



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Michael Moore MLA
Independent

minister

Ms Kate Carnell MLA
Chief Minister
ACT Legislative Assembly
CANBERRA ACT 2600

27 April 1998

Dear Kate,

Further to our discussions and your letter of offer to me to become Minister for Health and Community Care, I formally accept this offer to take effect from Tuesday 28 April 1998.

Yours sincerely,


Michael Moore, MLA

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Email:
moore@dpa.act.gov.au

GPO Box 1020
Canberra ACT 2601
Australia


Chair:
Standing Committee
Planning & Environment (94-)
Conservation, Heritage
& Environment (89-94)

Chair:
Select Committee:
Drugs (92-93)
HIV, Illegal Drugs
& Prostitution (89-91)
Euthanasia (93-94)



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY
ASSEMBLY**

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Clerk of the Legislative Assembly



Kate Carnell MLA

Office of the Chief Minister

Treasurer
Minister for Health and
Community Care

Member for Malonglo
Australian Capital Territory

Mr Michael Moore MLA
ACT Legislative Assembly

27 April 1998

Michael
Dear Mr Moore

In response to your letter of 26 April I am pleased to be able to offer you the position of Minister for Health and Community Care.

As you rightly identify in your letter, this is an historic step and one that will rely on goodwill and trust on both sides if it is to work in the best interests of the people of Canberra and the Government. It is also an exciting step and one that reflects a genuine commitment towards improving the system of governance here in the ACT.

I accept that your appointment to the ministry will be based upon the framework outlined in the Pettit Report. To that end I accept that there are a number of issues on which you will continue to dissent from stated government policy.

On all other matters you will be a full member of Cabinet and bound by Cabinet solidarity to fully support decisions of Cabinet. In particular, with regard to the ACT Budget, you will be required to fully support all Budget decisions and share the Cabinet's corporate responsibility for what may at times be very difficult decisions. As Minister for Health and Community Care you would also be required to be involved in all Cabinet deliberations regarding that portfolio and be bound by Cabinet decisions affecting that portfolio.

I believe strongly that this arrangement will be successful and I look forward to working with you in Cabinet. I give you my personal commitment that I will make every effort to ensure that this is a step towards better government for the people of the ACT.

Yours sincerely

Kate Carnell MLA
Chief Minister

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GPO Box 158, Canberra ACT 2601

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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Michael Moore MLA
Independent

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Kate Carnell
Chief Minister
ACT Government

26 April 1998

Dear Kate,

Following our discussions on the matter of the Ministry for Health and Community Services I believe it is appropriate for me to set out, for my part, my understanding of how we intend to manage this arrangement. There is no doubt that what we are attempting is new and innovative, however, I believe that it will be in the best interests of the people of Canberra.

By accepting a Ministry, I accept that I become part of a Carnell Government, even though the arrangement has been appropriately described by the Pettit Inquiry as a "loose coalition". It is my intention to ensure that I work towards that government being the best possible government for the people of Canberra.

I agree to our arrangement being based on the three conditions set out in the Pettit Report as well as the general tenor of the report in dealing with this issue. Additionally, it is appropriate for me to step aside from cabinet when the issues before cabinet are ones that I have identified before hand as issues where I might have a difference of approach. Naturally, for good government I would first try to see if there is a compromise which can be reached, as I did when I chaired the Standing Committee on Planning and Environment.

I have attached a list of such issues to this letter.

Additionally, my support for you as Chief Minister was a full term commitment, it is not affected by whether this arrangement turns out to be successful or not. However, the most important commitment I can make is to look forward to working with you and other Ministers in a cabinet which seeks to deliver the best possible government for the people of the ACT.

Yours sincerely,

Michael Moore, MLA

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**ISSUES WHICH MAY REQUIRE STANDING ASIDE FROM
CABINET DISCUSSION AND DEBATE ON INDIVIDUAL ISSUES
WHILE RETAINING NORMAL ASSEMBLY DEBATING AND
VOTING RIGHTS**

ENVIRONMENT, PLANNING, AND LEASEHOLD SYSTEM

For Example

- . oppose 999 year lease
- . establish a land account
- . extend appeal rights
- . support Statement of Objectives in the Planning Act
- . support the Y-Plan
- . John Dedman Drive not through O'Connor Ridge
- . Licensing wood merchants
- . tree preservation orders
- . continued banning of circus animals
- . protection of residential amenity from noise, i.e. The Ridgeway
- . Support expanded Green Choice Scheme

EDUCATION

- . oppose voucher funding
- . no cuts to Education budget
- . Review Schools Authority Act
 - support a Schools Authority
- . Maintain quality, planned, accessible, cohesive and free compulsory and secular public education.

- . Support a study of integration of school systems.
- . Retain voluntary payment of fees
- . Maintain system of neighbourhood, local schools.
- . Prevent the closure of neighbourhood schools unless called for by the community.

HEALTH, SOCIAL JUSTICE AND COMMUNITY SERVICES

- . Emphasise a healthy society as well as providing sickness care.
- . Support specific womens' health strategies
 - reproductive health and sexuality
 - ageing women
 - violence against women
 - stereotyping of women
 - post natal depression.
- . Continue to advocate voluntary, active euthanasia
- . Reform of drug laws
- . Gambling
 - counselling and crisis services
 - ACTTAB - protection of jobs and revenue.

OPEN GOVERNMENT

- . Strengthen *Freedom of Information* Legislation.

JUSTICE

- . Protect Civil Liberties

e.g. Australian Privacy Charter - adequate legislation

- Police powers to remain subject to appeal rights.
- . Community Policing rather than punitive approach to problems.
- . Preventative measures to deal with crime.
- examining the causes of crime

SOCIAL JUSTICE

e.g. Public Housing

- adequately funded
- sensitively handled.

PRIVATE MEMBER ISSUES

Introduction of legislation as a private member on the issues as outlined above.
e.g. Litter legislation.

This process not to include the "financial prerogative of the Crown".

FEDERAL ISSUES

Where the Assembly is sending a message

e.g. WIK

6.11 It is critical that the executive retains the confidence of the Assembly. However, defeat on particular measures is not treated as a loss of the confidence of the Assembly. The prevalence of minority governments in the first five Assemblies has meant that failure to pass significant pieces of legislation is not uncommon.

6.12 On one occasion the motion that the annual appropriation bill (the budget) be agreed to was defeated. The bill provided funds for a highly controversial supervised heroin injecting facility. The Assembly adjourned to the next scheduled sitting day and the government restructured both the appropriation bill and the injection room proposal. At its next meeting the Assembly rescinded the vote on the appropriation bill, agreed to government amendments and passed the amended bill.¹⁴ Generally the passage of a motion of no confidence is necessary to unseat a Chief Minister.¹⁵

CABINET

6.13 By convention, the executive determines its policies and makes its decisions through a cabinet system of decision making, with cabinet decisions seen as binding on all Ministers as government policy. This convention of collective responsibility is supported by the convention of cabinet confidentiality, whereby strict confidentiality is attached to cabinet documents and cabinet discussions. As stated in the current *Cabinet Handbook*:

Cabinet is the forum in which Ministers are able to discuss proposals and express their views with complete freedom while working towards a collective position. The openness and frankness of discussions in the Cabinet Room are protected by the strict observance of this confidentiality.¹⁶

6.14 The current code of conduct for the executive¹⁷ not only addresses ministerial obligations to the Assembly but also addresses collective responsibility:

All Ministers who make up the executive of the Government acknowledge that the collective decisions of Cabinet are binding on them individually. If a Minister is unable to publicly support a Cabinet decision, the proper course is to resign from Cabinet. This convention is based on the proceedings of Cabinet ordinarily being private and with the decisions of Cabinet being collective in nature.

6.15 The Assembly has seen fit to enact provisions reinforcing Ministers' individual responsibility for the administration of departments and other administrative units mainly through amendments to the *Public Sector Management Act 1994*. On another occasion, the Assembly recognised an arrangement whereby the convention of collective responsibility was waived.

6.16 In December 1995 the Assembly considered significant amendments to the *Public Sector Management Act* which introduced new employment arrangements for chief executives and executives (senior public servants). During detail stage consideration of the bill a provision was inserted to ensure that nothing in a contract between the Territory and a person

¹⁴ See Assembly Debates, (29.6.2000) 2209-30, 2265-367 and (10.7.2000) 2427-41. Because of the way Territory finances are structured, the defeat of the appropriation bill did not precipitate any immediate financial crisis for the government. This does not diminish the seriousness of such a setback to a government and the precarious position it would be in should it be unable to obtain the Assembly's agreement to an appropriation proposal within a reasonable time. There is no legal requirement or convention that guarantees a government supply. For a full discussion of this matter, see paragraphs 11.185 to 11.195.

¹⁵ See Assembly Debates (5.12.1989) 2987-3046.

¹⁶ *Directions on Cabinet Procedure: ACT Government Cabinet Handbook*, January 2007, p. 2.

¹⁷ *Code of Conduct for Ministers*, Australian Capital Territory Government, February 2004. Presented in the Assembly on 12 February 2004; see MoP 2001-04/1122.

engaged to perform the duties of an office of chief executive could be taken to derogate from the responsibility of a Minister administering an administrative unit for the policies developed or applied by the administrative unit and the financial and other performance of the administrative unit. The issue had been canvassed in a report on the bill by the Standing Committee on Public Accounts.¹⁸

6.17 By arrangement, the convention of collective responsibility (or cabinet solidarity) was not followed during the Fourth Assembly. This resulted in moves from the floor of the Assembly (ultimately successful) to enact legislation to ensure that the convention operated in regard to the making of subordinate legislation.

6.18 In April 1998 Chief Minister Carnell appointed an independent Member, Mr Moore, as a Minister pursuant to certain conditions that had been recommended in a report entitled *Review of Governance of the Australian Capital Territory*.¹⁹ The review investigated the basis upon which a non-government Member could become a Minister. This included identifying areas in which the new Minister would not necessarily be bound by cabinet solidarity.²⁰

6.19 The Chief Minister presented letters that had been exchanged between Mr Moore and herself with regard to his appointment as a Minister. The letters indicated Mr Moore's acceptance to become part of the government and his agreement to the three conditions set out in the review. These conditions were that:

- the crossbench Member be willing to give prior notice of the sorts of issues on which he reserved the right to dissent in public and in the Assembly;
- as a Minister, he should be willing, where it falls within his brief, to act in the implementation of a decision from which he dissents; and
- as a Minister he should be prepared to renounce the use of the threat to resign in cabinet negotiations.

6.20 Additionally, Mr Moore saw it as appropriate for him to step aside from cabinet when it was considering issues that he had identified beforehand as issues where he might have a different approach (having first attempted to see if there was a compromise that could be reached). A 'list of issues which may require standing aside from Cabinet discussion and debate on individual issues while retaining normal Assembly debating and voting rights' was attached.²¹

6.21 The Chief Minister offered Mr Moore a ministerial position based upon the framework outlined in the review's report, while accepting that there were a number of issues on which Mr Moore would continue to dissent from in relation to stated government policy. On all other matters, particularly with regard to the budget and his portfolio responsibilities, Mr Moore would be a full member of cabinet and be bound by collective cabinet responsibility and confidentiality.

6.22 This arrangement led to a proposed amendment to the [then] Subordinate Laws Act to ensure collective and individual responsibility by the executive for the making and signing of regulations. The amendment proposed that the approval of the whole executive be required for any subordinate law proposed by a Minister and that the Minister responsible for administering the subordinate law be one of the Ministers signing the subordinate law. The requirement applying at that time was that any two Ministers who were Members of the

¹⁸ MoP 1995-97/228-9, 237; Assembly Debates (12.12.1995) 2865-6.

¹⁹ The Pettit Review.

²⁰ MoP 1998-2001/7; Assembly Debates (28.4.1998) 19-21.

²¹ The list of topics was general in nature.

executive could sign a regulation into effect. The Member sponsoring the bill viewed the then existing provision (whereby any two Ministers who were members of the executive could sign a regulation into effect) as being used to breach the clear intention that any two Ministers signing regulations were clearly interpreting the will of the executive.

6.23 In addition, it was argued that the Westminster convention of collective and personal ministerial responsibility was being undermined by the practice.²² Although the bill lapsed at the expiration of the Fourth Assembly, the substantive provisions were inserted in the Legislation Act in May 2002.²³

6.24 Arising out of this arrangement, standing orders 77 and 78 were amended by temporary order to make provision for a new category of business—'Executive Members' business'.²⁴

Standing and other orders of the Assembly pertaining to the executive

6.25 The standing rules and orders of the Assembly allocate to the executive and Ministers certain prerogatives as well as imposing upon them essentially the same duties and responsibilities as those imposed upon other Members, though Ministers are rarely called upon to sit upon Assembly committees.²⁵

6.26 Only Ministers may propose any enactment, vote or resolution for the appropriation of the public money of the Territory, and non-executive Members are precluded from moving an amendment to such a proposal if it would increase the amount of public money to be appropriated.²⁶ In November 1995 the Assembly, by resolution, further limited the ability of non-executive Members to move amendments to appropriation bills other than those to reduce items of proposed expenditure²⁷ (see paragraphs 11.178 to 11.190).

6.27 Standing orders also provide that only a Minister may require that the question on the (automatic) adjournment be put forthwith without debate,²⁸ move a motion without notice to fix the next meeting of the Assembly,²⁹ move a motion pursuant to standing order 214³⁰ and (together with the Speaker) present papers.³¹

6.28 The Assembly grants precedence to executive business over private Members' business and Assembly business, except for sitting Wednesdays and a period of 45 minutes on

22 See Assembly Debates (25.8.1999) 2362-3. The background to this matter was that the Attorney-General had stated that (a) he intended, with the assistance of the Minister for Urban Services, to introduce regulations concerning abortion pursuant to an Act administered by the Minister for Health, Mr Moore and (b) that he (the Attorney) had no intention of seeking the approval of the executive in order to make the regulations. Mr Moore had publicly stated that he would not make any such regulations and that if they were made he would vote against them. The Leader of the Opposition argued that the Attorney-General was promoting a fiction—that any two Ministers were, for the purposes of exercising the regulation making power, the executive.

23 On the motion of a non-executive Member and with the support of the executive; see MoP 2001-04/151, 156-7. The provisions are now included in sections 41 and 253 of the Legislation Act.

24 MoP 1998-2001/186-7, and see Chapter 8: Conduct of the business of the Assembly.

25 During the course of the Fifth Assembly the Deputy Chief Minister, Mr Quinlan, was appointed to a Select Committee on Privileges to inquire into the possible unauthorised dissemination of committee material and other matters (MoP 2001-04/802-3). On other occasions, Ministers have remained as members of select and standing committees for short periods following their appointment as Ministers.

26 Self-Government Act, section 65; standing orders 200, 201 and 201A.

27 MoP 1995-97/201-02.

28 Standing order 34.

29 Standing order 36.

30 Standing order 214: 'On any paper being presented to the Assembly ... a Minister may move without notice ...' either that the Assembly take note of the paper or that it be referred to a committee.

31 Standing order 211.