

## **Select Committee on Opening Parliament to the People**

### **Submission by Brendan Doran PSM**

#### **Introduction**

I congratulate the 13<sup>th</sup> NTLA on the establishment of this Select Committee and welcome the opportunity to comment on various reform proposals to date and to suggest others.

The Westminster system of parliamentary democracy relies on checks and balances and accountability mechanisms to provide for good government based on decisions, expenditure and behavior that are in the public interest and reflect broad community wishes, expectations and standards. The past four years of Executive 'dictatorship' and bad government highlighted the defects in the version of Westminster practiced in the NT, including (in the absence of an Upper House) a weak committee system. This prompted many calls for reform, including from myself.

The stakes are high with the national and international spotlight focussed on decades of failings by all Territory administrations towards significant sections of the community. Statehood progression, and perhaps even the future of self-government itself, depend on the public institutions of the Territory being quickly able to demonstrate competent delivery of good, clean, open and responsive government and quality service provision especially to the most disadvantaged. There is considerable scope for the Assembly to play a strong leadership role.

Early progress is required on a credible pro-integrity and anti-corruption regimen governing the Executive and the Assembly, as well as bringing codes of conduct on ethics, conflicts of interest, basic behavior at home and abroad and entitlements into line with best practice and public expectations.

Particular avenues for reflecting the views of the indigenous community of the Territory in NTLA deliberations should also be investigated, given the significance of that community's presence and issues and the failure to produce adequate Aboriginal advancement. This could be in the form of a standing advisory body to the Assembly or enshrining mandatory indigenous consultation in the TOR of relevant committees. As part of any review of Self Government/Constitutional arrangements for the Territory, consideration could be given to an Upper House type body with formalized and representative involvement by its indigenous population.

Strengthening the support resources to the Assembly would be a necessary and worthwhile investment in delivering the reforms being contemplated.

**NTLA Green Paper (16 October 2016)**

(Numbering refers to Green Paper heading numbers)

**2 - Two New Scrutiny Committees**

The concept of continuous scrutiny of the Executive by the Legislature in these proposals also provides for cooperation on policy development, mistake prevention, and management of difficult issues. The proposal for two committees with allocated departmental clusters is appropriate. In my view, the addition of joint sub-committees dealing with important cross-cutting issues (or some alternative to deliver the same effect), would improve the proposal. Examples of cross-cutting issues, where the Territory must lift its game include Aboriginal Advancement and International Relations, Commitments and Travel.

Sessions of scrutiny committees (and sub-committees) should be open to the public, and all documents presented and committee records and reports should be publicly available, preferably on the NTLA website or by link to other locations. There may, however, be a need for rare confidentiality or privacy exceptions for good reason.

Cross-Cutting Sub-Committees

To accommodate the concept of cross-cutting sub-committees, the following provision is suggested (between para 2.2 and 2.3 of the Green Paper).

“The Assembly will also establish standing joint sub-committees on the cross-cutting issues of Aboriginal Advancement, and International Relations, Commitments and Travel.”

Rationale for dedicated Indigenous and International sub-committees

In both areas, the political parties and the public institutions of the Territory have grossly underperformed. Not only is there little to show after four decades of self-government, but the Territory’s reputation for any sort of competence may have been irretrievably damaged in the eyes of the taxpayers of the rest of Australia who fund the Territory’s existence.

The Assembly must urgently step up its community opinion-reflecting, guidance, monitoring and scrutiny role in relation to Executive action in these areas to try to improve performance and trust. There should be LA input into Executive policy and programs at the planning stage and ongoing monitoring of progress and outcomes.

#### International Engagement and Travel needs the closest of scrutiny

The period of Self-Government is littered with much costly and unnecessary overseas travel by Ministers, MLAs, public servants and select others who benefit from taxpayer funded or subsidized trips and consultancies. This 'travel addiction' has led to a multiplicity of undertakings to foreign governments and entities for cooperation, capacity-building and aid, and for repeat and reciprocal travel and hospitality. Much of this is inappropriate and un-affordable for a small jurisdiction like the Territory that is struggling to deal with local issues and cannot pay its own way. A further significant issue is that this travel and engagement diverts Cabinet, Ministerial and public sector attention from very real priorities at home.

An early task of the 13<sup>th</sup> Assembly, through questions and existing and evolving committee arrangements, should be to ask the Government to provide a detailed justification of the Chief Minister's recent travel to Asia including the timing, why so many people went, who were they, what were the full costs and details of the actual and anticipated benefits. All undertakings made and documents signed should also be tabled and regular (three-monthly) public reports on delivery costs and benefits made.

At face value the Chief Minister's initial Asia trip report to the Assembly seems to contain largely 'spin' and nothing much new. His trip appears to have been neither essential or unavoidable - and the timing was also bad, possibly contributing to the rushed and highly controversial decision on Christmas and New Year overtime that overshadowed his trip. The timing also saw him miss the COAG National Summit on Reducing Violence against Women and Children.

To satisfy itself of the appropriateness of NTG international activity, the Assembly/Committees should be briefed regularly and consulted on the forward travel and commitment-making programs of Ministers and agencies and proposed expenditures.

Individual MLA travel and other expenditures in accordance with their 'entitlements' also need review. Their personal travel reports and explanations on the public record are somewhat cursory in many cases and questions arise as to justification.

Spending an entitlement for the sake of doing so is as bad as agencies frivolously exhausting their budgets before the financial year cut-off. Is it appropriate for MLAs to be using public monies and official time for company director courses and other personal educational and training programs?

One area where the Assembly needs to be much better briefed is that relating to commitments made by NT Ministers and public servants to foreign interests, including governmental, commercial and private. For example, have MLAs seen, or are they aware of the full implications of, the many agreements signed with, and concessions made to, the Landbridge Group and Rhizao City/region? How deep is the black-hole of unproductive re-engagement with BIMP-EAGA?

The Assembly should also be consulted and better briefed on Treaties and other international agreements that the Commonwealth is proposing Australia enter into and which may constrain Territory policy and legislative action. For example, are MLA's aware of the implications of the FTAs fast-tracked with China, Japan and Korea by the Abbott and Turnbull governments, and of the TransPacific Partnership Agreement? Do any limit the Territory's freedom of action on positive discrimination in favour of Aboriginal advancement or buy-local procurement initiatives?

### **3 - Consulting the Community on Bills**

Referral of Bills to a committee, which would also be able to obtain expert and community views, should be the norm. This is particularly important given the absence of an Upper House in the NT.

Attention would need to be given to prioritization and committee time and resource allocation to Bills according to the likely interest level by the public and interested groups.

### **4 - Passage of Bills**

The detail of the procedures outlined in the Green Paper, is more a matter for the MLA practitioners involved but seem reasonable. The renaming of Ministerial speeches at the Second Reading stage (4.6) is a logical outcome of what is being proposed.

The idea of emails to registered subscribers and identified stakeholders requesting input is good. It could be broadened to seeking comment on important issues other than draft legislation.

## **5 - Committee Time Allocation and Membership**

The procedures and membership arrangements outlined seem reasonable and in accordance with good parliamentary practice by some other jurisdictions. Presumably committees will also be able to meet between Sittings of the Assembly.

## **6 - Super Scrutiny Wednesdays**

More a matter for the practitioners but the proposals seem reasonable and in the spirit of redressing the imbalance between government and non-government members in Assemblies.

## **7 - Consideration of Estimates and Annual Reports**

Annual Reports by public sector agencies are an important vehicle for Executive accountability to the Parliament but they are not the only one. While devoting a week of detailed consideration to ARs in November may be useful, this should not come at the cost of reducing the time currently allocated for the June Estimates Hearings.

The proposal for the two new scrutiny committees (instead of a single Estimates Committee) to do the Estimates work may be problematic if it denies an MLA with particular issues to pursue, an opportunity to be present due to committee membership exclusions or clashes in scheduling.

Assembly reforms that enable MLAs to question more, and compel responses from, Ministers and officials, are to be welcomed. As part of freedom of information and public disclosure reforms, real-time and continuous release of most information (including financial, travel and performance) throughout the year on agency websites should be introduced to improve Executive accountability and enhance the efficiency of scrutiny committee work.

## **8 - Debating petitions**

The proposed procedures in 8.5 to enable 500-signature petitions to be formally debated are supported.

## **9 - Reforming Question Time**

I have noted the frustration of non-government MLAs with the new rules eliminating Dorothy Dixier questions on Wednesdays but preventing MLAs from persisting with questions to an individual Minister. This is tantamount to 'giving with one hand but taking with the other'. The changes in 9.2 in favour of supplementary questions and Speaker discretion, seem appropriate.

The proposed move to 30-second questions seems somewhat restrictive but may be a reasonable trade-off if, in the same spirit, it results in 'to-the-point' answers. A higher 'relevance' test may be required.

## **10 - Acknowledgement of Country and Prayers**

Something more contemporary would be appropriate instead of the current Prayers. The ACT precedent (10.2) of the Speaker inviting Members to 'stand in silence and pray or reflect on their responsibilities to the people of the (NT)' has merit as the most inclusive approach.

If some gesture to the Judeo-Christian context of Westminster practice is preferred, the current NTLA Parliamentary Prayer could be retained. The language is inclusive enough to be acceptable to all Abrahamic religions (including Islam) and perhaps a number of other faith traditions.

The Lord's Prayer is more problematic in contemporary society and both current NTLA Prayers would not find favour with Atheists, Buddhists and strict adherents to traditional Aboriginal beliefs.

The addition of Acknowledgement of Country is not only appropriate for the NT but long overdue. A general formula acknowledging traditional ownership/custodianship of Territory would seem most inclusive and reflect the Assembly's interest in greater outreach to all regions.

## **Appendix A: Notional timeframe for passage of a Bill**

The detail of the procedures outlined in the Green Paper is more a matter for the MLA practitioners involved but seems reasonable.

## **Appendix B: Draft Sessional Order for Scrutiny Committees**

The detail of the procedures outlined in the Green Paper is more a matter for the MLA practitioners and will depend on the outcomes of discussion around the role and functions of the proposed two new Scrutiny Committees.

### Bills

The proposed alterations to Standing Orders (143, 145, 146, 147) and Sessional Orders (144A, B, C) in respect of Bills seem reasonable.

### New Scrutiny Committees

The proposed replacement provisions for Standing Order 176 providing for the two new Scrutiny Committees need further consideration and some change.

Section (3) [on page 25 of the GP] on proposed functions of the Committees may need some changes.

Questions. Is (3)(a) too restrictive in limiting referral rights to the Assembly or a Minister? Is Assembly referral to be by consensus (no objection), or by vote, and if so, what numbers are required – simple majority or less or more? Should not an individual MLA, a group of petitioners, or an individual member of the public for that matter, be able to refer matters to these committees? What a committee does with a reference is another matter but at least procedures are open to a broad range of referral sources.

In respect of Bills and instruments of a legislative or administrative character, the ability of a committee to inquire and report on sufficiency of ‘regard to Aboriginal tradition’ [(3)(c) (i) (j)] is noted. For consideration is whether further elaboration is required to accommodate a broader range of Aboriginal interests, including the need to address the persistence of widespread disadvantage.

Question. Would it be appropriate to add an additional consideration into (3)(c)(ii) to provide for enquiry and reporting on whether legislation has sufficient regard to the institution of Parliament by “ensuring that the Assembly has already been consulted at the negotiation stage on any treaties and international agreements and arrangements that the Commonwealth wants executed in NT law”? This is to ensure that the Assembly is fully aware of possible international commitments (on free trade, climate change and human rights for example) that may constrain NT policy and legislation. Other effects would be to ensure Territory interests are protected by enabling the registration of objections to draft sections of treaties, and to reduce the risk of unwitting Territory action contrary to Australia’s international legal obligations.

### Financial management scrutiny

In respect of (3)(d) the following addition is suggested - "..., any other reports tabled pursuant to the Financial Management Act or the Audit Act, and any relevant reports, comments, referrals from any other source." This would increase the range of potential information that the committees could draw upon including that from non-government reports, media articles and whistleblowers.

### Performance management

In respect of (3)(e), the following additions and rewording is suggested - "the performance and operation of agencies, including in regard to international travel, engagement and commitments, and with attention to the examination of government policy and planning documents, portfolio budget statements and documents and annual reports".

The rationale is that international travel and activity have been a particular area of waste, distraction and reputational damage. Greater scrutiny, control and avoidance of repeating past mistakes is required going forward.

### Joint Sub-committees of Scrutiny Committees

A new section (5) is suggested - "Scrutiny committees may establish joint sub-committees to handle cross-cutting issues to which they may delegate responsibilities and prescribe report-back arrangements."

The rationale is to pick up my suggestion for an efficient method for handling stand-out issues (such as Aboriginal advancement, and international engagement, commitments and travel) that straddle the portfolio allocations to the proposed two new scrutiny committees.

## **OTHER MATTERS**

### Non-Service of Alcohol at Territory official functions

Successive Territory governments have failed to turn around chronic social problems, particularly in the indigenous community. Alcohol is at the centre of many of these problems. Changing damaging behaviours requires a multi-pronged approach including leadership-by-example and messaging by the Legislature and the Executive. Cessation of service of alcohol at official NT Government functions, both in the Territory and overseas, would signal a serious intent to address the issues.

Non-service of alcohol at official functions abroad would also go some way towards changing the poor image of NT delegations internationally.



There would be no trade downsides because, unlike other jurisdictions, the Territory does not have a wine or brewing industry to promote. Any savings could be put towards promoting Territory products on which net profits go back into the Territory economy.

I would be happy to elaborate on any of my comments on suggestions should the committee or any individual MLA invite me to do so.

Brendan Doran PSM

28 November 2016