

Latimer House Principles in the Australian Capital Territory

Implementation of the Latimer House Principles on the Separation of Powers of the Three Branches of Government in the Australian Capital Territory

Review and report to the Legislative Assembly

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Executive Summary

Introduction

The Commonwealth (Latimer House) Principles ('the Principles') provide a roadmap for supporting democracy and good governance, with the emphasis on the separation of powers between the three branches of government.

The decision of the Australian Capital Territory (ACT) Legislative Assembly to commission regular reports on the implementation of the Latimer House Principles in the ACT, and to have a parliamentary committee consider and report on those reviews, continues to be groundbreaking.

In 1988 the Australian Parliament enacted the *Australian Capital Territory (Self-Government) Act*, which granted self-government to the ACT and set out the framework for governance, including the roles of the ACT Executive government (the Executive), the ACT Assembly and the judiciary.

The ACT is a progressive jurisdiction within Australia's established parliamentary democracy and strong commitment to the separation of powers and the rule of law. The ACT continues to perform at a high level in relation to Latimer House Principles.

The ACT Executive has responsibility for both traditional state and local government service provision which also places additional representative workload on Members of the Legislative Assembly. The size of the ACT's population, public sector and revenue base present challenges to achieving economies of scale and operational independence of the various offices under the three branches of government, particularly independence from Executive government.

Audit of Principles: Observations and Recommendations

i. The Three Branches and the Independence of the Assembly and its Members

Australian jurisdictions have a poor record of Executive influence over budget determinations for parliamentary administration. The ACT continues to provide a lead in establishing a more robust and transparent process for determining the annual appropriation (budget) for the Assembly, based on the Budget Protocols agreed between the Speaker and the Chief Minister. There is scope for an increased level of determination by the Assembly.

The practice of the Executive determining the staffing of Members is inconsistent with the Latimer House Principles.

The ministerial code of conduct and the Members code of conduct are both robust, but the Members code and the expectations of ministers could be improved further by being more explicit about the responsibility of Members, who are ministers, to comply with the independence of the Assembly and the judiciary from Executive interference.

The ACT Self-Government Act does not expressly provide limits to the legislative powers of Members of the Assembly in relation to taxation. There appears to be no legal impediment to a Member moving an amendment to a taxation bill. Only a rule resolved by a majority of

Members in the Assembly could qualify or self-limit the power for Members to legislate in relation to taxation and other charges.

There is a need to clarify the powers of (non-Executive) Members of the Legislative Assembly in relation to bills appropriating moneys and bills raising moneys (taxation).

Recommendation 1 (To the Legislative Assembly)

That the Assembly continue to monitor and evaluate the effectiveness of the Legislative Assembly Budget Protocols Agreement, dated 6 March 2026, for the funding of the Office of the Legislative Assembly and the Officers of the Assembly. If at any stage before the next review in eight years' time the budget outcomes become unsatisfactory and undermine the capacity of the Assembly to perform its functions, the Assembly should consider adopting the recently enacted New Zealand model for parliamentary funding.

Recommendation 2 (To the Legislative Assembly and the Executive Government)

The *Legislative Assembly (Members' Staff) Act 1989* and the *Remuneration Tribunal Act 1995* should be amended to provide that Members, on behalf of the Territory, have the power to employ staff to a full-time equivalent level (on the basis of set classifications and rates of pay) determined periodically by the Remuneration Tribunal.

Recommendation 3 (To the Legislative Assembly)

The Continuing Resolution 5, Code of conduct for all members, be amended by inserting the following after paragraph (3) –

(3A) Members, in upholding the separation of powers in accordance with the Latimer House Principles, including a member carrying out ministerial duties, shall not infringe on the independence of the Assembly or the judiciary and shall be held to account as a member subject to this Code.

Recommendation 4 (To the Legislative Assembly)

That the Assembly resolve that the *Memorandum for the Office of the Legislative Assembly -Financial Initiative of the Executive in Australian Capital Territory*, provided by Professor Gabrielle Appleby (11 December 2020) at the request of the Clerk of the Legislative Assembly, and any other advice provided by the Solicitor-General as advised to the Assembly in August 2020, be tabled to better inform all Members about the powers of the Legislative Assembly and the Executive government in relation to revenue and taxation bills and the options available in relation to reform of the Standing Orders and/or practice of the Assembly.

Recommendation 5 (To the Legislative Assembly)

An amendment to Standing Order 178A should be considered to require a taxation amendment be submitted by 12 noon on the day that is two days prior to the day the amendment is to be moved.

A ‘taxation amendment’ for the purposes of this rule is limited to an amendment which directly affects the imposition or rate of taxation.

ii. Independence of the Judiciary

The ACT is operating in a manner that is largely consistent with the Judicial Independence Principle but there is scope to improve operational independence and budget outcomes for courts and to more fully implement the Principles in relation to the quasi-judicial ACT Civil and Administrative Tribunal.

The process of appointing judicial officers is largely at the discretion of Executive government.

Access to justice includes the role and adequate funding of Legal Aid, which is the only option for legal representation for some of the most disadvantaged people in the ACT.

There is no continuing resolution of the Assembly that addresses interaction between the Assembly and the courts where there is concern that the proceedings of parliament will be impeached.

Recommendation 6 (To the Legislative Assembly)

That the Assembly consider a new Continuing Resolution 7A - Freedom of speech and exclusive cognizance of the Assembly – to provide that if a matter before the courts appears to infringe on the freedom of speech of the Assembly or the exclusive cognizance of the Assembly more generally, the Speaker may apply to join proceedings after seeking the advice of the Clerk.

Recommendation 7 (To the Executive Government)

That the *Judicial Commissions Act 1994* be reviewed and options for separate or amended legislation be considered for the purpose of establishing a statutory, independent panel to recommend appointments of the Chief Justice and resident Judges, the Chief Magistrate and Magistrates and the President of ACAT by Executive Commission.

Such panel should be separate from the statutory regime for review of complaints against judicial officers.

Recommendation 8 (to the Legislative Assembly)

That the Standing Committee on Legal Affairs conduct an inquiry at least 12 months prior to the 2028 election with terms of reference that include:

a general review of the *Court Procedures Act 2004* in relation to the administrative support for courts and tribunals in the ACT; and

a focused review of which corporate functions, including data governance and information systems, should be separated from government services and be provided in-house by ACT Courts and Tribunals; and

a review of budget impacts on timeliness of and access to justice in the ACT.

Recommendation 9 (to the Executive Government)

While acknowledging the challenges of managing the Territory's fiscal balance, funding decisions about the administration of justice should include a high priority on equal access to justice and the funds required by Legal Aid ACT in support of this priority.

Recommendation 10 (To the Executive Government)

That paragraph 1.3 of the Schedule in the Law Officers Legal Services Directions 2023 be amended to provide that the ACT Civil and Administrative Tribunal (ACAT) is not required to comply with the rules in paragraph 1.1 and 1.2 in relation to the provision of legal services, so that the ACAT has discretion to obtain legal advice from non-government legal service providers.

Recommendation 11 (To the Legislative Assembly)

That the standing committee referred to in recommendation 8 above, include the ACT Civil and Administrative Tribunal in its considerations of administrative support, corporate functions and financial arrangements. That the consideration of ACAT's various sources of annual funding include examination of the transparency of the funding and the extent to which it hinders the ACAT's capacity to plan and meet service demands.

iii. Public office holders

There is a history of strong female representation in the Legislative Assembly. Similarly, more than 50% of current ACT Judges and Magistrates are women.

In the broadest sense of 'public office' there are various categories of office holders across the three branches of government, including statutory office holders.

The ACT stands out in Australia for the role the Legislative Assembly plays in overseeing the proposed appointment of statutory office holders and the transparency of this process.

In late 2024, the Speaker presented an exposure draft of a bill to amend the Office of the Legislative Act and related Acts, to tighten up various aspects of the independence of the Office of the Legislative Assembly, primarily from Executive influence, and to a lesser extent from the Speaker. The Bill has not been proceeded with in the new Assembly, but should be revisited to improve implementation of the Latimer Principles.

Recommendation 12 (to the Legislative Assembly and the Executive Government)

That the Standing Committee on Procedure and Administration present an updated version of the 2024 exposure draft of the Legislative Assembly Legislation

Amendment Bill 2024 to the Assembly, including an explanation of the benefits of such a bill and a recommended timetable for the introduction of a bill to the Assembly.

iv. Ethical governance

The ACT has a well-developed culture of ethical conduct and a willingness to subject itself to internal, external and public review.

The Clerk of the Legislative Assembly is required to administer the Register of Lobbyists, an unusual function for a clerk in Australia. The Clerk is an integral component of the parliamentary branch of the three branches of government. The regulation of lobbying intersects with the Executive and the Parliament. A statutory or independent officer, sufficiently removed from both branches, is better placed to regulate a lobbying scheme.

Non-Executive Members of the Assembly are currently not required to report meetings with lobbyists. It is both feasible and consistent with the Latimer Principles that Executive and non-Executive Members be required to report meetings with known lobbyists.

The Latimer Principles are relevant for caretaker conventions. Caretaker conventions set an expectation that Executive government will not make significant policy decisions, appointments and undertakings on behalf of the Territory during the caretaker period, which bind a future government and during which time there is much less opportunity for the Assembly and committees to scrutinise government and provide public transparency.

Recommendation 13 (To the Legislative Assembly and Executive Government)

a. If the lobbying scheme is to be removed from the Standing Orders and resolutions of the Assembly into an enactment or place out of the Assembly, the Government and the Assembly should ensure that the role of registrar is no longer assigned to the Clerk or any other position in the Office of the Legislative Assembly.

b. If the lobbying scheme is to remain in the Standing Orders and resolutions of the Legislative Assembly, the Assembly should amend the scheme by assigning the role of registrar to an independent officer of the Assembly.

Recommendation 14 (To the Legislative Assembly)

Contingent on the Integrity Commission's inquiry into lobbying and the potential for recommendations for a new scheme, it is recommended that the Legislative Assembly consider:

Requiring all Members (ministers and non-ministers) to report on meetings held with third party and in-house lobbyists, separate from any requirement for ministerial diaries to be published;

and

Amending Legislative Assembly, Continuing Resolution 5AA to include in the mandate of the Assembly's Commissioner for Standards a complaint against

any Executive or non-Executive Member in relation to their compliance with lobbying rules.

Recommendation 15 (To the Executive Government)

That the ACT Government table a copy of 2028 Caretaker Guidance prior to the general election, consistent with recommendation 1 of the Select Committee on Caretaker Conventions (February 2026).

Recommendation 16 (To the Legislative Assembly)

That the newly elected (12th) Legislative Assembly's appointment of a post-2028 election inquiry should include a review of the ACT Government's Caretaker Guidance, consistent with recommendation 2 of the Select Committee on Caretaker Conventions (February 2026).

v. Accountability mechanisms

The ACT has well established mechanisms for ensuring the accountability of Executive government to Parliament. These mechanisms have been enhanced since the last review, by the increased use by the Assembly of its power to order the production of documents from the Executive government. The rules governing Assembly orders for the production of documents by the Executive government are deficient by not allowing Members to view documents over which a claim of privilege has been made by the Executive.

There are regular reviews of the Standing Orders of the Assembly. Specific changes to the Assembly's Standing Orders flowing from the 2025 review have enhanced Executive accountability to the Assembly.

Seven of eight standing committees and all four select committee to date in the 11th Assembly have non-Government chairs, and none have a Government-party majority.

The extent of follow-up of Auditor-General reports by the Public Accounts Committee has been much improved since the 2019 Report.

The ACT has a strong framework for judicial accountability. The *Judicial Commissions Act 1994* establishes a standing Judicial Council and ad hoc judicial commissions, which provide a system for receiving and examining complaints about judicial officers. The framework for the removal of a judge, established by the Judicial Commissions Act, provides a balance of roles for the Legislative Assembly, the Executive government, through the Attorney-General, and an independent judicial commission with strict eligibility criteria.

Recommendation 17 (To the Legislative Assembly)

That Standing Order 213A (j) be amended in the following or similar terms (new words in bold):

If a claim of privilege is made by the Chief Minister in relation to a document, any Member may, within 5 business days of the tabling or circulation of the indexed listing to Members, **inspect the documents in the custody of the Clerk** and dispute the claim by writing to the Clerk. **The Member who has inspected the documents must not**

disclose the contents of the documents to any person. Any such disclosure may constitute a contempt of the House.

vi. Law-making process

The Legislative Assembly has made very positive reforms to rules and practices that demonstrate implementation of the Latimer Principle on law-making.

In the Tenth Assembly all bills were referred to committees. Initially, committees were subject to a time limit of two months for inquiry and report, but this has since been extended to three months.

Standing Orders provide all Members with reasonable opportunities to present bills in the Assembly. The capacity for Members to introduce bills and substantial amendments to bills is also reliant on the availability of expert drafting services, which is affected by the limited resources of Parliamentary Counsel.

Good practice in relation to subordinate legislation can be found in the *Legislation Act 2001* and the Legal Affairs Committee's functions in relation to review of subordinate laws (instruments). This would be improved further by statutory provision of automatic repeal of instruments after a prescribed number of years.

Recommendation 18 (To the Executive Government)

That within 12 months of this report, the resources for the Parliamentary Counsel be reviewed to take account of Executive and non-Executive drafting demand and that the Government table its review and funding intentions in the Legislative Assembly.

Recommendation 19 (To the Legislative Assembly)

That the Assembly consider a resolution that directs the Standing Committee on Legal Affairs or another committee to inquire into and report to the House on whether the *Legislation Act 2001* should be amended to include provisions for the automatic repeal of statutory instruments, and any related provisions.

vii. Oversight of government

The ACT has a sophisticated framework of oversight bodies comprised of both officers of the Parliament and independent statutory offices.

There is good protection for the independence of many officers of parliament and independent statutory officers and a recognition that the public interest of accountability to the Parliament outweighs competing interests.

Statutory offices with Executive scrutiny and integrity roles, including the Human Rights Commission and the Inspector of Custodial Services, are not independent officers of the Assembly and do not have any operational and budgetary independence from Executive government. Notwithstanding the high quality of its report in 2012, there is merit in the Standing Committee on Administration and Procedure doing an updated review and report of the criteria

for determining whether an office is an Officer of the Assembly and whether certain statutory officers should be included in the Assembly’ Budget Protocols.

While there is evidence that the intent of the FOI regime in the ACT is pro-disclosure, timeliness of decision making is complicated by various statutory and cultural factors. A 2025 review of the Act, commissioned by Government, recommended a number of improvements to the FOI regime aimed at improving decision-making and timeliness by government and in turn supporting the review role of the Ombudsman.

Recommendation 20 (to the Legislative Assembly)

That the Standing Committee on Administration and Procedure conduct a review of the criteria for determining whether an office is an Officer of the Assembly and whether certain statutory officers should be included in the Assembly’ Budget Protocols.

Recommendation 21 (To the Legislative Assembly)

The Human Rights Commission should be included, along with other statutory officers in a review by the Standing Committee on Administration and Procedure, found in recommendation 20 above.

Recommendation 22 (To the Executive Government and the Legislative Assembly)

That the Human Rights Commission’s statutory human rights education functions be specifically considered in the recommendation of its next and ongoing budget appropriations.

Recommendation 23 (To the Executive Government)

That it be accepted as an overriding principle that where the Legislative Assembly enacts legislation prescribing statutory functions and duties to statutory bodies, those bodies should be adequately funded so as to be able to discharge those functions.

Recommendation 24 (To the Legislative Assembly)

The Inspector of Custodial Services should be included in the review by the Standing Committee on Administration and Procedure, found in recommendation 20 above.

Recommendation 25 (To the Executive Government)

That section 9, *Appointment of Inspector*, of the *Custodial Inspector Act 2017* be amended to require that the Executive must not appoint a person as Inspector unless,

- the Executive has reported the selection process, recommended appointee and terms of appointment to the relevant standing committee of the Legislative Assembly; and
- the Committee has not, within 30 days of confirming receipt of the report, vetoed the recommended appointment.

Recommendation 26 (To the Legislative Assembly and the Executive Government)

That the Legislative Assembly Budget Protocols Agreement be amended to provide that any funds appropriated as Controlled Recurrent Payments that are not expended by the Auditor-General, the Electoral Commissioner or the Integrity Commissioner during the financial year, subject to requirements of the Financial Management Act being met, will be retained by the respective officer.

Recommendation 27 (To the Executive Government)

That the Executive government consider an audit of statutory review provisions in Acts establishing statutory officers, their functions and powers, to determine if a periodic review of each Act should be inserted where no such provision already exists. The Executive should have regard to examples in the *Auditor-General Act 1996* and the *Integrity Commission Act 2018*.

Recommendation 28 (To the Executive Government)

That the ACT Government introduce a bill to amend the *Freedom of Information Act 2016* to implement the recommendations of the 2025 review of the Act.

viii. Civil society – participation in the democratic process.

In 2008 the ACT established, by statute, the Aboriginal and Torres Strait Islander Elected Body (ATSIEB), to represent Aboriginal and Torres Strait Islander people living in Canberra. The ATSIEB is the longest running body of its kind in Australia, whose work appears to be taken seriously by the ACT Government.

The electoral commissioners are independent Officers of the Assembly. The Commission exercises a high degree of operational independence, but its discretion over administration of elections can be limited by statute. The Standing Committee on the Integrity Commission and Statutory Officer Holders is responsible for examining the ACT Electoral Commission, and is well placed to review the extent to which the Commission's discretionary powers over the administration of elections should be protected.

There is a clearly established case for an increase in the number of Assembly Members. This review has noted the progressive, reformist approach taken by the ACT Assembly and governments over many years to parliamentary procedures, committee operations, statutory safeguards and standards of conduct that mean the ACT rates very favourably against the Latimer Principles. The problem in the ACT is not insufficient safeguards and procedures, which is the problem in many other jurisdictions. The problem is that an insufficient number of elected Members of the Assembly presents a risk that many of the Territory's achievements will be undermined.

Recommendation 29 (To the Legislative Assembly)

That the Standing Committee on the Integrity Commission and Statutory Officer Holders examine the Electoral Commission's recommendations relating to operational independence to this review, seek a response from the Executive and report to the Assembly.

Recommendation 30 (To the Executive and the Legislative Assembly)

That a bill be introduced to the Legislative Assembly to amend Section 3 of the *Australian Capital Territory (Legislative Assembly) Act 2014* to increase the number of Members to 35, to come into operation at the next General Election following the passage of the amendment.

Where to from here: Observations and Recommendations

The Commonwealth Secretariat Rule of Law section has facilitated three “Latimer House Dialogues” in a variety of jurisdictions, including Lesotho, Barbados and Tonga. These Dialogues bring together Ministers, Members of Parliament, Judges, senior public servants, independent office holders and civil society representatives, to engage in dialogue about the application of the Principles within the jurisdiction. The goal is to agree upon a set of practical recommendations suitable to the needs of the particular jurisdiction.

If the ACT Legislative Assembly wishes to remain at the cutting edge in relation to the Latimer House Principles, the Speaker, Clerk and Standing Committee on Procedure and Administration in the 13th Assembly could consider supplementing the Latimer House review process with a “Latimer House Dialogue.”

Recommendation 31 (To the Executive, the Legislative Assembly and the Judiciary)

That the Legislative Assembly, the ACT Government, the ACT judiciary, and other participants in the governance of the ACT, continue to reaffirm their commitment to the ongoing application of the Latimer House Principles and to periodic scrutiny of their implementation in the ACT, with the next review to commence in the second year of the 13th Assembly.

Recommendation 32 (To the Legislative Assembly)

That the Speaker, Clerk and Standing Committee on Procedure and Administration in the 13th Assembly consider supplementing the next Latimer House Review process mandated by Continuing Resolution 8A with a “Latimer House Dialogue,” and that the Speaker and Clerk reach out to the Commonwealth Secretariat at the commencement of the 13th Assembly to explore this option.

Recommendation 33 (To the Legislative Assembly)

That, upon the tabling of this report in the Legislative Assembly, the Speaker and Clerk make copies of this report available to the Latimer House Principles Working Group and the Commonwealth Secretariat, for their information and for consideration in any review and/or update of the Principles.

1. Introduction

Latimer House Principles

The Commonwealth (Latimer House) Principles ('the Principles') provide a roadmap for supporting democracy and good governance, with the emphasis on the separation of powers between the three branches of government. The Principles set out the checks and balances required to promote the rule of law, fundamental human rights and good governance based on the highest standards of honesty, probity and accountability.¹

The Latimer House process commenced in 1996 when Commonwealth Law Ministers "recognised the importance of the role played by judges and lawyers in a healthy democracy."² In 1998 representatives of four Commonwealth organisations, the Commonwealth Parliamentary Association (CPA), Commonwealth Magistrates and Judges Association (CMJA), Commonwealth Lawyers Association (CLA) and Commonwealth Legal Education Association (CLEA) met together in a Joint Colloquium at Latimer House, in Buckinghamshire in the United Kingdom. What resulted was the development and adoption, by consensus, of the Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence. The Guidelines were refined into what became the Latimer House Principles.³

The endorsement of the Principles by the Commonwealth Heads of Government in 2003 was a significant step in the ongoing and evolving articulation of the fundamental political values of the Commonwealth, and their acceptance by member states as an integral part of their own fundamental political values. The Principles were later embodied in the Commonwealth Charter, adopted in 2013.

The articulation of Commonwealth values and the Principles was in part driven by concern about serious and persistent violations of democratic values and human rights, and efforts to develop measures to assist to restore democracy and constitutional rule in errant jurisdictions.⁴

As noted by a former Commonwealth Secretary-General in 2008:

Do our Executives respect the freedom of the Legislature and the Judiciary to discharge their responsibilities? Theirs, of course is the greatest temptation to jettison these Principles – and there was a time, perhaps a generation ago, when many Legislatures and Judiciaries wilfully complied with over-reaching Executives.⁵

Hence the emphasis in the Latimer House Principles on the independence of Parliamentarians and the independence of the Judiciary.

¹ The Commonwealth (Secretariat), *The Commonwealth Latimer House Principles: Facilitator's Guide*, 2017.

² K Brewer & P Slinn, "The Commonwealth Principles (Latimer House) on the relationship between the three branches of Government: Twenty Years On," *Denning Law Journal*, 2018, Volume 30, 105.

³ Although subsequently refined into, and to some extent superseded by the Principles, the Guidelines continue to be a useful framework for considering parliamentary and judicial independence, with further detail on significant points than the "tighter" Principles.

⁴ Brewer & Slinn, 104.

⁵ K Sharma, Foreword to *Commonwealth (Latimer House) Principles on the Three Branches of Government*, Commonwealth Secretariat, 2008.

The Principles are now firmly entrenched in the fundamental political values of the Commonwealth and it is not unusual for higher courts to reference the Principles in judgments dealing with high constitutional law.⁶

Notwithstanding their gradual infusion into customary international law, and the references made to them in constitutional cases, the question of how to provide for “systematic monitoring of compliance” with the Latimer House Principles “has proved problematic.”⁷ A proposal for the establishment of a Commonwealth Commissioner for Democracy, Rule of Law and Human Rights, to monitor and report on compliance – “somebody who will make a fuss and protest when things are not going right” – did not receive sufficient support (notwithstanding being recommended by the Eminent Person Group that proposed the text of the Commonwealth Charter, which was adopted).⁸

Against this background, the decision of the ACT Legislative Assembly to commission regular reports on the implementation of the Latimer House Principles in the ACT, and to have a parliamentary committee consider and report on those reviews, was and continues to be unique and groundbreaking. It is “an example of good practice... sadly, this audit precedent has not been followed in other jurisdictions.”⁹

The Commonwealth Heads of Government reaffirmed their commitment to the Principles in 2018. They also requested the Commonwealth Secretariat work in partnership with Commonwealth organisations in “promoting dialogue between the three branches of governments,” including through the application of a *Latimer House Toolkit* which provides a practical guide to enhancing the separation of powers. As outlined in the concluding chapter to this report, there have now been three such “Latimer House Dialogues” facilitated across a diverse range of Commonwealth jurisdictions.

2. Conduct and context for this review

2.1 Legislative Assembly endorsement of the Latimer Principles

The Legislative Assembly first endorsed the Latimer Principles by continuing resolution on 11 December 2008, subsequently amended by resolution on 23 February 2012 and 30 March 2021. Continuing Resolution 8A is included as *Appendix 1* in this report.

The resolution is the first in the Commonwealth to require the Speaker to appoint persons to conduct an independent assessment of the ACT’s implementation of the Principles. The resultant report is tabled in the Assembly and referred to the Standing Committee on Administration and Procedure for inquiry and report.

⁶ See for example: *Johnson v Republic* (Ghana) No J3/3/2010 [2012] 1 LRC 343; *Re Chief Justice of Gibraltar* [2009] UKPC 43 [2010] 2 LRC 450; *Tu’ifua v Public Service Tribunal* (Tonga) [2014] 5 LRC 588.

⁷ K Brewer & P Slinn, op cit, 110.

⁸ The Hon M Kirby AC CGM, “The Commonwealth Charter and Commonwealth Parliaments”, Second Emilia Monjowa Lifaka Lecture, 2024 Commonwealth Parliamentary Conference, 2024, 9.

⁹ K Brewer & P Slinn, op cit, 116.

2.2 Terms of Reference

The review team was contracted on 19 November 2025 to conduct an independent assessment of the implementation of the Latimer House Principles and report by 30 June 2026.

The ‘details of service’ in the contract, in effect the terms of reference, are as follows –

- a) Invite submissions from Members of the Legislative Assembly, ACT Judges and Magistrates, the Head of Service, Officers of the Legislative Assembly and the Clerk of the Legislative Assembly, the ACT Courts Registry and Administration, and anyone else the assessor considers should be invited to make a submission.
- b) Meet with any stakeholders, as required.
- c) Consider and analyse relevant legislation, practice, policies and procedures applying to and/or affecting the operation of the Legislative Assembly and its administration, the ACT Executive and its public service, and the ACT Judiciary and its administration.
- d) Having considered the information gathered as part of the assessment process, prepare a **finalised written report** containing:
 - i. observations and findings about the extent to which, in the independent expert view of the assessor, the ACT has successfully applied and implemented the Latimer House Principles across the three branches of government in the Territory; and
 - ii. recommendations as to how the ACT could further implement the Latimer House Principles across the three branches of government, particularly in areas where gaps or weaknesses are identified.
- e) Provide the report to the Clerk of the Legislative Assembly.

2.3 Methodology

Report structure

This report has been structured around the ten specific Latimer House Principles. Some sections have grouped two Principles together where they are closely related. Analysis, observations and recommendations are then presented under each principle, in effect an audit of the implementation of the Principles in the ACT, and a response to specific issues raised in submissions, interviews and publicly available documents.

The report is longer than previous reports, which were conducted on a more frequent basis than will be the case after this review. Reviews will take place each alternate Assembly, following an amendment to the Continuing Resolution on the Latimer Principles (para. 2A). Therefore, the authors hope that the more extensive background and commentary in this report will assist future reviewers and stakeholders, including Members of the Assembly, to understand the framework in which the three branches of government in the ACT have operated and evolved.

Recommendations

Some recommendations are subject to decision-making by the Legislative Assembly, others by Executive government and in some cases, both the Assembly and the Executive government.

The authors understand that the Standing Committee on Administration and Procedure may limit its consideration to this report's recommendations addressed to the Legislative Assembly.

Submissions

Stakeholders in Executive government, Parliament, the courts, statutory office holders and certain community groups were invited by email to make a submission to this review. The invitations included the option for a submission to be made confidential. Almost all submission-makers were happy for some, or all of their submission to be referred to in the report.

Fourteen submissions were received from a cross section of the stakeholder groups listed above. In some cases, submissions were made on behalf of multiple stakeholders (eg. One submission was made on behalf of ACT Greens Members; the Chief Justice and Chief Magistrate made a combined submission.)

Interviews

The reviewers met various external stakeholder Officers to gather input for the review and met with the Standing Committee on Administration and Procedure and the Clerk to test some ideas and gather input for the review.

The list of submissions and interviews are in Appendix 2.

Desktop research

Relevant legislation, the Standing Orders of the Assembly, annual reports and reviews on websites and comparable provisions and processes in other jurisdictions were examined.

Reference to relevant legislation

Relevant ACT and Commonwealth statutes along with various instruments made under the authority of ACT statutes were examined and are referenced in footnotes in this report.

2.4 About the authors

David Blunt AM is former Clerk of the Parliaments and Clerk of the Legislative Council in NSW. David is an Expert Fellow at the Centre for Public Integrity and has direct experience with the Latimer House Principles, having been a facilitator for the recent “Latimer House Dialogues” in Nuku’alofa, Tonga, in July 2025, at the invitation of The Commonwealth Secretariat. David is also now the Independent Complaints Officer at the NSW Parliament.

Andrew Young is former Clerk of the Parliaments and Clerk of the Legislative Council in Victoria. Andrew is an Expert Fellow at the Centre for Public Integrity and a member of Deakin University’s Parliamentary Research Unit. He was the lead author of the Commonwealth Parliamentary Association’s Standards for Codes of Conduct for Members 2024 (Deakin University) and in 2025 was the lead author (Deakin) for the Australasian Council of Auditors General on independence from Executive government. In April 2026 he completed his role as independent consultant to the Tasmanian Parliament’s Select Committee on Workplace Culture.

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Research Director at the Centre for Public Integrity. Gabrielle has shaped national understanding of executive accountability, judicial integrity, and parliamentary practice. Gabrielle is a Fellow of the Australian Academy of Law and previously the constitutional consultant to the Clerk of the Commonwealth House of Representatives, and founding editor of *AUSPUBLAW*, the national public law blog. She worked as a pro bono constitutional consultant to the First Nations Regional Dialogues and Constitutional Convention that delivered the Uluru Statement from the Heart in 2017. Her books include *The Failure of the Voice Referendum and the Future of Australian Democracy* (2026) and *The Judge, The Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (2021).

2.5 Snapshot of the ACT

The Australian Capital Territory occupies a unique position within the Australian nation, its political system and its economy. It is our nation's capital city. By comparison with the rest of Australia, its residents are relatively well-educated, well-housed, well-paid and well-off, financially and in other ways. Inevitably, its economy is dominated by public sector activities, particularly those of the national government... the ACT Government is also, in effect, the Canberra City Council.¹⁰

A. The Australian Capital Territory and its population

Transferred from New South Wales to the Commonwealth of Australia in 1911 to become the seat of the Australian Government, the Australian Capital Territory (ACT) is 2,357 square kilometres in size.¹¹ The name of the capital, Canberra, was announced in 1913.

The ACT's current population is "just under half a million residents."¹² Relevantly in terms of the Latimer House Principles, the subject of this review, the ACT is one of more than 50 "small branches" in the Commonwealth Parliamentary Association. Small branches are defined as those with a population of up to 1 million.¹³

B. Governance of the ACT

In 1988 the Australian Parliament enacted the *Australian Capital Territory (Self-Government) Act*. As the name suggests, this legislation granted self-government to the ACT and set out the framework for governance, including the roles of the ACT Executive government, the ACT Assembly and the judiciary. The ACT's constitutional position as a Territory means it is created and governed under the broad but not entirely unfettered legislative power of the Commonwealth under s 122 of the Commonwealth Constitution. The Commonwealth retains legislative dominance over the Territory, although over time it has chosen to self-limit this

¹⁰ S Eslake, *The Fiscal Sustainability of the ACT: Final Report to the ACT Legislative Assembly Select Committee on the Fiscal Sustainability of the ACT*, 4 May 2026, 5.

¹¹ Almost twice the size of Singapore, larger than Mauritius, slightly smaller than Luxembourg.

¹² Chief Minister A Barr MLA, *Ministerial Statement: Population Growth*, 5 May 2026. The Chief Minister said that "some projections suggest (the population of the ACT) could approach 700,000 by mid-century. The precise population of the ACT, with considerable movement of residents across the border with New South Wales, is a matter of some debate and relevant to the distribution of Goods and Services Tax (GST) revenue by the Commonwealth Grants Commission. See S Eslake, *The Fiscal Sustainability of the ACT*, 76.

¹³ The other Australian small branches are Tasmania (population 571,596) and the Northern Territory (population 252,576).

power, this stands as a legislative restriction and not a constitutional one. The courts of the ACT occupy a distinctive constitutional position – not federal Chapter III Courts governed by the respective provisions of Chapter III of the Constitution, and not State courts. Nonetheless the High Court has recognised them as part of the integrated federal judicial system exercising federal judicial power and therefore subject to minimum constitutional requirements of independence and impartiality.¹⁴

The ACT Executive

Executive responsibility is vested in a Chief Minister, who is elected by and from the Legislative Assembly, together with no more than nine Ministers. The government is responsible for a range of state government responsibilities (eg education, health, social welfare, transport, justice and policing), and local government responsibilities (town planning and building approvals, local roads, rubbish collection and waste disposal).

The Legislative Assembly

The Legislative Assembly currently consists of 25 Members, elected from five multi-Member constituencies, each returning five members using a system of proportional representation, known as the Hare-Clark system. The electoral system has meant that minority governments have been the norm in the ACT.¹⁵ The Australian Labor party (ALP) has formed the government since 2001, in the eighth, ninth and tenth Assembly with the support and inclusion in government of Members of The Greens, and in the current 11th Assembly, as a minority government.¹⁶ Since 2016 a majority of Members elected to the Assembly have been women, currently 13 of 25 (52 %).¹⁷

As a unicameral parliament, which is effectively a city-state legislature, with an electoral system continually returning minority governments and diverse membership, it is not surprising that the ACT Assembly has developed and adopted a strong culture of parliamentary innovation in its procedures. Originally based closely on the procedures of the Australian House of Representatives, these procedures have increasingly reflected the procedures of the Australian Senate and best practice across the Commonwealth.¹⁸

Power to make laws

With certain qualifications, the ACT Assembly has the power to make laws for the ACT, covering “domestic” matters relating to the Territory “within the purview of both state governments and local governments elsewhere in Australia.”¹⁹

Until 2011 the *Australian Capital Territory (Self-Government) Act* gave the Governor-General of Australia, acting on the advice of the Federal Executive Council – in effect the Australian Government – the power to disallow ACT legislation. This power was removed in 2011. Nevertheless, the Act continues to provide that an Assembly enactment is subordinate to the

¹⁴ See, for instance, *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569.

¹⁵ Only the sixth Assembly resulted in a majority government.

¹⁶ For further information see D Skinner & T Duncan, *Companion to the Standing Orders of the legislative Assembly for the Australian Capital Territory*, Second edition, 2022, pp 5-8, 201-203.

¹⁷ Of the eight Ministers in the ACT Government, five are women.

¹⁸ D Skinner & T Duncan, *Companion to the Standing Orders*, p 5.

¹⁹ D Skinner & T Duncan, *Companion to the Standing Orders*, p 10.

laws of the Commonwealth and has no effect to the extent that it is inconsistent with Commonwealth law, a provision that largely mirrors the inconsistency provision in s 109 of the Commonwealth Constitution.²⁰

The ACT court system

The judiciary in the ACT consists of:

- a Supreme Court which has original and appellate jurisdiction necessary for the administration of justice in the Territory – there are currently five resident judges in addition to the Chief Justice
- a Court of Appeal consisting of the judges of the Supreme Court
- A Chief Magistrate and nine magistrates
- The ACT Civil and Administrative Tribunal (ACAT)

Appeals from the ACT Court of Appeal ultimately lie to the High Court of Australia, subject to the granting of special leave to appeal.

Appointments to the Supreme Court and of the Chief Magistrate and magistrates are made by the ACT Executive government. Conduct matters, including for the removal of judicial officers, is provided for through the Judicial Council.²¹

The ACT public services and budget

As noted above, the ACT Executive government has responsibility for both traditional state and local government service provision. There are currently 30,764 full-time equivalent positions in the ACT public service and business enterprises.²²

The annual budget for the ACT Government is currently \$AUD 9.6 billion (\$USD 6.85 billion).²³ Major sources of revenue are grants from the Commonwealth (Australian) Government of approximately \$AUD 4.16 billion, and own source revenues (including payroll tax, general rates, land tax, duties and gambling taxes) of approximately \$AUD 3.28 billion.²⁴

At the time of writing, there is a Legislative Assembly Select Committee examining the Fiscal Sustainability of the ACT. While the Committee is yet to report, it has published an assessment by esteemed economist Saul Eslake, which concludes that there has been a “significant deterioration in the financial position of the ACT public sector over the past decade, and in particular during the past five years.”²⁵ The assessment draws attention to what it describes as the relatively high levels of public spending in the ACT, both relative to other parts of Australia, and in the context of economic and social indicators for the population of the ACT.

²⁰ D Skinner & T Duncan, *Companion to the Standing Orders*, pp 10-20; *The Commonwealth of Australia v The Australian Capital Territory* [2013] HCA 55 (re *Marriage Equality (Same Sex) Act* 2013).

²¹ Established by s 5A of the *Judicial Commissions Act* 1994.

²² ACT Budget 2026-27, *Budget Outlook*, p 321.

²³ ACT Budget 2026-27, *Budget Outlook*, p 9.

²⁴ ACT Budget 2026-27, *Budget Outlook*, pp 169-170. For a detailed discussion of the basis upon which the major portion of Commonwealth funding is allocated, from the Goods and Services Tax, including the application of the principles of “horizontal fiscal equalisation” between the States and Territories, see Commonwealth Grants Commission, *2026 Update: GST Relativities 2026-27*, March 2026.

²⁵ S Eslake, *The Fiscal Sustainability of the ACT*, p 5.

C. Economic and social indicators

As of 2023, the median age of the population in the ACT was 35, compared to 38 for Australia as a whole.

The median weekly income was \$AUD 2,373, compared to \$AUD 1,746 for Australia as a whole.

69.6% of Canberrans were in the labour force, compared to 61.1 % across Australia.

(As of 2026 the unemployment rate in the ACT was under 4 %, about 0.5 % under the national average.)

17.1 % were employed in central government administration. 31.4 % were employed as professionals and 17.9% as a manager. In addition to the 30,021 full-time equivalent positions in the ACT public service noted above, there were 68,435 Commonwealth (Australian) Government public servants based in the ACT at 30 June 2024²⁶.

42.9 % have a bachelor degree and above, compared to 26.3 % for the rest of Australia.²⁷

The participation rate at the most recent (2024) election for the ACT Assembly was 86.7 % (92 % of enrolled voters). The percentage of informal voting was 1.9 %.²⁸

2.6 Previous reviews in the ACT

This is the fourth time that the Legislative Assembly has contracted an external review of the implementation of the Latimer House Principles. The preceding reviews were as follows:

Prof. John Halligan, University of Canberra, 2011.

Bill Burmester, Mark Evans, Meredith Edwards and Richard Reid, ANZOG Institute for Governance and Policy Analysis, University of Canberra December 2014.

Emeritus Prof. John Halligan, Institute for Governance and Policy Analysis, University of Canberra and Benedict Sheehy, Business, Government and Law, University of Canberra, 2019.

Each review has been followed up and reported on by the Standing Committee on Administration and Procedure, which has made its own recommendations.

See *Appendix 3* for an overview of the actions taken by the legislature in response to Halligan's review (2019) and the Committee's report.

²⁶ Commonwealth, *State of the Service Report 2023–24*.

²⁷ For these 2023 statistics, see J Kelly, "Rebel-held land of our national capital," *Weekend Australian*, 28 October 2023, 3.

²⁸ ACT Electoral Commission, *Report on the ACT Legislative Assembly Election 2024*, 29–30, 93–94.

3. Audit of the Latimer Principles in the ACT

3.1 The Three Branches of Government Principle and the Independence of Parliamentarians Principle

Latimer Principle (the three branches):

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.

Latimer Principle (independence of parliamentarians):

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

A. Overall observation

As an innovative and progressive jurisdiction, within a country which is an established parliamentary democracy with a strong commitment to the separation of powers and the rule of law, the Australian Capital Territory (ACT) continues to perform at a high level in relation to Latimer House Principles I (the three branches of government) and III (independence of parliamentarians). Nevertheless, there is always scope to further enhance governance – hence a number of proposals for further reform (or perhaps more accurately “refinement”) contained in various submissions received by the review are discussed below.

B. Financial independence of the Legislative Assembly

The financial independence of the Legislative Assembly has been touched upon in previous reviews of the implementation of the Latimer House Principles in the ACT.²⁹

The Legislative Assembly currently, and no doubt in part thanks to the attention given to this issue in previous reviews, has the most progressive model in Australia for parliamentary input into the annual appropriations for the Office of the Legislative Assembly and Officers³⁰ of the

²⁹ See for example J Halligan, *An Assessment of the Performance of the Three Branches of Government in the ACT Against Latimer House Principles*, 2011, 2; J Halligan & B Sheehy, *Review of the Performance of the Three Branches of Government in the Australian Capital Territory against Latimer House Principles*, 2019, 20.

³⁰ The Auditor-General, members of the Electoral Commission, Ombudsman, Integrity Commissioner, and Inspector of the Integrity Commission.

Legislative Assembly and a level of transparency of the government's decision to accept or vary the recommended appropriation.

It is important to qualify this observation by acknowledging that most Australian jurisdictions have little if any financial independence despite such independence being regarded as normal in places such as the United Kingdom and Canada.

The ACT model is based on a Budget Protocol signed by the Chief Minister and the Speaker³¹ and provisions in the *Financial Management Act 1996* (FMA)³².

The FMA provides, amongst other things, that the Speaker will advise the Treasurer of the appropriation that should be made for the Office of the Legislative Assembly (OLA) (s 20) and in the case of the Officers of the Legislative Assembly, the Speaker will advise the Treasurer and present the recommended appropriation to the Legislative Assembly (s 20AB).

If the Treasurer presents a bill with appropriations for the OLA or the Officers that are less than that recommended by the Speaker, the Treasurer must make a statement of reasons to the Assembly (ss 20AA & 20AC).

Complementing the FMA, the Budget Protocols provide the machinery for how the Legislative Assembly will arrive at recommended appropriations for the Assembly and offices. Two of the stated principles of the Protocols are as follows:

The Assembly has, by continuing resolution, endorsed the Latimer House Principles on the Three Branches of Government which envisage an independent process for the development of parliamentary budgets in recognition of the importance of the separation of powers doctrine.

And

Deliberate, fair and good-faith consideration shall be given by the ACT Executive through its Expenditure Review Committee (ERC) to include the 'recommended appropriation' for the Office and for each Officer in an appropriation bill (whether the first appropriation for the financial year or a supplementary appropriation).

The Speaker consults the OLA in relation to its proposed draft budget and the various Officers and the Standing Committee on the Integrity Commission and Statutory Office Holders in relation to the proposed draft budgets for each Officer.³³

The provisions of the FMA and the Protocol can be characterised as an attempt to balance two conflicting facts.

The first fact is that s 65 of the *Australian Capital Territory (Self-Government) Act 1988* (Self-Government Act) provides that

- (1) An enactment, vote or resolution (proposal) for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister.

³¹Legislative Assembly Budget Protocols Agreement, 11th Assembly, 6 March 2026.

³² *Financial Management Act 1996*, various provisions.

³³ Arrangement for the Ombudsman are separately provided for in the Protocol because the ACT is only part funding the Commonwealth Ombudsman for services to the ACT and who otherwise receives a Commonwealth appropriation.

- (2) Subsection (1) does not prevent a member other than a Minister from moving an amendment to a proposal made by a Minister unless the amendment is to increase the amount of public money of the Territory to be appropriated.

The second fact is that the system of parliamentary government adopted in Australia and in most Commonwealth countries is based on the concept of government being responsible to and accountable to parliament. While government is formed in the parliament, the two branches are otherwise separate powers. The parliament is not an agency of Executive government. For this reason, the Guidelines to the Latimer House Principles provide that

An all party committee of members of parliament should review and administer parliament's budget which should not be subject to amendment by the executive.³⁴

The ACT Greens submitted to this review that the Latimer Guideline, if adopted, would ensure that 'scrutiny of the Government as provided by the Officers of the Assembly are not subject to the whims and resource constraints of the Executive' and that 'the only consequence for the Treasurer choosing to refuse the requested budget is the risk of a political confrontation. If the Treasurer is prepared to take that risk, they effectively wield a substantial power of veto over the parliament'.

It is understood that the current protocols work to the general satisfaction of the Office of the Legislative Assembly and the Officers of the Assembly.

If, however, this does not continue and if, for example, the Office of the Legislative Assembly and Officers of the Assembly were to consistently receive less appropriation than recommended under the protocol, the Assembly could consider the model just enacted and applied in New Zealand.

The new funding model for the New Zealand Parliament is set out in the *Parliament Act 2025* (NZ) and the *Parliament (Repeals and Amendments) Act 2025* (NZ). Under the model, first put into action in May 2026, the parliamentary agencies submit their budget proposals to a select committee, which consider the proposals with input from Treasury and support from an independent adviser. The committee reports to the House with its recommended appropriations for the agencies, for the House to adopt and commend to the Governor-General for inclusion in the Appropriations Bill.

It is understood the initial iteration of this process in May 2026 was most satisfactory. This model is an advancement on the ACT budget protocols, ensuring that parliamentary funding is determined in a way that upholds the Parliament's independence, but does not infringe on the so-called financial prerogative of the Crown.

The reviewers acknowledge that the ACT does not have a Governor and that a budget resolution by the Assembly would instead be best directed to the Chief Minister with a clear expectation that the amount resolved would be included in the appropriation bill.

³⁴ PARLIAMENTARY SUPREMACY AND JUDICIAL INDEPENDENCE - Latimer House Guidelines for the Commonwealth, 19 June 1998. (VII) Law-Making, clause 6.

Recommendation 1 (To the Legislative Assembly)

That the Assembly continue to monitor and evaluate the effectiveness of the Legislative Assembly Budget Protocols Agreement, dated 6 March 2026, for the funding of the Office of the Legislative Assembly and the Officers of the Assembly. If at any stage before the next review in eight years' time the budget outcomes become unsatisfactory and undermine the capacity of the Assembly to perform its functions, the Assembly should consider adopting the recently enacted New Zealand model for parliamentary funding.

C. Independent decision-making about Members' staffing

Under the *Legislative Assembly (Members' Staff) Act 1989*, the power of Members to employ staff or engage a consultant or contractor is subject to the discretion and direction of the Chief Minister³⁵.

The Greens submitted to this review that whilst in a hung parliament with a minority government, crossbench members with the balance of power can negotiate for staffing resources to support their parliamentary roles, in the event of a return to majority government, “the Chief Minister of the day would have significant unconstrained capabilities to stifle parliamentary oversight by their opposition parties” by withholding resources.

The ACT Remuneration Tribunal has statutory power to determine the salaries and allowances of Members of the Assembly³⁶. The Tribunal conducts inquiries into the salaries and allowances of Members under Section 9 of the Tribunal's Act and its determinations under Section 12 are tabled in the Assembly, but not disallowable.

The Greens in their submission suggest that the Tribunal be given an additional responsibility, of determining the staffing needs of Members, in line with the system in operation in New South Wales (NSW). In NSW the Parliamentary Remuneration Tribunal determines the numbers of staff able to be employed by Members, as part of their entitlements:

- The number of electorate staff able to be employed by each Member of the Legislative Assembly,
- the number of secretary/research assistants able to be employed by each Member of the Legislative Council,
- the number of research staff able to be employed by independent Members of the Legislative Assembly, and
- staffing for certain office-holders (eg Whips).³⁷

In NSW the Presiding Officers (the President of the Legislative Council and the Speaker of the Legislative Assembly) then determine the conditions of employment, including rates of pay (within the available funding envelope provided in the annual appropriations to Parliament) of those staff to which Members are entitled.

³⁵ S10 (staff); s 20 (consultants and contractors).

³⁶ *Remuneration Tribunal Act 1995*.

³⁷ Funding for additional staffing for the Leader of the Opposition, however, continues to be determined and granted by the Premier.

It is noted that these matters have been the subject of a recent report by the Assembly's Standing Committee on the Integrity Commission and Statutory Office Holders.³⁸ The Committee noted, correctly in our view, that the practice of the Executive determining the staffing of Members is inconsistent with the Latimer House Principles. The fact that some other jurisdictions in Australia similarly fail to have independent determination of staffing levels for Members does not diminish the fact that it should be determined independently of the Executive and that these other jurisdictions fall well short of established best (or better) practice in other Commonwealth countries³⁹.

The Committee recommended that the ACT Government, in consultation with the Committee, “establish a transparent process for the ACT Remuneration Tribunal to determine staffing allocations for both Executive and non-Executive Members.” The Committee further recommended that the ACT Government “ensure that the legislative changes, guidance and processes to enable the ACT Remuneration Tribunal to determine staffing allocations for members be in place by the commencement of the Twelfth Assembly.”

However, it is also noted that the report was not unanimous and includes a strongly worded dissenting statement from one of the Committee Members in relation to these recommendations.

Nevertheless, as independent reviewers, we think the majority report is not without considerable merit, given that it reflects a model in NSW that works well.

Recommendation 2 (To the Legislative Assembly and the Executive Government)

The Legislative Assembly (Members' Staff) Act 1989 and the Remuneration Tribunal Act 1995 should be amended to provide that Members, on behalf of the Territory, have the power to employ staff to a full-time equivalent level (on the basis of set classifications and rates of pay) determined periodically by the Remuneration Tribunal.

D. Endorsement of separation of powers in codes of conduct

A Select Committee on Privileges report in 2022 expressed concern about Executive interference with the Assembly stemming from the imposition of a prohibition notice on committee proceedings by WorkSafe ACT. The Committee noted that ministers are also Members subject to the Members Code of Conduct, but expressed the view that ‘insufficient gravitas is given to the fundamental separation of powers concept by being a passing reference in the code of conduct’ and went on to recommend:

The Committee recommends that in the next review of the Latimer House principles, the Speaker refer:

³⁸ Legislative Assembly, Standing Committee on the Integrity Commission and Statutory office Holders, *Inquiry into the effectiveness of transparency arrangements for Members of the Legislative Assembly – Final Report*, Report 7, May 2026.

³⁹ For example, in the UK, the Independent Parliamentary Standards Authority determines and administers all aspects of MP staffing under the *Scheme of MPs' Staffing and Business Costs*, see [IPSA – The Scheme of MPs' Staffing and Business Costs 2024-25](#). In Canada, Boards of Internal Economy, and Legislative Administration Committees, typically chaired by the Speaker, are established to ensure financial independence and administrative independence of Members from executive determinations.

- (1) for assessment the Executive's compliance with the objectives enunciated in the principles, particularly in its relationship with the Legislative Assembly; and
- (2) to the Standing Committee on Administration and Procedure whether Continuing Resolution 8A requires amendment or re-affirmation to accentuate the independence of the legislature from Executive interference, in terms similar to the motion passed by the Senate⁴⁰.

This review report in its entirety responds to recommendation 1. The breach of privilege found by the Select Committee on Privileges in respect of the WorkSafe ACT prohibition notice is evidence that, notwithstanding the strong commitment of the ACT Executive government to the Latimer House Principles, there is scope for that commitment to be strengthened.

The Code of Conduct for Members of the Legislative Assembly⁴¹ requires that

- (3) Members should uphold the separation of powers and the rule of law.

The ACT Ministerial Code of Conduct 2020 mentions both the Members Code and the Latimer Principles (p.3), and 'respect for parliament' (p.6) but does not expressly refer to separation of powers. The ministerial code should be applauded for stating that the Members Code of Conduct 'applies to Ministers in addition to the obligations set out in this code'. However, enforcement of the ministerial code is a matter for the Chief Minister (clause 7).

It is therefore consistent with the ministerial code, the intention of the Code for all members and the Latimer House Principles⁴² that the Code for all members be more explicit about the responsibility of ministers to comply with the independence of the Assembly and the judiciary from Executive interference.

Recommendation 3 (To the Legislative Assembly)

The Continuing Resolution 5, Code of conduct for all members, be amended by inserting the following after paragraph (3) –

- (3A) Members, in upholding the separation of powers in accordance with the Latimer House Principles, including a member carrying out ministerial duties, shall not infringe on the independence of the Assembly or the judiciary and shall be held to account as a member subject to this Code.

E. Preventing disputes arising from conflicting powers of parliamentary privilege and government administration

The Select Committee on Privileges examined other aspects of the WorkSafe ACT intervention in 2022 and upon making a formal finding that

the first WorkSafe ACT prohibition notice improperly interfered with the free exercise of the Assembly and its committees and therefore was a breach of the privileges of the Assembly,

the committee went on to recommend that

⁴⁰ Select Committee on Privileges Report, 10th Parliament, November 2022, 28-30.

⁴¹ Continuing Resolution 5, Legislative Assembly.

⁴² Continuing Resolution 8A, Legislative Assembly.

WorkSafe ACT develop a memorandum of understanding with the Assembly on how it will exercise its regulatory functions within the Assembly precincts, acknowledging the parliamentary privilege issues engaged.⁴³

The Speaker and the Acting WHS Commissioner signed an MOU in February 2024, which recognises the legal responsibilities of the Speaker, Clerk and Members in the workplace, while at the same time recognizing the application of parliamentary privilege and including in its principles that

in exercising its powers and functions, WorkSafe ACT must ensure that all necessary steps are taken to avoid improper interference in the free exercise by the Assembly or its committees of its authority or functions or in the free performance by an MLA of their duties as an MLA;⁴⁴

The MOU is consistent with the Latimer Principles, which recognise that the branches of government have separate, valid functions. Members, committees and the Assembly more generally are subject to the general law other than where this is qualified by immunities flowing from parliamentary privilege. This exception is sometimes better asserted by a dialogue and respect for the separate functions of parliament and Executive government instead of an adversarial approach.

The MOU between the Speaker and the ACT Work Health and Safety Commissioner is a constructive mechanism for preventing disputes arising from conflicts between the powers and functions of the government agency and the Assembly.

F. Statutory power of non-Executive members in relation to bills

The Chief Minister and the Greens separately submitted to this review the need to clarify the powers of non-Executive Members in relation to bills appropriating moneys and bills raising moneys (taxation). In effect, the question is what legislative powers are exclusively held by Executive Members (ministers) and what are the powers of non-Government Members in this regard.

It is common practice in Westminster parliaments that all Members have the right to initiate bills and to move amendments to bills, but this right is qualified, to varying degrees, in relation to various forms of financial legislation. In some bicameral parliaments, this right is further qualified by prescribing limits to the legislative actions available to an upper house.⁴⁵

The Westminster principles that underpin this qualification are that Executive government must be accountable to the democratically elected Parliament, for the financial management of the state, at the same time the Executive government is politically accountable to the electorate for this financial management. The Executive must have certain prerogative powers over laws

⁴³ Select Committee on Privileges Report, 10th Parliament, November 2022, 23.

⁴⁴ Memorandum of understanding Between Speaker of the Legislative Assembly for the ACT and The ACT Work Health and Safety Commissioner, 23 February 2024, 8.

⁴⁵ In many bicameral parliaments this means that the upper house may ‘suggest’ amendments to the lower house, but not ‘make’ amendments, while retaining the right to ultimately defeat the bill if the lower house does not agree to make the amendments. In Victoria, amendments to the Constitution in 2006 went a step further so that the annual appropriation bill is deemed to have passed after one month in the upper house, regardless of the actions of that house (S 65, Constitution Act 1975 [Vic]).

relating to expenditure and revenue in order for the electorate to clearly understand who is accountable for the financial management and outcomes of the state.

The qualification of the right of Assembly Members to initiate and amend bills is provided by relevant statute and secondly by standing orders, which must be consistent with the statutory intent.

Section 65 of the ACT Self-Government Act provides that

- (1) An enactment, vote or resolution (proposal) for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister.
- (2) Subsection (1) does not prevent a member other than a Minister from moving an amendment to a proposal made by a Minister unless the amendment is to increase the amount of public money of the Territory to be appropriated.

Chapter 16 of the Assembly's Standing Orders incorporates the more obvious intent of the Act in the following terms (paraphrased):

- A bill or resolution for the appropriation of public money may only be proposed by a Minister (S.O. 200).
- A member cannot move an amendment that would increase the appropriation (S.O. 201), but is not precluded from moving an amendment that would reduce the amount of money to be appropriated (S.O. 201A).

The Self Government Act provides that taxation is one of the matters in relation to which the Territory's Executive has a power to govern the ACT.⁴⁶ The Act further provides that the Assembly has power to make laws for the Territory, which 'extends to the power to make laws with respect to the exercise of powers by the Executive'.⁴⁷

The Self-Government Act does not expressly provide limits to the legislative powers of Members of the Assembly in relation to taxation. In other words, the Act, through section 65, deals only with limits applying to bills appropriating public moneys.

'Appropriation', also referred to as a 'charge on public funds' or 'from the consolidated fund' is the authority to spend money, which authority must be provided by law, not simply by administrative action by the Executive.⁴⁸ This legal authority is most prominently sought in annual appropriation bills (the budget).

'Taxation', on the other hand is a 'charge on the people' or 'to the consolidated fund'. Taxation bills may fall under the generic term, 'money bill', but they are sometimes then distinguished in the text of the relevant Constitution Act as 'taxation bills' in addition to 'appropriating bills' (eg. Commonwealth and Victoria) or as an amount to be *paid to* the consolidated fund in addition to an amount to be *paid from* the consolidated fund (eg. Queensland)⁴⁹.

⁴⁶ *Australian Capital Territory Self-Government Act 1988*, s 37 and Schedule 4.

⁴⁷ Self-Government Act, s 22.

⁴⁸ See G.Taylor, *The Constitution of Victoria*, 2006, Federation Press, 349; Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, Lexis Nexis, 2011, see chapter 32, Financial procedure – general, and online at <https://erskinemay.parliament.uk/>, see Chapter 33, Overview of financial procedure.

⁴⁹ *Commonwealth of Australia Constitution Act*, ss 53-56; *Constitution Act 1975* (Vic), s 62; *Constitution of Queensland 2001*, s 68.

The omission of any distinction in the ACT Self-Government Act stands in contrast to express taxation provisions in constitutions in these other jurisdictions. In other words, there appears to be no legal impediment to a Member moving an amendment to a taxation bill.⁵⁰ Only a rule resolved by a majority of Members in the Assembly could qualify or self-limit the power for Members to legislate in relation to taxation and other charges.

Ultimately, this matter turns on the construction and interpretation of section 65 of the ACT *Self-Government Act 1988*. The Standing Orders, and practice of the Assembly, need to conform to the terms and understanding of the statute. It is understood that this is a topic on which the Clerk has previously sought and received advice from the Solicitor-General in 2019⁵¹ and independent legal advice from Professor Gabrielle Appleby in 2020.

Recommendation 4 (To the Legislative Assembly)

That the Assembly resolve that the *Memorandum for the Office of the Legislative Assembly - Financial Initiative of the Executive in Australian Capital Territory*, provided by Professor Gabrielle Appleby (11 December 2020) at the request of the Clerk of the Legislative Assembly, and any other advice provided by the Solicitor-General as advised to the Assembly in August 2020, be tabled to better inform all Members about the powers of the Legislative Assembly and the Executive government in relation to revenue and taxation bills and the options available in relation to reform of the Standing Orders and/or practice of the Assembly.

If the Assembly asserts its unrestricted taxation law-making power for all Members, while noting the unequivocal limits on non-Executive Members in relation to appropriation (expenditure) bills, the following matters warrant consideration. These observations and recommendations are based on the experience and knowledge of the reviewers as to how these delicate matters are balanced in other like jurisdictions.

Appropriations

The financial prerogative of the Executive government (appropriation rule) provides an exception to the law-making powers of all Members. It is therefore essential that the rule is articulated with clarity, applied cautiously and with its ultimate objectives (set out above) in mind.

It is not uncommon for Executive government Members in parliaments to argue that another Member's modest proposals in a private Member bill or an amendment are appropriating measures and therefore out of order. However, an appropriating measure is one that would require an actual increase in aggregate expenditure by taking money from the consolidated fund, in contrast to many legislative measures that are met by rearranging existing resources and funds already appropriated to a department.

⁵⁰ In New South Wales for example, there is now a body of precedent for taxation bills, even where cognate with the annual appropriations bills, being amended (initiated by either Ministers or non-Government Members) in the Legislative Council. See D Blunt & S Frappell, *New South Wales Legislative Council Practice*, Second edition, 2021, pp 619-620.

⁵¹ *Hansard*, Speaker - Administration and Procedure—Standing Committee Statement by chair, 13 August 2020.

The Speaker's task to rule consistently on such matters could be assisted by a rule that any point of order in which the Executive seeks to have a bill or amendment ruled out of order on the basis that it breaches s 65 of the Self-Government Act, be taken on notice by the Speaker until the Treasurer has tabled a statement of reasons that an appropriation would be required and the Speaker has considered those reasons. Such rule could include a requirement that the Government submit its statement of reasons to the relevant standing committee if the committee decides to inquire into the bill under Standing Order 174.

Taxation

While the Executive's financial prerogative may not apply to prevent proposed taxing measures by any Member, it is nonetheless politically accountable for the overall fiscal position of the Territory. It is reasonable that the Executive has an opportunity to properly state in debate in the Assembly any concerns about the fiscal impact of proposals.

Where the proposal is in the form of a private member bill, the Treasurer or other minister has ample opportunity to state their concerns during the *In principle agreement* debate stage and the *Detail stage* of the bill.

Standing Order 178A requires that all amendments proposed to be moved during the Detail stage be submitted to the Clerk by 12 noon on the day prior to the day the amendment is to be moved. It would be reasonable to provide the Treasurer with more time to consider the fiscal impact of a proposed taxing amendment, which would require an amendment to the Standing Order for taxing measures only.⁵² A 'taxing' amendment for this purpose should be limited to an amendment that directly affects the imposition or rate of tax and does not include amendments dealing with related administrative arrangements.

Recommendation 5 (To the Legislative Assembly)

An amendment to Standing Order 178A should be considered to require a taxation amendment be submitted by 12 noon on the day that is two days prior to the day the amendment is to be moved.

A 'taxation amendment' for the purposes of this rule is limited to an amendment which directly affects the imposition or rate of taxation.

⁵² A variation of this approach operates in the New Zealand Parliament where a proposed amendment to a bill that may have 'an impact on the Government's fiscal aggregate' requires 24 hours notice by lodgement with the Clerk in advance of the bill's consideration in Committee of the whole. This rule is related to the power of the executive in New Zealand to exercise a 'financial veto', while allowing Members to promote their legislative proposals of a fiscal nature.

3.2 The Parliament and the Judiciary Principle and the Independence of the Judiciary Principle

Latimer Principle:

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

Latimer Principle:

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:

- (i) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:
 - (A) equality of opportunity for all who are eligible for judicial office;
 - (B) appointment on merit; and
 - (C) that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination.
- (ii) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place.
- (iii) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought.
- (iv) 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.

A. Overall observation

The ACT Self-Government Act establishes the judiciary in a separate Part VA (the Judiciary) of the Act and provides that the Supreme Court has

all original and appellate jurisdiction that is necessary for the administration of justice in the Territory. (s 48(1))

The *Supreme Court Act 1933* and the *Magistrates Court Act 1930* constitute the courts, establish processes for the appointment of offices, prescribe jurisdiction and other matters.

The Supreme Court Act requires that a judge take an oath or affirm that they will ‘do right to all manner of people according to law, without fear or favour, affection or ill will’ and importantly, this is done before another judge, a justice of the High Court or a judge of the Federal Court⁵³, not a member of the Executive or parliamentary branches of government.

The Magistrates Court Act has a similar requirement for a Magistrate to take an oath or affirm before the Chief Justice.

In their joint submission to this review, the Hon Chief Justice and Hon Chief Magistrate expressed the view that the Territory’s legislative framework gives practical effect to the Latimer House Principles. Their Honours asserted that the ACT is operating consistently with the Principles as they relate to the independence of the judiciary, noting that the Territory’s ‘structure and practices also align with established frameworks such as *the International Framework for Court Excellence*’. The Territory’s judiciary is also required to meet the constitutional requirements of institutional integrity – that is, independence and impartiality.

The ACT Greens submitted that ‘there is a healthy distance between the Attorney-General and the Judiciary’.

A strong professional legal community and an effective, merit-based system for appointment of judges and magistrates has made it possible for the ACT to meet the aspirations of the Latimer Principles, including gender equity. The reviewers note that many judges in the ACT courts have gained tertiary qualifications and practiced in New South Wales prior to joining the ACT legal community. With its proximity to the ACT and much larger population and number of universities teaching law, it is reasonable that NSW legal practitioners form part of the ACT talent pool.

At the time of reporting, the Chief Justice and the Chief Magistrate positions are held by women. Both the Chief Minister and the Greens noted the increasing number of women on the bench. In June 2026, more than 50 per cent of the ACT’s Magistrates and Judges were women.

Where the ACT’s implementation of the two judicial Latimer Principles could be enhanced is by strengthening the status of the quasi-judicial ACT Civil and Administrative Tribunal (ACAT), recognising that it should enjoy independence similar to the courts.

⁵³ S 19 and Sch.1

B. The Judiciary and the Legislative Assembly fulfil their respective roles in a complementary and constructive manner

A fundamental pillar of the Latimer Principles is that the Parliament and the Judiciary perform separate, but complementary roles in the law. Parliament makes written, statute law. The courts make common law where no statute law applies, administer justice and interpret the written statute law made by Parliament when relevant matters are brought before them.

The ACT's *Legislation Act 2001* provides a strong framework in support of the principle that the Legislative Assembly makes statute law and the courts respect the intentions of the Assembly when interpreting those laws. The Act provides:

Interpretation best achieving Act's purpose

(1) In working out the meaning of an Act, the interpretation that would best achieve the purpose of the Act is to be preferred to any other interpretation⁵⁴.

The Legislative Assembly resolved Continuing Resolution 10, *Sub-Judice*, in 2008. The sub-judice principle is a form of self-restraint by a house of parliament to avoid infringing or reflecting on criminal and civil proceedings.

The Latimer Principles are based on mutual respect and separation of the parliamentary and judicial roles. Parliaments observe sub-judice principles and standards of debate that avoid reflections on judicial officers. The courts observe limited circumstances in which the proceedings of parliament are introduced into judicial proceedings. Article IX of the Bill of Rights 1689 obliges the courts not to 'impeach or question' proceedings in Parliament. This fundamental legal restraint on the courts, ensuring freedom of speech in proceedings, forms part of parliamentary privilege.

The Commonwealth's *Parliamentary Privileges Act*, which is applicable to the ACT by virtue of the Territory's nexus with the privileges of the Commonwealth Parliament, is an unusually detailed but reliable codification of what is meant by this obligation.⁵⁵

C. When parliamentary privilege may be infringed in the courts – a rule for impartial action by the Speaker

The Assembly's affirmation of its parliamentary privilege of freedom of speech is found in Continuing Resolution 4A, which concerns the Assembly's interactions with the ACT Integrity Commission's functions and powers. (Continuing Resolution 7 deals with Members' responsibilities in exercising their freedom of speech in Parliament.)

Parliamentary privilege also includes the principle of exclusive cognizance, that the courts will not interfere in a house's governing of its own proceedings (eg. not bringing into question the exercise of the standing orders).

There is no continuing resolution that addresses interaction between the Assembly and the courts where there is concern that the proceedings of parliament will be impeached.

⁵⁴ *Legislation Act 2001*, s 139; s 137 provides that the Act assumes that common law presumptions also apply in conjunction with Act's rules of interpretation.

⁵⁵ *Parliamentary Privileges Act 1987* (Cth), s 16.

The Clerk submitted that ‘there is a deal of uncertainty as to the circumstances in which the Speaker should apply to be heard as *amicus* in such cases, and whether MLAs should be consulted before such a decision is made’.

Erskine May describes the role of the Speaker of the House of Commons to be ‘the representative of the House itself in its powers, proceedings and dignity’⁵⁶. The Speaker is obliged to act in accordance with a resolution of the Assembly directing them to take action, but in the absence of the Assembly sitting or otherwise addressing the matter, the Speaker has a role to uphold the rights of the House in an impartial manner.

While it is assumed that the Speaker will seek advice from the Clerk on all matters of law and procedure affecting the Assembly, there is a clear case for an express requirement for the Speaker to seek this advice before seeking to join any judicial proceedings to protect the powers and immunities of the Assembly.

Recommendation 6 (To the Legislative Assembly)

That the Assembly consider a new Continuing Resolution 7A - Freedom of speech and exclusive cognizance of the Assembly – to provide that if a matter before the courts appears to infringe on the freedom of speech of the Assembly or the exclusive cognizance of the Assembly more generally, the Speaker may apply to join proceedings after seeking the advice of the Clerk.

D. Judicial appointments

While no submission was made to the review claiming that the appointment of judicial officers is controversial, the process warrants examination.

The Chief Minister submitted that, ‘judicial officers are appointed by the Executive following established public appointment processes with identified criteria. However, as at drafting, these criteria have not been updated since 2015 (Resident Judges) and 2009 (Magistrates)’.

The *Supreme Court Act 1933* provides that the Executive may appoint by commission, the Chief Justice and other judges as resident judges based on selection criteria and process established by a notifiable (legislative) instrument⁵⁷. Very similar provisions are in place for the appointment of the Chief Magistrate and other magistrates⁵⁸.

Neither the *Supreme Court Act* nor the *Magistrates Court Act 1930* prescribe the notifiable instrument to be a disallowable instrument⁵⁹. In other words, the Assembly does not have the opportunity to disallow the instrument by resolution of a majority of Assembly members.

The notifiable instrument for the appointment of a chief justice and other resident judges requires

⁵⁶ *Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, Lexis Nexis, 2011, 59.

⁵⁷ *Supreme Court Act 1933*, ss 4 & 4AA.

⁵⁸ *Magistrates Court Act 1930*, ss 7 & 7AA.

⁵⁹ The *Legislation Act 2001*, s 9 provides the meaning of a disallowable instrument.

The Attorney-General must seek expressions of interest for the position of Resident Judge by public notice and write to key ACT stakeholders, inviting them to suggest or nominate people who are suitably qualified for appointment.

The instrument also requires the Attorney-General to consult with the Chief Justice, before recommending the appointment of a resident judge to the Executive⁶⁰. The selection criteria in the determination is the same for the chief justice and other judge appointments.

The Latimer House Guidelines to the Principles provides:

(II) Preserving Judicial Independence

Jurisdictions should have an appropriate independent process in place for judicial appointments. Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.

The *Legislation Act 2001* provides that a minister must consult the relevant Assembly committee about a proposed appointment of a statutory officer (not a judicial officer) and the minister is to have regard to the recommendation of the committee, but ultimately the committee has no veto power. The subsequent appointment is then a disallowable instrument. There is, in effect, a balance of powers and transparency underpinning this approach to appointments.

Judicial officers, on the other hand, are Executive appointments by commission, not appointment made by an individual minister. The Act does not require the Executive to consult with stakeholders in relation to the appointment of resident judges – this is a requirement in the notifiable instrument, which is required to be made by the Act, but the content of which is at the discretion of the Executive. There is no statutory requirement to consult and no statutory role for an independent panel for judicial appointments.

The imperative that the judiciary be an independent branch of government precludes a role for the parliament. However, it also highlights the case for increasing the independence of the selection process prior to Executive appointment of judges and magistrates. This might be done by establishing a statutory, independent panel which function is to recommend appointments of judges, magistrates and the President of ACAT by Executive commission.

The reviewers are mindful of the expense of further panels and commissions and note that the initiative of an independent panel for judicial appointments may not require full time appointments and may have terms and conditions set by the Attorney-General. Furthermore, the head of service may be able to stand up staffing support for the panel from existing public servants at a level no more or not substantially more than is currently required to support the recruitment and selection process overseen by the Attorney-General.

Such a panel should be established and consist of persons unconnected with the judicial complaints review functions in the *Judicial Commission Act 1994*. Consideration should be given to the panel's establishment as independent statutory officers, whose recommended appointment by the Attorney-General would be a matter of consultation

⁶⁰ Supreme Court (Resident Judges Appointment Requirements) Determination 2015 (No 1) Notifiable instrument NI2015–683, Sch.1.

with the relevant Assembly committee in accordance with the *Legislation Act 2001*. The recommended appointment of judges and magistrates would not be subject to this requirement.

Recommendation 7 (To the Executive Government)

That the *Judicial Commissions Act 1994* be reviewed and options for separate or amended legislation be examined for the purpose of establishing a statutory, independent panel to recommend appointments of the Chief Justice and resident Judges, the Chief Magistrate and Magistrates and the President of ACAT by Executive Commission.

Such panel should be separate from the statutory regime for review of complaints against judicial officers.

E. Resources, independence and access to justice

i. Resourcing the courts – administrative independence

Both the 2014 (Burmester) review and the 2019 (Halligan) review reflected on the tension between the principle that judicial independence includes administrative independence and the Executive government's interest in a cost-effective administration of court functions.

Burmester recommended that

Other jurisdictions such as South Australia and Victoria have in recent times established fully independent court administrations, and such a step in the ACT would lend further clarity to the independence of the Judiciary within the Principles.⁶¹

Halligan was less prescriptive in 2019, recommending that the relationship between the Registrar, courts and the department of Justice and Court Services (JACS) be subject to further expert investigation.⁶²

The position of Chief Executive Officer of the ACT Courts and Tribunals was established by legislative amendment to the Court Procedures Act in 2015⁶³. While the Act expressly requires the Chief Executive Officer (CEO) to support the senior judicial officers in the administration of the Supreme Court, the Magistrates Court and the ACAT, the CEO is subject to Executive government authority in some manner:

- the appointment of the CEO is made by the Executive (with regard to any recommendations by the senior judicial officers);
- the CEO may engage staff under the Public Sector Management Act, as applies to other public servants, but the CEO has power to direct the employees;
- requests to perform other work by the CEO and disclosure of interests by the CEO are made to the Attorney-General; and
- the CEO may be dismissed by the Executive.

⁶¹ Recommendation 1, 17.

⁶² Recommendation 8, 27.

⁶³ *Court Procedures Act 2004*, Part 2A.

With the courts' reliance on public sector administration of operations through the government's Directorate of Justice and Community Safety, statutory provision of a CEO who is obliged to support senior judicial officers means that a delicate balance of interests is required.

The ACT Courts and Tribunal (ACTCT) business plan for 2025-26 states that the 'ACTCT contributes to the Justice and Community Safety Directorate's vision through providing equity of access to justice to the ACT community' and ACTCT's values include 'upholding the values of the ACT Public Service'.⁶⁴

The issue highlights the challenge of ensuring an independent administration of justice while also achieving efficiencies in a smaller jurisdiction. Shared services models may be efficient and appropriate in some settings for basic human resource, payroll and other corporate services, but not appropriate in key areas supporting delivery of services, such as information management systems, accommodation, staffing decisions, budget decisions and corporate strategy support.

The Chief Justice and Chief Magistrate submission to this review noted the potential for the separation of the Executive and judiciary to be blurred as a result of the centralising of data governance and information systems in government. These systems underpin judicial proceedings, not just corporate functions of the court.

The reviewers note that the *Guide to Judicial Conduct* published for the Council of Chief Justices of Australia and New Zealand identifies the separation of powers and independence of the judiciary as a cornerstone of democracy and the rule of law and 'in particular, an appropriate distance should be maintained between the judiciary and the Executive, bearing in mind the frequency with which the Executive is a litigant before the courts'.⁶⁵

ii. Resourcing the courts – sustainable budgets

The 2019 review of the Latimer Principles in the ACT recommended that:

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 (Rec.7).

The Chief Minister submitted to the current review that tensions naturally remain in a small jurisdiction between an independent judicial operation and Executive determination of the appropriation for the courts.

The Chief Justice and Chief Magistrate submitted to this review that they appreciated the constructive engagement with the Attorney-General over various matters, including budget. The submission stated that judicial resources are stretched, particularly in the Supreme Court, with increasing caseloads and complexity, meaning additional resourcing is needed to improve timely access to justice.

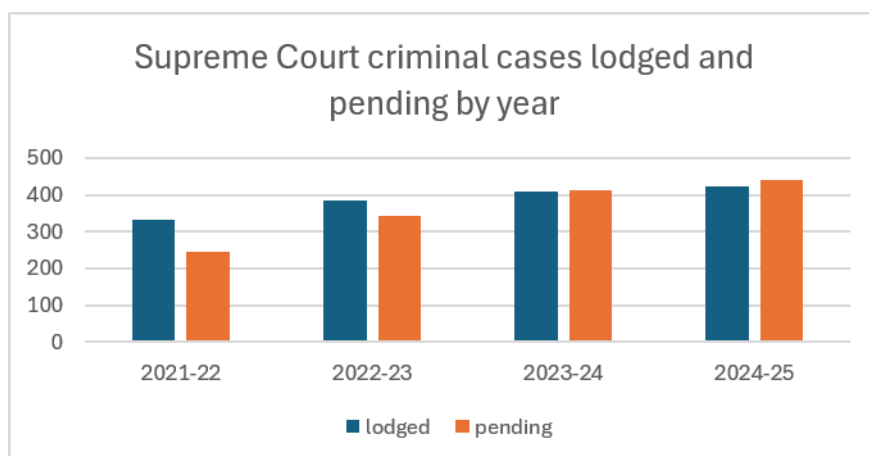
The annual reviews published by the Supreme Court include case statistics which illustrate this challenge in both civil and criminal matters⁶⁶. The chart below, based on certain criminal case

⁶⁴ ACT Courts and Tribunal 2025-26 BUSINESS PLAN, [JACS Business Plan Template](#)

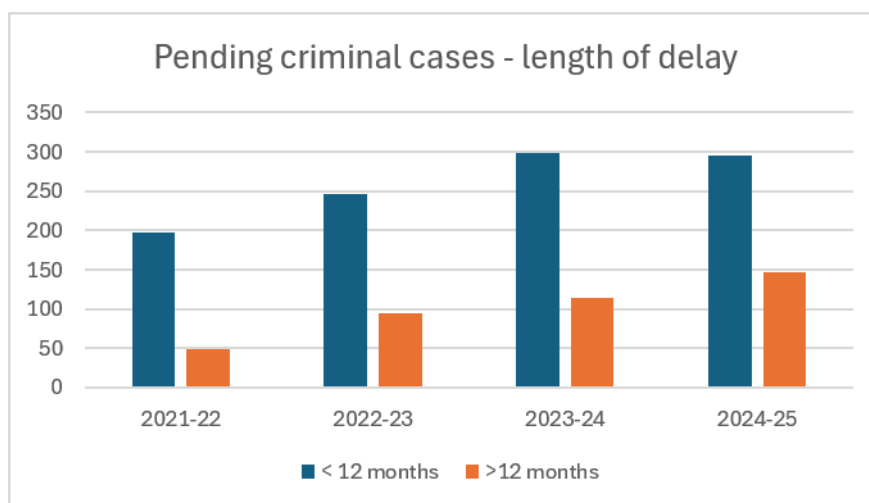
⁶⁵ *Guide to Judicial Conduct*, 4th ed. The Australasian Institute of Judicial Administration Limited, https://aija.org.au/wp-content/uploads/2026/03/Guide-to-Judicial-Conduct_Digital-260313.pdf

⁶⁶ See ACT Supreme Court Annual Review 2024-25, statistics on pages 22 to 27, [ACT Supreme Court Annual Review 2024-25](#)

statistics illustrates the extent to which the number of cases, including on appeal from the Magistrates Court, being lodged each year is increasing, as is the number of cases that remain pending.



It is noted that the criminal cases heard by the Supreme Court are serious (indictable) criminal offences and it not surprising that as the criminal caseload of the court continues to increase so too does the length of time cases are pending, as illustrated in the chart below. The number of criminal cases pending for more than 12 months has increased by 200% since 2021-22.



Recommendation 8 (to the Legislative Assembly)

That the Standing Committee on Legal Affairs conduct an inquiry at least 12 months prior to the 2028 election with terms of reference that include:

- a general review of the *Court Procedures Act 2004* in relation to the administrative support for courts and tribunals in the ACT; and
- a focused review of which corporate functions, including data governance and information systems, should be separated from government services and be provided in-house by ACT Courts and Tribunals; and
- a review of budget impacts on timeliness of and access to justice in the ACT.

iii. Resourcing equal access to justice

The Latimer principle requires that adequate resources be provided for the ‘judicial system to operate effectively without any undue constraints’. An important aspect of an effective and independent judicial system is equal access to justice. This has been reiterated by Commonwealth Heads of Government as recently as 2022:

Heads endorsed the Commonwealth Law Ministers Declaration on Equal Access to Justice issued in Colombo, in November 2019, and the subsequent Plan of Action endorsed by Senior Officials of Law Ministries, in February 2021. In particular, Heads renewed their commitment to respect the rule of law, equal access to justice and independent justice systems.⁶⁷

The Law Ministers Declaration in 2019⁶⁸ specifically listed access to legal aid as a key component of access to justice. This is consistent with the Commonwealth Charter linking access, effectiveness and the rule of law through its commitment to, ‘an independent, effective and competent legal system’ which ‘is integral to upholding the rule of law, engendering public confidence and dispensing justice’.

Legal Aid ACT submitted that it is required to apply a strict means and threshold test on applicants which results in many people being denied legal aid even though they cannot afford a private lawyer. The submission noted that the ACT Government has provided more short-term grants, but this does not assist long term planning.

The submission to this review from the Chief Justice and Chief Magistrate noted that judicial resources are stretched and that caseloads are increasing, which the reviewers have further emphasised with criminal case statistics in the previous section.

The reviewers note the recent interim report of the Select Committee on Fiscal Sustainability of the ACT, which found that the ACT has been experiencing a net operating deficit since 2013.

Recommendation 9 (to the Executive Government)

While acknowledging the challenges of managing the Territory’s fiscal balance, funding decisions about the administration of justice should include a high priority on equal access to justice and the funds required by Legal Aid ACT in support of this priority.

F. ACT Civil and Administrative Tribunal (ACAT)

The President of the ACT Civil and Administrative Tribunal (the ACAT) submitted that the ACAT is a quasi-judicial body, performing decision-making functions in areas of law ‘which were historically within the sole jurisdiction of the courts’. The President submitted that

The volume of ACAT’s work is significant. The 2023-24 Annual Review records that ACAT received over 4700 new applications in that year, held final hearings on 8542 days, and conducted 1162 mediations/conferences. ACAT’s clearance rate in 2023-24 was 101%. Data from subsequent years indicates ACAT’s volume of work is only increasing.

⁶⁷ Communiqué Of The Commonwealth Heads Of Government Meeting, *DELIVERING A COMMON FUTURE: CONNECTING, INNOVATING, TRANSFORMING CHOGM*, Rwanda, 2022, para18.

⁶⁸ Colombo, November 2019. [Commonwealth Law Ministers Declaration on Equal Access to Justice - FINAL.pdf](#)

All of this means that if an individual is required to participate in civil law proceedings in the ACT, whether as a party, representative or witness, it is just as likely that their engagement will occur in ACAT as in a court.

i. ACAT as part of the ACT justice system

Civil and administrative tribunals have been set up in various jurisdictions as a means to give people access to justice in relation to civil matters in a more affordable and efficient manner. While the status of tribunals as judicial bodies is a complex and contested question, the reviewers agree that the ACAT should be assessed against many aspects of Latimer’s judicial Principles. The many thousands of people who engage in ACAT processes are likely to view them as part of the administration of justice in the ACT. The reviewers note the following aspects of the ACAT legislation in support of this characterisation.

The ACAT is established by the *ACT Civil and Administrative Tribunal Act 2008* (s 88) (ACAT Act). The ACAT has an express ‘justice’ function.

Section 7 of the ACAT 8 provides:

In exercising its functions under this Act, the tribunal must—

- (a) seek to ensure the procedures of the tribunal—
 - (i) are as simple, quick, inexpensive and informal as is consistent with achieving justice;

The Tribunal must also observe natural justice and procedural fairness (s 7(b)), but need not comply with rules of evidence applying in the ACT (s 8).

The Tribunal has a broad civil disputes jurisdiction (s 16) and functions to review decisions of certain decision-makers (administrative review) (see Part 4A). The Executive cannot appoint a President of ACAT who is not a magistrate or eligible to be appointed as a magistrate (s 94).

The Tribunal has powers of arrest (s 42), to make orders, including by majority and to make interim orders (see Division 6.1) to award costs (s 48), including costs where an order has been contravened. Orders may be enforced by either the Supreme Court or the Magistrates’ Court depending on the nature of the order.

Section 70 of the ACAT Act provides –

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

A useful comparison can be made with the Victorian Civil and Administrative Tribunal (VCAT).

In Victoria, the VCAT describes itself as ‘an independent part of Victoria’s justice system,’ set up to improve Victorians’ access to justice.⁶⁹

VCAT sits under the administrative umbrella of Court Services Victoria, which also includes the Supreme Court, the County Court, the Magistrates’ Court, the Children’s Court and the

⁶⁹ VCAT Annual Report 2024-25, 16, 6.

Coroners Court. The VCAT is led by judicial members. The VCAT is established by the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (s 8), which requires the President of VCAT to be a Supreme Court judge (s 10) and Vice-Presidents to be a County Court judges (s 11).

VCAT has original jurisdiction and review jurisdiction (s 40) and may make orders, award costs and exercise powers.

ACAT is part of the administrative umbrella of ACT Courts and Tribunals. On a per capita basis, the ACAT volume of work is not dissimilar to the VCAT,⁷⁰ which describes itself as one of ‘the world’s largest tribunals’ due to its broad mandate⁷¹.

ii. Applying the Latimer Principles to the ACAT

This review has examined the application of Latimer Principles to the independence of the courts in relation to appointments, administrative independence and financial arrangements. It is appropriate to examine the ACAT in similar terms.

The President of ACAT submitted that

Most of the Principles in relation to Independence of the Judiciary are currently effectively implemented in relation to the ACAT. In the main, arrangements for appointment of members are consistent with the Principles. Relations between ACAT and the Executive and government are experienced as both cordial and respectful of respective roles.

The reviewers note that the responsibility of ACAT is to make decisions in certain matters in which the government is a party, such as an ACAT review of a decision held to have been made by the Territory or a Territory authority. In other words, the Tribunal affects the interests of the government. It is therefore important that the Tribunal be afforded as much independence as possible, while noting the challenges of achieving this in a smaller jurisdiction. The following are relevant matters.

The President and presidential members are appointed by the Executive (s 94), while the Attorney-General alone may appoint non-presidential members of the ACAT (s 96). The provisions of the *Legislation Act 2001* result in appointments of the Attorney-General being submitted to the Assembly’s Legal Affairs Committee for consultation, as do other appointments of statutory officers by a minister. This is a positive aspect of parliamentary scrutiny and transparency of appointments.

The President of ACAT submitted that

... it is possible to identify a number of aspects in which the treatment of ACAT has not been consistent with the Principles. These instances appear to have been driven primarily by budgetary constraints and the inappropriate application of policies or legislation to the judicial branch of government.

⁷⁰ The ACAT President advised that there were 4,700 new matters in 2023-24. The VCAT annual report of 2024-25 reported that 74,245 ‘new applications’ were received, 12.

⁷¹ VCAT Annual Report 2024-25, 16.

iii. Operational independence

The ACAT's decisions may affect the interests of the government, as explained above. From time to time, the ACAT may need to seek legal advice in matters that engage the interests of the Executive and government more generally. The ACT's Law Officers Legal Services Directions 2023 applies to the ACAT. The Directions, made by government, provides that all Territory legal work is to be performed by the Government Solicitor and that an agency may, with the approval of the Chief Solicitor, engage a legal services provider other than the Government Solicitor to undertake Territory legal work.⁷²

The President of ACAT has identified the application of this legal requirement to ACAT as inappropriate. There are very limited exceptions to this rule, including the Integrity Commission, the Legislative Assembly and the Office of the Legislative Assembly. These exceptions are consistent with the intent of the Latimer Principles and there is no obvious reason why the ACAT should not also be excepted from the rule.

Recommendation 10 (To the Executive Government)

That paragraph 1.3 of the Schedule in the Law Officers Legal Services Directions 2023 be amended to provide that the ACT Civil and Administrative Tribunal (ACAT) is not required to comply with the rules in paragraph 1.1 and 1.2 in relation to the provision of legal services, so that the ACAT has discretion to obtain legal advice from non-government legal service providers.

Operationally, ACAT is supported by ACT Courts and Tribunal, which provides registry and corporate services to the ACAT, as it does for the Magistrates Court and Supreme Court, as described in earlier sections of this report. The President expressed concerns to this review about perceptions and actual risks to independence flowing from whole of government systems applied to ACAT and other deficiencies, including:

- ACAT accommodation decisions;
- Insufficient tenure of ACAT members; and
- dependence on Executive-managed corporate and digital systems (similar concerns to the courts, particularly noting that government agencies may be parties in proceedings).

iv. Budget sustainability

The President submitted to this review that

The current funding model, in which ACAT is funded largely by the ACAT Trust, and to a much lesser extent by government, provides an environment in which neither Trust nor government accepts ultimate responsibility, or accountability, for adequate resourcing of ACAT functions.

The provisions of funds held in trust to tribunals is not unique to the ACT. For example, prior to 2024-25, the Victorian Civil and Administrative Tribunal received approximately 60 per cent of its funds from annual appropriation by the Parliament, with remaining funds coming from trust funds administered by Consumer Affairs Victoria and the Victorian Legal Services Board. In 2024-25 there was a large increase in the funding from funds held in trust, making up

⁷² Schedule, paragraphs 1.1 and 1.2.

approximately 60 per cent of total funding for VCAT as it commenced its function of dispute resolution for renters and rental providers.

Notwithstanding that the use of trust funds is not unique, it raises questions of appropriateness and transparency when funding sources are opaque and based, in part, on industry levies that are tied to certain purposes. Appropriations from the consolidated fund (approved by the legislature in the annual budget) may fail to increase commensurate with additional functions assigned to the tribunal, increased wage costs and similar things that should be met by increased appropriation but are not when other sources of funds are part of the annual budget. The President of ACAT submitted that this opaqueness is a problem in the ACT:

Energy and Water providers in the ACT pay a licence fee or levy to government, ... by reference to the running costs of the ACAT energy & water jurisdiction. Historically, this amount was then passed directly to ACAT to fund operations in that jurisdiction. Since 2012, however, the energy levy has been diverted to Treasury, while ACAT continued to receive directly that funding referable to the water component. There may be a simple explanation, however the complexity of funding arrangements for ACAT is such that in the years since this change ACAT has not been able to establish the extent to which its operations in energy and water jurisdiction are being resourced by the energy levy, as contemplated by the legislation.

Recommendation 11 (To the Legislative Assembly)

That the standing committee referred to in recommendation 8 above, include the ACT Civil and Administrative Tribunal in its considerations of administrative support, corporate functions and financial arrangements. That the consideration of ACAT's various sources of annual funding include examination of the transparency of the funding and the extent to which it hinders the ACAT's capacity to plan and meet service demands.

3.3 Public office holders

Latimer Principle:

- (i) Merit and proven integrity should be the criteria of eligibility for appointment to public office.**
- (ii) Subject to (i), 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.**

A. Overall observation

The ACT continues to be a leader in the Commonwealth in gender balance.

There is a history of strong female representation in the Legislative Assembly. In the 11th Assembly there are currently 14 female Members out of a total of 25 (56%). The current cabinet includes five female ministers out of a total of eight (62%)⁷³.

The Commonwealth Parliamentary Association (CPA) has conducted a gender sensitive audit of the ACT Branch (the first branch in the Commonwealth to do so), making 28 recommendations. The preparedness of the ACT Assembly and its leadership to voluntarily invite that audit is to be commended.

Similarly, more than 50% of current ACT Judges and Magistrates are women. The submission from the Chief Minister noted that ‘the Government is committed to a judiciary that is reflective of the broader community it serves’ and noted that expressions of interest for vacant positions in the judiciary are actively encouraged from women, people with disability, people who identify as LGBTIQ+, Aboriginal and Torres Strait Islander people, and people from other culturally diverse backgrounds.

In the broadest sense of ‘public office’ there are various categories of office holders across the three branches of government, including:

- Members of Parliament;
- The Clerk and employees of the Office of the Legislative Assembly;
- Independent officers of the Legislative Assembly (who may also be statutory office holders);
- Judicial officers;
- Statutory office holders;
- Public servants, executives and department heads.

The ACT stands out in Australia for the role the Legislative Assembly plays in overseeing the proposed appointment of statutory office holders and the transparency of this process. The *Legislation Act 2001* provides that a minister must consult the relevant Assembly committee about a proposed appointment to a statutory office, to which the committee may make a recommendation and the minister ‘must have regard’ to the recommendation when making the final appointment⁷⁴. The appointment is also a disallowable instrument.⁷⁵ The relevant Assembly committees table a schedule of statutory appointments every six months, including the date consultation was requested and the date the committee responded to the minister.⁷⁶ For example, the Standing Committee on Legal Affairs tabled a schedule for 1 January to 30 June 2025 which reported consultation in relation to 45 appointments across seven entities, including the Civil and Administrative Tribunal and the Sentence Administration Board.⁷⁷

B. The public sector and statutory office holders

In the ACT the most numerous cohort of public officials are public servants and certain other executives and office holders covered by the *Public Sector Management Act 1994* (PSM Act).

⁷³ Victoria’s cabinet of 22 ministers includes 14 women (64%).

⁷⁴ *Legislation Act 2001*, s 228.

⁷⁵ S 229

⁷⁶ As required by Legislative Assembly, Continuing Resolution 5A, which recognises ‘that the Executive has a role in making appointments to statutory positions, and that the Legislature has a role in being consulted’.

⁷⁷ See ACT Legislative Assembly, [Template - Schedule of Statutory Appointments](#)

The first listed object of the PSM Act is to ‘establish and maintain an apolitical public sector with clear values, clear standards of conduct and a best practice focus’.

Section 68 of the PSM Act provides –

- (2) The head of service may only appoint a person to an office if—
 - (a) the person is selected in accordance with the merit and equity principle;

This merit requirement extends to the appointment of senior executive service appointments of more than 9 months (section 27), an important principle that should be part of any framework that seeks to reduce the risk of politicization of the public service.

A Public Sector Standards Commissioner is appointed by the Chief Minister (s 142) and ‘has complete discretion in the exercise of the commissioner’s functions’ (s 143A). The Commissioner may be suspended by the Chief Minister in limited circumstances prescribed by the Act and such suspension and the reasons for it must be presented to the Assembly, which has a statutory power to cease the suspension (s 146).

A *snapshot* comparison of the ACT’s PSM Act with the equivalent statutes in NSW (*Government Sector Employment Act 2013*) (NSW GSE Act) and Victoria (*Public Sector Management and Employment Act 1998*) (Vic PSME Act) provides reassurance of the extent to which the Territory’s Act is fit-for-purpose and consistent with Latimer Principles.

All three Acts refer to the merit principle in employment, but the ACT PSM Act provides more extensive meaning and emphasis on merit, particularly in comparison with the Victorian Act.

The NSW GSE Act provides that ‘workforce diversity includes (but is not limited to) diversity of the workforce in respect of gender, cultural and linguistic background, Aboriginal people and people with a disability’ (s 65) and places an obligation on department heads to make diversity part of their workforce planning. The Victorian PSME Act provides no similar references. The ACT PSM Act places an emphasis on the principle of equity and requires the head of service to develop and implement a strategy to ‘eliminate disadvantage in relation to public service employment’. (s 26)

The ACT PSM Act and the Victorian PSME Act empower the parliament to overturn a decision of the Minister to remove the relevant public service commissioner.

Only NSW has a joint committee of both Houses of parliament overseeing the functions of the public service commissioner.

C. Parliamentary employees

The Latimer Principle includes ‘integrity’ as a required feature for public office holders. For the Clerk and parliament staff, integrity must include independence from the other branches of government.

Unlike some parliaments, including the Commonwealth and Victoria, the ACT does not have a standalone parliamentary service with its own employment framework and complete

separation from the wider government service. Instead, certain safeguards are provided in other statutory forms.

The *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (OLA Act) provides that

The clerk and the office's staff are not subject to direction by the Executive or any Minister in the exercise of their functions. (s 8)

The Clerk is appointed by the Speaker subject to various consultation and consent processes that ensure a cross-section of party/political input and protection from a partisan appointment. (s 9) Furthermore, the merit principle is supported by the Act's requirement that the Speaker must be 'satisfied that the person has extensive knowledge of, and experience in, relevant parliamentary law, practice and procedure'.

The Act empowers the Clerk to employ staff so that the office of the Legislative Assembly is not dependent on public service staff for support of the Speaker, Members and committees. However, it remains that staff are employed under the Public Sector Management Act in the absence of a separate parliamentary administration statute.

In 2024, the Speaker presented a paper to the House, which was an exposure draft of a bill to amend the OLA Act and related Acts⁷⁸. This took place just weeks prior to the Territory election and has not been progressed in the current Assembly.

The bill sought to tighten up various aspects of the independence of the office of the Legislative Assembly, primarily from Executive influence, and to a lesser extent from the Speaker. Provisions included, amongst others, the following:

- Amendment to the *Legislative Assembly (Members' Staff) Act 1989* to require the Executive to consult the Speaker before making a regulation under the Staff Act.
- Amendments to the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* providing that neither the Clerk, nor staff of the Office, are subject to direction by the Speaker in relation to advice sought from, or given by, the Clerk or Office staff in relation to the Assembly, its committees, or its members; and provision that the Office is not required to comply with a whole-of-government strategy if the Clerk considers that it would prejudice the exercise of the Office's functions.
- Amendment to the *Legislative Assembly Precincts Act 2001*, to require the Executive to consult the Speaker before making a regulation under the Precincts Act.
- Amendments to the *Public Sector Management Act 1994*, providing that the Public Sector Standards Commissioner is to advise the Speaker—rather than the Chief Minister—in relation to matters arising from an investigation of the Office of the Legislative Assembly.

In our view, these draft amendments do more than legislate 'for the avoidance of doubt' and address some shortcomings in the statutory independence of the Clerk, the Office of the Legislative Assembly and the Assembly from Executive influence. The independence from the Speaker when the Clerk and OLA staff are providing impartial advice to others, is something that should be observed as a matter of practice in all parliaments. Its inclusion as an express

⁷⁸ Legislative Assembly, Minutes of Proceedings, no. 133, 5 September 2024, 2089.

requirement in an amended OLA Act would be a best practice approach to preventing transgressions of the practice by future Speakers.

Recommendation 12 (to the Legislative Assembly and the Executive Government)

That the Standing Committee on Procedure and Administration present an updated version of the 2024 exposure draft of the Legislative Assembly Legislation Amendment Bill 2024 to the Assembly, including an explanation of the benefits of such a bill and a recommended timetable for the introduction of a bill to the Assembly.

D. Judicial officers

The *Public Sector Management Act 1994* (PSM Act) expressly excludes judges, magistrates and an ACAT tribunal member from the definition of a *public sector member*. (s 150). Issues and opportunities to fine tune the appointment process for judicial officers has been addressed in section 3.2 of this report.

E. Officers of the Assembly

The 2019 review of the application of the Latimer House Principles in the ACT recommended that the Officers of the Assembly be profiled on the Assembly.

This recommendation has been implemented, with the following Officers of the Assembly profiled, with links to their websites:

- Auditor-General
- Electoral Commission
- Integrity Commission
- Ombudsman.

Each of these bodies play critically important roles in the system of governance in the ACT and their classification as Officers of the Assembly is an important recognition of their independence from the Executive government and special relationship with the Parliament.

3.4 Ethical governance

Latimer Principle:

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.

A. Overall observation

The ACT has a well developed culture of ethical conduct and a willingness to subject itself to internal, external and public review. Examples since the 2019 Latimer review include -

The Assembly has resolved that the Integrity Commission (IC) conduct an inquiry into lobbying and the Government has provided additional resources for the IC to carry out that inquiry.

The Chief Minister submitted that since 2021, the Electoral Act has been strengthened by, amongst other things, restricting gifts from property developers.⁷⁹

The submission from the Clerk of the Assembly highlights the regularity of reviews of the Code of Conduct for members of the Assembly, commissioned by Standing Committee on Administration and Procedure, and undertaken by the Assembly's Ethics and Integrity Adviser, with recommended changes to improve the Code subsequently adopted by the Assembly.

The House resolved in April 2025 that the Standing Committee on the Integrity Commission and Statutory Office Holders conduct an inquiry into certain aspects of transparency of Members which the Committee amended to a broader review of transparency arrangements for Members and Ministers. The inquiry invited submissions.

The year before the 2019 review, the ACT established an Integrity Commission (IC) – a significant reform for a small jurisdiction, supplementing the already broad range of integrity measures which include: the Auditor-General; Ombudsman; Parliamentary Commissioner for Standards; Parliamentary Ethics Adviser.

The Ethics and Integrity Adviser submitted that that Members not only comply with but exceed the Latimer Principle on ethical conduct found in the code of conduct for Members (a continuing resolution of the Assembly), noting that it:

- has more enforceability than guidelines;
- requires the LA to reaffirm its commitment to the Code in the first six months after an election;

⁷⁹ *Electoral Amendment Act 2020*, s 11 inserted new Division 14.4A into *Electoral Act 1992*.

- provides that a newly elected member must confirm they will abide by the Code before they make their inaugural speech;
- applies to all conduct by a Member, not just conflict of interest.

Since the Halligan (2019) review, following the resignation of a Member in November 2023, the Speaker, pursuant to a resolution of the Legislative Assembly, appointed Lynelle Briggs AO to examine a number of matters. These included: the way allegations (of serious sexual misconduct) against the Member had been handled by current Members, as well as best practice and potential enhancements to laws, policies and procedures for dealing with such allegations. Ms Briggs found that the Assembly already had a comprehensive suite of laws, policies and procedures in this area, and particularly complimented the Assembly's Child Safety Code of Conduct. Nevertheless, in response to Ms Briggs' recommendations, that Code and the Assembly's Respect in the Workplace Policy were both updated, signed by all parliamentary leaders, presented to the Assembly and widely circulated, together with a clearer reporting and complaints referral framework for use by Members and all working in the Assembly building.

Judicial officers have also been active in reviewing ethical standards for their profession. The Council of Chief Justices of Australia and New Zealand, including the ACT Chief Justice, endorsed a new Guide to Judicial Conduct with updates in particular in relation to AI, workplace conduct, and judicial bias training, published in March 2026.⁸⁰

B. Governance of lobbying arrangements

One quite specific issue about the framework for ethical governance that has been raised with this review concerns the administration of the scheme in place for regulating lobbying.

The scheme that regulates lobbying in the ACT is established by continuing resolutions of the Assembly rather than by statute⁸¹. The resolutions require the Clerk of the Legislative Assembly to administer the Register of Lobbyists.

The ACT Integrity Commission (IC) published a discussion paper on lobbying arrangements in March 2026 following a resolution of the Assembly in 2025 advocating an inquiry.

Focus question 16, in the discussion paper, is 'Can a case be made for the transfer of the administration of the Scheme from the Clerk to another body?'⁸² There are many other aspects of lobbying arrangements that the Commission is examining, such as a statutory approach to regulation. Given the concurrent timing of the Commission's review of lobbying arrangements and this review's more general examination of the implementation of the Latimer Principles, comments in this and the following section are limited to the role of the Clerk as registrar and potential inclusion of declarations by all Members and its enforcement.

The ACT Clerk is the only clerk in Australia required to carry out the role of administering the register of lobbyists. Lobbyists have an interest in lobbying ministers or non-Executive Members of the Assembly and other non-elected public officials. The Clerk's role is not purely

⁸⁰ *Guide to Judicial Conduct*, 4th ed. The Australasian Institute of Judicial Administration Limited, https://aija.org.au/wp-content/uploads/2026/03/Guide-to-Judicial-Conduct_Digital-260313.pdf

⁸¹ Continuing Resolution 8AB Lobbyist Register - ACT Lobbying Code of Conduct & Continuing Resolution 8AC Lobbyist Register – ACT Lobbyist Regulation Guidelines.

⁸² ACT Integrity Commission, *Inquiry into arrangements for lobbying and influence in government in the ACT*, Discussion Paper, March 2026, 28.

administrative. There are obligations on the Clerk to register and to deregister based on forming judgements and opinions that require powers and resources not provided to the Clerk.

At 26 May 2026 there were 65 companies, partnerships and persons listed on the register of lobbyists.⁸³ This is a significant number of registrations given the size of the ACT relative to Victoria, which at the same time had 262 registered lobbyists and government affairs directors, a broader cohort than is captured by the ACT code.⁸⁴

A notable aspect of comparison with the regulation of lobbyists that operates in Victoria is that scheme's express inclusion of in-house government affairs officers in organisations, in addition to lobbyist who lobby on behalf of third parties.

It is reasonable to assume the current review or future action to amend lobbying regulation in the ACT will expand the definition of lobbying to include government affairs officers or their equivalents. It is also possible that an amended scheme will include the recording of actual lobbying activity. While this review will not pre-empt the outcome of the IC's consideration of these and many other issues, the range of issues arising from the current scheme in the ACT, comprehensively listed in the IC's discussion paper in March 2026, provides sufficient context to recommend that the Clerk should not regulate the lobbying scheme.

The Clerk is an integral component of the parliamentary branch of the three branches of government. The regulation of lobbying intersects with the Executive and parliament branches to a significant degree. A statutory or independent officer, sufficiently removed from both branches, with powers and resources, is better placed to regulate a lobbying scheme.

A related aspect of this conclusion is that the lobbying scheme is found only in two continuing resolutions of the Assembly, and therefore currently falls exclusively under the decision-making powers of the Assembly. Whether or not the current review by the IC leads to a relocation and/or enactment of the scheme, the Assembly has options available to relieve the Clerk of the registrar role by assigning it to a parliamentary commissioner or officer, just as it has done with other positions established by resolution, such as the Ethics and Integrity Adviser and the Standards Commissioner.

Recommendation 13 (To the Legislative Assembly and Executive Government)

- a. If the lobbying scheme is to be removed from the Standing Orders and resolutions of the Assembly into an enactment or place out of the Assembly, the Government and the Assembly should ensure that the role of registrar is no longer assigned to the Clerk or any other position in the Office of the Legislative Assembly.
- b. If the lobbying scheme is to remain in the Standing Orders and resolutions of the Legislative Assembly, the Assembly should amend the scheme by assigning the role of registrar to an independent officer of the Assembly.

⁸³ Legislative Assembly website: [ACT Register of Lobbyists - Consolidated List - ACT Legislative Assembly](#)

⁸⁴ The Victorian scheme is administered by the Public Sector Commission, [Search the register | lobbyists.vic.gov.au](#), 26 May 2026. Of the 262 registrants, 156 were lobbyists, 106 were government affairs officers.

C. Transparency of Members and Ministers

This review has the benefit of very recent examination of aspects of transparency by the Assembly's Standing Committee on the Integrity Commission and Statutory Office Holders.⁸⁵

The Assembly resolved (April 2025) that the Committee examine transparency of Members with particular focus on publication of travel, diaries and staffing expenditure. The Committee then resolved (June 2025) to broaden the terms of reference to examine effectiveness of transparency measures for Executive and non-Executive members of the Assembly.

The Committee's interim report recommended the feasibility of increased public reporting of travel by non-Executive Members be examined by the OLA, noting that travel is already published biannually.⁸⁶ The Committee's final report tabled in May 2026⁸⁷ noted the Speaker's response that the OLA has now implemented quarterly reporting of this data. The reviewers endorse this recommendation and subsequent implementation in line with the Latimer Principles.

The Committee examined whether transparency arrangements should include the publication of non-Executive Members' diaries, as is done by Ministers. The Committee found 'that no case has been made for the publication of non-Executive Members' diaries',⁸⁸ but also recommended:

that the ACT Integrity Commission, as part of its inquiry into lobbying, examine the feasibility of requiring registered lobbyists to report on their meetings with both executive and non-executive Members.⁸⁹

The Committee's final report notes the response of the Integrity Commission that it will examine this issue in its inquiry. The Commission's discussion paper released in March 2026, included focus questions:

9. Should the Scheme require public officials to maintain disclosure logs of contact with lobbyists?

And

12. Should non-executive MLAs also be required to publish their diaries in accordance with existing ACT Government Open Access Information arrangements applying to executive MLAs?⁹⁰

The Chief Minister submitted to this review that 'there is further scope to strengthen public confidence by requiring all Members to declare relevant lobbying activity and stakeholder

⁸⁵ Standing Committee on the Integrity Commission and Statutory Office Holders, Inquiry into the effectiveness of transparency arrangements for Members of the Legislative Assembly – Interim Report, Report 2, 11th Assembly, September 2025.

⁸⁶ Recommendation 4, 17.

⁸⁷ Standing Committee on the Integrity Commission and Statutory Office Holders, Inquiry into the effectiveness of transparency arrangements for Members of the Legislative Assembly – Final Report, Report 7, 11th Assembly, May 2026, 11.

⁸⁸ Interim Report, Finding 1, 15.

⁸⁹ Recommendation 2, 14.

⁹⁰ ACT Integrity Commission, *Inquiry into arrangements for lobbying and influence in government in the ACT*, Discussion Paper, March 2026, 19.

influence associated with legislative decision making’ and that consideration of Members’ diary disclosure is consistent with the Latimer Principles.

Non-Executive Members’ diary disclosure

The Standing Committee reported on evidence from the Clerk of the risk of a ‘chilling effect’ on Members performing their function of scrutinising legislation and the government if their diaries were published. The different roles and responsibility of ministers and non-Executive Members was referenced to demonstrate why it is appropriate to publish the diaries of ministers only and for the Committee to find no case for publication of non-Executive Members’ diaries. The reviewers agree with the Clerk’s reasoning.

Declaration of meetings with lobbyists

The reviewers note the Chief Minister’s submission that transparency and public confidence would be strengthened by all Members declaring relevant lobbying activity and stakeholder influence on legislative decision making. The attempt to categorise ‘stakeholder influence’ is imprecise and could include any constituent who expresses a view about legislation to their representative. The fact that ‘lobbyists’ are defined in so many jurisdictions, including the ACT, is because there is a clear difference between a lobbyist and a government affairs officer and ordinary constituents and stakeholder organisations.

Contingent on the final recommendations of the Integrity Commission in relation to lobbying later this year, the reviewers think that there is merit in the Chief Minister’s view that all Members be required to report lobbying activity, which we suggest should be limited to meetings held with third party and in-house lobbyists. The Standing Committee’s recommendation would place the onus on the lobbyist to report the meeting, but given the public nature of the lobbyist register in the ACT, it is both feasible and consistent with the Latimer Principles that Executive and non-Executive Members be required to report meetings with known lobbyists.

The ACT Ministerial Code of Conduct provides:

Ministers must handle lobbying by business and other parties carefully and ensure their personal interests do not conflict with or override their public duties. Ministers should familiarise themselves with the ACT Lobbying Code of Conduct. Ministers should ensure that lobbyists that they deal with are properly registered and report any breaches to the Clerk of the Legislative Assembly.⁹¹

Any breach of the ministerial code is referred to the Chief Minister. Equal or similar obligations on ministers and non-Executive Members in relation to reporting meetings with lobbyists should not expose ministers to less transparent and potentially less consequential processes than other Members.

⁹¹ Ministerial Code of Conduct 2020, 5(h).

Recommendation 14 (To the Legislative Assembly)

Contingent on the Integrity Commission's inquiry into lobbying and the potential for recommendations for a new scheme, it is recommended that the Legislative Assembly consider:

Requiring all Members (ministers and non-ministers) to report on meetings held with third party and in-house lobbyists, separate from any requirement for ministerial diaries to be published;

and

Amending Legislative Assembly, Continuing Resolution 5AA to include in the mandate of the Assembly's Commissioner for Standards a complaint against any Executive or non-Executive Member in relation to their compliance with lobbying rules.

D. Caretaker provisions

At the time the Chief Minister made the Executive government's submission to this review, a select committee on caretaker conventions was concluding its inquiry, but it had not reported.

The select committee was established because of a controversy after the election in October 2024, in which it emerged that important health budget information provided to a minister during the caretaker period was not shared with other parties, Members and the public.

The select committee reported in February 2026 and made seven recommendations. The reviewers note that a dissenting report by a Member opposed recommendation 6, 'that factual information that is provided by the ACT Public Service to ministers during caretaker should be published at the same time, to ensure equal access to factual information during the caretaker period'.

Other recommendations made by the committee included improved clarification of the circumstances in which factual information should be communicated by the public service to ministers and non-Executive parties / MLAs.

The Chief Minister submitted to this review that

Consistent with the Latimer House Principles, the ACTPS is apolitical and serves the Executive, while the Assembly scrutinises the actions of the Executive. The potential for further direct access by non-Executive MLAs to ACTPS advice risks blurring these lines. Clarity about proper information channels, the scope of neutrality and conventions surrounding caretaker is essential to preserve responsible government.

The reviewers agree in principle with the Chief Minister's statement, but note that Assembly scrutiny of the Executive is not usually possible when the government is in caretaker mode. This period commences 36 days prior to the general election, and the Assembly is not usually sitting in this period⁹² and the period continues until the Chief Minister is sworn in at the first sitting day after the election, a longer delay than occurs in many other Australian jurisdictions⁹³. The

⁹² It is noted that it is possible for the Assembly to sit close to the day of the general election because unlike most other lower houses in Australia, the Assembly is not dissolved prior to its fixed election day.

⁹³ Select Committee on Caretaker Conventions, *Inquiry into Caretaker Conventions*, Report 1, 11th Assembly, Legislative Assembly for the Australian Capital Territory, February 2026, 5.

principle of ‘responsible government’ is normally provided by meetings of the parliament. As the Solicitor-General said in evidence to the Select Committee, ‘caretaker conventions focus on the exercise of restraint and judgement by the elements of government’.⁹⁴

It is therefore clear why caretaker conventions are important. Caretaker conventions set an expectation that Executive government will not make significant policy decisions, appointments and undertakings on behalf of the Territory during the caretaker period, which bind a future government and during which time there is much less opportunity for the Assembly and committees to scrutinise government and provide public transparency.

For this reason the reviewers think that caretaker conventions are relevant to the Latimer principle of ethical governance, which focuses on guidelines and codes of conduct, which may not be legislated, and sometimes rely on self-restraint and accountability based on the guidelines being transparent to all. The reviewers therefore endorse the first two recommendations made by the select committee and leave remaining recommendations as matters for the Assembly and Government to determine as they see fit.

Recommendation 15 (To the Executive Government)

That the ACT Government table a copy of 2028 Caretaker Guidance prior to the general election, consistent with recommendation 1 of the Select Committee on Caretaker Conventions (February 2026).

Recommendation 16 (To the Legislative Assembly)

That the newly elected (12th) Legislative Assembly’s appointment of a post-2028 election inquiry should include a review of the ACT Government’s Caretaker Guidance, consistent with recommendation 2 of the Select Committee on Caretaker Conventions (February 2026).

⁹⁴ Select Committee on Caretaker Conventions, *Inquiry into Caretaker Conventions*, Report 1, 11th Assembly, Legislative Assembly for the Australian Capital Territory, February 2026, 11.

3.5 Accountability mechanisms

Latimer Principle:

(i) Executive Accountability to Parliament

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

(ii) 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.

(iii) 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.

A. Overall observation

The ACT has well established mechanisms for ensuring the accountability of Executive government to Parliament. This is not surprising given the fact that minority governments are commonplace in the ACT. These mechanisms have been enhanced in recent years, since the last review, by the increased use by the Assembly of its power to order the production of documents from the Executive government, which is discussed below.

The submission from the Clerk of the Assembly draws attention to the regular review of the Standing Orders of the Assembly towards the end of each parliamentary term. Specific changes to the Assembly's Standing Orders flowing from the 2025 review which have enhanced Executive accountability to the Assembly include:

- Provision for the Speaker to determine if an answer to a question without notice or a supplementary question is not responsive to the question, and to direct the Minister to provide a written answer the next day (based upon Victorian Legislative Council rules and practice), and
- Variations to the procedures for order for the production of documents according to an order of the Assembly (based on NSW Legislative Council rules and practice).

The Clerk also points out that seven of eight standing committees and all four select committees to date in the 11th Assembly have non-Government chairs, and none have a Government-party majority. The Assembly's committees also have self-referencing powers. All these factors contribute to the Assembly's Committees being well placed to hold Executive government to account.

A number of stakeholders, including the Auditor-General (A-G) observed that follow-up of A-G reports by the Public Accounts Committee has been much improved, since the 2019 Report, which addressed the lack of follow-up activity and called for the PAC to have a clearer focus. In the 9th Assembly, the PAC followed up just 4 reports, whereas 24 A-G reports were followed up in the 10th Assembly. The Auditor-General meets regularly with the Committee.

In terms of judicial accountability, the ACT has the advantage of a clear and established mechanism for dealing with complaints about judicial officers through the Judicial Council, required by the *Australian Capital Territory (Self-Government) Act 1988* and given statutory form in the *Judicial Commissions Act 1994*.

B. Executive accountability to Parliament – Orders for the production of documents

Orders for the production of documents from the Executive government are a powerful mechanism by which a Parliament may gain access to information essential for Members to fully discharge their legislative and Executive oversight roles, within the system of responsible government.

There has been a significant increase in the use of the order for papers power by Members of the 11th Assembly. This significantly enhances Executive government accountability to Parliament, and accountability of Government more generally to the community. The ACT Greens submitted that 'a recent revival of Orders for the Production of Documents has, over successive orders, reduced the extent to which the Executive seeks to conceal matters that are not genuinely cabinet-in-confidence'. At the time of writing there have been twenty orders made since the start of the 11th Assembly. According to the submission from the Chief Minister on 25 February 2026, this had resulted in the production of 35,000 documents.

The submission from the Chief Minister recognises that, whilst the scope of orders for papers can result in tensions between the Assembly and Executive government, the power is "rooted in the principles supporting transparency and accountability of government."

Not unreasonably, the Chief Minister's submission draws attention to the practical implications of orders for the production of documents upon the effective functioning of the Executive government, if the scope of orders is unreasonable or deadlines unrealistic. It is important to note that the order for papers power is quite extraordinary and it is incumbent upon all Members to exercise this power with some self-restraint and awareness of the impact of an order. To some extent this has already been recognised by the Assembly through the adoption of amendments to Standing Orders 213A and 213B to provide a mechanism for the redaction of personal information in documents produced and for the timeframe or scope of orders to be varied upon request from the Government.

The submission from the Chief Minister also touches on the potential for tension between the Executive government and the Assembly over orders that require the production of documents that may have been considered by Cabinet. The Chief Minister's submission accurately

acknowledges that the nub of the potential tension is limited to ‘material that exposes Cabinet deliberations’ and notes the role of the Independent Legal Arbiter in assessing disputes as to questions of privilege.

The Independent Legal Arbiter, the Hon Keith Mason AC KC, in his submission drew attention to a series of his reports which have enunciated his understanding of ‘the relatively narrow scope of deliberations of Cabinet as a species of recognised privilege in response to parliamentary oversight.’ In the view of the reviewers, the Assembly has been extremely well served by Mr Mason in the preparation of these reports, which reflect his distinguished career and more than 10 years’ experience developing his deep understanding of these issues as Independent Legal Arbiter for the NSW Legislative Council.⁹⁵

In that light it is noteworthy that Mr Mason, in his submission draws attention to a small but important difference between the relevant Standing Orders governing orders for papers in the ACT Assembly and the NSW Legislative Council. In NSW, Members of the Council have access, on a strictly confidential basis, to inspect all documents produced, including those over which privilege is claimed by the Government, other than actual Cabinet documents. In contrast, Members of the ACT Assembly are not able to access documents over which privilege is claimed unless and until the claim of privilege has been disputed and the dispute resolved. This means that ACT Assembly Members disputing a claim of privilege do so without access to the contents of the relevant documents. In contrast NSW Legislative Council Members will sometimes be able to make more focused submissions on matters genuinely in dispute having read the contents of the documents and proposed redactions. This can minimise the scope of matters in dispute between the Legislative Council and Executive government. However, it does rely upon the integrity of Members respecting the strict confidentiality of privileged documents.

If the Assembly were to amend its rules so that Members could view documents subject to a claim of privilege by the Executive government, mechanisms could be put in place to ensure that Members can only view the documents in the custody of the Clerk while accompanied by the Clerk or their delegate and should sign a register of inspection. Any disclosure of the contents of the documents by a Member may constitute a contempt of the House.

Recommendation 17 (To the Legislative Assembly)

That Standing Order 213A (j) be amended in the following or similar terms (new words in bold):

If a claim of privilege is made by the Chief Minister in relation to a document, any Member may, within 5 business days of the tabling or circulation of the indexed listing to Members, **inspect the documents in the custody of the Clerk and dispute the claim by writing to the Clerk. The Member who has inspected the documents must not disclose the contents of the documents to any person. Any such disclosure may constitute a contempt of the House.**

⁹⁵ For example, Mr Mason’s interim reports, dated 13 August 2025, dealing with disputed claims of privilege regarding documents produced on “ACT Government Projects – Business Cases” and “Road Infrastructure Projects – Business Cases” provide clarity on questions about whether the production and publication of certain documents would reveal the deliberations or decisions of Cabinet, and if followed should assist the Legislative Assembly and the Executive government to avoid unnecessary disputes on this question.

C. Judicial accountability

The ACT has a strong framework for judicial accountability. The *Judicial Commissions Act 1994* establishes a standing Judicial Council and ad hoc judicial commissions, which provide a system for receiving and examining complaints about judicial officers as well as a system for their removal from office in certain circumstances (in accordance with a vote of the Assembly following a report from a Judicial Commission).

The framework for the removal of a judge, established by the Judicial Commissions Act, provides a balance of roles for the Legislative Assembly, the Executive government, through the Attorney-General, and an independent judicial commission with strict eligibility criteria.

This clear process contrasts positively with the absence of such a mechanism at the Commonwealth (Australian national) level.

Judicial accountability is also achieved by providing rights of appeal. The Supreme Court Act provides for a Court of Appeal (s 37E) and expressly prohibits a judge sitting on an appeal from an order made by the judge (s 37H).

D. Judicial review

No submissions have been received in this review concerning judicial review.

The reviewers note for the record, but make no comment on the extensive attention given, during the period since the last review, to a range of matters arising from the trial in *R v Lehrmann* in the ACT Supreme Court. In addition to the trial itself and the extensive media coverage surrounding it, these included:

- A Board of Inquiry into the Criminal Justice System (appointed by the ACT Government, conducted by Mr Walter Sofranoff KC), 2022-2023
- Judicial review in the ACT Supreme Court of the findings in the Final Report of the Board of Inquiry (*Drumgold v Board of Inquiry & Ors (No 3)*), 2024
- Investigation by the ACT Integrity Commission into alleged corrupt conduct by Mr Sofranoff in respect of the Board of Inquiry, 2024-2025
- Judicial review in the Australian Federal Court of the findings in the ACT Integrity Commission Report, (*Sofranoff v ACT Integrity Commission (2025) FCA 1565*)

The reviewers note that a number of avenues for judicial review were taken up by key players in these matters (only some of which were successful). The reviewers also note the value to the ACT of having an Integrity Commission in place able to investigate alleged corrupt conduct. The reviewers make no other comment on these matters.

3.6 The law-making process

Latimer Principle:

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

- (i) there should be adequate parliamentary examination of proposed legislation;
- (ii) where appropriate, opportunity should be given for public input into the legislative process; and
- (iii) parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

A. Overall observation

The primary sources of written law in the ACT are laws made by the Legislative Assembly and subordinate laws made by the ACT Executive government, notwithstanding some Commonwealth laws apply to the governance of the Territory.

The Legislative Assembly has made very positive reforms to rules and practices that demonstrate implementation of the Latimer Principle on law-making.

In the Tenth Assembly all bills were referred to committees. Initially, committees were subject to a time limit of two months for inquiry and report, but this has since been extended to three months. Committees have the option of waiting for the scrutiny report before making a decision as to whether to inquire into the bill.

In the Eleventh Assembly, to 31 January 2026, committees had commenced inquiries into 23 percent of bills referred to them (12 out of 53). The Clerk submitted to this review:

Our observation is that committees have been discerning about what bills they inquire into and that the inquiries lead to meaningful improvements to legislation, as well as taking into account the workload of the committee.

The practice of committees to invite public input into inquiries includes a large list of community groups and organizations.

All Members are provided with reasonable opportunities to present bills in the Assembly. The Assembly's Standing Orders refer to 'Members' rights and duties in relation to the progress of bills, rather than emphasizing 'ministers' as is the case in the Standing Orders of other Houses. The precedence of business in the Assembly supplements the opportunities for Members. The capacity for Members to introduce bills and substantial amendments to bills is also reliant on the availability of expert drafting resources, usually provided by Parliamentary Counsel.

B. Bill and amendment drafting support for non-Executive Members

The reviewers note the concerns of the ACT Greens that 'While the parliamentary counsel is highly trusted as being fair and impartial, it has limited capacity to support members and its resources are managed by the Executive rather than by the Assembly'. Members have a right to introduce bills. The right is not limited to ministers and the Assembly's Standing Orders reflect

this. There is therefore a right for Members to access expert bill drafting services. The drafting of bills is a highly specialized skill even within the legal profession. Unless the Assembly and the Government are prepared to fund in-house counsel in the Office of the Legislative Assembly, the resources of Parliamentary Counsel should be reviewed, particularly noting the increase in Assembly membership from 17 to 25 and the possible further increase in membership.

Recommendation 18 (To the Executive Government)

That within 12 months of this report, the resources for the Parliamentary Counsel be reviewed to take account of Executive and non-Executive drafting demand and that the Government table its review and funding intentions in the Legislative Assembly.

C. Subordinate legislation

The Self-Government Act empowers the ACT Legislative Assembly to make laws for the government of the Territory and to make laws with respect to the exercise of powers by the Executive⁹⁶. The Act further requires the Executive to execute and maintain enactments and subordinate laws⁹⁷.

The *Legislation Act 2001* empowers the Executive government to make subordinate laws in the form of statutory and legislative ‘instruments’.⁹⁸ As is appropriate and consistent with the practice in well-functioning parliamentary systems of government, subordinate laws about a subject may only be made if a principal Act expressly permits it. Such instruments may then empower other, related instruments, to be made. The Act properly provides that a ‘statutory instrument is to be interpreted as operating to the full extent of, but not to exceed, the power given by the Act or statutory instrument under which it is made’.⁹⁹

Good practice includes the power of the parliament to disallow an instrument after it has been made by the Executive government, to protect the role of the parliament as the primary law maker. Chapter 7 of the *Legislation Act* requires that subordinate laws or statutory instruments are presented to the Assembly and sets out the processes that may be used by the Assembly to disallow the law and prohibits the re-making of a disallowed instrument until 6 months after the disallowance.

The Assembly appoints a Standing Committee on Legal Affairs (Legislative Scrutiny Role) which reviews primary and subordinate legislation against criteria focused on protecting rights of people and the legislative rights and primacy of the Assembly.

While no submissions to this review raised concerns about the operation of subordinate law, the good practice found in the *Legislation Act* and the Committee’s functions would be improved further by statutory provision of automatic repeal of instruments after a prescribed number of years. Equivalent statutes in Victoria and NSW provide that instruments are automatically repealed after 10 years and 5 years respectively¹⁰⁰, a measure notably absent from the ACT *Legislation Act*. The Chief Minister submitted that the instruments setting out the

⁹⁶ *Self-Government Act 1988*, s 22.

⁹⁷ S 37(b).

⁹⁸ See Chapter 6, Part 6.2 of the Act.

⁹⁹ *Legislation Act 2001*, s 43(1).

¹⁰⁰ Victoria – *Subordinate Legislation Act 1994*, s 5; NSW – *Subordinate Legislation Act 1989*, s 10.

criteria for the appointment of Judges and Magistrates have not been updated for over a decade. Automatic repeal provides an imposed discipline to review the appropriateness of content of instruments.

Recommendation 19 (To the Legislative Assembly)

That the Assembly consider a resolution that directs the Standing Committee on Legal Affairs or another committee to inquire into and report to the House on whether the *Legislation Act 2001* should be amended to include provisions for the automatic repeal of statutory instruments, and any related provisions.

3.7 Oversight of Government

Latimer Principle:

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:

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

A. Overall observation

The ACT has a sophisticated framework of oversight bodies comprised of both officers of the Parliament and independent statutory offices.

There is good protection for the independence of many officers of parliament and independent statutory officers and a recognition that the public interest of accountability to the Parliament outweighs competing interests. This is evident in the *Public Sector Management Act 1994* which applies public sector standards to statutory office holders and their staff, as they are applied to public servants, but qualifies the application, providing the following *Example* in the Act:

A public sector member has a function under an Act that requires the member to report to the Legislative Assembly on the Territory's compliance with certain territory laws and to

advocate for compliance with the laws. The member tables a report in the Assembly that identifies non-compliance by the Territory. The member does not fail to comply with s 9 (2) (a) which is about damage to the reputation of the public sector or the Executive by tabling the report or publicly commenting on the report.¹⁰¹

The following table provides a comparison of some statutory officers, all of whom provide a scrutiny role or have a key role in the integrity of ACT governance. The extent to which each officer has their independence entrenched is described. Judicial officers are excluded.

Officer / body and principal Act	Defined as an 'officer of the Assembly' for inclusion in the LA Budget Protocols	1. Statutory Independent Officer of the Legislative Assembly; & 2. Statutory statement of independence
Auditor-General <i>Auditor-General Act 1996</i>	Yes – A-G is an 'officer of the Parliament'	1. Yes – s 6A of the Act 2. Yes – s 7
Electoral Commission Members, including the Commissioner <i>Electoral Act 1992</i>	Yes – 'members of the Electoral Commission' are 'officers'	1. Yes – s 6A of the Act 2. Yes – s 6B
Human Rights Commission Members* <i>Human Rights Commission Act 2005</i>	No	1. No 2. Yes – s 16 of the Act, subject to limited powers of direction by the Minister in s 17
Inspector of Custodial Services <i>Custodial Inspector Act 2017</i>	No	1. No 2. No, but Object of the Act is to be achieved by 'independent and transparent reporting' (s 6)
Integrity Commissioner <i>Integrity Commission Act 2018</i>	Yes – Integrity Commissioner is an 'officer'	1. Yes – s 21 of the Act 2. Yes – s 22
Inspector of the Integrity Commission <i>Integrity Commission Act 2018</i>	Yes – Inspector of the Integrity Commission is an 'officer'	1. Yes – s 225 of the Act 2. Yes – s 226
Ombudsman <i>Ombudsman Act 1989</i>	Yes – Ombudsman is an 'officer'	1. Yes – s 4A of the Act 2. Yes – s 4B
* (a) the president; (b) the children and young people commissioner; (c) the disability and community services commissioner; (d) the discrimination commissioner; (e) the health services commissioner; (f) the human rights commissioner; (g) the public advocate; (h) the victims of crime commissioner.		

B. Officers of the Assembly

The Standing Committee on Administration and Procedure conducted a review of officers of the Assembly in 2012.¹⁰² The Committee's report provides an extensive analysis of the reasons that

¹⁰¹ *Public Sector Management Act 1994*, s 151(1).

¹⁰² Standing Committee on Procedure and Administration, *Officers of the Parliament*, Report 4, 7th Parliament, March 2012,

https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/371913/Officers_of_the_Parliament.pdf

an office should be designated as an office of the Legislative Assembly and what governance and administrative legislation should look like for any officer so designated.

The Committee's report included a recommendation that the Assembly review the establishment of new offices of Parliament from time to time¹⁰³. Both the Auditor-General and the position of Ombudsman were recommended to be officers of the Parliament. Since then, the Integrity Commissioner and Electoral Commission members have been designated Officers of the Parliament, demonstrating the fact that the list of offices would evolve over time. However, the criteria established by the Committee in 2012 has not been fundamentally reviewed despite the landscape of statutory offices with scrutiny of government administration functions, including human rights, having changed considerably.

Notwithstanding the high quality of its report in 2012, there is merit in the Standing Committee on Administration and Procedure doing an updated review and report. Some of the following recommendations and analysis provide examples of certain statutory officers who should be part of the review.

Recommendation 20 (to the Legislative Assembly)

That the Standing Committee on Administration and Procedure conduct a review of the criteria for determining whether an office is an Officer of the Assembly and whether certain statutory officers should be included in the Assembly's Budget Protocols.

C. Human Rights Commission

Established under the *Human Rights Commission Act 2005* (the HRC Act), the ACT Human Rights Commission (HRC) includes: the Human Rights Commissioner (and President of the Commission); Discrimination, Health Services, Disability and Community Services Commissioner; Information Privacy Commissioner; the Public Advocate and Children and Young People Commissioner; and the Victims of Crime Commissioner. The Commission performs a wide range of statutory functions connected with the promotion of human rights and the welfare of the people of the ACT. These include review, advice and policy functions in relation to government policy and legislative instruments, intervening in Supreme Court cases involving human rights, and the provision of training and education in human rights. Importantly, section 16 of the HRC Act provides that the commission "is not subject to the direction of anyone else in relation to the exercise of a function under this Act or a related Act..."

The Commission raised two related issues with the reviewers, through its submission and during a consultation with the reviewers.

Firstly, the Commission calls for a greater level of financial and administrative independence from the Executive government. In the ACT context, the HRC is required to seek and receive funding, and some administrative services, through the Justice and Community Services (JACS) Directorate within the ACT public service. The Commission is regarded as a "business unit" and its budget bids are considered and addressed alongside competing demands from other "business units" which are implementing ACT government policy. The priority given to

¹⁰³ See recommendation 5, 44.

competing budget bids is decided by the Directorate and the HRC has no role in directly advocating its budget bids to the Expenditure Review Committee of Cabinet.

The HRC submission points out that these issues are not new, and points to the recommendations of the Hawke Review of the ACT public service in 2011 as an example of calls for the HRC and other statutory bodies to be funded “in their own right.” These are issues of concern to Human Rights Commissions both in Australia and internationally.¹⁰⁴ The submission also draws attention to the “Principles Relating to the Status of National Human Rights Institutions (the Paris Principles)” supported by the United Nations General Assembly calling for “financial and administrative independence” for human rights commissions, as well as the relevant CPA Benchmarks for Democratic Legislatures.

There are a number of possible models that could be developed to address this important issue raised by the Commission. One option would be the establishment of an independent review mechanism that could examine and report on the adequacy of funding received by the Commission and other integrity bodies.¹⁰⁵ Alternatively, an Independent Funding Tribunal could be established, to make determinations of funding for independent integrity bodies, including the Commission.¹⁰⁶

There may be a simpler, more cost-effective solution in the ACT. As discussed in section 3.1 above in relation to the financial independence of the Legislative Assembly, in the ACT funding for both the Office of the Legislative Assembly and Officers of the Legislative Assembly is set via a reasonably transparent and independent process. For the Officers of the Legislative Assembly (currently the Auditor-General, Electoral Commission, Integrity Commission, Inspector of the Integrity Commission, and Ombudsman), the Speaker of the Assembly consults with the Standing Committee on the Integrity Commission and Statutory Office holders in relation to the appropriation to be recommended to the government for inclusion in the Appropriations Bill. According to the Legislative Assembly Budget Protocols Agreement, the government has committed to give good-faith consideration to the recommended appropriation for each Officer. If the amount included in the Appropriations bill is different to that recommended, the Treasurer must give a statement of reasons.

It may not be appropriate for the Human Rights Commission to be classified as an Officer of the Legislative Assembly for all purposes. Unlike the established Officers of the Assembly, the Human Rights Commission does not report directly to the Speaker of the Assembly. Further, the Commission has described as critically important the work that it undertakes in advising within government on proposed legislative instruments before they are made. The Commission would be loath to give up this opportunity for constructive engagement within government.

Nevertheless, whilst it may not be appropriate for the Human Rights Commission to be classified as an Officer of the Legislative Assembly for all purposes, it may be possible for it to be so designated “for the purposes of the recommendation of its annual appropriation” only. Given the existence of this budget setting mechanism and the familiarity of government, the Assembly and independent statutory bodies with its operation, the application of this

¹⁰⁴ For a discussion of these issues see G Appleby, “Horizontal accountability: the rights-protective promise and fragility of executive integrity functions,” *Australian Journal of Human Rights*, 2017, 23:2, 168-187.

¹⁰⁵ *Ibid*, 183.

¹⁰⁶ Centre for Public Integrity, *Protecting the integrity of accountability institutions*, 13 May 2021.

mechanism to the Human Rights Commission, rather than the creation of an entirely new mechanism, should be considered.

Recommendation 21 (To the Legislative Assembly)

The Human Rights Commission should be included, along with other statutory officers in a review by the Standing Committee on Administration and Procedure, found in recommendation 20 above.

Secondly, the Commission points to the statutory responsibilities that it has been given in relation to human rights education. However, the Commission has only three full-time equivalent staff, and no funded education or communications staff. This significantly constrains the ability of the Commission to deliver on its legislative education mandate.

Whilst a more independent system for the funding of the Commission should hopefully result in additional funding to enable it to more fully discharge its educational responsibilities, there is a further issue of principle here. Namely, that where the Assembly enacts legislation which provides a statutory body with specific statutory functions, it should be accepted and expected that the statutory body be provided with sufficient funding to undertake those functions.

Recommendation 22 (To the Executive Government and the Legislative Assembly)

That the Human Rights Commission's statutory human rights education functions be specifically considered in the recommendation of its next and ongoing budget appropriations.

Recommendation 23 (To the Executive Government)

That it be accepted as an overriding principle that where the Legislative Assembly enacts legislation prescribing statutory functions and duties to statutory bodies, those bodies should be adequately funded so as to be able to discharge those functions.

D. Inspector of Custodial Services

The Legislative Assembly Standing Committee on Justice and Community Safety (JACS) has expressed concern about the current arrangements in relation to whether the office of the Inspector of Custodial Services (OISC) is able to be adequately funded to perform its legislative oversight function. The Committee recommended that to ensure adequate funding and resourcing on an ongoing basis, the Inspector should be made an Officer of the Legislative Assembly through legislation.¹⁰⁷

The OISC is reliant on the the Justice and Community Safety Directorate (JACS) within government for budget and administrative support. The OISC oversees ACT Corrective Services, a business unit of JACS, thus creating a risk or perception of a conflict of interest for the government and inconsistency with Latimer Principles.

¹⁰⁷ Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Inquiry into Annual and Financial Reports 2021-22, Report 15, 10th Assembly, March 2023, Recommendation 1, pages 7-8.

The statutory role and administrative features of the OISC are arguably at odds with one another. For example, the *Custodial Inspector Act 2017* provides that continuous improvement of custodial centres and services is to be achieved by independent and transparent reporting¹⁰⁸ and such reports are submitted directly to the Speaker who causes them to be tabled.¹⁰⁹ The Minister and Director-General have a statutory right to be given a copy of the draft report and to provide comment to the Inspector prior to its transmission to the Speaker.¹¹⁰ It is therefore surprising that the Executive government may appoint and end the appointment of the Inspector with no consultation or right of veto for the Legislative Assembly.

The Inspector submitted to this review their concern about lack of operational independence from the government and suggested that the office of Inspector should be an Officer of the Assembly to better align with Latimer Principles. Further, the Inspector raised two specific matters of concern, the first being that

In 2021 my office was designated as part of the multi-body ACT National Preventive Mechanism (NPM) to contribute to fulfillment of the ACT Government's obligations arising from the Commonwealth Government's ratification of the Optional Protocol to the Convention Against Torture (OPCAT), and no ongoing funding has been provided by Government to my office for additional monitoring functions as an NPM;

and the second being the government's current designation of the Inspector as part-time.

The Inspector submitted to this review that the NSW Custodial Inspector is formally appointed by the NSW Governor, but a Joint Committee of the NSW Parliament can veto that appointment, and it also has a close role in oversight of the Inspector's functions. The Queensland Inspector of Detention Services (also the Queensland Ombudsman), is an Officer of the Queensland Parliament. In that jurisdiction, the appointment must be approved by a parliamentary committee.

Similar to this report's analysis of the Human Rights Commission (HRC), there is a consistent case for the Inspector to be designated an Officer of the Legislative Assembly for inclusion in the Legislative Assembly Budget Protocols Agreement. However, unlike the HRC, the Inspector does make some reports direct to the Legislative Assembly and there is a case that the independent office status of the Inspector should include a role for the Assembly in the appointment of the Inspector and a role for a standing committee to oversight the Inspector's functions.

Recommendation 24 (To the Legislative Assembly)

The Inspector of Custodial Services should be included in the review by the Standing Committee on Administration and Procedure

Recommendation 25 (To the Executive Government)

That section 9, *Appointment of Inspector*, of the *Custodial Inspector Act 2017* be amended to require that the Executive must not appoint a person as Inspector unless,

¹⁰⁸ s 6.

¹⁰⁹ s 30.

¹¹⁰ s 29.

- the Executive has reported the selection process, recommended appointee and terms of appointment to the relevant standing committee of the Legislative Assembly; and
- the Committee has not, within 30 days of confirming receipt of the report, vetoed the recommended appointment.

E. Budget protocols for Officers of the Legislative Assembly – retained funds

The Budget protocols agreement between the Legislative Assembly and the Executive provide a level of independence in the process of recommending the annual appropriations for the Office of the Legislative Assembly (OLA), headed by the Clerk, and the various officers of the Legislative Assembly.

The agreement expressly permits the OLA to retain all unspent appropriation at the end of the financial year. On the other hand, the Auditor-General, Electoral Commissioner and Integrity Commissioner¹¹¹ are permitted to retain only ten per cent of unspent funds. There is no obvious reason for this restriction. As a matter of principle and operational effectiveness, the independence of officers of the Assembly and their ability to manage funds and plan for longer term work schedules is improved if they can make decisions to spend less funds in a financial year and retain funds.

Recommendation 26 (To the Legislative Assembly and the Executive Government)

That the Legislative Assembly Budget Protocols Agreement be amended to provide that any funds appropriated as Controlled Recurrent Payments that are not expended by the Auditor-General, the Electoral Commissioner or the Integrity Commissioner during the financial year, subject to requirements of the Financial Management Act being met, will be retained by the respective officer.

F. Mandatory statute reviews for scrutiny bodies

The principle promotes more than a static establishment of oversight bodies, but also a requirement to ‘enhance appropriate oversight bodies’.

A recent review of the independence of Auditors General by the Australasian Council of Auditors General identified the need for better practice of mandatory statutory reviews of the legislation providing the functions and powers of Auditors General.¹¹² Oversight bodies rely on powers to access and report information. The challenges they face in doing so may evolve and require a statutory response. One example is access to cabinet information. Similarly, the jurisdiction or mandate of the body may require amendment. Examples include the increasing need for ‘follow

¹¹¹ The Ombudsman is covered in a separate section of the Protocols because the Commonwealth Ombudsman, who provides the ACT Ombudsman service, is funded for certain services instead of the cost of the whole organisation.

¹¹² Australasian Council of Auditors General, *Independence of Auditors General Report 2025*, November 2025, see extract of review provision in the *Auditor General Act 2006 (WA)*, page 82 of report, [Independence of the Australasian Auditors General Report 2025](#)

the dollar' powers for some investigative officer and powers to access information for various scrutiny bodies.

The review has examined the legislation for the following oversight and independent statutory bodies as a sample.

Officer / body and principal Act	Mandatory statutory review and notes
Auditor-General <i>Auditor-General Act 1996</i>	Part 5 of the Act requires a strategic review of the auditor-general once every parliamentary term. The strategic review includes a review of the 'functions' of the auditor-general, in effect the legislative mandate. The review is overseen by the Public Accounts Committee and the Speaker.
Integrity Commission and Inspector of Commission <i>Integrity Commission Act 2018</i>	s 303 requires a review of the Act every 5 years. The minister must consult the Speaker in relation to the review and its tabling.
Inspector of Custodial Services <i>Custodial Services Act 2017</i>	No statutory review clause.
Ombudsman <i>Ombudsman Act 1989</i> <i>Freedom of Information Act 2016</i>	No statutory review clause. s 110 of a previous version of the Act, which required a statutory review after the first 5 years of operation, was then repealed.
Human Rights Commission <i>Human Rights Commission Act 2005</i>	No statutory review clause.

Recommendation 27 (To the Executive Government)

That the Executive government consider an audit of statutory review provisions in Acts establishing statutory officers, their functions and powers, to determine if a periodic review of each Act should be inserted where no such provision already exists. The Executive should have regard to examples in the *Auditor-General Act 1996* and the *Integrity Commission Act 2018*.

G. Freedom of Information (FOI)

The Chief Minister submitted that under the *Freedom of Information Act 2016* (FOI Act) open access regime, the Chief Minister and other Ministers have obligations to provide visibility of government engagement and decision making, including Cabinet decision summaries, ministerial diaries and travel and hospitality expenses.

The objects of the FOI Act (s 6) include '(b) recognise the importance of public access to government information for the proper working of representative democracy;' and '(f) facilitate

and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information’.

While there is evidence that the intent of the FOI regime in the ACT is pro-disclosure, timeliness of decision making is complicated by various factors.

The Ombudsman submitted to this review that

My Office experiences challenges in meeting the timeframes set by the FOI Act for our review of FOI decisions by ACT government directorates. Noting that the FOI Act allows directorates to ask applicants for extensions of time of up to two years for their FOI decisions whereas my Office is required to make decisions within 30 working days, a recent review of the FOI Act recommended that the FOI Act be amended to provide a power for me to extend the time my Office has to deal with review applications, with appropriate notification provisions to the parties. This would provide transparency and clarity around matters where my Office requires more time to properly address a review application.

In 2025, a statutory review commissioned by the ACT government¹¹³ stated the following to be a key theme to emerge from the review:

Access requests are increasing in volume and complexity, impacting both FOI teams and line areas. Nuanced consideration of complex legislative tests by FOI specialists and non-specialists alike can lend itself to reverting to what is comfortable – in some instances this is not consistent with the pro disclosure objectives of the FOI Act.

In addition to finding that the public interest test specified in the Act was complicating and delaying original access decisions by FOI officers and that the test needed to be simplified, the review found that only 18 per cent of reviews by the Ombudsman met the statutory 30-day timeframe, with most taking over 12 weeks, due in part to the absence of a statutory extension mechanism. The review further noted:

While FOI officers generally report positive working relationships with the Ombudsman, many find the FOI guidelines outdated, hard to access, and lacking practical utility. Additionally, some FOI teams do not treat Ombudsman decisions as persuasive precedent in an administrative (not legally binding) sense, leading to inconsistent application of principles across agencies.¹¹⁴

The review included the following recommendations:

Recommendation 11: Implement regular reviews of FOI Guidelines.

Recommendation 12: Increase resourcing of both FOI processing teams and funds allocated to the ACT Ombudsman to enable more timely and accurate decision-making in the first instance and in full merits review.

Recommendation 13: Amend the FOI Act to include a mechanism for the ACT Ombudsman to extend the review period, with appropriate notification considerations for the applicant and other party to the review.

¹¹³ *The journey to pro-disclosure: Statutory Review of the Freedom of Information Act 2016*, Proximity, commissioned by Justice and Community Safety directorate (JACS) on behalf of the ACT Government, 27 August 2025, [The-journey-to-pro-disclosure-Statutory-Review-of-the-Freedom-of-Information-Act-2016-ACT.PDF](#)

¹¹⁴ Op cit, 6.

Recommendation 14: Establish methods for regularly communicating and training FOI processing officers and information officers on ACT Ombudsman decisions and the principles they create for consideration in future decisions.

The FOI Act was last amended by the *Statute Law Amendment Act 2025*, which applied technical amendments to various acts, but has not had significant amendment made to it since the statutory review was completed in 2025. The reviewers note that the statutory review, reported in August 2025, was comprehensive and any legislative response by the Government would require time to prepare, but should be part of the legislative agenda.

The reviewers have already noted in a previous section of this report, above, that the statutory review provision in the FOI Act has been repealed. Given the dynamic nature of issues that affect the culture of disclosure in government, interpretation of the public interest and issues of timeliness, the Government is encouraged to consider inserting a mandatory statutory review into the FOI Act.

Recommendation 28 (To the Executive Government)

That the ACT Government introduce a bill to amend the *Freedom of Information Act 2016* to implement the recommendations of the 2025 review of the Act.

3.8 Civil society – participation in the democratic process

Latimer Principle:

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.

A. Overall observation

The governance of the elected representative aspect of democracy in the ACT is structurally sound.

The ACT Electoral Commission is constituted by three members: a chairperson; the commissioner; and one other member. All members are statutorily provided with the status of independent officer of the Assembly and have 'complete discretion in the exercise of the member's functions'.¹¹⁵

The Commissioner has director-general employer powers under the *Public Sector Management Act 1994* and a degree of financial independence by virtue of the commission's budget being subject to the Assembly's budget protocols. The Commission itself recognised in its

¹¹⁵ *Electoral Act 1992*, ss 6, 6A, 6B.

submission that these governance features ‘represent a mature implementation’ of the Latimer Principles.

Beginning in April 2023, in response to an audit by the Commonwealth Parliamentary Association, the Assembly’s committees are collecting information on the gender of witnesses. The aim is to determine whether committee inquiries are meeting the needs, and allowing the participation of, a range of genders in the community. Participation is voluntary and there are no set responses.

B. Aboriginal and Torres Strait Islander Elected Body

In 2008 the ACT enacted the Aboriginal and Torres Strait Islander Elected Body Act. This Act establishes the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) to represent Aboriginal and Torres Strait Islander people living in Canberra. Each member of the ATSIEB is democratically voted in by Canberra’s Aboriginal and Torres Strait Islander community (approximately 6,500 of the ACT’s inhabitants).¹¹⁶

The ATSIEB is the longest running body of its kind in Australia, with a substantial mandate.

The ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 was signed on 26 February 2019 by the Chief Minister, the Chair of the ATSIEB, the Minister for Aboriginal and Torres Strait Islander Affairs, and the Head of Service.

In the first annual report on the Agreement, it was stated:

The Agreement sets out the commitment of the ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body to work together to recognise and respond to the needs of Aboriginal and Torres Strait Islander peoples living in the ACT and surrounding region. It identifies core and significant areas to achieve the quality life outcomes, and these areas provide a framework for this report.

Self-determination is the underlying principle of the Agreement, which is an ongoing process of choice to ensure the Aboriginal and Torres Strait Islander community can meet their social, cultural and economic needs.¹¹⁷

The Elected Body reports to the ACT Government and to the public through ‘Hearing reports’ and ‘community consultation reports’. In 2025, for example, three days of hearings were held by the ATSIEB with ACT government officials (held at the ACT Assembly and supported by the Office of the Legislative Assembly) to examine performance against the 2019-2028 Agreement targets. On the basis of the information obtained through these hearings the ATSIEB then published a comprehensive report and scorecard¹¹⁸ to which the ACT Government responded (also in considerable detail) in May 2026.¹¹⁹

¹¹⁶ Aboriginal and Torres Strait Islander Agreement, 2019-2028, 2019 Annual Report, 29.

¹¹⁷ Aboriginal and Torres Strait Islander Agreement 2019-2028, 2019 Annual Report, 2020, 5, [ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028-2019-Annual-Report.pdf](#)

¹¹⁸ Aboriginal and Torres Strait Islander Elected Body (ATSIEB), *Truth through transparency: a turning point report*, Report from hearings 12-14 August 2025, Thirteenth Report to the ACT Government

¹¹⁹ Minister for Aboriginal and Torres Strait Islander Affairs, Aboriginal and Torres Strait Islander Elected Body – Report from Hearings 12-14 August 2025, Thirteenth Report to the ACT Government, *Government Response*, 5-7 May 2026.

It would appear from these interactions, that ATSIEB's work is valued and taken seriously by the ACT Government, but this observation is qualified by the reviewers having not received a submission from the ATSIEB.

C. Operational independence of the Electoral Commission

Following recent elections in the ACT, a standing committee of the Assembly has reviewed the operation of the most recent election, including the number and location of polling places. While not canvassed in the standing committee's 2021 report on the operation of the 2020 election, the Electoral Commission's autonomy in relation to the operational task of deciding the number of polling places became an issue in 2020, during the influence of Covid-19.

The Commission submitted that In May 2020 it provided a Special Report to the Legislative Assembly proposing a temporary, risk-mitigated election delivery model. The government response¹²⁰ to the Electoral Commission's report on how it would organise early voting and election-day voting was supportive of the Commission's proposals in relation to early voting arrangements, but was not supportive of the Commission's intention to operate 15 voting centres on election day. The Government response stated:

The Government has received advice that the risks to electoral integrity and public health can be reduced further from expansion of the number of voting locations on election day. As such, the Government will engage with the Electoral Commission on their willingness to adjust the intended delivery model to expand the number of voting locations. The Government will also consider the merits of a potential government amendment to the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No.2) to amend the Electoral Act 1992 to require the Commissioner to appoint 80 voting locations on polling day, unless a lower number is declared by the Attorney-General. If required, this change would only apply to the 2020 election.¹²¹

The reviewers note that the Government's approach was influenced by the Covid-19 pandemic and proposed to be limited to that period. While the ACT Assembly has a history of minority government and healthy procedures to publicly scrutinize bills, there should be great caution exercised in relation to legislating operational matters for elections at the expense of the Commission's discretion.

Section 6A of the *Electoral Act 1992* provides that each member of the Commission is an Officer of the Legislative Assembly, while section 6B provides that 'subject to this Act and to other territory laws, a member of the electoral commission has complete discretion in the exercise of the member's functions'. In other words, the Commission's discretion can be limited by a law passed by the Assembly, but the Electoral Act is rightly based on the Assembly setting general parameters for elections, including timing, and leaving operational decisions to the Commission.

For example, Section 19 of the Act provides:

- (1) The commissioner may—
 - (a) appoint a specified place to be a polling place on polling day for an election; and

¹²⁰ Government Response To Special Report of the Electoral Commission: Impact of the COVID-19 Pandemic on the 2020 ACT Legislative Assembly Election, Presented by Mr Gordon Ramsay MLA Attorney-General

¹²¹ Op cit., 4

(b) appoint a specified place to be a scrutiny centre during the election period for the purpose of the scrutiny at an election.

and section 20 provides that ‘The commissioner must make appropriate administrative arrangements for the conduct of each election.’

A proposal to legislate for a specific number of voting locations, which may be lowered by the Attorney-General would result in:

- a legal, but unhealthy diminution of the Commission’s operational discretion; and
- a discretionary power for the Executive of the day, over a matter of election administration.

The Commission submitted that this review should affirm:

1. That the operational independence of the ACT Electoral Commission is fundamental to Latimer House compliance, and must be preserved even during emergencies.
2. That concerns about electoral delivery models be addressed through structured consultation, rather than legislative direction or Executive override of core operational decisions.
3. That any emergency legislation affecting electoral operations include robust safeguards, such as mandatory consultation with the Commission, explicit protections for independence, and time-limited (sunset) provisions.

The Standing Committee on the Integrity Commission and Statutory Officer Holders is responsible for examining the ACT Electoral Commission, as well as many other statutory offices. The Committee conducts reviews of the operation of each general election, so it is well placed to follow up on the Electoral Commission’s submission to this review and seek a public response from the Executive about the principle of not intruding on operational independence and committing to structured consultation. The Committee would then be well placed to advise the Assembly about whether any legislative changes are required to further protect the Commission’s operational independence.

Recommendation 29 (To the Legislative Assembly)

That the Standing Committee on the Integrity Commission and Statutory Officer Holders examine the Electoral Commission’s recommendations relating to operational independence to this review, seek a response from the Executive and report to the Assembly.

D. Membership of the Legislative Assembly

The first Legislative Assembly of the ACT (1989) consisted of 17 Members and twenty-seven years later, legislative amendments increased the number to 25 Members (2016), which remains the case¹²². There is a statutory limit of nine ministers.

¹²² Australian Capital Territory (Legislative Assembly) Act 2014, s 3.

The Halligan review (2019) noted that

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.¹²³

Halligan went on to make recommendation 12 of the review:

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.

The Canberra Alliance for Participatory Democracy highlighted this recommendation as remaining important in their submission to the current review. The ACT Greens submitted that the number of Members should increase, noting that the ACT has the lowest level of political representation per-capita in Australia, in large part due to the Assembly and its Members having both local government and Territory government responsibilities.¹²⁴ The Greens submitted that the ACT's population is over 100,000 people stronger since the Government's expert review was conducted in 2013,¹²⁵ which recommended an increase to 35 Member for the 2020 or 2024 election.

A large volume of member work comes from what would be 'local government' matters in other jurisdictions. There is a welfare issue related to the workload of just 25 Members including those who must undertake ministerial and local representative duties.

This review makes no further comments to those made in previous reviews about the number of ministers required to provide effective Executive government. The Chief Minister's submission did not raise the size of the Cabinet as an issue. The Chief Minister submitted that the government had aligned 'portfolios and responsibilities to support stewardship and service delivery, and to guide Executive–Legislature interactions' in response to an ACTPS Taskforce review in 2025 and in response to the Halligan review (2019).

Of greater importance is the need to have enough non-Executive members from all parties that enables committee workloads and constituency demands to be spread more widely, thus increasing the capacity for scrutiny of government and representation. When Ms Cheyne, the Manager of Government Business and Attorney-General, moved the sitting schedule for 2026 in the Assembly in October of 2025, a number of non-Government party Members expressed concern at the decrease to 12 sitting weeks for the year, which Ms Cheyne conceded was 'unusual'. Ms Cheyne argued that

¹²³ Halligan, 32.

¹²⁴ Every other state and territory jurisdiction in Australia has local council representatives in addition to state/territory Members and Commonwealth Members.

¹²⁵ Expert Reference Group 2013, Review into the size of the ACT Legislative Assembly, ACT Government, 28 March 2013

the very high committee workload from legislation referrals and own-motion inquiries, and that having an extra week for committee flexibility, for hearings or meetings, is more desirable than a parliamentary sitting week.

I expect there will be some contributions about limiting democracy or limiting what occurs in this place, but the point I would stress is that committees are places where a lot of information can be exchanged, where there are no time limits to questions or how they are answered, and where genuine dialogue can occur. Respectfully, I am not entirely convinced by the arguments that have been put forward that we need to have more question time or more private members' motions.¹²⁶

The Manager of Government Business was effectively conceding that Member workloads required a choice to be made - *either committee work or sittings of the Assembly, but not both*. The reviewers respectfully point out that the *either, or* scenario is inconsistent with the Latimer House Principles, which require:

1. Healthy levels of participation by citizens, which is in part achieved by adequate and active representation by elected Members, a robust committee system that engages with community and a chamber that meets to receive public petitions and the like.
2. Proper scrutiny of the Executive by committee activities and chamber procedures, such as Question Time and motions.
3. Proper law-making by adequate levels of legislative scrutiny and public input into examination of bills, particularly by having enough capacity for committees to conduct bill inquiries in addition to their other inquiries.
4. Ultimately, a number of Members of the chamber sufficient to enable the above Principles to be met.

This review has noted the progressive, reformist approach taken by the ACT Assembly and governments over many years to parliamentary procedures, committee operations, statutory safeguards and standards of conduct that mean the ACT rates very favourably against the Latimer Principles. The problem in the ACT is not insufficient safeguards and procedures, which is the problem in many other jurisdictions. The problem is that an insufficient number of elected Members of the Assembly presents a risk that many of the Territory's achievements will be undermined.

The reviewers reiterate Halligan's concern in 2019 and the view of the expert review group in 2013 that the ministerial, scrutiny of government and representative workload requires an increase in the number of Members in the Assembly¹²⁷.

The reviewers are mindful of the current concern about the fiscal position of the Territory. The reviewers do not suggest that the establishment of local councils is the answer to the workload issues identified above. The far more cost-effective, parliamentary solution is to increase the number of Members of the Legislative Assembly to 35, as previously recommended. Given the body of work already produced by the government's own expert review in 2013 and previous

¹²⁶ Debates Of The Legislative Assembly for Australian Capital Territory, *Hansard*, 28 October 2025, P3343. [Hansard - 28 October 2025](#)

¹²⁷ See also Tom Duncan, *Parliament and the Numbers*, 46TH Presiding Officers and Clerks Conference, Hobart, Tasmania, July 2015 for an overview of Assembly membership, comparisons with other jurisdictions and the reasons to change the number of members. [Parliament and the numbers](#)

Latimer reviews, there is no need for a further review that will further delay an increase in membership. At this stage of the electoral cycle, it is likely that an increase would not come into effect until 2032.

Recommendation 30 (To the Executive and the Legislative Assembly)

That a bill be introduced to the Legislative Assembly to amend Section 3 of the *Australian Capital Territory (Legislative Assembly) Act 2014* to increase the number of Members to 35, to come into operation at the next General Election following the passage of the amendment.

E. Public participation in public policy making

The Legislative Assembly provides opportunities for public participation in public policy making and review of government action, particularly through the public engagement by parliamentary committees, which is core business activity for most committees conducting public inquiries.

Governments in Australia have less obvious engagement with the public that can be regarded as ‘business as usual’. The Canberra Alliance for Participatory Democracy (CAPaD) submitted that it promotes increased citizen and community participation in public decision making. The CAPaD noted the recommendation of the Halligan (2019) report that ‘the potential for a citizens’ council should be explored as a structure that complements and supplements the Legislative Assembly,’ and suggested that this be one of several options to be pursued during the 11th Assembly.

In May 2026, the ACT government announced that

The ACT Government is undertaking the next stage of work in voluntary assisted dying policy by considering what should happen if a person loses decision-making capacity after the final assessment stage of the voluntary assisted dying process.

To ensure this work reflects community values and evolving clinical practice, a citizens’ jury will be established to bring everyday Canberrans together, supported by close engagement with clinicians, legal experts, consumers, carers and advocacy groups.¹²⁸

The government’s media release went on to state that the citizen’s jury would make recommendations to government and that \$3.1 million would be provided over two years in support of the jury initiative.

While this approach is based on a citizen’s jury for a specific issue, rather than a standing citizen’s council, the reviewers note that this step is a positive response by the ACT government to previous Latimer reviews and the principle broader participation in the democratic process.

¹²⁸ ACT Government media release, 27 May 2026, [ACT Budget 26-27: Citizens' jury to support the next stage of voluntary assisted dying policy - Chief Minister, Treasury and Economic Development Directorate](#)

4. Where to from here

The ACT Legislative Assembly is to be commended in the strongest possible terms for its explicit commitment to the Latimer House Principles and to periodically subject itself, and the ACT Government, judiciary and other participants in the governance of the ACT, to scrutiny as to the extent to which the Principles are being implemented.

Likewise the ACT Government, the judiciary and other participants in governance of the ACT are also to be commended for their commitment to the Principles and for their engagement with this review. The reviewers wish to place on the record our gratitude for the thoughtful and insightful input received from all of those who made submissions to this review.

According to the Legislative Assembly's Continuing Resolution 8A, Latimer House Principles, as last amended in March 2021, the next review of the implementation of the Latimer House Principles in the ACT will commence in the second year of the 13th Assembly (ie 2033).

Given the seemingly ever-increasing rapidity of political, social and technological change, and experience since the last review in 2019 with the impact of unexpected events (eg the COVID-19 pandemic), it is difficult to predict the sorts of challenges that will be faced by the Assembly, government, judiciary and others in the ACT in the intervening years.

What is clear, though, is that continued commitment to the Latimer House Principles will assist to ensure that the three branches of Government in the ACT continue to be well placed to address those challenges in an accountable, transparent, effective and mutually respectful manner.

As outlined in the Introduction, since the ACT Legislative Assembly agreed to the Continuing Resolution on the Latimer House Principles in 2008, and committed to periodic reviews of their implementation in the ACT, the Principles have since been embodied in the Commonwealth Charter, and have received continued reaffirmation from Commonwealth Heads of Government. The Commonwealth Secretariat's Rule of law section has produced a *Latimer House Toolkit* as a practical guide to the separation of powers and a comprehensive collection of relevant international case law.

The Commonwealth Secretariat Rule of Law section has also now facilitated three "Latimer House Dialogues" in a variety of jurisdictions, including Lesotho, Barbados and Tonga. These Dialogues, which take place over anything from one to three days, bring together Government Ministers, Members of Parliament, Judges, senior public servants, independent office holders and civil society representatives, to engage in dialogue about the application of the Principles within the jurisdiction. The goal is to agree upon a set of practical recommendations suitable to the needs of the particular jurisdiction, to further embed and implement the Principles.

If the ACT Legislative Assembly wishes to remain at the cutting edge in relation to the Latimer House Principles, the Speaker, Clerk and Standing Committee on Procedure and Administration in the 13th Assembly could consider supplementing the Latimer House review process with a "Latimer House Dialogue." Perhaps the Speaker and Clerk could reach out to the Commonwealth Secretariat in this regard at the commencement of the 13th Assembly?

Recently there was a meeting in London of the Latimer House Principles Working Group. This group includes the Secretary-General of the Commonwealth Parliamentary Association (CPA), the Secretary-General of the Commonwealth Magistrates and Judges Association (CJA), and the

Secretary-General of the Commonwealth Lawyers Association (CLA) and the Commonwealth Secretariat. It is understood the group is planning to report to the Commonwealth Heads of Government Meeting (CHOGM) in November 2026.

Making this report available to the Latimer House Principles Working Group, and the Commonwealth Secretariat Rule of Law section may be of assistance to them in their ongoing work on the Principles and their implementation. The report might highlight some areas in which the Principles could usefully be reviewed and updated.

Recommendation 31 (To the Executive, the Legislative Assembly and the Judiciary)

That the Legislative Assembly, the ACT Government, the ACT judiciary, and other participants in the governance of the ACT, continue to reaffirm their commitment to the ongoing application of the Latimer House Principles and to periodic scrutiny of their implementation in the ACT, with the next review to commence in the second year of the 13th Assembly.

Recommendation 32 (To the Legislative Assembly)

That the Speaker, Clerk and Standing Committee on Procedure and Administration in the 13th Assembly consider supplementing the next Latimer House Review process mandated by Continuing Resolution 8A with a “Latimer House Dialogue,” and that the Speaker and Clerk reach out to the Commonwealth Secretariat at the commencement of the 13th Assembly to explore this option.

Recommendation 33 (To the Legislative Assembly)

That, upon the tabling of this report in the Legislative Assembly, the Speaker and Clerk make copies of this report available to the Latimer House Principles Working Group and the Commonwealth Secretariat, for their information and for consideration in any review and/or update of the Principles.

Appendices

Appendix 1 - Legislative Assembly Continuing resolution 8A – Latimer House Principles

8A

Endorsement of the Commonwealth (Latimer) House Principles on the Three Branches of Government

Resolution agreed by the Assembly

11 December 2008 (amended 23 February 2012 and 30 March 2021)

That:

(1) Preamble

Members of the Legislative Assembly endorse and adopt the Commonwealth (Latimer) House Principles on the Three Branches of Government as agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003.

Members do so in acknowledgment that the principles express the fundamental values they believe should govern the relationship between the three branches of government in the Australian Capital Territory.

The Principles

(2) 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.

(a) 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.

(b) Parliament and the Judiciary

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.

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

(c) Independence of Parliamentarians

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

(v) 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.

(d) Independence of the Judiciary

(a) 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:

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

(D) equality of opportunity for all who are eligible for judicial office;

(E) appointment on merit; and

(F) that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination.

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

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

(ix) 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.

(e) Public Office Holders

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

(xi) Subject to (i), 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.

(f) 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.

(g) Accountability Mechanisms

(xii) 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.

(xiii) 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.

(xiv) 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.

(h) The law-making process

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

(xv) there should be adequate parliamentary examination of proposed legislation;

(xvi) where appropriate, opportunity should be given for public input into the legislative process; and

(xvii) parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

(i) 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:

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

(j) 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.

- (2A) In the second year after a general election for each alternate Assembly, 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.
- (2B) For paragraph (2A), the Assembly in which the Speaker shall next appoint a suitably qualified person is the 11th Assembly.
- (3) 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.

Appendix 2 - List of submissions and interviews

Submissions

Chief Minister - Andrew Barr MLA on behalf of the ACT Government

Leader of the Greens - Shane Rattenbury MLA, Leader, on behalf of the ACT Greens Members

Clerk of the ACT Legislative Assembly - Tom Duncan, Clerk of the Legislative Assembly for the ACT

Electoral Commission - David W Kalisch Chairperson, Damien Cantwell AM CSC Electoral Commissioner, Ed Killesteyn PSM Member

ACT Human Rights Commission - Dr Penelope Mathew, President and Human Rights Commissioner and for: The Discrimination, Health Services, Disability and Community Services Commissioner & Information Privacy Commissioner; The Public Advocate and Children and Young People Commissioner; and The Victims of Crime Commissioner.

CAPaD - Peter Tait, Convener, Canberra Alliance for Participatory Democracy

Ombudsman - Iain Anderson ACT Ombudsman **(and Inspector of the ACT Integrity Commission; Principal Officer to the ACT Judicial Council; overseer of ACT Freedom of Information Act and the Reportable Conduct scheme; National Preventative Mechanism (NPM) Coordinator for ACT; review mechanism for the release of ACT Government Cabinet documents from 1 July 2026)**

Legal Aid - Dr John Boersig, Chief Executive Officer, Legal Aid Commission ACT

Custodial Inspector - Rebecca Minty, ACT Custodial Inspector. Office of Inspector of Custodial Services

Legal Arbiter - Hon. Keith Mason AC KC, Independent Legal Arbiter, Legislative Assembly

Ethics and Integrity Adviser - Stephen Skehill, Ethics and Integrity Adviser, Legislative Assembly

Integrity Commissioner - Hon. Michael F Adams KC, Commissioner, ACT Integrity Commission

ACT Courts (Supreme Court and Magistrates Court) – Hon Chief Justice Lucy McCallum and Hon Chief Magistrate Louise Taylor

ACT Administrative and Civil Tribunal – Mary-Therese Daniel, President

Interviews / meetings

Auditor-General - Mr Ajay Sharma, Auditor-General

Administration and Procedure Committee, ACT Legislative Assembly - Jeremy Hanson MLA (Speaker), Chair; Caitlin Tough MLA, Deputy Chair; Ed Cocks MLA; Laura Nuttall MLA

Human Rights Commission - Dr Penelope Keith, President and Human Rights Commissioner; Jodie Griffith-Cook, Public Advocate and Children and Young People Commissioner;

Juliette Ford, Victims of Crime Commissioner; Karen Toohey, Discrimination, Health Services, Disability and Community Services Commissioner and Information Privacy Commissioner

Appendix 3 – Response to Latimer House Principles review 2019 and standing committee report 2020

In his submission to this review, the Clerk of the Legislative Assembly, Tom Duncan, reported the following responses had been made to recommendations relating to the Legislative Assembly –

Latimer review recommendation 3: The Legislative Assembly should review the committee system and committees’ 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***
- ***some select committee activity might be incorporated in standing committees including estimates***

In 2020, the Standing Committee on Administration and Procedure (the committee) inquired into the Assembly’s committee system. The [report on the inquiry](#) (Report No 17) addressed many recommendations of the Latimer review, as detailed below:

“the language used should be sharpened by referring to scrutiny of the Executive and investigation of public policy matters”

This was implemented through recommendation 1 of the review by the committee, and resolutions establishing standing committees in both the Tenth and Eleventh Assemblies referred to these goals:

Resolution of the Tenth Assembly:

- (1) the following general-purpose standing committees be established as set out in the table below. **The purpose of such committees is to enhance the scrutiny of the Executive, to examine and suggest improvements to any bills referred to it, to enable the citizens of the Territory to engage and to participate in law-making and policy review, to enable financial scrutiny of the Executive’s budget proposals and to review annual reports of taxpayer funded agencies;**

Resolution of the Eleventh Assembly:

- (2) **the purpose of such committees is to enhance the scrutiny of the Executive, to examine and suggest improvements to any bills referred to it, to enable the citizens of the Territory to engage and to participate in law-making and policy review, and to review annual reports of taxpayer funded agencies;**

“greater use should be made of standing committees for the examination of bills”

Recommendation 2 of the review by the committee addressed this, and in the Tenth Assembly all bills were referred to committees, but with a time limit set of two months for inquiry and report, rather than the maximum of six recommended by the committee.

It took government a while to develop more complex and significant legislation, which committees wish to focus on and so initially not many bill inquiries were undertaken.

Time was also taken to sort out a few teething problems. The two-week window for a committee to decide on whether to undertake an inquiry has been extended to three. Further, committees have the option of waiting for the scrutiny report before making a decision. Report timing was later extended from two months to three.

There remains an inconvenience around reporting and decisions deadlines from mid-December to mid-January, which has led to extensions being requested from the Assembly.¹²⁹ We will pursue this in the next standing orders review.

Our observation is that committees have been discerning about what bills they inquire into and that the inquiries lead to meaningful improvements to legislation, as well as taking into account the workload of the committee.

In the Eleventh Assembly, to 31 January 2026, committees have commenced inquiries into 23 percent of bills referred to them (12 out of 53).

“standing committees should more explicitly reflect directorates, and be clearly subject matter committees”

The Standing Committee on Administration and Procedure considered using the government’s directorate structure as the basis for organising the ambit of each standing committee, but decided not to recommend that course, partly because ministerial structures were seen as being particularly complicated (p 39 of the review by the committee). It agreed with the idea of subject matter committees.

Committees continue to be subject matter committees, but do not align with directorates.

We note that the standing orders refer to inviting ministers to hearings, rather than directorates.

There have been occasions, particularly in the Tenth Assembly, where two ministers were responsible for subject matter related to a single directorate. This has led to either a lack of scrutiny or required multiple ministers to attend a hearing.

The Eleventh Assembly established a committee (the Standing Committee on the Integrity Commission and Statutory Office Holders) devoted to overseeing the Officers of the Assembly (AG, Elections, Ombudsman, Integrity Commission, and the Assembly). The Standing Committee on Public Accounts and Administration focusses on finance now, which includes reviewing Auditor-General’s reports.

The reviewers may find it useful to obtain initial feedback from stakeholders about the operation of the Standing Committee on the Integrity Commission and Statutory Office Holders.

“some subjects incorporated in committee titles that are not given obvious attention in committee activity should be dropped”

This recommendation was rejected by the Standing Committee on Administration and Procedure (p 40 of the review) as it wasn’t clear which subjects the reviewers thought were not getting ‘obvious attention’. However, with the adoption of simpler, more general names for Assembly

¹²⁹ The extension of the reporting deadline to four months for bills tabled in the last sitting week is useful, but something with wider application is required. For example, stating that the clocks stop between 15 December and 15 January.

standing committees in the Eleventh Assembly, this recommendation could be regarded as having been largely implemented.

Committees in the Ninth Assembly had titles that included tourism, youth affairs, aging and urban renewal. The Tenth Assembly saw some more elaborate titles, including Standing Committee on Economy and Gender and Economic Equality and the Standing Committee on Environment, Climate Change and Biodiversity.

While a matter for the Assembly, one approach that could be useful is to avoid including particular subject matter and a subset of that subject matter in a committee's title. So, Environment, Transport and City Services would be fine, but Environment, Climate Change and Biodiversity would not as the climate change and biodiversity would generally be regarded as subsets of the environment.

“some select committee activity might be incorporated in standing committees”

The Standing Committee on Administration and Procedure agreed that a parsimonious approach should be taken to establishing committees and their membership (p 45 of the review).

We generally advise that new inquiries go to a standing committee because it's more efficient (no overheads supporting an additional committee) and the Members of the standing committee will already have some subject matter knowledge and interest.

In the Tenth Assembly, there were three Estimates committees established, a privileges committee, and committees examining the COVID response, cost of living, the Voluntary Assisted Dying Bill 2023, and on the Drugs of Dependence (Personal use) Amendment Bill 2023.

In theory, a select committee might be warranted if the remit reaches across a range of standing committees, but it is also often driven by Members' interests (see below).

The Standing Committee on Administration and Procedure recommended that only one select committee operate at a time hasn't been followed in the Eleventh Assembly (Caretaker, Estimates, the Estimates amendment, and fiscal sustainability all being established within about a year).

“the work of estimates committees should become part of standing committees”

The Standing Committee on Administration and Procedure agreed to this as a trial, and in 2021, inquiries into budget estimates were conducted by standing committees.

The Assembly established a select committee in 2022 to compare against the 2021 experience.

The Standing Committee on Administration and Procedure recommended to the Assembly in 2023 that Estimates be conducted through a select committee, and this has been the practice ever since.

Latimer review 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.

In its review, the Standing Committee on Administration and Procedure recommended that the resolution establishing the Standing Committee on Public Accounts (PAC) focus on the core role of inquiring into Auditor-General (AG) reports, particularly to see whether government has implemented findings and recommendations contained in those reports. This occurred in both the Tenth and Eleventh Assemblies.

It also recommended that PAC and the AG meet to discuss a more systematic approach to examining AG reports and this has also occurred.

In the Tenth Assembly, PAC considered 24 AG reports and in a further inquiry followed the government response to three AG reports. This compares with the Ninth Assembly, where PAC only formally followed up four AG reports.

Latimer review 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.

In 2021 and 2022, Dr Rosemary Laing conducted a [review of Committee Support](#) at the request of the Standing Committee on Administration and Procedure. The committee noted recommendations 24 and 25 by the PAC in its combined annual reports and appropriation bills [report in 2020](#) (more resources and more administrative resources).

The two consistent areas of feedback from Members were (para 2.20):

- More resources for complex inquiries, including specialised research capacity – resources overall have been increased, see below – specialised expertise has been sought around budget/economics/finance for the Estimates committees and the new fiscal sustainability committees – no recent feedback from Members about research gaps
- More consistent document management across committees – implemented during the 2024 election period with a refresh of templates, including agendas and minutes.

Prior to the Laing review, there was one committee secretary per committee (seven), 2 x ASO 6, and 2 x ASO 4 level staff to assist with research and administration.

Dr Laing suggested that a team-based approach be adopted in which there would be four secretaries, 6 x ASO 6 officers as assistant secretaries, and 4 x ASO 4 officers as administrative officers. The area was to be headed by a senior director (SOG A). The Office agreed to adopt the model and additional funds were appropriated to facilitate funding the revised structure.

Members have noted an improvement in service delivery standards. There is now cooperation between teams within the committee support function to manage peaks and troughs in workloads. This includes Estimates committees. In the past, one secretary shouldered the bulk of the workload. It is now spread across the team.

Latimer review recommendation 11: The Officers of the Legislative Assembly should be profiled on its website.

The Officers of the Legislative Assembly are profiled on the Assembly's website [here](#).

Although not directed at the Assembly, consideration of the following recommendation may be useful to the review team:

Latimer review 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.

For the Tenth Assembly, the Speaker tabled seven versions of the schedule of government responses to committee reports.

This occurred six times for the Ninth Assembly.

For the [Tenth Assembly](#), all reports requiring a government response received one, and 84 percent of government responses were received on time (with 16 percent late).

When the Standing Committee on Administration and Procedure undertook its [inquiry](#) into the 2019 Latimer Review, it made four recommendations:

Recommendation 1: The Committee recommends that, following the election of the 10th Assembly in October 2020, the Government/Assembly consider the comments and suggestions of the Review of the Performance of the Three Branches of Government in the Australian Capital Territory against Latimer House Principles in its development of a new committee structure.

This was done and the Standing Committee on Administration and Procedure addressed these comments and suggestions in its Report No 17 of 2020 as discussed above.

Recommendation 2: The Committee recommends that the matters raised in the Review in relation to the role and operation of the Standing Committee on Public Accounts be brought to the attention of the Standing Committee and that the Committee be invited to respond to the Assembly on why so few reports on Auditor-General's reports had been presented. That Committee is also invited to provide its views on its preferred form, structure, membership and terms of reference for any future public accounts committee for the Assembly

This was addressed in Report No 17 of 2020 as discussed above.

Recommendation 3: The Committee recommends that information relating to the Officers of the Parliament be included on the Legislative Assembly website, including links to their home pages.

This was implemented – see recommendation 11 above.

Recommendation 4: The Committee recommends that Continuing resolution 8A be amended at paragraph 2A to ensure that a review is undertaken in the second year of every second Assembly.

This was dealt with by the Assembly and the Latimer review now occurs every eight years, not four years as previously.