



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Office of the Clerk

Submission to the Select Committee on Opening Parliament to the People

Clerk of the Legislative Assembly

The Select Committee on Opening Parliament to the People (SCOPP) has published a *Green Paper on Parliamentary Reform* and invited submissions by 28 November 2016.

The Committee's terms of reference are to *inquire into options for parliamentary reform, particularly increased participation in the Legislative process and policy debates and improving the effectiveness of Question Time.*

The reference allows the Committee a very broad scope because it allows the Committee to inquire into 'options for parliamentary reform' per se, and arguably there is no limitation on the scope for the inquiry, so long as it concerns itself with 'parliamentary reform'.

Understandably, in order to conduct an effective inquiry within the timeframe provided, the Committee has chosen to consider only specific matters in the Green Paper.

The Committee has not chosen to consider matters considered best practice in Westminster Parliaments such as an independent Parliamentary Service or separate budget appropriation for the Assembly. These are two areas where the Northern Territory Legislative Assembly has reported a negative result to Commonwealth Parliamentary Association surveys concerning the Latimer House Principles¹.

These matters are well worth considering in the context of the Committee's terms of reference, however it is understood that they will not be taken up on this occasion.

It is suggested the final report of the SCOPP give consideration to the Assembly initiating a future inquiry on these matters.

This submission reflects my experience as the Clerk of the Legislative Assembly and in prior Assembly roles informed by having spoken directly with Territorians over the past decade about the operation of the Legislative Assembly of the Northern Territory.

COMMUNITY EXPECTATION

During consultation across the Northern Territory on Statehood matters from 2005 to 2011 and since the commencement of *Know Your Assembly* seminars in 2013 I have presented information and spoken one on one about the Assembly and how it works, to literally thousands of people in Darwin, Alice Springs and a vast number of remote Northern Territory communities.

¹ For an example, see the ACT Assembly at <http://www.parliament.act.gov.au/Publications/review-of-latimer-house-principles>

My experience is that community expectation about participation and accountability remains strong, and if achieved, will enhance the credibility and respect the institution of Parliament has in the community.

A well-established system of governance is one which is reflective and embraces improvement.

Since first becoming an officer of the Assembly in January 2005 I have discerned:

- Territorians value and respect the public democratic institution of the Legislative Assembly
- Territorians feel the institution could do better to reflect their values and achieve their aspirations

During statehood consultations² The Statehood Steering Committee received consistent calls for ways to do things better, different, smarter.

Discussions occurred during community forums promoting statehood (2005-2011) about jurisdictional maturity and the opportunity statehood might offer to realise models which would increase community participation and promote reconciliation in a fairly unique Australian, Westminster based jurisdiction.

While energy focused on statehood and constitutional development has waned for a number of reasons, the opportunity for the Assembly Committee system to lead reform of the Parliament would mean less has to be done later if statehood is one day realised.

The proposed reforms in the Green Paper meet the acceptable standard already in place in other jurisdictions.

For example, experiences such as post Fitzgerald Inquiry Queensland resulted in parliamentary reforms.

In the Northern Territory the lack of a significant event such as the Fitzgerald Inquiry provides a less fraught opportunity to proceed methodically, looking at best practice and developing the most accountable and best fitting model that suits the Territory without the 'storm clouds' which have so often been associated with otherwise positive reforms elsewhere.

ENHANCING COMMITTEES

Many Parliaments within the Westminster tradition have increased the use of committees to improve public participation in the legislative process and enable detailed consideration of issues of public concern.

The proposals being considered provide an opportunity to educate, inform and engage with Territorians so that they understand that committee inquiries can be useful and achieve results and come to a belief based on their experience of committees that:

- Committees are an extension of (not lesser than) the Assembly itself.
- Committees are the Assembly examining matters in closer detail.
- Committees allow participation by interested Territorians in the processes and proceedings of the Assembly.

² I refer here only to the Statehood Steering Committee 2005-2010 and the Constitutional Convention Committee 2011-12, not to the previous extensive Committee consultations during the 1980s and 1990s.

- Committees are an expression of the will of the Assembly to find out something.

In neighbouring unicameral parliaments such as Queensland, the Australian Capital Territory and New Zealand, committees provide an opportunity for review matters not possible for detailed scrutiny within the House itself to:

- Inquire into issues of concern and difficult policy issues
- Consideration of the provisions of bills
- Scrutinise bills and regulations for their impact on rights, liberties, regulatory burden and the institution of Parliament
- Scrutinise Budgets
- Examine public accounts and Auditor-General reports
- Scrutinise agency performance

In the Northern Territory the existing committees examine public accounts and Auditor-General's reports, scrutinise regulations (but not for their regulatory burden) and Budget Estimates, and inquire into issues of concern or policy issues on an ad hoc and occasional basis.

During 2015, the matters now being considered by the SCOPP were addressed in a detailed Discussion Paper which was published by the Speaker after more than 12 months in the drafting and consultation stages. There is no need to repeat that content in this submission.

The proposals would, if adopted, demonstrate that the Assembly as a whole, and not only the Government, is committed to best practice in legislative processes and parliamentary accountability as befits a mature, confident developed polity.

Provision of public feedback on the possible impacts of bills and a check on those bills and regulations that unnecessarily impose a regulatory burden is an expectation that can be managed properly under the proposal.

While it remains a matter for governments to determine if they wish to use numerical superiority to expedite bills through the Assembly, the proposed process would make that the exception and promote a better, more orderly and more engaging system where Territorians can have confidence that their participation is valuable and obtain a better understanding of how and where they can have input into the processed of law making.

Using meeting times of the Assembly each Wednesday will improve time management by making more effective use of the Assembly's time, free up Ministers' time during sitting weeks and enable committee members to better perform their functions with minimal impact on their electoral duties.

LOW RISK

Possible criticism that the 'politicians gave themselves time off' from the existing Wednesday morning Assembly schedule would soon be demonstrated as false by a new practice where 14 Members are consistently engaged in detailed and highly publicly scrutinised work on these specific mornings, often for more than the two hours now allocated to Assembly meeting time.

Other beneficial outcomes include more accountable public sector agencies, improving agency performance, and public understanding of the role of and the challenges such agencies face.

Criticism and risk include

- 'Delay' in the passage of bills
- Inquiries distracting from the Government's agenda

- Criticism of the reduction in the Assembly's sitting hours resulting from giving sitting time to committees

The risk of delay in the passage of bills is readily managed by the Assembly exempting urgent Bills from the inquiry process and setting fixed reporting dates for other bills. It will be up to the Government to explain why a bill is urgent, tell the story and then up to Territorians to determine if they agree.

Committees can also expedite bill consideration if required. Flexibility and maturity can be the hallmarks of a new system of good practice.

The onus will be on the committee to manage its inquiry into any bill in a manner that suits the needs of the Assembly, and the Assembly may proceed to pass a bill if a committee fails to meet the required reporting time.

The risk of committee inquiries distracting from the Government's agenda are a matter for the final recommendation of the SCOPP and whether the proposal limits the committees' powers to inquire into matters on its own motion to those matters under their standing referrals relating to public accounts and annual reports or whether they have much more discretion.

The potential for criticism of the reduction in the Assembly's sitting hours is covered briefly above and is something that merely needs to be explained to be understood. Arguably, Wednesday committee days could become the focus of more scrutiny and be the 'popular' day for the public and the media to take notice of what is going on in the Assembly

OTHER ASPECTS OF REFERRAL NOT COVERED IN GREEN PAPER

In addition to my opening comments on the Latimer House Principles, it is noted that the Assembly's resolution providing the terms of reference for the SCOPP includes consideration of all of the content of:

- *Parliamentary Reform - Opening Parliament to the People (Labor Policy Discussion Paper)*
- *Restoring Integrity to Government – Trust and Integrity Reform Discussion Paper*

These particular policy documents disclose proposals including an *Inquiry into Parliamentary Practice*. It can be assumed that this proposal for an external inquirer has been subsumed by the role of the SCOPP.

The Speakership of the Assembly was considered in some detail in those documents, including the possibility of reforms to the foundation governance document, the *Northern Territory Self Government Act 1978 (Cth)* to draw on a non-Member Speaker or otherwise 'independent' Speaker.

This would be a matter for the Northern Territory Government approaching the Australian Government for potential reform.

In the short term, and for the duration of the existing Speaker, Hon Kezia Purick MLA in office, the election of a non-party aligned Member of the Assembly to the Chair may address this policy proposal to some extent, however what if there is no independent Member elected to a future Assembly or if that Member is not willing to take the Chair?

The cited policy documents also gave consideration to the following matters not explicitly covered in the SCOPP Green Paper including:

- Modernising Standing Orders – This has been taken up by the Standing Orders Committee for consideration during 2017.

- Technology Improvements – “Parliament be upgraded to allow presentations to include modern technology.”
- Ministerial Statements using “technology which allows for questioning of Ministers delivering Statements and their Chief Executives and Departmental representatives”.
- Declaration of Interests to be on-line – The Assembly has resolved to table these annually and tabled papers are on line from March 2017

The Committee may wish to address these matters in its final report to the Assembly.

BUDGET IMPLICATIONS

Adequate resourcing will be vital to the effectiveness of a new system. Given the small number of Members and committees that will be covering all Government activity, the committees will need effective support to ensure their time is spent efficiently and they have access to all required information.

The basic secretariat needs of each committee are a secretary, researcher and administrative support, subject to the number of references each committee receives.

Support for a formal ‘rights and liberties’ aspect of scrutiny of Bills would include referring the Bills for advice. It is anticipated this would cost around \$20,000 per annum. There would also be costs arising from increased activities of the committees, such as Members’ travel for hearings out of Darwin.

Secretariat staffing

Committee staffing arrangements must be dynamic and responsive to the work required. As a general guide, an active committee requires a committee secretary, a senior research officer and shared administrative support. If a committee was conducting a number of concurrent inquiries, it could require an additional senior research officer.

As the Department of the Legislative Assembly currently has one Committee Secretary and one Senior Research Officer, two committees would require as a minimum the appointment of two new staff, and three committees would require the appointment of four staff.

In addition to secretariat support, many parliaments have found it useful to have staff to assist committees with community engagement. For example, the Queensland Parliament employs an Indigenous Liaison Officer to, among other things, facilitate effective consultation by committees with indigenous communities. The United Kingdom’s House of Commons has a Public Engagement Directorate, which provides between .5 and one staff member to each parliamentary committee to assist with community engagement. Dedicated community engagement support enhances the accessibility of committees by the public, thereby further opening parliament to the people.

General expenses

Committee support also includes a range of other general expenses, such as information technology support, advertising, transcription services and staff travel. The cost of Members’ travel for committees can vary significantly depending on the nature of the inquiry, varying from nil for committees able to hold all their meetings during sittings, to tens of thousands for committees that conduct regional and remote hearings.

Physical infrastructure

Parliament House has two rooms for committee meetings, one of which has a sound and video system linked into the Hansard, media video feed and webcast system used for the Chamber.

While committees could hold hearings at the same time in the Litchfield Room, Ormiston Room or the Chamber, only one of those meetings could be recorded on the Hansard

system and webcast. An audio recording could be made of a second hearing using portable equipment.

To enable two hearings to be videoed and webcast at the same time would require significant investment to either equip the Ormiston Room with video facilities or provide the Litchfield Room with dedicated recording, control and webcast equipment to allow it to operate at the same time as the Chamber.

Recurrent Cost

The cost of committee support is dependent on the referrals made by the Assembly. Support for Assembly committees in 2015-16 cost around \$700,000. To provide adequate support for two portfolio committees considering all Bills and undertaking some other inquiries would cost around an additional \$500,000 (totaling \$1,200,000 for committee support). Support for three portfolio committees would cost around an additional \$800,000 to 2015-16 funding (totaling \$1,500,000). This does not include Members' travel, which is provided in accordance with the Remuneration Tribunal Determination, and enhancements to committee support, such as a community engagement officer. If there was a large number of significant inquiry referrals this may require additional temporary staff.

The total cost of committee support for the proposal in the Green Paper may therefore be between \$1,200,000 and \$2,000,000 (requiring a budget increase of between \$500,000 and \$1,300,000).

While this cost is significant, it is worth making a number of comparisons:

- The cost of Assembly committee support in 2011-12, including the Council for Territory Cooperation, was \$1,150,000 (equivalent to \$1,250,000 in 2016 dollars).
- The cost of support for the Tasmanian Legislative Council (which has 15 Members and performs bill review and scrutiny of government functions) in 2014-15 was \$6,674,000.
- The Northern Territory Anti-Corruption, Integrity and Misconduct Commission Inquiry estimated the initial budget of an anti-corruption commission would exceed \$5 million.

CONCLUSIONS ABOUT BEST PRACTICE

During the weekend of 12-14 November 2016 I visited Lusaka at the invitation of the Commonwealth Parliamentary Association for the Post Election Seminar for new Members of the Zambian Assembly where I joined Members of the National Assembly of Zambia, a South African Member of Parliament: the Hon. Angela Thoko Didiza, MP, academic Dr Abel Kinyondo from the University of Dar es Salaam in Tanzania and presenters from the Parliament of Kenya and the Speaker from Zimbabwe to speak first on Parliamentary Practice and Procedure and again on Parliamentary Committees.

During my presentation on Committees I cited the Standing Orders of Zambia and discussed their very well developed Committee system.

During my presentation I acknowledged the comment from the Minister for Home Affairs that the Zambian Committee system was more sophisticated and comprehensive than the Northern Territory experience and advised that my attendance was very opportune given the Northern Territory is looking at models for Committee reform and my attendance could inform that approach.

During July this year when on annual leave I visited with the Clerk of the Legislature of Nebraska, the only unicameral legislature in the United States, and had a discussion with him and his colleagues about committee scrutiny of bills.

Clerk Patrick O'Donnell has been Clerk in Nebraska since 1978 and described a sophisticated and rigorous scrutiny of bills system and expressed some surprise at the lack of such a system in a developed unicameral parliament in Australia.

The SCOPP inquiry provides a significant opportunity for the Northern Territory Assembly.

My recent contemporary encounters with colleagues in unicameral parliaments on two other continents has emphasised to me the catch up work required in the Northern Territory to meet basic levels of accountability and scrutiny which would be met with the proposals being considered in the Green Paper as well as consideration of the other matters I have outlined in this submission.

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