, Treasury & Economic Development Environment, Planning & Sustainable Development Community Services (4)
Chris Steel (3)	Minister for Community Services & Facilities Minister for Multicultural Affairs Minister for Transport and City Services*	Community Services Chief Minister, Treasury & Economic Development Environment, Planning & Sustainable Development Transport Canberra & City Services (4)
Shane Rattenbury (4)	Minister for Climate Change & Sustainability Minister for Corrections and Justice Health Minister for Justice, Consumer Affairs and Road Safety Minister for Mental Health	Environment, Planning and Sustainable Development Justice & Community Safety ACT Health (3)

*Primary portfolio. Sources: Australian Capital Territory (Self-Government) Ministerial Appointment 2019 (No 1); Administrative Arrangements 2019 (No 1)

Does the number matter? There were several comments made, including the observation to an earlier review that covering a range of functions results ‘in some ministers having a smorgasbord of portfolios that no one person could do justice to’.⁶ Different types of accountability can be seen to be in play, one being about visibility, client focus and connections, and more general resonance with the public; the other being about process, clarity and alignment. The span of focus is much more complicated where there are multiple portfolios, particularly when they are diverse rather than cognate. Ministers have noted that it is difficult to comprehend portfolios in depth. They must appear before different committees as part of the accountability process. Functions may be divided between portfolios. It is not clear that ministers are able to convey what is being achieved in some specialised areas, and comments were made about the credibility of a few portfolio areas.

To take one example, in 2019 the Attorney-General has six ministerial appointments. In addition to being Attorney-General he is Minister for the Arts and Cultural Events, Minister for Building Quality Improvement, Minister for Business and Regulatory Services, Minister for Government Services and Procurement and Minister for Seniors and Veterans.

Diverse portfolios mean dealing with multiple directorates. The Chief Minister has only two, the merger of 2011 incorporated Treasury and Economic Development in the Chief Minister’s Directorate, but the Deputy Chief Minister’s five portfolios involve six of the seven directorates. Three other Ministers work with four directorates.

Recommendation 1: The Executive should seek a better balance between principles of portfolio allocation so that there is greater alignment of ministers and directorates and more stability in the arrangements in the interests of clarity for accountability purposes.

Directorates

The seven directorates are organised by purpose as the primary principle followed by collections of services. They generally reflect the directorates announced following the Hawke Report (ACTPS Review 2011), with the major exceptions being the creation of Chief Minister, Treasury and Economic Development (CMTEDD) which operates as a central agency with some line responsibilities reflecting the interests of the Chief Minister; and Transport Canberra and City Services more recently replacing Territory and Municipal Services.

Table 2 Directorates and Ministers

<i>Directorate</i>	<i>Minister (N)</i>	<i>Portfolios (N)</i>
Chief Minister, Treasury and Economic Development	6	13
Community Services	4	10
Education	1	1
Environment, Planning and Sustainable Development	6	8
Health	2	3
Justice and Community Safety	3	4
Transport Canberra and City Services	2	2

Sources: compiled from sources for Table 1.

⁶ Professor George Williams quoted in Expert Reference Group 2013, p.17.

Table 2 looks at the stakeholder ministers and the range of portfolios. Not unexpectedly, almost all ministers have responsibilities that involve CMTEDD, and these cover a total of thirteen portfolios. Other directorates with multiple ministers and portfolios are Community Services with four ministers but ten portfolios and Environment, Planning and Sustainable Development with six ministers and eight portfolios. Education has one minister with a single portfolio and Transport Canberra and City Services has two ministers each with a single portfolio.

Accountability and Performance

There is a standard array of accountability and reporting documents for both the ACT Government and the ACTPS. A key Government report is the delivery document reflecting its priorities and the Parliamentary Agreement between the ALP and the Greens. The estimates process and the annual review of reports and finances by the Assembly are central to the accountability regime. In both cases ministers and senior public servants appear before Assembly committees. The ACT Government is also expected to respond to Assembly reports within a fixed period of time. The annual reports of directorates are the main form of external reporting. External accountability to the Legislative Assembly and Officers of Parliament – the Auditor-General and the Ombudsman – discussed later.

In addition, it is worth knowing whether there are consequences within the ACT public service for poor performance in this regard. While directors-general are accountable to the relevant minister, there are also administrative mechanisms built into public service governance arrangements for annual performance review processes by which the Head of Service is able to guide directors-generals in responding to internal and external requirements.

Performance management

CMTEDD has produced *Strengthening Performance and Accountability: A Framework for the ACT Government* (April 2019), which outlines the expectations for a performance regime. Annual reports contain performance statement by directorates, which are subject to review by the Auditor-General. While a detailed analysis of how the performance system works is beyond the scope of this report, it is possible to raise three points.

First, accountability indicators are a keyway to measure government performance against the goals specified in its budget. The budget papers set out for output 2018-19 targets, 2018-19 estimated outcomes and 2019-20 targets. According to the Assembly's Estimates Committee 2019-2020, 'committees have, over the years, suggested various improvements that could be made to individual indicators to improve their usefulness and to make their measurement or target more meaningful'. The Committee acknowledged the need for balance 'between the importance of having measurable targets to assess performance against and the resources required to gather that data'. The Committee made recommendations regarding some outputs where improvements were possible, and more generally recommended that 'the ACT

Government include historical series of accountability indicators to demonstrate performance measures over time'. It is unclear to what extent such suggestions have been taken up.⁷

Secondly, a University of Canberra doctoral thesis by Graham Smith (2019), factors influencing changes to performance measures in government agencies, addresses performance data for three different types of agency for three jurisdictions over five years (the analysis finishing in 2015–2016).⁸ For the ACT, *clarity* of measures was uniformly high, with the average over the period varying between 2.7 and 3.0 for the three organisations. This may well be due to the regular review of the clarity of performance measures conducted by the Audit Office. However, *relevance* and *completeness* were not subject to formal review, and these dimensions of quality varied significantly, from 1.1 to 2.3 for relevance, and from 1.6 to 2.7 for completeness. The relevance and completeness figures for a small ACT commission were the lowest in the survey. Smith concludes that the results indicate the power of external review in influencing quality.

Thirdly is the question of evaluation and how and with what impact it has been used. The need for evaluation in the public sector has been a long-held imperative of public management that was voiced strongly at the Commonwealth level in the 1980s, but then lost as mandatory evaluation was replaced by the belief that it should be incorporated in routine management. The result, particularly under the devolved arrangements within the APS initiated in the 1990s, was that evaluation came to be an impossible dream (with a few notable exceptions) as echoed in various reports (e.g. Alexander and Thodey 2018). The ACT has also subscribed to evaluation in an emphatic way by indicating that it should be a routine part of management.

Agency Evaluation Plans were mandated a decade ago with provision for them to be reviewed by a cabinet committee (Chief Minister's Department 2010). Under the 2019 Framework there is a requirement to develop an agency evaluation plan.⁹ The annual reports of selected directorates did not indicate particular commitment to evaluation beyond specific programs and projects, and by establishing to what extent an evaluation culture was being practised.

Recommendation 2: There is an ongoing role for the ACT executive, the Auditor-General and the Legislative Assembly in reviewing the efficacy of performance indicators and accountability.

Two other initiatives in public service modernisation and professionalisation deserve to be noted. First, red tape has bedevilled central governments in Westminster systems (Halligan 2019). The ACT annually reviews regulations to simplify the community's interactions with government and to drive innovation. The *Red Tape Reduction Act 2018* is one of a series of regular reviews of the ACT's regulatory settings for addressing unnecessary administrative and compliance costs for business, the community and government. The focus is on streamlining

⁷ Select Committee on Estimates 2019-2020, Appropriation Bill 2019-2020 and Appropriation (Office of the Legislative Assembly) Bill 2019-2020, *Report*, ACT Legislative Assembly, July 2019.

⁸ The scale for assessing the quality of performance measures ranges from 0 to 3 (for more details see Smith 2019, Appendix A).

⁹ Chief Minister, Treasury and Economic Development Directorate (2019) *Strengthening Performance and Accountability: A Framework for the ACT Government*, ACT Government, Canberra

processes and regulation for the community sector. The extent to which internal rather than external red tape is covered is unclear, although the latter has implications for the former. While the ACT has historically been nimbler and managerially more responsive than larger systems of government, it may of course with growth in the machinery generate more internal red tape.¹⁰

The office of the independent Public Sector Standards Commissioner (PSS Commissioner) was created in 2016, replacing that of the office of the Commissioner for Public Administration. The core functions of the Commissioner are to undertake investigations about a matter declared by the Chief Minister in the way prescribed; and under an industrial instrument; promote and provide advice about public sector values, principles and appropriate conduct required under the *Public Sector Management Act 2014*; and advise about public interest disclosures. The Chief Minister appoints the PSS Commissioner who is independent of the Public Service but reports directly to the Chief Minister. The PSS Commissioner does not have staff with discrete responsibility for supporting the office but draws on the capacity of relevant CMTEDD staff for support.¹¹

Open government

The ACT Government declares its commitment to transparency in process and information, citizen participation in governing and public collaboration in solving problems and improving community well-being. The open government initiatives are presented as enhancing democracy and placing ‘the community at the centre of the governance process’ (Open Government website).¹² There are numerous components of which three are mentioned here: Annual reports, freedom of information and open access information including cabinet decisions.

The ACT government decided to release Cabinet information in 2011 as part of an open government agenda, designed to make government information more readily available to the community. Cabinet decisions are also announced by government and cabinet material may be made public through ministers’ media releases and statements in the Legislative Assembly, which are published in the Hansard or available on the Assembly website.

A new *Freedom of Information Act 2016* (FOI Act) commenced in 2018, changing the model to one based on the Queensland’s concept of ‘right to information’ with modifications for improving the scheme and the availability of government information. Underpinning the Act is the principle that effective democracy requires a public right to government information. Consequently, the FOI Act was designed to make information held by government more accessible to the community than before. It has created a statutory right of access to information held by the government and set up a clear framework for determining the public interest in the disclosure or non-disclosure of government information. Information only remains confidential where it is contrary to the public interest to release it.

The FOI Act makes provision for responding to particular requests for information, and there is a greater emphasis on the proactive disclosure of information without the need for a formal

¹⁰ <https://www.legislation.act.gov.au/a/2018-33/>

¹¹ <https://www.cmtedd.act.gov.au/industrial-relations-and-public-sector-management/commissioner>

¹² https://www.cmtedd.act.gov.au/open_government

request. The ‘push model’ for providing information means that a range of information including policy documents, details about agency activities and budgeting, certain expert reports from three years after they are written: incoming minister briefs, question time briefs and estimates and annual reports briefs must be proactively published by agencies (except where contrary to the public interest). The FOI Act imposes an obligation on government agencies to take the initiative in continually considering what additional information can be made available and authorises agencies to provide information in response to informal requests for information to avoid going through a formal FOI process.

The *Territory Records Act 2002* was amended to complement the new FOI Act by providing that agency records are open to public access after 20 years, and executive records are accessible after 10 years. The two schemes have been devised to be complementary over time and will work harmoniously so that agency records are subject to the new FOI scheme.

The FOI Act extends an open access regime designed to ensure regular disclosure of certain categories of government information. The website is created to support a pro-disclosure culture across the ACT government by providing a central, searchable interface to enable the community to access government information. ACT government agencies will progressively make open access information available through this website.¹³

There has been provision for public access to executive documents for three decades. The Chief Minister is required to publish a summary of cabinet decisions and a copy of the corresponding triple bottom line assessments for the decisions. Some information relating to cabinet decisions is published.¹⁴ The requirement in the FOI Act is intended to increase the volume and timeliness of information about cabinet decisions. Under the open access information scheme, ministers are required to publish ministerial travel and hospitality expenses and a copy of the Minister’s diary, which must include the appointments and meetings that relate to the Minister’s responsibilities. The intention is to give the public a greater understanding of who ministers engage with and how. Open access information for agencies includes, after an interval of five years, briefs to parliamentary estimates, annual reports and question time.

Parliamentary Branch

Parliament and Latimer

The Assembly has had relatively more independence, compared to comparable systems operating within a Westminster tradition because a one-party majority in the Assembly is the exception. At the same time, the conditions have not existed for a regular change of government. One-party government has prevailed for 18 years, one term of majority government and three with a minority government majority in the Assembly. The numbers in the two main parties have been fairly even for the last two election results, with the balance of power being assumed by the third party. Parliamentary Agreements between the governing party (the Australian Labor Party ACT) and the ACT Greens for recent Assemblies has

¹³ <https://www.act.gov.au/open-access/about>

¹⁴ http://www.cmd.act.gov.au/open_government/inform/cabinet.

included an agenda for improving the work, operations and the resources of the Assembly. In ACT's multi-party system with an active Opposition and mediums for inter-party cooperation, regular discussions occur about enhancing the institution.

The ACT Legislative Assembly has continued to perform well against Latimer House Principles (and the benchmarks of the Commonwealth Parliamentary Association 2018) as a unicameral parliament with broad responsibilities. The most recent and comprehensive indication is the assessment of the ACT's record against 132 CPA benchmarks. The results indicated that the Assembly 'fully complied with the spirit and letter of the benchmark' in 79% of the cases; and partially complied with 12%. Non-compliance (2%) and not applicable (e.g. bicameral benchmarks) (7%) made up the remainder (Duncan 2019).

Indicators of MLA independence

Several indicators are used to examine the relative independence of MLAs (who are still acting as members of political parties): the functioning of committees, the attention given by the assembly to non-executive bills, the willingness of the executive to accept amendments from non-executive MLAs, non-government questions and time assigned to non-government business.

Composition and chairs of committees

Under the parliamentary agreement for the 9th assembly, 'The parties agree to establish seven Standing Committees. As reflected in the Latimer House Principles, the Opposition will Chair three committees (including the JACS and Scrutiny of Bills Committee and the Public Accounts Committee), the ALP will Chair three committees, and the Greens will Chair one committee. Committees will comprise two Labor Members, two Liberal Members, and the Greens Member if she chooses to join the committee'.

The roles of chairs of committees are distributed across the parties, but with one exception are currently held by opposition or crossbench members. The ACT has a tradition of using opposition members in this position. Another example is the Select Committee on Estimates, which has five members (two from the Opposition, one from the third party, and two from the government), and a non-government chair.

The four-person standing committee created conflicts in the 8th Assembly because government and opposition were dividing on matters. Several committees were unable to report findings and make recommendations in relation to particular inquiries. The solution was to use three-person committees under an arrangement whereby the opposition members either had a representation of two or the chair's position. The committees' functioning has accordingly been more successful in producing reports

In line with the ACT practice of using non-government MLAs as chairs of the committee, of the twelve chairs from self-government up to 2008, only one (the first) was from the governing party, ten came from the opposition, and one from the crossbenches. Further, the deliberations can be quite collegial (an experience shared with the comparable committees elsewhere).

Table 3 Distribution of committee chair positions

	2012	2013	2014	2015	2016	2017	2018
Chair positions N	7	8	10	8	8	11	12
Opposition chairs N (%)	6 (85)	4 (50)	5 (5)	4 (50)	3 (3)	6 (55)	8 (67)

Source: Office of the Legislative Assembly, Parliamentary Performance Report Cards 2012-2018

Non-executive bills

The capacity of private members to introduce legislation and to secure its passage reflects Latimer principles. There is a significant ACT tradition of non-executive bills (NEB), both their introduction and passage. The volume has fluctuated over time with MLA interest and political tactical preferences.

In 2009-10, 72 bills were introduced, including 17 private members' bills, an unusually high number for an Australian parliament. Of those introduced all the Executive's bills were passed, 10 private members' bills were successful. Non-executive bills (NEB) have declined to a handful between 2012-2013, but 9 in 2017-2018. The two relevant points here are first that the legislative context is not so disciplined politically that non-executive bills are resisted. An important factor is whether the Opposition regards such bills in a tactical sense as the best option to advance their arguments and role in the Assembly.

Table 4 Non-executive bills

	2012	2013	2014	2015	2016	2017	2018
NEB passed (N)	7	4	1	3	1	4	2
Bills passed (N)	50	52	61	53	57	49	52
NEB passed (%)	14	8	2	6	2	8	4

Sources: Office of the Legislative Assembly, Annual Reports, Appendices.

Data is available about the extent to which non-executive members have their amendments to bills accepted. Over seven years the success rate fluctuates, but there is always some receptivity and in several years it is notable.

Table 5 Success rate of non-government amendments to bills

	2012	2013	2014	2015	2016	2017	2018
Number of non-government amendments to bills agreed to (% of amendments)	57/106 (54)	7/67 (10)	22/260 (8)	15/105 (14)	7/83 (8)	26/166 (16)	32/163 (20)

Source: Office of the Legislative Assembly, Parliamentary Performance Report Cards 2012-2018

The final set of indicators concern non-government members ability to operate meaningfully in an Executive dominated Assembly. First, the answering of question on notice dipped from a high level in the mid-2010s to become 'unhealthy' in 2016 (according to Assembly performance indicators), but the percentage has since been higher. The number of questions addressed to Ministers has varied but is generally strong. The time spent on non-government business has been judged to be 'somewhat unhealthy' in comparison with previous years (Table

6). Nevertheless, the ACT Legislative Assembly still compares favourably with other Australian parliaments.

Table 6 Non-government members questions and Assembly time

	2012	2013	2014	2015	2016	2017	2018
Questions on notice answered (%)	92	96	96	83	62	88	98
Average number of questions without notice asked of each minister per year (N)	185	343	280	233	137	242	216
Time spent on non-government business (%)	74	56	42	42	39	42	41

Source: Office of the Legislative Assembly, Parliamentary Performance Report Cards 2012-2018

Committee system

The ACT committee system comprises standing, select and domestic committees and other specialised committees. Standing committees comprise six subject matter committees, plus public accounts and the specialised committee devoted to the integrity commission, Administration and Procedure. Select committees are ad hoc and focused on a specific task, and expire when that is completed, are used for domestic topics (privileges), estimates, and inquiries (of which there have been five during the 9th Assembly).

According to the *Companion to the Standing Orders* the roles of the Assembly's committees are to scrutinise proposed legislation, monitor activities of the executive and examine public policy issues in a detailed way (McRae nd). The question of interest here is how they perform these functions. First consideration is given to how the role and functions of a committee system are defined elsewhere. Some committee systems have a particular orientation. The Victorian committee functions are framed in terms of investigating specific issues: 'Most committees are investigatory committees. These committees conduct public inquiries and encourage public participation...Committees investigate specific issues ... Members work together to research an issue in detail, by gathering and reviewing evidence from experts and the public'.¹⁵ By way of contrast, the New Zealand House of Representatives, specialises in the legislative function. Bills are usually referred to the relevant committee following the first reading. The committee may call for public submissions and receive oral and written submissions. It can recommend amendments and whether the bill should be passed. In Queensland all bills, except urgent ones, are referred to a committee. The Parliamentary Procedures Handbook also refers to opportunities provided by committees to scrutinise the executive and public service and to investigate topics that parliament could not consider.¹⁶

In the ACT, considerable attention is devoted to issues raised during the estimates and the review of annual and financial reports. Inquiries and investigations do not appear to be high priorities. Bills are rarely referred. Few reports are presented by the majority of committees. Petitions are also referred to committees.

¹⁵ <https://www.parliament.vic.gov.au/assembly/publications-a-research/fact-sheets/2489-fact-sheet-g2>

¹⁶ <https://www.parliament.qld.gov.au/documents/assembly/procedures/ParliamentaryProceduresHandbook.pdf>, p.48

Referral of bills to Assembly committees

A standard indicator of the role of a parliament in legislation is whether bills are referred to committees. In large assemblies specialised consideration of bills and other matters is imperative, but even in a small legislature there are advantages from a division of labour, rather than occupying all MLAs in plenary sessions. An average of 7 per cent of bills were referred for 2012-2017, but up to 11 per cent for 2018, entailing seven bills (Table 7).

Table 7 Bills referred to standing committees

<i>Year</i>	<i>Bills Total</i>	<i>Referrals N</i>	<i>Per cent</i>
2012	na	na	8
2013	na	na	7
2014	64	5	8
2015	57	4	7
2016	52	4	8
2017	54	2	4
2018	61	7	11

Sources: Office of the Legislative Assembly, Parliamentary Performance Report Cards 2012-2018

The distribution of committee activity in Table 8 indicates that the pattern consistently includes consideration of Annual and Financial reports, bills examined range from zero to two and most committees conduct one inquiry per year or less. Committees also have specialised statutory roles: e.g. Justice and Community Safety undertakes specialised legislative scrutiny. Select committees are established for domestic purposes (e.g. privileges), estimates, and conducting inquiries on matters that could be referred to standing committees.

Table 8 Standing Committee Roles and Activity 2017, 2018, 2019 (up to August)

Standing Committee (subject)	Legislation: Bills reports	Monitoring executive: Annual/financial reports	Inquiry reports
Economic Development & Tourism	0, 1, 0	1, 1, 1	0, 1, 1
Education, Employment & Youth Affairs	0, 0, 0	1, 1, 1	0, 1, 1
Environment & Transport & City Services	0, 0, 0	1, 1, 1	3, 2, 0
Health, Aging & Community Services	0, 0, 1	1, 1, 1	1, 2, 1
Justice and Community Safety*	0, 2, 0	1, 1, 1	0, 0, 0
Planning and Urban Renewal** (Public Accounts)	0, 0, 0 0, 1, 0	1, 1, 1 1, 1, 1	1, 0, 1 0, 1, 1
Total for subject area committees	0, 3, 1	6, 6, 6	5, 6, 4

* Excluding the specialised legislative scrutiny role, which involved examining 61 bills in 2017-18.

** Inquiries exclude four draft variations to the Territory Plan.

Source: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly>

There has been earlier comment about the relationship of ministerial portfolios and directorates. The standing committees generally have a link with at least one directorate, but multiple portfolios complicate the reporting arrangements.

Table 9 Subject Standing Committees Legislative Assembly 2019

Standing Committee	Primary directorate	Ministers reporting*
Economic Development & Tourism	CMTED	4
Education, Employment & Youth Affairs	Education	3
Environment & Transport & City Services	Transport Canberra City Services	6
Health, Ageing & Community services	Health; Community Services	6
Justice and Community Safety	Justice and Community Safety	3
Planning & Urban Renewal	Environment, Planning & Sustainable Development	5

* Number of ministers appearing in annual and financial reporting processes

Sources: Annual and Financial Reports

Public Accounts Committee

The Committee on Public Accounts has a central place in parliamentary oversight and is given special recognition by Latimer. The quality of the past oversight at the state level in Australia has been variable.

Ein ACT every report from the Auditor-General is automatically referred to the PAC, which can choose to conduct a separate inquiry into the report. There has often been a significant lag – as much as a year – between the release of an Auditor-General’s report and consideration by the committee. This means that the committee was inclined to run 4-6 reports behind. In recent years, other than standard reporting on Annual and Financial Reports and the Appropriation Bill, there is not much happening on what might conventionally be regarded as core work. For 2017-2018, there were thirteen SO 246A Statements, four Auditor-General reports have been adopted for further inquiry, one was completed in 2019, while the other three remain ‘on-going’ approximately a year or eighteen months later. No other Auditor-General reports have been adopted for inquiry since September 2018.

Yet the PAC has been the hard-working committee: for 2017-2018 it had the highest number of meetings (along with JACS, not counting its legislative scrutiny role), the highest number of public hearings, the longest meeting hours (apart from JACS), and the most submissions (Office of the Legislative Assembly 2018a, Appendix 7). Although Public Accounts is an active committee it has relied on four members (and the support of one committee secretary). In the past it may have normally produced six to eight reports per year, but for the last two years, the figure was four or five.

The PAC appears to have opted out of inquiring into Auditor-General audit reports with almost no reports in the 9th Assembly. Either the PAC has been focused on other matters (and it has undertaken inquiries that are not directly related to PAC work); or perhaps the Auditor-General is not reporting on topics that the committee believes are worth an inquiry. For whatever reason there are questions to be asked about the nature of the PAC, the timeliness of its reporting, and the priority accorded to oversight. Is there a need for greater resources to address the backlog and to maintain its oversight role?

In view of the above observations about the committee system, a review appears to be timely of the functions, roles, and organisation of the committee system and its performance in the

oversight of the executive, reviewing legislation and conducting inquiries with public engagement.

Recommendation 3: *The Legislative Assembly should review the committee system and committee roles to determine whether:*

- *the language used should be sharpened by referring to scrutiny of the executive and investigation of public policy matters*
- *greater use should be made of standing committees for the examination of bills*
- *standing committees should more explicitly reflect directorates, and be clearly subject matter committees*
- *some subjects incorporated in committee titles be dropped where they are not given obvious attention in committee activity*
- *much select committee activity might be incorporated in standing committees including estimates*

Recommendation 4: *The Legislative Assembly should review the purpose and operation of the Public Accounts Committee with reference to how they operate in comparable jurisdictions, and whether the resources available should be increased*

Independence and Resourcing of the Assembly

There are a number of ways of enhancing the independence of the Assembly, which are discussed in this and the following section. A succession of acts during the 2010s have strengthened the independence of officers and offices within or attached to the Assembly and provided an improved basis to its funding.

Latimer House action guidelines for the independence of parliamentarians emphasise having access to resources that are commensurate with responsibilities, and parliaments having control of budgets.¹⁷ The professional staff of parliament should be independent from the public service. The benchmark of the Commonwealth Parliamentary Association is also clear: ‘Only the legislature shall be empowered to determine and approve the budget of the legislature’.¹⁸ Less clear were ways in which the good governance of the ACT would be advantaged through better resourcing. That is a matter picked up by other studies that advance aspirational objectives with different costings (Moran et al 2018).

In the Australian tradition and type of parliamentary system, the executive has been the dominant branch in the relationship with the legislature because of how they are co-joined through members of the political executive being recruited from the parliament and because of an electoral system that traditionally produced majority government. The ACT has differed because a number of Legislative Assemblies have had minority governments. The Executive

¹⁷ Commonwealth (Latimer House) Principles on the Three Branches of Government, 2009, Edinburgh Plan of Action, July 2008, p.42; Annex, Latimer House Guidelines for the Commonwealth, p.22.

¹⁸ Commonwealth Parliamentary Association, Recommended Benchmarks for Democratic Legislatures, A Study Group Report, Commonwealth Parliamentary Association Secretariat, London, 2006.

has been fairly attentive to the needs of the Legislative Assembly, but perhaps more so under the conditions of minority government.

It was noted in the first Latimer review that the statement ‘In relation to the key Latimer Principle, that the Legislature should have the power to determine and approve its budget, is not applied in the ACT. This question should be reviewed once the ACT system of government as a whole acquires independent authority over its Governance and agreement is reached on a larger Assembly’ (Halligan 2011). The Assembly did not determine the funding allocation as provided for in the relevant appropriation bill. Instead, the traditional practice has been that the executive determines the funding quantum for the Assembly having considered recommended appropriations put by the Speaker after he or she has sought advice from the Standing Committee on Administration and Procedure.

The Budget Protocols Agreement now covers the principles and procedures for developing the budget for the Office and Officers of the Legislative Assembly. An agreement has existed between the Treasurer and the Speaker since 2014 and has been progressively refined (Burch 2019). A statement of principles states that: ‘The parties commit to advance the ‘separation of powers doctrine’ as it relates to the mutually independent status of the legislative and executive branches of government in the ACT’s form of parliamentary democracy. The parties recognise that each branch has distinct roles and responsibilities that will not be encroached by one another’.¹⁹ While the executive government has the right to frame a budget appropriation bill, the recommended appropriation must reflect the legislature’s resource requirements and priorities. The independent status of the Legislative Assembly, Office of the Legislative Assembly and Officers of the Legislative Assembly are reaffirmed and are not subject to the direction or the policies and procedures of the Executive.

The Budget Protocols Agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly set out detailed arrangements for the development and consideration of budget appropriations. The protocols are intended to strengthen the application of the separation of powers doctrine and acknowledge and support the financial initiative of the Executive (the right of the Executive to develop and frame appropriations for consideration by the Legislature). The protocols were first developed in the Eighth Assembly and applied only in relation to the budget appropriations of the Office of the Legislative Assembly. They have since been expanded to include the Auditor-General and the Electoral Commissioner, both of whom are Officers of the Legislative Assembly. The current protocols took effect in 2018. A review is to be conducted at the end of the 2020 to evaluate the effectiveness of the agreement.

The *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (the OLA Act) established the Office of the Legislative Assembly and enshrines its independence. The Act provides that ‘the clerk and the office’s staff are not subject to the direction by the Executive or any Minister in the exercise of their functions’. The Office of the Legislative Assembly is responsible for the provision of impartial advice and support to the chamber, its committees and the Members. The Office’s statement of values emphasises independence and separation

¹⁹ Budget Protocols Agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly, 2018. <https://www.parliament.act.gov.au/Publications/budget-protocols>.

from the executive, transparency and accountability, primacy of the legislative arm, the principles and guidelines of the Latimer House Principles as a basis for best practice in relationships between the branches of government, and the checks and balances embodied in the ACT's form of government, established in the *Australian Capital Territory (Self-Government) Act 1988*. The Office is accountable to the Speaker, the Assembly and its committees for the work it does.

The powers of the Speaker of the Legislative Assembly were augmented by the *Legislative Assembly Legislation Amendment Act 2013*, including the responsibility for appointing Officers of Parliament, such as the Auditor-General and the Electoral Commissioner²⁰ (and later the Integrity Commissioner). Previously, the Executive was responsible. The rationale for shifting these powers was that the Speaker could best reflect the Legislative Assembly's will and uphold its independence from the Executive.

Law making process

The condition of the law-making process features in the Latimer House Principles. In several respects the ACT Assembly performs strongly. The average number of days taken between the introduction and the passage of bills is 46, the range being 48 to 67 days for 2012-2018. The average time that each bill is debated for is 43 minutes (the range being 40 to 50 minutes for 2012-2018). In addition, closure motions are not used, and bills are not forced through in one day (ACT Legislative Assembly Parliamentary Performance Report Cards 2012-2018).

However, committees play an insignificant role in legislation as indicated above, although where they do, the use of the public inquiry process is significant (as discussed later).

Holding the executive to account

As mentioned earlier, the Assembly has a number of options for holding the executive to account, including the estimates process and the review of annual reports. Another area of activity is questions directed to ministers either with notice or without notice. MLAs have generally been active in making use of questions. Questions with notice soared for the 2017-2018 year (1207, up from 377 for the previous year: OLA 2018a, Appendix 6), while questions without notice and supplementary questions were also noticeable higher.

Government responses to committee reports is a stock concern of parliaments (the Australian National Audit Office has recently examined non-implementation of recommendations at the Commonwealth level: ANAO 2019). Under ACT standing orders, government responses to committee reports must be tabled in the Legislative Assembly within four months of presentation of the report. As Table 10 indicates the response rate has dropped significantly in three of the last four years. It is not entirely clear how to judge the status of reporting. In a few cases there is a blank, others have 'in progress'. A standing order specifies that if government does not comply, there is provision for members to request a ministerial explanation or

²⁰ The Electoral Commission in fact comprises three officers of the ACT Legislative Assembly: a full-time Electoral Commissioner and a part-time Chairperson and part-time member.

statement; and may move a motion without notice regarding the failure to provide a government response.

Table 10 Percentage of committee reports responded to

	2012	2013	2014	2015	2016	2017	2018
Government responses to committee reports %	95	87.50	100	48	92	56	61

Source: Office of the Legislative Assembly, Parliamentary Performance Report Cards, 2012-2018

This is not a matter confined to the ACT. The requirement to respond to committee recommendations exists in other legislatures, such as Queensland, which specifies a three-month deadline and requires an interim response from the minister and a final response within six months (50 Section 107 of the *Parliament of Queensland Act 2001*).

There may be several types of explanation. The nature of the recommendation may not always be readily and explicitly responded to. The executive may in some cases be according these responses low priority. The recommendations may not be sufficiently important to MLAs to impel them to use the procedural options available for holding ministers to account.

Recommendation 6: The low recent percentages for Executive responses to committee recommendations indicate that the reasons for the rates of response need to be clarified and this task should be undertaken by the Executive.

Institutional Development and Capacity

There are a number of ways of reviewing institutional development, such as level of specialisation and continuity of membership. These may enhance capacity, refine procedural support, and reinforce the independence and identity of the legislature. A steady stream of changes over the last decade or so have contributed to the Assembly's standing including the addition of the Ethics and Integrity Adviser (from 2008), the function of a parliamentary budget officer (from 2009), the Commissioner for Standards (from 2013) and a Register of Lobbyists (2014). There have been regular reviews of the code of conduct (first adopted in 2005) (Duncan 2017). The establishment of Officers of the Legislative Assembly (2013) and the Integrity Commission (2019), discussed later, were major initiatives. These and earlier initiatives indicate a sustained focus on ethical governance, a core Latimer House Principle (Duncan 2018).

The renaissance of parliaments has been reflected in their greater activity whether through legislative reviews or policy investigations by committees and has been reflected in new agencies responsible to parliament, such as the parliamentary budget office (PBO). The growth of independent fiscal oversight agencies in OECD countries has added capacity and improved accountability in parliaments. Apart from analysing long-term fiscal sustainability, PBOs support parliaments with budget analysis and may have a role in policy costing (e.g. election platforms) (Craft and Halligan 2019). A decade ago, the Standing Committee on Administration and Procedure concluded that a fully resourced and independent PBO was inappropriate and the temporary appointment of an expert consultant for the estimates process

provided flexibility and the most appropriate model.²¹ This approach was supported by the Executive. An external expert has been used annually to provide advice with regards to Estimates since 2009. The work of the PBO is essentially prospective and represents an advisory capacity designed explicitly to serve parliamentarians that is independent of the executive. Other PBOs may provide a wider range of services, but the question of whether the Assembly needs advice beyond what is provided now was not raised.

In terms of supporting MLAs, adequate resources need to be provided to backbenchers to improve parliamentary contributions, including provision for secretarial, office, library and research facilities; drafting assistance for private members' bills and training for new members. No consensus emerged about the level of resources to support MLAs, except independent expertise to assist committee work and access to greater research expertise, were thought to allow stronger roles and contributions. An example of an aspirational approach, as conducted for the New Zealand Parliament, is to use an independent review process that considers the long-term development of the institution and relates different levels of support to parliamentary roles and the associated costings (Moran et al 2018).

Recommendation 5: The capacity needs of the Assembly should be reviewed holistically to determine where weaknesses in support can be best addressed. This ranges from resources for MLAs particularly the opposition members, committee work particularly investigative activities, more in-depth scrutiny of the Executive, and the level of research staff in the Office of the Legislative Assembly that can be drawn on. This should be done in conjunction with the review of how standing committees are performing as a strengthened committee system is likely to require greater supporting expertise. The optimal approach is an independent review process that considers the roles of the Assembly and the resources required.

Judicial Branch

Judiciary and Latimer

Latimer address two dimensions: the independence of the branch and relationships between branches, both of which have been important in the ACT. Other specific matters are also raised: judicial accountability, resourcing and the appointments process.

Independence of the Judiciary

The Latimer Houser Principles are clear on the position of the Judiciary: 'An independent, impartial, honest and competent Judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice'. In order to achieve these objectives, there are requirements covering judicial appointments, security of tenure, resourcing of the judicial system and interaction with the executive.

The question of the role and standing of the judicial branch is subject to several interpretations. There is complete agreement about the independence of the Judiciary in terms of the judgement

²¹ Standing Committee on Administration and Procedure *The Merit of Appointing a Parliamentary Budget Officer*, Canberra, August 2009.

it makes in accordance with the law. With regards to the administration of the courts there appear to be at least two basic positions: one holds that judicial independence requires control of the courts to be in the hands of the judicial branch; the other is that effective and efficient court administration requires a direct role for the Executive. Both positions acknowledge a role for the other branch but differ as to what the nature and extent of that role should be.

In the ACT both positions are held. The Executive asserts a need to control the operations of the courts to ensure that appropriate efficiencies are being found and implemented. The Executive points to the investment in the new courts building as an example of its effective management and control. The judiciary holds the position that the courts need to be in control of the resources to ensure that the court's priorities are being met. These priorities may well be at odds with the priorities of the government of the day but are seen as critical to advancing the cause of justice as understood by the courts.

Resourcing

Resourcing of the courts is considered in most instances appropriate. The judiciary is conscious of costs, not seeking additional funds without regard to the constraints of the small size of the jurisdiction. Further, the judiciary acknowledges the significant improvement in facilities in terms of the new courts building—a contribution of which the Executive is justifiably proud. All of this, however, is not to say that there are no issues with resourcing.

The number of judicial officers in the Magistrates Court remains a matter of concern. With 95% of criminal matters coming to that court in the first instance, as well as a heavy case load generally, it is the view that an investment in additional judicial officers is overdue. By way of contrast, the Executive is of the view that efficiencies like those achieved in the Supreme Court could provide for perceived shortages, at least to some degree, and further, that the new court building should both demonstrate a commitment to resourcing as well as work to solve some of the problem through such technologies as remote witness testimony options. Finally, the Executive believes that the matter of resourcing should be resolved after an external review of the Magistrates Court, a review which is to take into account the work of the court, and to form the basis of determining the number of appointments.

In the matter of resourcing generally, similar to the Executive's preference for the Magistrate's Court, the view of the judiciary was that it was time that an independent review be conducted. The current system of simply increasing the budget by a set percentage (5% per year) is inappropriate and the prevailing view of the Judiciary is that the increase should be based and set on a review of the actual work of the court.

There remains a diversity of views on the preferability of separate budgets for the different courts to reflect their different areas of work and related different needs. Further, there is a consensus that the Registrar is underfunded, preventing among other things, annual reporting by the courts.

The Executive is not unaware of the desire by the courts for increased control over their resources. It is, nevertheless of the view that in other jurisdictions where the Executive has

relinquished control the outcomes have not been uniformly positive. As a result, there is little appetite for shifting control from the Executive to the judiciary.

Recommendation 7: A regular expert review of the work and needs of the courts be instituted in consultation with both the courts and the executive for purposes of determining appropriate resourcing and accountability.

Appointments

Latimer is explicit that judicial appointments should be ‘on the basis of clearly defined criteria and by a publicly declared process. The process should ensure equality of opportunity for all who are eligible for judicial office; appointment on merit; and that appropriate consideration is given to ... gender equity’.

The judicial appointment process in the ACT has been developed and refined over the years. It is focused on merit and transparency. The process is maturing, increasingly well thought out and involves key stakeholders as well as external judicial officers. The process provides for the Chair of Recruitment to forward a list of proposed appointees to the Attorney-General, who then brings the list to the Minister and Cabinet for a decision. The Executive continues to hold ultimate control over the appointments in that the Attorney-General makes the appointment. As a result, the view was expressed that while merit holds considerable sway, inevitably political and personal preferences continue, perhaps inevitably, to have some influence.

On matters of gender, the current benches of both the Supreme Court and the Magistrates’ Court have reached gender parity. In addition, the heads of both the jurisdictions are female. It is the only jurisdiction in Australia to have females occupying the office of Chief judicial officer in both courts. Achieving these gender parity milestones is an important accomplishment for the ACT and for the judiciary nationally. The ACT is to be congratulated for this success.

Relationships between the branches: The Judiciary and the Executive

The relationship between these two branches of government is largely cordial and respectful. There is mutual respect and good will. The strength and effectiveness of the relationships is considered to be based on institutional understanding of the roles rather than personal affinities. While there are conflicts concerning a range of views, it is understood that the conflicts are neither personal nor necessarily detrimental to the functioning of the Westminster system. Rather, they are understood to be part of its effective operation.

One critical point of contention was on the role of the court Registrar. The Registrar’s role as currently construed is positioned between the demands of the Executive and the needs of the courts. It is the view of the courts that the Registrar is significantly under-resourced and as a result unable to carry out the duties necessary for the full, proper functioning of the courts. The details of the issues are to be found in the above noted conflicting priorities of the executive and the courts in the administration of justice. This conflict and related funding allocations underlie to some degree the desire for shifting responsibility for the administration of the courts from the executive to the courts themselves. The noted position of the executive is that it has a

role in monitoring and managing the courts' administration up to and including the careers of judicial officers. The relationship between the Registrar, the courts and JACS has been described as 'structurally awkward' and may be an area where reform should be considered.

Perhaps the greatest conflict concerns oversight of the judiciary by the Integrity Commission. The Commission, established by the *Integrity Commission Act 2018* and taking effect in 2019, provides for Executive oversight of judicial officers. Members of the public may bring allegations of corruption, termed a 'corruption report', against any public officer. The legislation explicitly includes judicial officers who are defined as 'public officials' under the Act.

There are a range of views on the matter. The judicial officers of the courts did not express a single voice about such oversight: there was both strong opposition and an acceptance of it as understandable. The foundation for the opposition is twofold: first, there was the view that in taking this oversight role, the Executive is trammelling judicial independence in fundamental breach of the separation of powers doctrine which underpins the Westminster system. Second, the opposition follows on from the existing legal arrangements. In the latter view, the ACT Judicial Council already provides sufficient oversight, providing an active body for all types of judicial complaints including corruption. Like the judiciary, the Executive is somewhat divided on the matter. Some of the Executive accepts the views of the judicial officers and notes that placing them under commission oversight was a necessary political compromise and hopes that subsequent reform may remove the oversight. Other parts of the Executive hold the view that as the Commission is 'doing what Parliament should but cannot do in terms of capacity', the provision should stay in place. In this view, problems of corruption are systemic and accordingly, systemic solutions are required.

A third concern in the relationship between the Executive and the Judiciary comes from the time frames allotted for consultation on proposed legislation. All judicial officers interviewed, the ACT Law Society and ACT Bar Association complained that the time frames were too short. The ACT Law Society, given its necessary committee structure, considers three weeks insufficient time to examine and comment on proposed legislation. The ACT Bar Association, for its part, noted that barristers were donating time in providing review and so required more time. The executive seemed to pay little attention and in certain instances the Executive had provided as little as 24 hours for consultation. The inadequate time frames can have significant implications.

One example of an implication resulting from inadequate time frames for consultation is an unintended consequence of the reform of Family Violence Orders. The prior procedure authorised police officers to issue temporary orders pending opportunity for those officers to appear before a court. The reform removed that authority and the matter must to be brought to a magistrate in the first instance. Given the nature of many family violence events, magistrates are now required to take turns being on call at night to ensure magistrate services are available 24 hours a day seven days a week. This single reform has had a significant impact on magistrates' work. Magistrates on evening and night duties are unable to function properly during normal working hours and so require different rostering. This reform has had the

unintended consequence of effectively removing a magistrate from normal day time hearings and related duties.

Finally, the courts are of the view that the Executive does not wholly appreciate the nature and meaning of independence. For example, the Executive still issues press releases on behalf of the courts. Or, as another example, the Executive seeks to involve itself in judicial complaints as noted above in the discussion of the Integrity Commission.

All in all, however, the parties view the relationship as a good, stable and respectful one. While the relationship is maturing, it is still in need of further maturation which is likely to come as the ACT grows in population further removing the more personal relationships aspects and developing further experience over time.

Recommendation 8: The relationship between the Registrar, the courts and JACS has been described as 'structurally awkward'. Further expert investigation is required to determine the precise nature of the issue and, in consultation with the parties, potential solutions that could be crafted.

Recommendation 9: While the Integrity Commission Act provides for a review in 2022, the ACT Executive and Judiciary need to be open to the potential need for an earlier review if it becomes clear that there are issues beyond the basic concerns of unnecessary and costly redundancy with respect to providing oversight to judicial officers.

Recommendation 10: The Executive establish what appropriate time frames are for consultation with the different parts of the judiciary separately, namely, judicial officers, ACT Law Society and ACT Bar Association, and provide proposed legislation within those time frames.

Public Office Holders, Oversight and Integrity

The 2010s have been a period of modernisation and strengthening of the role and position of statutory office holders and of oversight of government and integrity. A significant development has been the creation of Officers of the Legislative Assembly, and at the end of the decade, the inauguration of an integrity commission also presided over by an officer.

Officers of the Legislative Assembly

The standard practice in national and sub-national jurisdictions is to appoint a set of officers of parliament. This is a relatively new practice dating from the 2000s and is designed to make statutory appointments accountable directly to the parliament rather than the executive. In this respect it conforms with Latimer principles. A former Speaker observes that 'officers became more fully independent. The legislation created a much clearer separation between these officers and the executive by ensuring that: appointments are made by the Speaker of the Legislative Assembly; reporting will be done through the Speaker; and appropriations are separate from the general government appropriations' (Dunne 2015).

Officers of the Assembly were created by legislation in 2013 that covered the Auditor-General, Electoral Commissioner and the Ombudsman. The Integrity Commissioner was added in 2018. The ACT government's approach has been considered, proceeding on the basis of committee processes and reporting and comparisons of practices in other jurisdictions.

There have been two approaches internationally, one makes limited use of officers, focusing on a core like the Auditor-General and the Ombudsman. The other is to make extensive use of such appointments, the expansion possibly being prompted by concerns about ethical issues. The first approach is exemplified by the national governments of Australia, New Zealand and the United Kingdom; the latter approach by the Canadian national parliament and provincial legislative assemblies, which have as many as eight officers (diffusion within a federal country is relevant here). A number of assemblies and parliaments give explicit public recognition of their officers. One example is New Zealand's Offices of Parliament website, which has links to its three officers.²²

Recommendation 11: The Officers of the Legislative Assembly should be profiled on its website.

Another area recognised by the Latimer principles is human rights. The ACT Human Rights Commission was expanded in 2016 to include the functions of the Victims of Crime Commissioner and the advocacy functions of the Public Advocate, and statutory office holders appointed.

Finally, the high calibre of the appointments to the position of Officer of the Legislative Assembly is apparent, a judgement that also applies to the Executive's statutory appointments such as Public Sector Standards Commissioner.

Integrity Commission

An Integrity Commission was established in 2018 following extended debate and review, and became operational, at least administratively in the middle of 2019.²³ As an independent body it has the power to investigate corruption in public administration and is meant to strengthen public confidence in government integrity. The Integrity Commission is to investigate conduct that is alleged to be corrupt in relation to ACT public sector agencies, employees and contract staff in government directorates and members of the Legislative Assembly and their staff. The Integrity Commission Act also requires them to notify the Commission about a matter that might on reasonable grounds involve serious corrupt misconduct or systemic corrupt conduct.²⁴ The new Commission is intended to play an important role in ensuring the transparency and accountability of the ACT's public sector and legislature.

The Act covers judiciary and judicial officers and provides for mandatory referral to the Judicial Council or Commission in situations where complaints arise about a judicial officer's behaviour. This approach is meant to ensure that the Judicial Council continues to be

²² <https://www.parliament.nz/en/footer/about-us/offices-of-parliament/>

²³ Burch, J. Keeping the Legislature Modern/The Addition of the Integrity Commissioner as an Office of the Assembly, paper presented to 50th Presiding Officers and Clerks Conference, Brisbane, 8-11 July 2019.

²⁴ <https://www.legislation.act.gov.au/a/2018-52/>

responsible for dealing with low-level complaints about judicial officers, but the Integrity Commission is not prevented from fully investigating corrupt conduct. As discussed earlier, there is some sensitivity about ensuring the separation of powers, and the Integrity Commission cannot investigate complaints made about judicial officers that directly relate to a judicial decision or process. The power to impose a sanction against a judicial officer remains with the Judicial Council or the Legislative Assembly, an approach that is regarded as retaining the independence of the Judiciary and encouraging a collaborative approach between the Integrity Commission and the Judicial Council (see the earlier recommendation for reviewing the operation of the Act to learn whether this is the case).

Civil Society and Governance in the ACT

Three aspects of governance are addressed: women's role, and the Assembly and Executive's engagement.

Representation of women

The Latimer Principles are emphatic that the three branches of government should treat women and public positions on an equal footing with men in all circumstances to improve the numbers of women members in Commonwealth parliaments. Latimer focuses more on improving representation rather than their roles in parliament. Mainstreaming gender as an institutional and cultural process will facilitate the elimination of gender biases.

The ACT has a consistently high record across the three branches of government. The historic record for the Assembly's short existence is very good compared to other Australian parliaments. Four Chief Ministers of ACT government have been women. Their representation in the current cabinet is three out of seven. MLA representation of women increased with larger assembly, peaking at 56 % (currently 52%). The Hare-Clark system of proportional representation gives voters greater choice in elections, which can result in the Assembly's membership more closely reflecting the community. Multi-member electorates can better mirror diversity (Burch 2018).

Three women have held the position of Speaker. Of leadership positions in the current Assembly, the current Speaker, Deputy Speaker, Assistant Speaker and Government Whip are women.

A majority of the director-general positions of the seven directorates of the ACT public service are held by women. As mentioned earlier, the memberships of the Magistrates' and Supreme Courts have gender parity, and the two most senior positions are held by women.

Assembly engagement

The Assembly provides an extensive range of information and documents about its members and operations, including performance indicators. The several avenues for public participation include submissions to committee inquiries, access to public hearings of committee inquiries and Assembly meetings, citizen's right of reply, petitions, and access to administrative records

and general files through FOI requests.²⁵ Two dimensions, MLAs and constituents and public inquiries are considered here.

Information is available about MLA's handling of constituent matters, defined as matters referred by Members to the executive for action. The performance report card uses a six-point spectrum from Very unhealthy (completely dominated by executive government) to Very healthy (Highly democratic and balanced), figures of 98, 84, 52 and 76 are deemed to be 'unhealthy' (i.e. a rating of 1 out of 5). The figures for the last five years suggest a downward trend (Table 11). This presumably understates the work of MLAs who receive communications from interpersonal contact and social media etc and have other means for attending to constituent needs.

Table 11 MLA's constituency work involving referrals to ministers

	2012	2013	2014	2015	2016	2017	2018
Average number of constituent matters dealt with by each Member in a year	161	67	108	98	84	52	76

Source: Office of the Legislative Assembly, Parliamentary Performance Report Cards for 2012-2018

<https://www.parliament.act.gov.au/Publications/Publications>

The Latimer House Principles refer to opportunities being 'given for public input into the legislative process'. A common way of handling this is to refer legislation to parliamentary committees, which can then conduct public inquiries. Given that few items of legislation were referred to committees, and relatively few investigations were conducted by standing and select committees (Table 8), this type of opportunity was not accorded particular significance in the ACT Legislative Assembly, although contributions are also made through reporting processes. For 2018, the total number of witnesses was 817; and the number of submissions was 898. However, public and government submissions and witnesses are not differentiated, and the Table 12 figures are combined. In annual report cards they were deemed to be variously 'unhealthy' (2014, 2016), 'somewhat unhealthy' (2015, 2017).

Table 12 Submissions received and witnesses at Assembly inquiries

	2012	2013	2014	2015	2016	2017	2018
Submissions/witnesses per Committee inquiry (number)	21/35	12/73	5/16	11/25	3/23	10/22	27/21

Source: Office of the Legislative Assembly, Parliamentary Performance Report Cards 2012-2018

Committees have held some high-profile inquiries during the 9th Assembly that attracted significant engagement from the ACT public. The Select Committee on End of Life Choices received 488 submissions, an Assembly record. Inquiry into drone delivery systems in the ACT in 2019 received 151.²⁶ The inquiry by the Standing Committee on Health, Ageing and Community Services into the implementation, performance and governance of the National Disability Insurance Scheme in the ACT received 70 submissions. The Standing Committee

²⁵ Office of the ACT Assembly 2017-18 Annual Report, p.40.

²⁶ Standing Committee on Economic Development and Tourism, Inquiry into drone delivery systems in the ACT, July 2019, Report 6.

on Justice and Community Safety completed its long-standing inquiry into domestic and family violence—policy approaches and responses, involving 32 written submissions and 40 witnesses. All these inquiries have involved public hearings that have attracted public and media attention.

The Standing Committee on the Environment and Transport and City Services used several approaches to encourage engagement with its inquiry into a proposal for a mammal emblem for the ACT.²⁷ The Office has been assessing the lessons to be learned from such innovations. There is also a growing body of Australian and international experience on new forms of parliamentary engagement (Hendriks 2019). The Assembly’s library has recently sponsored a fellow’s paper on co-design and deliberative engagement (Moore 2019).

Executive engagement

The ACT Government commitment to open government encompasses transparency in process and information, citizen participation in governing, public collaboration and participation in problem solving and improving community well-being. Open government covers a range of initiatives, including a website, aspires to ‘enhance democracy and place the community at the centre of the governance process’.²⁸ The Chief Minister has talk back sessions on radio fortnightly during which comments and requests are made to him, many of which are municipal in character. Open government includes, Fix My Street and Access Canberra. An ambitious step is the ‘online research platform YourSay Community Panel’, which provides opportunities for the expression of views on a range of topics, and is designed ‘to inform decision making, but also help evaluate the effectiveness of government programs and services’. About 2,200 have joined the panel. The inputs, ‘will help shape policies, programs and services for the future and allow the government to engage with a statistically significant and representative group of Canberrans’.²⁹

A Whole of Government Communications and Engagement Strategy was launched in 2018, and a 2019 Plan is now operational.³⁰ The whole of government approach works at the strategic level with directorates working on an integrated basis in their focus on government priorities.

The Parliamentary Agreement for the 9th Assembly specifies: ‘strengthen community consultation processes, including using deliberative democracy strategies, so that diverse views are considered in major project proposals.’ The Chief Minister has committed to what is termed more ‘representative engagement’ with Canberra’s community, enumerating four deliberative engagement processes involving randomly selected Canberrans contributing to government policy (ACT Carers’ Strategy, the Better Suburbs Statement, improving housing choices and improvements to the Compulsory Third Party motor vehicle insurance scheme). The lessons acquired from these processes are being examined to determine how deliberative

²⁷ For example, information packs were sent to schools to encourage student engagement. The committee’s site visits (e.g. Tidbinbilla Nature Reserve) were filmed for the Assembly’s website.

²⁸ https://www.cmtedd.act.gov.au/open_government/what_is_open_government

²⁹ <https://www.act.gov.au/yoursay/our-conversations/we-are-cbr>; Chief Minister, *ACT Legislative Assembly Hansard* 20 August, p.3157.

³⁰ https://www.act.gov.au/__data/assets/pdf_file/0020/1324640/2019-WhoG-Communications-and-Engagement-Plan.pdf

engagement principles can be applied to ‘everyday engagement between government and the community’.³¹

Community councils are also active in many areas of Canberra with a focus on planning matters of local relevance. They are not deemed by the Executive to be formal local government.

ACT Futures

The ACT has been experiencing substantial change and population growth. There are predictions of a population of 500,000 by 2030, assuming the addition of 7000 people per year is sustained. The ACT Government has already initiated Towards #CBR500k.³²

The developmental pathway for the future involves unfinished business with the size of the Assembly and the Ministry, the constitutional standing of the Capital Territory, making the most of new creative thinking, and building on what has been initiated to envisage more clearly the effective governance for the future that incorporates engagement with the Canberra community. Three significant issues in the Latimer House tradition are raised here as matters for the medium to long term that need to be anticipated in the 2020s.

First are a set of questions that encompass representation, engagement and governing capacity. There are the burgeoning engagement endeavours, and what they mean for the branches of government. The ACT’s conundrum is how to match scale and resourcing relative to responsibilities as a state and municipal entity. It was observed in discussions for this report that the Assembly is still too small for the range of local and state functions. The pressures on MLAs and Ministers have continued because of the complex range of responsibilities of the city-state, and the absence of an upper house and a lower tier of government matters.

There is also the question of whether ‘the difficulty of popular access to government’ continues to be relevant. ACT was said to be prone to under-representation (the ratio of electors to MLAs) and ‘under-presence’ at the time of the 1998 working party on ACT governance, which meant that the majority of the constituency work of Senators was essentially sub-national because they had electoral offices (Pettit 2000, 85).

Despite the increase in the size of the Assembly, 25 Members has been insufficient for a governing party in terms of providing a pool of backbenchers. The Expert Reference Group (2013) supported an increase to 25 or 27 members for the 2016 election, and an increase to 35 members for the 2020 or the 2024 elections. The Ministry needs to be larger to accommodate the range and diversity and complexity of the functions in the city-state.

There are of course alternatives, which can only be noted here as they deserve further investigation. The first is provided by the German city-states, which use a durable model that entails sub-legislature boroughs undertaking local responsibilities but without the status of independent local governments. This allows municipal roles to be assigned to that level, while state functions can be handled on an at-large basis. A second option is whether citizen engagement councils can be envisaged as a supplement. The provision of a citizens’ council

³¹ <https://www.act.gov.au/yoursay/our-conversations/we-are-cbr>; Moore 2019.

³² <https://www.act.gov.au/yoursay/our-conversations/we-are-cbr>

that is being tested in Belgium is an intriguing option but apparently without precedent at the level of a jurisdiction like the ACT. There are many potential variations that need further exploration as a means of both increasing engagement and providing support for overloaded institutions.

Recommendation 12: A priority issue for the Executive is to address the continuing shortfall in representative capacity. The two main alternatives are either to increase the number of MLAs and Ministers (as recommended by previous reviews) which can be accomplished within the existing legislation; or to reassign functions and responsibilities within a new structure, which would involve reviewing the legislation and the appointment of an expert reference group to undertake the task.

Recommendation 13: In view of the Executive's interest in deliberative engagement, the potential for a citizens' council should be explored as a parallel and complementary structure to the Legislative Assembly. explored as a structure that complements and supplements the Legislative Assembly (variations being either electorate-based mechanisms for providing a real recognition or a local government focus).

Secondly, there is the intergovernmental context: the place and standing of the Australian Capital Territory. The ACT remains an unfulfilled system of governance in that it continues to operate under rules set by another level of government with lack of agreement on some questions. The single most significant constraint on good governance in the ACT, apart from those mentioned previously has been the Australian Capital Territory (Self-Government) Act 1988, which continues to impose limits on its autonomy and power. A recent jurisdictional issue arose because the Integrity Commission does not cover ACT Policing, but the Commonwealth Government rejected a proposal for it to have jurisdiction over members of the Australian Federal Police.

There are at least four components to this relationship: the powers of the Commonwealth to act through legislation, the operation of a Joint Standing Committee on the National Capital and External Territories, the role of the National Capital Authority (NCA), and the lack of an Administrator. The most contentious question was partly addressed by a 2011 amendment to the *Australian Capital Territory (Self-Government) Act 1988* that removed the power to disallow or recommend amendments to laws made by the ACT Legislative Assembly, which meant that a Commonwealth minister could no longer reject ACT legislation. However, this does not preclude Commonwealth legislation that will have this effect, such as that for voluntary assisted dying (and there are other issues where a majority of Canberrans support positions that may not accord with a government at the Commonwealth level³³).

Agendas for the 2010s as consciousness increases of the ACT's growing status as a capital city and city-state, review and reflect on a number of questions including the Commonwealth's capacity to intervene in ways that exceed comparable jurisdictions, and the boundaries between the ACT and the NCA, and more generally whether a reassessment of the relationship of the

³³ Chief Minister, *ACT Legislative Assembly Hansard*, 20 August 2019, p.1358.

Commonwealth and the Australian Capital Territory is due. One other option is whether there is a case for the provision of an Administrator. This would presumably draw on the Northern Territory's experience where the Administrator is appointed by the Governor-General, but in practice, performs a similar constitutional role to state governors, and has [other statutory powers as well as non-partisan ceremonial and civic duties](#).

Thirdly, there is a case for future-oriented work about both how the ACT system of government operates and the means for engaging the branches of government and the community. There are a range of options that could suggest scenarios for the system of government. There are likely to be impacts on how the Assembly functions and the structure of the public service. If the Assembly wishes to be part of this debate it will need to constitute an expert reference group supported by appropriate expertise, to address future options for the ACT.

Conclusion

The Australian Capital Territory's record in implementing Latimer House Principles is highly credible and notable. There has been sustained attention to addressing accountability, performance, institutional and relational issues. It has also demonstrated adaptability to new expectations for modern systems of government.

Tensions will continue to exist between the branches of government simply because they are driven by different imperatives. The Judiciary is most concerned about the integrity of its independence. The Legislature wishes to elaborate its capacity to perform in a world where Executives are dominant in many respects. The Executive has to reflect both the aspirations of the government of the day but with regard to the institutional basis of governance.

Latimer House Principles continue to provide a relevant focus for examining the performance and inter-relationships of the three branches of government and the checks and balances embodied in the ACT's system of government.

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Appendix A

COMMONWEALTH (LATIMER HOUSE) PRINCIPLES ON THE THREE BRANCHES OF GOVERNMENT

OBJECTIVE

The objective of these Principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth's fundamental values.

I) The Three Branches of Government

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

II) Parliament and the Judiciary

(a) Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.

(b) Judiciaries and parliaments should fulfil their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

III) Independence of Parliamentarians

(a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

(b) Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

IV) Independence of the Judiciary

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.

To secure these aims:

(a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:

equality of opportunity for all who are eligible for judicial office; appointment on merit; and that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;

(b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;

(c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;

(d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.

Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.

An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

V) Public Office Holders

(a) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;

(b) Subject to (a), measures may be taken, where possible and appropriate, to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance.

VI) 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.

VII) Accountability Mechanisms

(a) 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.

(b) Judicial Accountability

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness.

The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

(c) Judicial review

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.

VIII) The law-making process

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

There should be adequate parliamentary examination of proposed legislation;

Where appropriate, opportunity should be given for public input into the legislative process;

Parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

IX) Oversight of Government

The promotion of zero-tolerance for corruption is vital to good governance. 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:

(a) 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,

(b) Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.

X) Civil Society

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.

Resolution agreed by the Assembly 11 December 2008 (amended 23 February 2012)

(2A) In the second year after a general election, following consultation with the Standing Committee on Administration and Procedure, the Speaker shall appoint a suitably qualified person to conduct an assessment of the implementation of the Latimer House Principles in the governance of the ACT with the resultant report:

(a) to be tabled in the Legislative Assembly by the Speaker; and

(b) to be referred to the Standing Committee on Administration and Procedure for inquiry and report.

This resolution has effect from the commencement of the Seventh Assembly and continues in force unless and until amended or repealed by this or subsequent Assembly.