

**INQUIRY INTO LEGISLATIVE COUNCIL COMMITTEE  
SYSTEM**

**Organisation:** Office of the Legislative Assembly, Australian Capital Territory  
**Date received:** 24/03/2016

---



The Director  
Select Committee on the Legislative Council Committee System  
Legislative Council  
Parliament House, Macquarie Street  
SYDNEY NSW 2000

Dear Mr Griffith

Thank you for the opportunity to make a submission to your Committee's inquiry into the Legislative Council Committee system and I apologise for the lateness of this submission.

Looking at possible reforms to the way parliament operates is a worthwhile task and I commend the Committee for this important task.

I offer the following comments in relation to the very detailed discussion paper issued in November 2015.

Legislative Council Committee system- is there a limit on the types of inquiries that the GPSCs undertake?

In your discussion paper it is noted that as well as receiving references from the House, General Purpose Standing Committees (GPSCs) have the ability to self-refer an issue for inquiry on the expenditure, performance or effectiveness of any government department, statutory body or corporation, relevant to the portfolios allocated to the committee.

In the Legislative Assembly for the Australian Capital Territory (ACT Legislative Assembly) there are five general purpose committees. These committees, in addition to inquiring into and reporting on matters referred to them by the Assembly, also have the ability to self-refer matters that they consider to be of concern to the community. For example, the Standing Committee on Education, Training and Youth Affairs could self refer any matter related to early childhood education and care, primary, secondary, post secondary and tertiary education, non-government education, youth services, technology, arts and culture.

The Committee may wish to consider whether the terms of reference for your GPSCs be amended to allow self referral on subject matters within their committee subject. This would give the committees a wider remit to inquire into and report on matters of concern to the community within NSW.

Legislative Assembly for the Australian Capital Territory

Civic Square, London Circuit (GPO Box 1020) Canberra ACT 2601

T (02) 6205 0439 F (02) 6205 3109 E [secretariat@parliament.act.gov.au](mailto:secretariat@parliament.act.gov.au) W [www.parliament.act.gov.au](http://www.parliament.act.gov.au)

Printed onto 100% recycled paper

## Should Committees consider statutory appointments made by the Executive?

Section 228 of the *Legislation Act 2001 (ACT)* requires that, before making an appointment to a statutory position in the ACT, a Minister must consult the relevant subject standing committee before making the appointment (i.e. an appointment to a position created by an Act). A committee may make recommendations with regard to a proposed appointment and a Minister is required to consider any such recommendations prior to making an appointment. The law does not apply to ordinary positions within the ACT public service, to short term appointments or to appointments of ministerial staff. The Minister may proceed to make the appointment if the committee does not respond to the initial consultation within the 30 days.

The system outlined above has been in place since 1994. When the private Members Bill was introduced that year, the sponsor of the Bill noted that:

It is important, Madam Speaker, not only that we ensure that appointments do not go to mates but also that the system is designed to be clean and that there is a system in place to avoid that situation.

In practice, Committees rarely comment on proposed appointments but the system increases transparency. In addition, continuing resolution 5A of the Assembly's Standing Orders and continuing resolutions of the Assembly require the Committees to report twice a year detailing a list of statutory appointments referred to the committee, the date the request for consultation was received and the date committee feedback was provided.

The committee may wish to consider whether such a regime could be introduced to NSW Legislative Council committees.

### Allocation of committee spots

I note that the composition of the GPSCs are three government members, two opposition members and 1 crossbench member, and that select committees have seven members with a non-government majority.

The committee may be interested to know the way that the Assembly deals with the composition of committee membership. Standing order 221 stipulates:

221. Overall membership of committees shall comprise representatives of all groups and parties in the Assembly as nearly as practicable proportional to their representation in the Assembly.

Were this test to be applied the GPSCs in the NSW LC it shows as follows:

Party	% in committee	% in Council
Government	50%	47%
Opposition	33%	28.5%
Crossbench	16%	23.6%

Whilst it appears that membership of the GPSCs are proportional to the overall representation in the Council, if there is no equivalent standing order 221 in the Council, consideration of having one might be worthwhile. If the membership of the council were to alter significantly at a future election and there was no corresponding change to the committee membership of committees, the committees may not be truly representative of the make-up of the council, and all members would not be able to contribute equally to the important work that committees do.

#### Appointment of committee chairs

Although there is no equivalent standing order in relation to the position of committee chairs, the practice of the Assembly has been to **not** allocate all committee chairs to government members. This occurred even in the Sixth Assembly when the governing party had an absolute majority (i.e. 9 out of 17 seats) in the assembly when 2 committees were chaired by Opposition and Crossbench MLAs. In the current Assembly, 3 out of the 6 standing committees are chaired by opposition MLAs, and the annual select committee has always been chaired by an opposition MLA for this current Assembly.

Applying the principles of SO 221 to the chairs of 13 Council Committees listed on your website it shows:

Party	% of chair positions & No of chairs in brackets	% in Council
CDP	23 %(3)	4.7%
ALP	7.6% (1)	28.5%
Greens	7.6% (1)	11.9%
Lib	38% (5)	30.9%
Shooters	15% (2)	4.17%
Nationals	7.6% (1)	16.6%

The position of committee chair is crucial for the effective operation of the committee. It is my view that, just as committee positions should accurately reflect the composition of the legislature, so too should the committee chairs.

Consideration might be given to devising a system whereby the committee chairs are shared more equally amongst the parties represented in the Council.

#### Consideration of bills and regulations

The Committee has posed the question in its discussion paper as to whether the current system for scrutinising legislation is effective. My only observation is that it does not appear from your website that there are specialist staff assisting your Joint Legislation Review Committee.

In the ACT Legislative Assembly we have a Standing Committee on Justice and Community Services performing that scrutiny role, and they are assisted in that task by two specialist advisers appointed by the Speaker. There is a Legal Adviser (Bills) currently advising the committee when it considers Bills introduced. The current adviser is a former Reader in Law from the Australian National University. We also have a Legal Adviser (subordinate legislation) advising the committee on all regulations and other disallowable instruments presented to the Assembly. He is the author of the definitive text on delegated legislation in Australia and also advises the Senate Standing Committee on Regulations and Ordinances. You will no doubt be aware that both Senate Committees that examine legislation also engage legal advisers.

The presence of such specialist staff does, in my view, make the operation of the committee more non-partisan. Whilst I was secretary to our scrutiny committee from 1990 -2003 there was never a division on any report. I note from the last minutes posted on the NSW parliament website (unconfirmed extracts of Minutes of meeting No 16 dated 15 March 2016) that the committee divided twice on the report.

The committee may wish to consider whether the engagement of specialist staff may assist the scrutiny committee and provide a more non-partisan and effective operating environment for the improvement of legislation.

#### Budget estimates

The Committee has asked whether any changes should be made to the budget estimates process.

The Committee may be interested to know of the Estimates Committee process in the ACT Legislative Assembly. There is a Select Committee established specifically for the purpose of examining the estimates and, as previously noted, the Estimates Committee is usually chaired by an Opposition MLA, although the non-government MLAs do not have a majority on the Committee. The Estimates Committee holds hearings over a period of 12 days, with

one day being devoted to hearing from community groups, and a day reserved for recalling Ministers in case further evidence is required.

At the end of the process the Committee presents to the Assembly a substantial report with numerous recommendations. For example, in 2015 the Committee presented a 2 volume report with the main volume containing 369 pages and 148 recommendations. The Committee is assisted by an independent economic adviser whose role it is to advise the Committee on the contents of the budget delivered by the Government. In 2015b the report from the economic adviser was 81 pages. The government presents a government response to the Committee's report usually within one week of the Committee's report being presented, and the budget is not considered until both the Committee report and the governments' response has been received by the Assembly. In the government response in 2015, the government indicated that it agreed to 61 of the recommendations, agreed in principle to 15, noted 61, agreed in part to four and disagreed with seven.

The committee may wish to consider whether a more substantial report with recommendations to government could be established to improve scrutiny of the \$58billion NSW Budget.

#### Government responses

The discussion paper sought comments on the process of government responses to committee reports and the time allowed for governments to respond.

In the ACT Legislative Assembly governments set themselves a timeframe of responding to committee reports within 3 months (with the one exception of reports from the PAC where recently it was changed to allow 4 months). The Speaker tables in the Assembly at least once a year a schedule detailing all government responses received and whether they have met the 3 (or 4) month deadline. In addition, there is a standing order (SO 254A) where, if a government response has not been received within 3 months of the tabling of a committee report, the Chair of the Committee may without notice ask the relevant Minister for an explanation or statement as to why the committee response has not yet been received, and may also move, without notice, at the end of the explanation a motion that the Assembly take note of the explanation.

The committee may wish to consider whether adopting some of the practices above may enhance the rate of government responses received.

### Committee powers

In the ACT legislative Assembly, pursuant to the *Australian Capital Territory (Self-Government) Act 1988 (C'wealth)* the Assembly has the same privileges and immunities as the Commonwealth Parliament, which means almost the entire *Parliamentary Privileges Act 1987 (C'wealth)* apply in the Territory. Significantly though, the Commonwealth Parliament stipulated that the Assembly is not empowered to fine or imprison.

Similarly, the Assembly has adopted many of the Senate resolutions in relation to the protection of witnesses and placed them in our standing orders. For instance, see standing order 264A (Protection of witness – Adverse mention procedures), as well as standing order 280 (Procedures for the protection of witnesses before a Privileges Committee).

The ability to rely on the Parliamentary Privilege Act and its relevant case law and commentary in *Odgers Australian Senate Practice* and the *House of Representatives Practice* and the adoption of Senate resolutions has worked well for the Assembly, and the Council may wish to consider adopting them as well.

I trust the information above is of some use to the Committee and I wish it well in its deliberations. I would be more than happy to give evidence at a hearing (if the committee considers it useful) or to attend the symposium foreshadowed in your letter to me.

Yours sincerely

Tom Duncan  
Clerk of the Legislative Assembly

27 March 2016