

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

INQUIRY INTO PROVISIONS OF THE LEGISLATIVE
ASSEMBLY (OFFICE OF THE LEGISLATIVE
ASSEMBLY) ACT 2012

REPORT No 10

August 2016

COMMITTEE MEMBERSHIP

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Chris Bourke MLA	(from November 2012 to February 2016)
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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

TERMS OF REFERENCE

On 9 June 2016, the Assembly resolved that the Standing Committee on Administration and Procedure would inquire into and report on the issues raised in Mr Pearson's report¹.

Specifically, the Assembly resolved that the committee would:

- (i) consider and make recommendations as to the continued relevance and adequacy of the provisions of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*;
- (ii) consider and make recommendations relating to the capacity of the Office of the Legislative Assembly to provide administrative support to the Speaker in the performance of the Speaker's role and functions in relation to the independent officers of the Legislative Assembly; and
- (iii) consider and make recommendations on any other matters raised in the report the committee considers relevant according to its terms of reference.

¹ The Assembly also resolved that the Standing Committee on Public Accounts would inquire into and report on the establishment of a term of appointment for the ACT Auditor-General.

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RECOMMENDATIONS

RECOMMENDATION 1

The committee recommends that the Assembly support the development of new practices and procedures, which give the Assembly a greater role in determining its budget appropriations including in relation to the Office of the Legislative Assembly and Officers of the Legislative Assembly.

RECOMMENDATION 2

The committee recommends that:

- a) the Assembly consider amendments to the *Office of the Legislative Assembly Act 2012* to clarify that one of the Office's functions is to provide advice and support to the Speaker in the exercise of the Speaker's functions in relation to Officers of the Legislative Assembly;
- b) any amendments to the OLA Act do not have the effect of establishing a superintendent function for the Office of the Legislative Assembly in relation to Officers of the Legislative Assembly;
- c) any amendments do not have the effect of establishing the Office of the Legislative Assembly as the sole source of administrative support and advice to the Speaker in these matters; and
- d) during the 9th Assembly, the Office of the Legislative Assembly liaise with Office of Parliamentary Counsel and the Speaker to consider how best to achieve these objectives in the drafting of any amendments.

RECOMMENDATION 3

The committee recommends that:

- a) the Assembly resolves to support the operation of strong budget protocols, which establish an independent and separate budget development process for the Assembly consistent with the separation of powers doctrine;
- b) the review of the Budget Protocols proceeds as scheduled and is finalised prior to the 2016 election;
- c) in reviewing the protocols, the Government does not attempt to weaken existing provisions to advantage the Executive; and
- d) Officers of the Legislative Assembly are covered in a revised budget protocols document.

1. ISSUES

CONDUCT OF THE INQUIRY

1.1. This inquiry was initiated as a result of a recommendation of the 2016 strategic review of the ACT Auditor-General undertaken by Des Pearson AO pursuant to s24 of the *Auditor-General Act 1996*.

1.2. In his report on the review, Mr Pearson recommended that:

The Standing Committee on Administration and Procedure consider the continued relevance and adequacy of the provisions of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* and provide recommendations relating to the Office's capacity to administratively support the Speaker in the performance of the Speaker's role and functions in relation to these independent officers of the Legislative Assembly.

1.3. On 9 June 2016, following a motion moved by the Speaker, the Assembly resolved that the Standing Committee on Administration and Procedure would inquire into and report on the issues raised in Mr Pearson's report².

1.4. Specifically, the committee was to:

- i. consider and make recommendations as to the continued relevance and adequacy of the provisions of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*;
- ii. consider and make recommendations relating to the capacity of the Office of the Legislative Assembly to provide administrative support to the Speaker in the performance of the Speaker's role and functions in relation to the independent officers of the Legislative Assembly; and
- iii. consider and make recommendations on any other matters raised in the report the committee considers relevant according to its terms of reference.³

1.5. The committee, through the Speaker, invited MLAs and Officers of the Legislative Assembly to make a submission to the inquiry. The committee received written submissions from:

- Andrew Barr MLA, Chief Minister for the ACT;
- Philip Green, ACT Electoral Commissioner; and
- Richard Glenn, Acting ACT Ombudsman.

1.6. The committee reviewed the submissions and considered issues relevant to the reference.

² The Assembly also resolved that the Standing Committee on Public Accounts would inquire into and report on the establishment of a term of appointment for the ACT Auditor-General.

³ Legislative Assembly for the Australian Capital Territory, *Minutes of Proceedings*, No. 141, Thursday, 9 June 2016, p 1603.

BACKGROUND

MATTERS RAISED IN THE REPORT ON THE STRATEGIC REVIEW

1.7. In undertaking the strategic review of the Auditor-General, Mr Pearson had occasion to reflect on the adequacy of administrative support arrangements in place to assist the Speaker in the performance of the Speaker's statutory functions in relation to the Auditor-General and Officers of the Legislative Assembly more generally.

1.8. In his report, Mr Pearson noted that:

...in recognition [of] the sensitivity of the relationship with these independent officers it would be desirable to clarify the manner in which the Speaker is to be administratively supported in relation to the exercise of the Speaker's functions vis-a-vis Officers of the Legislative Assembly.

In the event that the Office of the Legislative Assembly is to play a role in the provision of administrative support it would be prudent to consider codifying these functions by way of a consequential amendment to the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*. This could be done, for example, by amending s6 of the Act to include such a remit in the statutory functions of the Office.

1.9. The committee notes the comments of the Speaker who has previously observed in the Assembly that:

...while I am very supportive of the creation of officers of the Legislative Assembly, we have been in uncharted waters. My office and I have been creating new procedures as we go along, with the assistance of the Clerk's office... But that has been an informal arrangement and I want, while I am still the Speaker, to create a more formal arrangement for that to continue to happen. I do not want to leave the Speaker's post without having created sufficient form and practice for my successors to be able to carry out this job without having to reinvent the wheel...

I was very concerned about the processes which were left essentially to the Speaker and to the Speaker's own personal staff to deal with. I think that is not appropriate. For instance, today I shall be signing a service agreement in relation to the Auditor-General for the audit of the Auditor-General. I think it would be entirely inappropriate for that work to be done by somebody who was not a public servant.⁴

1.10. The committee shares the Speaker's concerns.

1.11. Against this background, the key proposition with which the committee is required to engage relates to whether or not the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* might be amended so as to provide a statutory basis for any support or advice provided by the Office in relation to Officers of the Legislative Assembly.

THE OFFICE OF THE LEGISLATIVE ASSEMBLY

1.12. The *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (the OLA Act) establishes the Office of the Legislative Assembly⁵ and enshrines its independence. Significantly, the Office of the Legislative Assembly Act provides that 'the clerk and the office's staff are not subject to the direction by the Executive or any Minister in the exercise of their functions'.⁶

⁴ Legislative Assembly for the ACT: 2016 Week 6 Hansard (9 June), p 1917.

⁵ The committee notes that, despite its name, the Office of the Legislative Assembly is not an Officer of the Legislative Assembly and nor is the Clerk.

⁶ Section 8, *Legislative Assembly (Office of the Legislative Assembly) Act 2012*

1.13. As the primary support agency of the Legislative Assembly for the ACT, the Office is responsible for the following functions:

- (1) The office's function is to provide impartial advice and support to the Legislative Assembly and committees and members of the Assembly, including by—
 - (a) providing advice on parliamentary practice and procedure and the functions of the Assembly and committees; and
 - (b) reporting proceedings of the Assembly and meetings of committees; and
 - (c) maintaining an official record of proceedings of the Assembly; and
 - (d) providing library and information facilities and services for members; and
 - (e) providing staff to enable the Assembly and committees to operate efficiently; and
 - (f) providing business support functions, including administering the entitlements of members who are not part of the Executive; and
 - (g) maintaining the Assembly precincts.
- (2) The office also has the function of providing public education about the functions of the Assembly and committees.
- (3) The office may exercise any other function given to it under this Act or another territory law.⁷

1.14. To fortify the independence of the Office, the Assembly amended a number of other ACT statutes upon passage of the original Bill⁸. A separate budgetary framework for the Office was incorporated in the *Financial Management Act 1996*⁹ and provisions relating to annual reports, government procurement, and public sector management were also amended to reflect the special status of the organisation.

OFFICERS OF THE ASSEMBLY

1.15. The Officers of the Assembly Amendment Bill was introduced in 2013. The purpose of the Bill was to formally establish the Auditor-General, the Ombudsman and the three Electoral Commission members as Officers of the Assembly.

1.16. The Bill followed a Standing Committee on Administration and Procedure inquiry in the 7th Assembly¹⁰, which examined the feasibility of establishing the position of 'officer of the parliament'. Having examined relevant matters, that committee supported the creation of such a position and proposed a number of criteria that might be used to evaluate whether or not particular public positions within the public service 'might benefit from being designated an Officer of the Parliament'¹¹. The committee recommended that the Auditor-General, Electoral Commissioners, and the Ombudsman all be made 'Officers of the Parliament'¹².

1.17. Drawing on the recommendations of the committee, an Executive Member's Bill, presented by Shane Rattenbury MLA, was unanimously passed by the Assembly and was notified on the Legislation Register on 7 November 2013. A subsequent Bill – the Officers of the Assembly

⁷ Section 6 of the OLA Act

⁸ Legislative Assembly (Office of the Legislative Assembly) Bill 2012

⁹ Sections 20 and 20AA

¹⁰ In addition, the Standing Committee on Public Accounts (7th Assembly) conducted an inquiry into the ACT *Auditor-General Act 1996*

¹¹ Standing Committee on Administration and Procedure (7th Assembly) 'Officers of the Parliament', report 4, March 2012, p 40

¹² Standing Committee on Administration and Procedure (7th Assembly) 'Officers of the Parliament', report 4, March 2012, p 39.

Legislation Amendment Bill 2014 – was enacted by the Assembly to introduce a number of ‘minor changes to address inconsistencies arising from the *Officers of the Assembly Legislation Amendment Act 2013*’.¹³ Once enacted, the legislation had the effect of amending a number of primary statutes, including the *Auditor-General Act 1996*, the *Electoral Act 1992*, and the *Ombudsman Act 1989*¹⁴, to establish these officers as Officers of the Legislative Assembly and to enshrine their independence from the Executive.

POWERS OF THE SPEAKER

1.18. With the commencement of the *Legislative Assembly Legislation Amendment Act 2013*, a number of substantial powers were vested in the Speaker. Among other matters, the Speaker assumed responsibility for:

- appointing the Auditor-General;¹⁵
- appointing members of the Electoral Commission and the Electoral Commissioner (i.e. the Chief Executive Officer of the Electoral Commission)¹⁶;
- appointing a chairperson of the Electoral Commission¹⁷;
- appointing an acting Auditor-General;¹⁸
- appointing an acting Electoral Commissioner;¹⁹
- retiring the Auditor-General;²⁰
- retiring members of the Electoral Commission²¹;
- suspending the Auditor-General;²²
- suspending members of the Electoral Commission²³;
- ending the appointment of the Auditor-General²⁴;
- ending the appointment of a member of the Electoral Commission;²⁵
- engagement of a strategic reviewer of the Auditor-General;²⁶
- engagement of an independent auditor of the Auditor-General²⁷.

¹³ Officers of the Legislative Assembly Legislation Amendment Bill 2014, Explanatory Statement, circulated by Shane Rattenbury MLA, p 2.

¹⁴ While s4A of the *Ombudsman Act 1989* establishes that the Ombudsman is an independent Officer of the Legislative Assembly, this provision does not become operative until an appointment is made pursuant to s22 of the ACT (i.e. where a person who is not the Commonwealth Ombudsman is appointed (see s28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth)). Where a person other than the Commonwealth Ombudsman is appointed to the role of ACT Ombudsman, the powers available to the Speaker with respect to the Ombudsman are broadly those that apply with respect to the other two Officers of the Legislative Assembly.

¹⁵ Section 8, s9B

¹⁶ Sections 12 of the *Electoral Act 1992*

¹⁷ Section 12C of the *Electoral Act 1992*

¹⁸ Section 9A of the *Auditor-General Act 1996*

¹⁹ Section 12A of the *Electoral Act 1992*

²⁰ Section 9A of the *Auditor-General Act 1996*

²¹ Section 18 of the *Electoral Act 1992*

²² Section 9B of the *Auditor-General Act 1996*

²³ Section 18A of the *Electoral Act 1992*

²⁴ Section 9BC *Auditor-General Act 1996*

²⁵ Section 18D of the *Electoral Act 1992*

²⁶ Section 25(2) of the *Auditor-General Act 1996*

- 1.19. The Speaker also has a role to play in advising of the recommended appropriations that should be made for Officers of the Legislative Assembly.
- 1.20. The committee notes that while some of these powers will rarely, if ever, be exercised, there are others which are required to be exercised periodically and as a matter of course.

ADVICE AND SUPPORT

- 1.21. While the judgement and propriety of the Speaker is called upon to exercise the powers mentioned above, there is also a governance imperative that the Speaker is able to access professional advice and support on the operation of broader public sector management issues that might be engaged by the exercise of these powers.
- 1.22. Prior to the commencement of the Officers of the *Assembly Legislation Amendment Act 2013*, the powers listed at paragraph 1.18 were within the ambit of the Executive. Accordingly, support and advice to assist the Executive in the exercise of these powers was provided from within the wider ACT Public Service.
- 1.23. The rationale for moving these powers from the Executive to the Speaker was on the basis that the Speaker was the office holder best placed to reflect the will of the Assembly and to confer parliamentary legitimacy and independence from the Executive on Officers of the Legislative Assembly. The exercise of many of these powers is subject to requirements being met in relation to consultation with the relevant Assembly committee and office holders such as the Chief Minister and the Leader of the Opposition. The author of the Bill, Shane Rattenbury MLA, observed in his explanatory statement that:

The Bill delegates significant responsibility to the Speaker for the officers of the Assembly. The delegated administrative power has a range of checks and balances in place to help ensure that the Speaker's actions reflect the collective views of the Legislative Assembly.²⁸
- 1.24. The committee understands that to date support and advice to the Speaker has, depending on the nature of the task before the Speaker, variously been provided by the Officers themselves, staff in the Speaker's office, external consultants, and by the Office of the Legislative Assembly.
- 1.25. It is also the case that the establishing legislation for the Auditor-General and the Electoral Commissioner provides that the Speaker is able to call upon numerous sources of advice in acquitting certain statutory responsibilities. In particular, where the Speaker is considering suspending an Officer of the Legislative Assembly, the Speaker may seek advice about the proposed suspension from the Commissioner for Public Administration or anyone else the Speaker considers appropriate²⁹.
- 1.26. The committee considers that there will be occasions where the Speaker needs to have access to different sources of advice and administrative support depending on the nature of the powers that are being exercised. The scope and nature of the advice that will be required to assist the Speaker will also vary considerably depending the level of complexity that might attend the exercise of a power in a given set of circumstances.

²⁷ Section 31 of the *Auditor-General Act 1996*

²⁸ Officers of the Assembly Legislation Amendment Bill 2013, Explanatory Statement, Circulated by Shane Rattenbury MLA, 15 August 2013, p 6.

²⁹ Section 9B(2) of the Auditor-General Act 1996 and s18A of the *Electoral Act 1992*

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- 1.27. Depending on the circumstances, expert advice may need to be provided to the Speaker in relation to:
- complex legal matters and statutory interpretation;
 - separation of powers issues;
 - recruitment processes;
 - compliance with public sector management requirements and the application of broader governance principles;
 - probity and integrity issues;
 - budgetary and financial matters; and
 - parliamentary practice and procedure.
- 1.28. Against this background, the committee can see occasions where the Speaker may need to seek advice from the Solicitor-General or a private law firm, the Commissioner for Public Administration, an Officer of the Legislative Assembly, external consultants, the Clerk, the Ethics and Integrity Adviser, and others.
- 1.29. In addition to the advice that might be made available to the Speaker, there is also the day-to-day administration of particular tasks that arise in the course of the Speaker exercising a particular power or function. That support might range from the conduct of a procurement process in the case of engaging an independent auditor of the Auditor-General, through to the conduct of a full merit selection process in the case of appointing a new Auditor-General or Electoral Commissioner. Typically, administrative support will entail the preparation of correspondence, liaison with stakeholders, drafting of contracts, appropriate record keeping and so forth.
- 1.30. The committee notes that since the 2013 legislative change, Officers of the Legislative Assembly and their staff have been responsible for providing support and advice in relation to all financial and budgetary matters associated with their respective agencies, including meeting relevant requirements in relation to the Speaker's consideration of the recommended appropriation pursuant to s20AB of the *Financial Management Act 1996*.
- 1.31. The Electoral Commissioner has provided advice and administrative support in relation to the appointment of a member of the Electoral Commission. The Speaker also received advice and administrative support from an external executive recruitment consultant in relation to the appointment the Electoral Commissioner.
- 1.32. The Office of the Legislative Assembly has provided advice and administrative support in relation to the engagement of the strategic reviewer and the independent auditor of the Auditor-General.
- 1.33. The Office of the Legislative Assembly and Officers of the Legislative Assembly have all provided advice and support to the Speaker in relation to the development of budget protocols between the Executive and the Legislature in relation to appropriate administrative processes that might apply to the development of annual budgets for the Officers' agencies. The committee addresses this matter in more detail at paragraph 2.16.
- 1.34. The committee sees no reason why the advisory and administrative support arrangements mentioned above should not continue.

1.35. There has been no cause to suspend or end the appointment of an Officer of the Legislative Assembly. The committee considers that the existing provisions³⁰, provide an adequate mechanism for the Speaker to seek and receive advice and support in the event that the exercise of these powers ever needed to be considered.

ACT ELECTORAL COMMISSIONER SUBMISSION

1.36. In his submission to the inquiry, ACT Electoral Commissioner, Phillip Green, indicated that:

- The commission has been able to provide administrative support and budget funding to assist the Speaker in relation to the Commission's budget;
- It is, in his view, practicable for Public Sector Management Act officers employed by the Electoral Commissioner to assist the Speaker in relation to the administration of recruitment of members of the Commission;
- He was satisfied that it is appropriate for the Commission to 'contribute budget funding to pay for expenditure incurred on behalf of the Speaker in relation to undertaking roles related to the Commission. This has particularly arisen in relation to providing funding for recruitment processes for Commission member vacancies'.³¹

1.37. The committee considered the Commissioner's submission in formulating its views on the matters raised in the terms of reference.

ACT OMBUDSMAN SUBMISSION

1.38. The Acting ACT Ombudsman's submission to the inquiry observed that it was unable to comment on the adequacy of support arrangements on the basis that 'the ACT Ombudsman has had limited dealings with the Office of the Legislative Assembly' arising from the fact the Commonwealth Ombudsman delivers the Ombudsman function to the ACT under a services agreement.³²

1.39. The Acting Ombudsman confirmed that 'the current arrangements for the ACT Ombudsman to operate as an Officer of the Legislative Assembly are adequate and effective from our perspective'.³³

1.40. The committee considered the Acting Ombudsman's submission in formulating its views on the matters raised in the terms of reference.

CHIEF MINISTER'S SUBMISSION

1.41. The committee notes a submission made by the Chief Minister to this inquiry. In it, the Chief Minister made the following observation:

³⁰ Section 9B(2) of the Auditor-General Act 1996 and s18A of the *Electoral Act 1992*

³¹ Submission from the ACT Electoral Commissioner, Phillip Green, 26 July 2016.

³² Submission from the Acting ACT Ombudsman, Richard Glenn, 26 July 2016.

³³ Ibid.

The Government appreciates the demands upon the Speaker and her office in relation to independent officers of the Legislative Assembly. However, it is worth drawing to the Committee's attention that any recommendation regarding Government appropriations, arising from the Committee's deliberations, would need to be considered within the budget context.³⁴

- 1.42. The Chief Minister indicated that he would reserve further comment pending the outcome of the committee's inquiry.
- 1.43. It is worth the committee briefly reflecting on the substance of the Chief Minister's submission so far as it reflects on what are described as 'Government appropriations' and the 'budget context'.
- 1.44. While accepting that financial impacts may arise by virtue of recommendations of an Assembly committee in the event that they are accepted by the government of the day, the committee notes that it is the Assembly – not the Government – which is responsible for appropriating funds.
- 1.45. The adequacy of funding arrangements for the legislative arm of government is ultimately one that is adjudicated by the parliament itself. While the Executive may have a view and reflect that view in an appropriation proposal (i.e. a Bill), the Assembly must also satisfy itself, before any enactment is made, that the institution has the resources which are reasonably necessary to perform its functions in an effective manner.
- 1.46. The committee believes that it is institutionally prudent that Executives of all stripes and flavours exhibit an appropriate deference towards the legislative arm of government when it comes to decisions which affect the resources that are made available for the parliament to acquit its functions. Accordingly, the committee supports efforts, consistent with the Latimer House Principles, which were endorsed by the Assembly on 11 December 2008, to recast the manner in which the Executive and the Legislative branches work to develop the Assembly's annual budget and to give the Assembly a more authentic decision-making role.
- 1.47. In this vein, the committee notes and endorses comments made by the Speaker during evidence to the Select Committee on Estimates 2016-2017:

Although a long-standing practice, it still strikes me as odd that the budget committee of cabinet is in a position to unilaterally determine the level of funding available to the legislature. There is, of course, an inherent conflict of interest in the executive determining a parliament's resourcing base, given that a well-funded legislature is always going to be better placed to extract scrutiny and accountability outcomes and to hold the government of the day to account.

We can argue about the merits of various proposals that are advanced on the part of the Assembly from time to time. But it seems that as a matter of principle there should be greater capacity on the part of the Assembly and not just the cabinet to establish the amount of funding available to parliament to ensure that its accountability, representative and legislative responsibilities are adequately fulfilled.

As members would be aware there is a budget protocol agreement in place between the executive and the legislature setting out special administrative and process arrangements for the development of the Assembly's budget. It has been a very positive development as far as OLA is concerned. Indeed, it is an approach that has been watched closely by other parliaments as being a modest step towards more autonomous budgetary processes.³⁵

³⁴ Chief Minister's submission, 18 July 2016

³⁵ Proof Transcript of Evidence, Select Committee on Estimates 2016-2017, Thursday, 30 June 2016, p1077, Mrs Dunne.

RECOMMENDATION 1

The committee recommends that the Assembly support the development of new practices and procedures, which give the Assembly a greater role in determining budget appropriations for the Assembly, the Office of the Legislative Assembly and Officers of the Legislative Assembly.

2. COMMITTEE'S VIEW

- 2.1. The terms of reference require that the committee consider the relevance and adequacy of provisions of the Office of the Legislative Assembly Act, the capacity of the Office to provide administrative support to the Speaker in relation to Officers of the Legislative Assembly, and other matters.
- 2.2. The committee is conscious that with the 8th Assembly drawing to an end, the matters raised in the strategic review of the Auditor-General and in this report will likely fall to the 9th Assembly to address.
- 2.3. The committee supports legislative change to clarify the manner in which administrative advice and support might be made available to the Speaker. While the Office of the Legislative Assembly might be the first port of call in relation to many issues that could be encountered in relation to exercise of particular powers, there are other sources of advice and administrative support, which should not be excluded (see paragraph 1.28). The committee is mindful that in amending relevant legislation no impression should be created that the Office of the Legislative Assembly has a statutory function to oversee the functions of the Officers of the Assembly.
- 2.4. To maintain adequate separation of powers, the committee considers that, where possible, advice and support should not be drawn from agencies within the control and direction of the Executive but notes that there could be occasions where, for instance, it could be appropriate for the Speaker to seek advice from the Commissioner for Public Administration or the Solicitor-General.
- 2.5. It is also important that any potential conflicts of interest are effectively managed where an Officer or personnel under the direction of an Officer might be seen to have an interest in the outcome of the exercise of the Speaker's powers. For instance, where the Speaker needed to exercise powers in relation to the appointment, suspension or ending the appointment of an Officer, an apprehension of bias could emerge in the event that the Speaker relied on advice and/or administrative support provided by the Officer's staff.
- 2.6. Finally, where significant costs are to be borne arising from the exercise of a particular power or function, the committee considers that it is appropriate that they be funded by the budget appropriation of the Officer to which the exercise of the power or function relates. This broadly reflects the practice that has applied to date. As an example, while the Speaker is responsible for engaging, under a contract, both an independent auditor of the Auditor-General and a strategic reviewer of the Auditor-General, the Audit Office is responsible for payment under the contract once the services have been rendered to the satisfaction of the Speaker. Similarly, the Electoral Commission met the costs associated with the appointment of the Electoral Commissioner.

RECOMMENDATION 2

The committee recommends that:

- a) the Assembly consider amendments to the *Office of the Legislative Assembly Act 2012* to clarify that one of the Office's functions is to provide advice and support to the Speaker in the exercise of the Speaker's functions in relation to Officers of the Legislative Assembly;
- b) any amendments to the OLA Act do not have the effect of establishing a superintendent function for the Office of the Legislative Assembly in relation to Officers of the Legislative Assembly;
- c) any amendments do not have the effect of establishing the Office of the Legislative Assembly as the sole source of administrative support and advice to the Speaker in these matters; and
- d) during the 9th Assembly, the Office of the Legislative Assembly liaise with Office of Parliamentary Counsel and the Speaker to consider how best to achieve these objectives in the drafting of any amendments.

BUDGET PROTOCOLS

- 2.7. Given their relevance to the issue of resourcing and appropriate separations between the Executive and the Legislature, the committee wishes to make some brief observations about the *Budget Protocols for the Office of the Legislative Assembly*, which are in place between the Executive and the Assembly³⁶.
- 2.8. A statement of principles included in the protocols document states that:

The parties commit to advance the separation of powers doctrine as it relates to the mutually independent status of the legislative and executive branches of government in the ACT's form of parliamentary democracy. The parties recognise that each branch has distinct roles and responsibilities that will not be encroached by one another.

The parties agree that the doctrine will be given due recognition at all stages of the development and consideration of the annual budget and appropriation bill for the Office of the Legislative Assembly and any additional appropriation.

The parties acknowledge and support the principle of the financial initiative of the Executive the exclusive right of executive arm of government to develop and frame appropriation bills for consideration by the legislative arm of government.

The parties acknowledge that, while the executive government is entitled to frame a budget appropriation bill as it sees fit, the recommended appropriation for the Office of the Legislative Assembly will, as a matter of fundamental principle, be regarded as a statement of the Legislature's resource requirements and priorities.

The parties acknowledge that there will be occasions in which the demands of government policy have the potential to conflict with the roles and functions of an effective legislature. Where these conflicts -potential or otherwise -arise, the parties

³⁶ Tabled in the Assembly on 5 August 2014, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/698674/Budget-Protocols-for-the-Office-of-the-Legislative-Assembly.pdf

agree to ensure that the Legislature can perform its accountability, representative and legislative roles effectively.

The parties recognise and support the independent status of the Legislative Assembly and the Office of the Legislative Assembly in its capacity as the Legislature's primary source of administrative and procedural advice and support.

The parties acknowledge that the Office of the Assembly is not subject to the direction of the Executive and is not, therefore, bound by policies, procedures and other governance arrangements promulgated by the Executive or its officers in the ACT public service, unless otherwise provided for by law.

- 2.9. The committee unequivocally supports the principles outlined in this statement.
- 2.10. Although a review of the budget protocols (which already operate with respect to the Office of the Legislative Assembly) was scheduled to have taken place in early 2016, the committee notes that the Chief Minister has written to the Speaker indicating that the government wanted to postpone the review until following the election.
- 2.11. The committee does not support the postponement.
- 2.12. Further, the committee strongly supports the budget protocols as a mechanism for establishing appropriate administrative controls in the development of the Assembly's budget and supports the protocols being expanded to include Officers of the Legislative Assembly.
- 2.13. The committee does not support any watering down of the protocols and considers that current and future governments should support measures designed to assert the independence of the Assembly, the Office of the Legislative Assembly, and Officers of the Legislative Assembly.
- 2.14. The committee considers that strengthening the institution of parliament and its accountability, scrutiny and representative functions, is a project that should transcend politics and on this basis the committee supports non-partisan efforts to build independent funding arrangements into the practices, procedures and conventions of the Assembly.

RECOMMENDATION 3

The committee recommends that:

- a) the Assembly resolves to support the operation of strong budget protocols, which establish an independent and separate budget development process for the Assembly;**
- b) the review of the Budget Protocols proceeds as scheduled and is finalised prior to the 2016 election;**
- c) in reviewing the protocols, the Government does not attempt to weaken existing provisions to advantage the Executive; and**
- d) Officers of the Legislative Assembly are covered in a revised budget protocols document.**

**Vicki Dunne MLA
Chair
3 August 2016**