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Making the Grade

Legislative Assembly for the ACT—assessment against the updated CPA Benchmarks for Democratic Legislatures

**Paper to be presented by Tom Duncan, Clerk of the
Legislative Assembly for the Australian Capital Territory**

There has to be some way to measure success in the Service. British Leyland can measure success by the size of its profits. However, the Civil Service does not make profits or losses. *Ergo*, we measure success by the size of our staff and our budget. By definition a big department is more successful than a small one. It seems extraordinary that Woolley could have passed through the Civil Service College without having understood that this simple proposition is the basis of our whole system. (*Memo from Sir Humphrey Appleby*)

Background and purpose

In 2006, a Commonwealth Parliamentary Association (CPA) study group hosted by Bermuda produced a report entitled, *Benchmarks for Democratic Legislatures*. Drawing on a range of earlier works, including the National Democratic Institute's discussion paper, *Toward the Development of International Standards for Democratic Legislatures*, the benchmarks set out a set of best practice standards aimed at providing tools to better assess levels of parliamentary democracy across CPA branches.

The Legislative Assembly for the Australian Capital Territory was the first legislature to measure itself against the 2006 benchmarks. Through that assessment, which was published in 2008 in *The Parliamentarian*,¹ the Assembly was rated as having met 80 of the 87 benchmarks.

In 2018, the Recommended Benchmarks for Democratic Legislatures were revised and updated following the work of a study group of CPA members representing different Commonwealth regions. The group was organised by the Commonwealth Parliamentary Association Headquarters Secretariat and the Westminster Foundation for Democracy.

With the changes to the benchmarks in 2018, the Office of the Legislative Assembly² wished to establish whether the Assembly's performance had changed.

This paper sets out the results of the Office's assessment of the revised benchmarks.

Method

An assessment team, comprising the Clerk of the Legislative Assembly, Tom Duncan, and the Director of the Office of the Clerk, David Skinner, applied a relatively straightforward assessment method. Recognising that compliance with the benchmarks could exist on continuum, the assessment team evaluated the Assembly against each benchmark to determine whether the Assembly:

- fully complied with the spirit and the letter of the benchmark (awarding 2 marks);
- partially complied with the spirit and the letter of the benchmark (awarding 1 mark); or
- did not comply with the spirit and the letter of the benchmark (awarding no mark).

¹ Based on a paper '[Rating the ACT Legislative Assembly against CPA Benchmarks for Democratic Legislatures— is A minus good enough?](#)' by then Speaker Wayne Berry MLA and David Skinner for the 39th Presiding Officers and Clerk's Conference in Adelaide, 2008.

² The Office of the Legislative Assembly is a statutory office responsible for advising on parliamentary procedure and providing administrative support to the Legislative Assembly for the ACT.

The assessment team considered the Assembly's performance against the benchmarks with the underlying democratic functions of the legislative branch of government in mind. Parliaments have a number of important functions including: the representation of electors, the scrutiny of government and holding the executive to account, and the consideration and passage of legislation. In making its assessments, the assessment team considered relevant statutory and subordinate law, the conventions and practice of the Assembly, the standing orders and resolutions of the Assembly, and relevant statistics associated with the business of the Assembly.

Where the assessment team considered that the evidence supported an assessment of full compliance with a benchmark, two points were awarded, where the team considered that the evidence supported partial compliance, one point was awarded, and where the team considered that the evidence was unable to support compliance, no points were awarded. Where a particular benchmark was not relevant to the Assembly—for instance, because it related to a national legislature or a bicameral legislature—it was excluded from the assessment.

External review

Following its own assessment, Emeritus Professor John Warhurst AO³ of the Australian National University undertook an external review to validate or invalidate the judgements that had been made by the Office and to offer any further comment.

As a general comment on the Office's assessments, Professor Warhurst noted:

The initial Office Assessments are almost invariably sound and my comments below are largely in the form of suggestions to tighten up or to expand the comments by the Office rather than to dispute the rating.

The benchmarks themselves include many subjective general terms which are always open to interpretation, including: regular, periodic, fair, proportionate, regularly, substantial proportion, adequate, timely, sufficient, reasonable, etc. This point should be made in a prominent position.

The ACT Legislative Assembly has general characteristics, including its relatively small size, which may affect the applicability of the benchmarks. These should also be noted.

The Office revised a number of its assessments and comments on the basis of Professor Warhurst's analysis.

The Office will provide the assessment to the Assembly's Standing Committee on Administration and Procedure (which is comprised of the Speaker (Chair) and each of the whips of the three parties represented in the Assembly) for consideration and endorsement later in July 2019.

Results

When the CPA Study Group re-considered the original 87 benchmarks it added a further 47 new benchmarks, bringing the total number of benchmarks to 132. Subject to the views of the Standing Committee on Administration and Procedure, the Assembly has scored 225 marks against a possible score of 246, which, in percentage terms is 91.5% (compared with the 91.9% score obtained in 2008).

³ Emeritus Professor John Warhurst AO, Visiting Fellow, School of Politics and International Relations, Australian National University.

Where did the Assembly fall short and not meet the benchmark at all?

Of the 132 benchmarks the Assembly did not meet three, and partially met 14 measures. Detailed below are the explanations of why the Assembly did not meet the benchmark.

Parliamentary government – 5.1.5

The Legislature shall take measures to ensure that women are represented at all levels of administration.

The Assembly did not meet this benchmark and it is unsure whether it will ever be in a position to do so. The Office made the following comment explaining its rating:

There are no measures in place to ‘ensure that women are represented at all levels of administration’. As with elsewhere in the Australian public sector, the merit principle is applied in relation to all appointments at all levels of administration.

While there is no barrier to encouraging women to apply for particular positions within a public sector organisation, any measure that is designed to ‘ensure’ that one category of person over another is considered for a position on the basis of an attribute (e.g. sex or gender) unrelated to a person’s merit, cannot, under current legislative arrangements, be adopted.

The implementation of measures to ‘ensure’ that women are represented at all levels of administration’ would almost certainly contravene the *Discrimination Act 1991*, which establishes that a person’s sex and a person’s gender identity are ‘protected attributes’.

Section 8 of that Act, *inter alia*, provides that:

- A person directly discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more protected attributes.
- A person indirectly discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more protected attributes.

It is also observed that this benchmark would appear to conflict with benchmark 5.3.1, which proposes that ‘Recruitment and promotion of non-partisan staff shall be on the basis of merit and equal opportunity’, and 5.2.2 which proposes that ‘recruitment procedures... shall not discriminate... recruitment of staff on the basis of race, ethnicity, religion, gender, disability...’.

Legislative function general – 6.1.5

The Legislature shall encourage the process of equality impact assessment with respect to the development of legislation, policies and budgets.

The Assembly has not, by resolution or by legislation, expressed a formal view on encouraging the adoption of ‘equality impact assessments’ in relation to legislation, policies and budgets.

Legislature procedure – 6.2.4

The Legislature shall establish procedures for systematic monitoring of the effective implementation and consequences of legislation.

This was another benchmark that the Assembly did not meet. In our comment on the benchmark we noted:

There is no systematic monitoring of ‘effective implementation and consequences of legislation’. However, through debate, the work of Assembly committees and the use of question time, the Assembly is able to examine these matters in an ad hoc fashion. It would be open to the Executive to consider an arrangement whereby it report on these matters (through, for instance, annual reports) to the Assembly. It is also a function that could be given to the Auditor-General in the context of its performance audit program.

The external advisor noted that the benchmark does appear to be beyond the scope of a legislature.

Benchmarks which the Assembly partially met

Candidate eligibility – 1.2.2

Measures to encourage the representative political participation of marginalised groups shall be drawn to accomplish precisely defined objectives.

There are no explicit measures—outside of statute—to ‘encourage the representative political participation of marginalised groups’ occurring under the banner of the legislature (i.e. by way of the internal institutional arrangements of the Assembly).

Arguably, any measures that might be taken to encourage the representative political participation of marginalised groups is a matter that falls to individual and collective political actors in civic and civil life, including the executive and individual members, rather than being an inherent function of a democratic legislature.

Such arrangements may also, of course, occur by way of particular legislative proposals (as opposed to the utilisation of internal policies, practices and procedures of the legislature to produce such measures).

As an example, the Assembly passed the *Aboriginal and Torres Strait Islander Elected Body Act 2008*, the object of which is very much in line with the encouragement of representative participation of a marginalised group—

The objects of this Act are, in recognition of the rights of Aboriginal and Torres Strait Islander peoples to freely determine their political status and to freely pursue their economic, social and cultural development in line with the right to self-determination—

- (a) to ensure maximum opportunity for the voice of Aboriginal and Torres Strait Islander people living in the ACT to reach decision-makers in the government and its agencies; and
- (b) to ensure maximum participation of Aboriginal and Torres Strait Islander people living in the ACT in developing and implementing government policies affecting them; and
- (c) to ensure coordination by government agencies in developing policies affecting Aboriginal and Torres Strait Islander people living in the ACT without detracting from, or diminishing, the responsibilities of those agencies to provide services for the broader community; and
- (d) to further the economic, social and cultural development of Aboriginal and Torres Strait Islander people living in the ACT.

Procedure and sessions – 2.6.1

Plenary debates and votes in the Legislature shall be public.

With the exception of votes in relation to the election of the Speaker, Deputy Speaker, Chief Minister and Leader of the Opposition (which require a secret ballot—see standing orders 2, 3, 5 and 5B), all votes of the Assembly are made publicly known.

All proceedings of the Assembly are open to the public, Hansard Debates and video of proceedings are publicly available via the website.

Committees – 3.1.5

All Committee votes and substantive decisions, and the Committee’s reasons for them, are made public in an accessible and timely manner.

Minutes of all committee proceedings, including the results of particular votes are maintained. However, not all minutes of a committee may be made publicly available without the committee tabling them in the Assembly. There may be occasions where it might be in the interests of the Assembly or the public that deliberations of a committee are not made publicly available.

Upon presentation of the report of a committee, standing order 253 requires that minutes or extracts of the relevant minutes are tabled in the Assembly.

Committees – 3.2.2

There shall be a presumption that the Legislature will refer legislation to a Committee, and any exceptions must be transparent, narrowly-defined, and extraordinary in nature.

There is no requirement that legislation is to be referred to a policy committee for inquiry and report. However, the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) examines: 1. all bills; 2. all amendments to any bills; and 3. subordinate legislation.

The committee must consider various rights issues as well as other matters provided for in the [committee’s resolution of appointment](#). See also standing order 182A relating to legislative amendments receiving scrutiny from the committee.

Committees – 3.2.3

Committees shall scrutinize legislation referred to them and have the power to recommend amendments or amend the legislation.

As stated above, not all Bills are referred to committees (with the exception of technical scrutiny by the (Legislative Scrutiny Committee).

Political parties, party groups, cross-party groups and the opposition – 4.2.2

The Legislature shall provide adequate resources and facilities for party groups pursuant to a clear and transparent formula that does not unduly advantage the majority party.

The Assembly does not adopt a ‘formula’ to determine the allocation of resources for party groups within the Assembly.

However, resources are generally provided on the basis that each individual non-executive MLA receives more or less the same level of support (ministers are given additional support in recognition of their Executive functions). The Speaker, Opposition Leader and Leader of the Crossbench also receive additional support in recognition of their special roles.

The Chief Minister makes staff salary determinations in accordance with the *Legislative Assembly (Members Staff) Act 1989* (LAMS Act). The [relevant determination](#) makes provision for the staffing allocation (an amount to employ or engage staff, contractors or consultants) provided to individual MLAs and additional amounts for the Leader of the Opposition, Deputy Leader of the Opposition, Crossbench member, Government Whip and Opposition Whip. [A separate determination](#) is made for the Speaker who also receives additional funding above that provided to MLAs.

Parliamentary staff – 5.4.1

The head of the parliamentary service shall have a form of protected status defined in legislation or in the Constitution to prevent undue political pressure.

The independence of the Office is protected from executive interference by way of s 8 of the Legislative Assembly (Office of the Legislative Assembly) Act, which 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’.

However, other than convention and practice, there are no legislative protections affording a broader protection from political interference.

This could be remedied by the inclusion of an additional provision in the Legislative Assembly (Office of the Legislative Assembly) Act to protect the Office, the Clerk, and staff of the Office from broader political influence or pressure and not just interference on the part of the executive.

Legislative function – 6.2.5

Only the Legislature shall be empowered to determine and approve the budget of the Legislature.

The doctrine of the financial initiative of the executive (embodied in s 65 of the Self-Government Act) prevents the Assembly from determining its budget. However, through the development of [budget protocols between the Executive and the Assembly](#) and the operation of ss 20-20AA of the Financial Management Act, the Assembly, through the Standing Committee on Administration and Procedure and the Speaker, have a high degree of influence over the amount of funding that is included in the standalone appropriation bill for the Office. Under the protocols, the Speaker is given the opportunity to appear with the Clerk before the budget committee of cabinet.

Legislative function – 6.3.1

Opportunities shall be given for public input into the legislative and Committee process, including the budget process.

So far as the Assembly is concerned, the budget is examined annually by a select committee on estimates and as part of the public inquiry process, members of the public are invited to (and do) make submissions and give evidence.

It is not, however, a requirement that all bills must be examined and reported on by the relevant policy standing committee as occurs, for instance, in New Zealand and Queensland parliaments.

Financial and budget oversight – 7.2.4

In addition to the draft annual budget, the Legislature shall receive and assess medium-term and annual budget strategies and be informed of the main assumptions that underlie the annual budget’s revenue and expenditure projections.

In addition to the annual budget (which contains out-year funding strategies / budgets) and appropriation, the Treasurer also provides a mid-year budget update.

Section 20A (2) of the Financial Management Act provides that the Treasurer must present the budget review for a financial year to the Legislative Assembly no later than 15 February in the financial year. Section 20B(1) of the Financial Management Act states that the “purpose of the budget review for a financial year is to give updated information to allow the assessment of the government’s financial performance against the financial policy objectives and strategies set out in the financial policy objectives and strategies statement for the Territory budget for the financial year.”.

Section 30E of the Financial Management Act provides that each directorate:

- (1) Within 45 days after 31 December in each financial year, each Minister must—(a) prepare a half-yearly performance report for each directorate for which the Minister is responsible; and (b) present the report to the Legislative Assembly.
- (2) The report must include—(a) a progress report on delivery of outputs; and (b) an explanation of any significant variations from performance criteria.

There is no parliamentary budget officer responsible for providing direct advice to the Assembly in relation to the assumptions, reasonableness and outlook associated with the government’s budget.

Financial and budget oversight – 7.2.9

All reports of the Supreme or National Audit Office shall stand referred to the Public Accounts Committee, or a designated Committee, for further report.

The resolution of appointment of the Standing Committee on Public Accounts requires that it examine ‘all reports of the Auditor-General which have been reported to the Assembly’.

In the period between November 2016 (when the Ninth Assembly commenced) and April 2019, there have been 26 reports of the Auditor-General. Of these, the Standing Committee on Public Accounts is conducting inquiries in relation to four of these reports. 21 reports have been ‘noted’ by the committee. 14 public hearings have been conducted during the period.

While the Assembly satisfies the technical letter of the benchmark in that all reports are referred to the committee, given it is clearly the spirit of the benchmark that the preponderance of referrals are, in fact, substantively inquired into and reported on by the committee, a score of 1 has been applied.

It must be noted that it is for public accounts committee, as with all Assembly committees, to determine how it approaches its remit and there may be valid reasons behind whether or not each audit report is the subject of substantive inquiry and report. For instance, it could be the case that a committee’s attention is drawn to particular areas of audit activity and determine to focus its attention of those areas to the exclusion of others.

See:

<https://www.audit.act.gov.au/reports-and-publications/audit-reports#AuditReports2016>

<https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts>

Representational function – 8.1.1

The Legislature shall be organised in such a way as to enable the substantive representation of women in its work.

The precise intention of this benchmark is somewhat unclear.

The Assembly has not adopted a *specific* organising principle (or practice) that is directed towards ‘the substantive representation of women in its work’.

However, this is not to say that women and the interests of women in the ACT have not been ‘substantively represented’.

Through the electoral process and the performance of the Assembly’s democratic functions the interests of women are substantively represented by both male and female members depending on the particular issues that come before the Assembly.

In 2016, the Assembly was the first Australian legislature where a majority of women were elected (currently 56% of Assembly members are women). Three of the Assembly’s seven Speakers have been women and three of the ACT’s seven Chief Ministers have been women.

Accessibility, openness and engagement – 10.1.2

The Legislature shall be accessible and open to persons with disabilities.

The Assembly is accessible and open to persons with disabilities.

However, the Speaker’s chair and the front bench of the Government and the Opposition are not wheelchair accessible.

Accessibility, openness and engagement – 10.1.6

The Legislature shall identify demographic groups whose perspectives are not well represented in parliamentary decision-making and make efforts to increase their participation.

On behalf of the Assembly, the Office uses various engagement techniques (some ad hoc, others systematic) to invite participation from a variety of individuals and groups, particularly through the committee system.

Members themselves also undertake to encourage participation amongst various demographic groups.

Conclusion

The Assembly has again undertaken this benchmarking exercise to identify those benchmarks where it either does not comply with at all, or complies with partially.

Every four years the Assembly undertakes a comprehensive review of the operation of its standing orders and continuing resolutions with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice. Undertaking this benchmarking exercise will assist in enabling the Assembly to adjust its standing orders, where it believes it is required, to more fully comply with the benchmarks.

However, the exercise has also shown that there are some benchmarks that the legislature will, perhaps, never be able to meet. These include the requirement that representation of female staff at all levels of parliamentary administration, and the systematic monitoring of the effectiveness of legislation passed by the Assembly.



Legislative Assembly for the Australian Capital Territory— Assessment of performance against the updated Recommended Benchmarks for Democratic Legislatures

Background to the assessment

1. In 2018, the Recommended Benchmarks for Democratic Legislatures, which were first developed in 2006, were revised and updated following the work of a study group of CPA members representing different Commonwealth regions. The group was organised by the Commonwealth Parliamentary Association Headquarters Secretariat and the Westminster Foundation for Democracy.
2. The Legislative Assembly for the Australian Capital Territory was the first legislature to measure itself against the 2006 benchmarks. Through that assessment, which was published in 2008 in *The Parliamentarian*,¹ the Assembly was rated as having met 80 of the 87 benchmarks.
3. With the changes to the benchmarks in 2018, the Office of the Legislative Assembly² wished to establish whether the Assembly's performance had changed.
4. An assessment team, comprising the Clerk of the Legislative Assembly, Tom Duncan, and the Director of the Office of the Clerk, David Skinner, applied a straightforward assessment method. Recognising that compliance with the benchmarks was not a strict binary, the assessment team evaluated the Assembly against each benchmark to determine whether the Assembly:

¹ Based on a paper '[Rating the ACT Legislative Assembly against CPA Benchmarks for Democratic Legislatures—is A minus good enough?](#)' by then Speaker Wayne Berry MLA and David Skinner for the 39th Presiding Officers and Clerk's Conference in Adelaide, 2008.

² The Office of the Legislative Assembly is a statutory office responsible for advising on parliamentary procedure and providing administrative support to the Legislative Assembly for the ACT.

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- fully complied with the spirit and the letter of the benchmark;
 - partially complied with the spirit and the letter of the benchmark; or
 - did not comply with the spirit and the letter of the benchmark.
5. The assessment team considered the Assembly's performance against the benchmarks with the underlying democratic functions of the legislative branch of government in mind. Parliaments have a number of important functions including: the representation of electors, the scrutiny of government and holding the executive to account, and the consideration and passage of legislation. In making its assessments, the assessment team considered relevant statutory and subordinate law, the conventions and practice of the Assembly, the standing orders and resolutions of the Assembly, and relevant statistics associated with the business of the Assembly.
 6. Where the assessment team considered that the evidence supported an assessment of full compliance with a benchmark, two points were awarded, where the team considered that the evidence supported partial compliance, one point was awarded, and where the team considered that the evidence was unable to support compliance, no points were awarded. Where a particular benchmark was not relevant to the Assembly—for instance, because it related to a national legislature or a bicameral legislature—it was excluded from the assessment.
 7. Following its own assessment, Emeritus Professor John Warhurst of the Australian National University undertook an external review to validate or invalidate the judgements that had been made by the Office and to offer any further comment.³

Results

8. When the CPA Study Group re-considered the original 87 benchmarks it added a further 47 new benchmarks, bringing the total number of benchmarks to 132. Subject to the views of the Standing Committee on Administration and Procedure, the Assembly has scored 225 marks against a possible score of 246, which, in percentage terms is 91.5% (compared with the 91.9% score obtained in 2008).

Legislative and procedural references

9. For ease of reference, below are the primary sources to which readers are directed in confirming assessments made by the assessment team.
 - [Auditor-General Act 2001](#)—provides for the establishment of an Auditor-General.
 - [Annual Report \(Government Agencies\) Act 2004](#)—provides for reporting requirements on the part of public sector agencies to ministers and the Assembly.

³ The consolidated assessment will then be presented to the Assembly's Standing Committee on Administration and Procedure for consideration and endorsement.

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- [Australian Capital Territory \(Self-Government\) Act 1988 \(Clth\)](#)—an act of the Commonwealth Parliament and the *de facto* constitution of the Australian Capital Territory (ACT)
- [Budget protocols agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly](#)—sets our specialised arrangements for the development of the annual budget of the Office of the Legislative Assembly and Officers of the Assembly.
- [Companion to the Standing Orders of the Legislative Assembly for the ACT](#)—which sets out previous decisions (including relevant Speaker’s rulings), practice and procedure of the Assembly.
- [Declarations of members’ interest](#)—statements of registrable interests made by members at the commencement of each Assembly and when a change to a member’s interests occurs.
- [Electoral Act 1992](#)—governs the conduct of elections, eligibility of electors and MLAs, election financing and political donations
- [Financial Management Act 1996](#)—establishes the financial management framework for the ACT, including how appropriations and budgets must be developed.
- [Freedom of Information Act 2016](#)—provides a legislative framework for the disclosure of information held by the ACT public sector.
- [Integrity Commission Act 2018](#)—establishes an independent Integrity Commission responsible for, among other things, investigating and reporting on corruption in the ACT.
- [Latimer House performance reviews](#)—reports are required once per Assembly on the ACT’s performance against the Latimer House Principles
- [Legislative Assembly \(Office of the Legislative Assembly\) Act 2012](#)—establishes an independent statutory agency responsible for supporting and advising Members of the Legislative Assembly (MLAs), the Assembly and its committees.
- [Legislative Assembly \(Members’ staff\) Act 1989](#)—provides the basis for employment of political staff.
- [Oaths and Affirmations Act 1984](#)—makes provision for oaths and affirmations.
- [Ombudsman Act 1989](#)—provides for the performance of the Ombudsman function by the Commonwealth Ombudsman.
- [Parliamentary Privileges Act 1987 \(Clth\)](#)—an act of the Commonwealth Parliament reaffirming the power, immunities and privileges of the Commonwealth Parliament and which also has application to the Legislative Assembly by reason of s 24 of the Self Government Act
- [Protocols for investigating complaints against members](#)—Establishes procedures for investigations by the Legislative Assembly Commissioner for Standards.
- [Public Interest Disclosure Act 2012](#)—provides for a range of statutory protections for whistleblowers.
- [Public Sector Management Act 1994](#)—the legislative framework for the ACT public service and the broader ACT public sector
- [Remuneration Tribunal Act 1995](#)—provides for the establishment of the ACT Remuneration Tribunal with responsibility for determining the remuneration of certain official positions in the ACT.

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- [Standing Orders and Continuing Resolutions of the Assembly](#)—sets out the Assembly’s own rules for the conduct of business and the functioning of the legislature.

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Benchmark	Rating	Commentary
General		
Elections		
1.1.1 Members of the popularly elected or only house shall be elected by direct universal and equal suffrage in a free and secret ballot.	2	<p>The <i>Electoral Act 1992</i> provides for direct election of Members.</p> <p>The Legislative Assembly is unicameral and its Members (MLAs) are elected via the Hare-Clarke electoral system of proportional representation.</p> <p>All persons eligible to be on the Commonwealth electoral roll (see s 94(1)(b)(ii) of the <i>Commonwealth Electoral Act 1918</i>, which provides that Australian citizens are entitled to enrolment) who reside in the ACT must be on the ACT electoral roll (see ss 72-73) and are required to vote (s 129).</p> <p>The identification of a voter and votes is prohibited under s 318 of the Act.</p>
1.1.2 Legislative elections shall meet international standards for genuine and transparent elections.	2	The Electoral Act sets out comprehensive provisions for the conduct of fair, genuine, transparent elections that meet international norms and standards.
1.1.3 Term lengths for Members of the popular house shall reflect the need for accountability through regular and periodic legislative elections.	2	There are fixed four year terms for the Legislative Assembly (s 100 of the Electoral Act).

Benchmark	Rating	Commentary
<p>1.1.4 There shall be legislation to ensure campaign finance laws are in place to regulate the manner and extent to which political parties and candidates may receive monetary contributions from individuals and corporations.</p>	2	<p>The Electoral Act includes a large number of provisions regulating the manner in which campaign financing occurs, including limitations of electoral expenditure and disclosure requirements (see part 14 of the Act). Provisions include:</p> <ul style="list-style-type: none"> • Disclosure periods; • Gifts—determination of amounts; • Reporting agents; • Requirements for registers of reporting agents; • Expenditure limits for party groupings, Members, associated entities, candidates, and third-party campaigners • Limits on spending—payments from related parties; • Records and regular disclosure of gifts. <p>It is a substantial legislative framework for the regulation of the receipt by candidates and parties of monetary contributions from both individuals and corporations.</p>
<p>1.1.5 An independent Electoral Commission or similar authority shall be established for the management of the conduct of elections and its tasks shall include monitoring the election expenses of parliamentary candidates and political parties.</p>	2	<p>The Electoral Act establishes the ACT Electoral Commission (s 5), which is responsible for the conduct of elections in the ACT and monitoring expenses of parliamentary candidates and political parties (part 14).</p> <p>Members of the Electoral Commission are independent ‘Officers of the Legislative Assembly’ (s 6a) and ‘have complete discretion in the exercise of [their functions]’ (s 6B).</p>

Benchmark	Rating	Commentary
Candidate eligibility		
1.2.1 Restrictions on candidate eligibility shall not be based on religion, gender, ethnicity, race or disability.	2	Eligibility is set out in s 103 of the Electoral Act. Religion, gender, ethnicity, race or disability are irrelevant to a person's eligibility to be a candidate.
1.2.2 Measures to encourage the representative political participation of marginalized groups shall be drawn to accomplish precisely defined objectives.	1	<p>There are no explicit measures—outside of statute—to ‘encourage the representative political participation of marginalised groups’ occurring under the banner of the legislature (i.e. by way of the internal institutional arrangements of the Assembly).</p> <p>Arguably, any measures that might be taken to encourage the representative political participation of marginalised groups is a matter that falls to individual and collective political actors in civic and civil life, including the executive and individual members, rather than being an inherent function of a democratic legislature.</p> <p>Such arrangements may also, of course, occur by way of particular legislative proposals (as opposed to the utilisation of internal policies, practices and procedures of the legislature to produce such measures).</p> <p>As an example, the Assembly passed the <i>Aboriginal and Torres Strait Islander Elected Body Act 2008</i>, the object of which is very much in line with the encouragement of representative participation of a marginalised group—</p> <p style="padding-left: 40px;">The objects of this Act are, in recognition of the rights of Aboriginal and Torres Strait Islander peoples to freely determine their political status and to freely pursue their economic, social and cultural development in line with the right to self-determination—</p> <p style="padding-left: 40px;">(a) to ensure maximum opportunity for the voice of Aboriginal and Torres Strait Islander people living in the ACT to reach decision-makers in the government and its agencies; and</p>

Benchmark	Rating	Commentary
		<ul style="list-style-type: none"> (b) to ensure maximum participation of Aboriginal and Torres Strait Islander people living in the ACT in developing and implementing government policies affecting them; and (c) to ensure coordination by government agencies in developing policies affecting Aboriginal and Torres Strait Islander people living in the ACT without detracting from, or diminishing, the responsibilities of those agencies to provide services for the broader community; and (d) to further the economic, social and cultural development of Aboriginal and Torres Strait Islander people living in the ACT.
Incompatibility of Office		
1.3.1 No elected Member shall be required to take a religious oath against his or her conscience in order to take his or her seat in the Legislature.	2	The <i>Self-Government (Australian Capital Territory) Act 1988</i> (Clth) (s 9) requires an oath of affirmation of allegiance before taking a seat. Provisions for oaths and affirmations are set out in the <i>Oaths and Affirmations Act 1984</i> , which permit an oath or affirmation swear to 'Almighty God' or 'a god recognised by the person's religion' or to simply declare that the Member-elect will 'faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibility according to law' (Schedule 1A, Part 1A.2).
1.3.2 In a bicameral Legislature, a legislator may not be a Member of both houses.	NA	The Assembly is unicameral.
1.3.3 A legislator may not simultaneously serve in the judicial branch or as a civil servant of the Executive branch.	2	By reason of s 103(2)(b) of the Electoral Act, neither a civil servant, nor a judicial officer is eligible to be an MLA.
Freedom of speech immunity		

Benchmark	Rating	Commentary
1.4.1 The Legislature is protected by the freedom of speech immunity. The immunity shall protect persons from legal liability for words spoken and acts done while participating in or directly facilitating the Legislature's proceedings, and shall restrict the judicial branch's use of such words and acts as evidence in judicial proceedings.	2	By reason of s 24 of the Self-Government Act and s 16 of the <i>Parliamentary Privileges Act 1987</i> (Clth) the freedom of speech immunity embodied in Article 9 of the Bill of Rights is afforded to the Legislative Assembly, its committees and its members.
1.4.2 The freedom of speech immunity shall operate to enable the Legislature to carry out its constitutional functions effectively, free from interference or impediment. This includes the Legislature having access to all the information it needs to carry out its functions.	2	See 1.4.1 above. In addition, the Assembly and its committees have the power to call for persons, papers by way of the combined effects of s 24 of the Self-Government Act, s 49 of the Australian Constitution, s 5 of the Parliamentary Privileges Act and standing orders 213A and 239.
1.4.3 The Legislature shall have protection against potential misuse of the freedom of speech immunity. References to judicially suppressed or protected information, or to matters awaiting judicial decision, shall be made only in exceptional circumstances and with due regard to the separation of powers between the Legislature and the judiciary.	2	The Assembly, through its standing orders and continuing resolutions, has made provision for <i>sub judice</i> (continuing resolution 10) and the responsible exercise of the freedom of speech immunity (continuing resolution 7).
1.4.4 The Legislature shall have mechanisms for persons to respond to adverse references made to them in the course of the Legislature's proceedings.	2	The Assembly has made provision for a citizen's right of reply (continuing resolution 4), which establishes a mechanism by which persons or corporations can seek to have a reply incorporated in Hansard where they claim to have been adversely affected in the course of the Assembly's proceedings. There have been 5 occasions where this standing order has been utilised where a response has been incorporated into Hansard.

Benchmark	Rating	Commentary
		Standing order 264B(a)-(c) sets out procedures in relation to adverse mentions that may arise in committee proceedings.
1.4.5 The freedom of speech immunity shall continue to apply to former Legislators after they have left office, in respect of words spoken and acts done while holding office and participating in or directly facilitating the Legislature's proceedings.	2	The provisions mentioned at 1.4.1 operate in such a way.
Remuneration and Benefits		
1.5.1 Fair remuneration and reimbursement of parliamentary expenses shall be provided to legislators for their service, to ensure that they give priority to parliamentary duties. All forms of compensation shall be allocated on a non-partisan basis.	2	<p>Section 73 of the Self-Government Act provides that the remuneration of MLAs, the Chief Minister, the Deputy Chief Minister, ministers, the Presiding Officer and Deputy Presiding Officer is to be determined in accordance with an enactment or by the Remuneration Tribunal.</p> <p>As at 2018, average weekly total earnings in Australia were \$1668.10.⁴ In 2018, MLAs had a base salary of \$164,382 per annum or approximately \$3161 per week.</p> <p>Remuneration is allocated on a non-partisan basis. Whether or not this is 'fair' remuneration is a matter of judgement. Some might argue that it is excessive when compared with average weekly earnings, others may argue that it is necessary and fair given the complexity and workloads associated with members' duties when compared with jobs in the private sector.</p> <p>Certainly, the pay rate could be described as being commensurate with the nature of the role.</p>

⁴ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0>

Benchmark	Rating	Commentary
1.5.2 An independent body or mechanism should determine the remuneration, benefits and other statutory entitlements of legislators.	2	Established by <i>the Remuneration Tribunal Act 1995</i> , the ACT Remuneration Tribunal determines remuneration, benefits and other entitlements for MLAs and office-holders.
Professional development		
1.6.1 The Legislature shall take measures to ensure that newly elected Members are assisted in understanding how the Legislature works and its rules of procedure.	2	<p>The Office provides all new members training in relation to the operations, practices and procedures of the Assembly.</p> <p>Following the training all Members are asked to identify additional areas of development requiring attention and subsequent training opportunities are then devised based on this feedback. One of the big challenges in the provision of ongoing training is low attendance levels by MLAs and their staff.</p>
1.6.2 The Legislature shall take measures to assist legislators increase their knowledge and skills in the performance of their parliamentary duties.	2	<p>MLAs routinely undertake professional development through the Commonwealth Parliamentary Association, the Australasian Study of Parliament Group, and the Presiding Officers and Clerks Conference. Members are also able to fund their own professional development activities from their salary.</p> <p>The Office recently conducted a seminar for all MLAs to explain changes to the standing orders arising from the 2018 review.</p> <p>All new members receive induction to the practices, procedures and administrative requirements that arise in the role of an MLA through a new members' seminar which occurs following the election. Again, the participation of members and their staff in training sessions provided by the Office can often be quite low.</p>
Resignation		
1.7.1 Legislators shall have the right to resign from Parliament in accordance with clearly defined procedures in the rules of procedure, the Constitution	2	Members have the right to resign from the Assembly pursuant to s 13 of the Self-Government Act.

Benchmark	Rating	Commentary
or any other related law.		
Natural justice		
<p>1.8.1 The Legislature shall incorporate principles of natural justice into its rules and procedures, and these shall be applied rigorously to all situations where serious allegations are made against named or identifiable persons during the course of proceedings, either in the Legislature or in its Committees.</p>	2	<p>Key tenets of natural justice require that a person against whom an allegation is made are given a fair hearing are adjudged in an impartial manner; have the right to be given sufficient information to understand the nature of an allegation and the factual basis for it; have the opportunity to respond to the allegation (to be heard) and to have facts tested. Where a decision is made in relation to an allegation, it is an important feature of natural justice that reasons for the decisions are provided to support the basis of the decision.</p> <p>Through its practice and procedure, the Assembly recognises and applies natural justice where serious allegations are made (for example, in cases involving a possible contempt).</p> <p>Similarly, the Commissioner for Standards is bound by ‘Protocols for investigating complaints against members’ in the investigation of Members for possible breaches of the Code of Conduct which contain requirements in relation to natural justice.</p> <p>The Code of Conduct for Members (paragraph 15) provides that Members ‘take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent resolution of the Assembly ‘Exercise of freedom of speech’.</p> <p>Continuing resolution 7 relating to the freedom of speech provides that Members should take the following matters into account in exercising their speech rights:</p> <ul style="list-style-type: none"> (a) the need to exercise their valuable right of freedom of speech in a responsible manner; (b) the damage that may be done by allegations made in the Assembly to those who are the subject of such allegations and to the standing of the Assembly; (c) the limited opportunities for persons other than Members of the Assembly to respond to allegations made in the Assembly;

Benchmark	Rating	Commentary
		<p>(d) the need for Members, while fearlessly performing their duties, to have regard to the rights of others; and</p> <p>(e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.</p>
1.8.2 Members, or others, who are subject to serious charges of contempt of, and offences against, the legislature are accorded natural justice during the whole process of consideration, and the charges are decided on the basis of all properly admissible evidence.	2	<p>It is the practice of the Assembly to establish a Privileges Committee to investigate possible contempts (see standing order 276), which have been guided by principles of natural justice in the gathering and consideration of evidence.</p> <p>Standing order 280 provides for natural justice in relation to witnesses appearing before privileges committees.</p> <p>The principles of procedural fairness are also afforded to a Member who is the subject of a complaint against the 'Code of Conduct for all Members of the Legislative Assembly' by reason of the 'Protocols for investigating complaints against members'</p>
1.8.3 Punishments imposed by the Legislature on Members or other people (for example, fines, or suspensions from attending or participating in further sittings of the Legislature and its Committees) are proportionate and fair.	2	<p>There are strong grounds to suggest that both proportionality and fairness are applied in relation particular infractions that arise vis-à-vis the Assembly.</p> <p>Proportionality, of course, broadly means that a punishment will 'fit the crime'. The related doctrine of fairness (in the context of punishment) generally speaks to whether there is a sufficient justification to mete out a particular punishment in light of the prevailing circumstances in a given matter and that a punishment is issued by an impartial agent having considered any aggravating or extenuating factors.</p> <p>The Assembly is limited in the punishments that it is able to mete out to MLAs or others.</p> <p>For instance, the Assembly does not have the power to fine or imprison a person (see s 24(4) of the Self-Government Act). Even a serious contempt of the Assembly committed by a member of the public would not be met by serious sanction and so the prospect of an unfair</p>

Benchmark	Rating	Commentary
		<p>or disproportionate punishment, which has the effect of disadvantaging a contemnor, is remote.</p> <p>While the proportionality and fairness of a particular penalty imposed by the Assembly on a Member (e.g. suspension of a member from attending the Assembly) may be contested by various political actors in a given instance, there are nonetheless procedural constraints that work to ensure a degree of fairness to MLAs or other people who are likely to be punished by the Assembly.</p> <p>The only substantive punishment that Assembly is able to impose on an MLA is suspension, which typically occurs via the 'naming' of a member by the Speaker and a subsequent resolution of the Assembly that a member be suspended from the 'service of the Assembly' (standing order 203).</p> <p>Standing 202 sets out the grounds upon which a member may be named. The period of suspension, following a successful motion, are stipulated in the standing order 204.</p>
Infrastructure		
1.9.1 The Legislature shall have adequate physical infrastructure to enable Members and staff to fulfil their responsibilities.	2	All MLAs are given the necessary ICT equipment and office accommodation at the Assembly premises to undertake their roles effectively. Members are also granted an 'office support allocation', which can be used to procure specific items that are considered necessary in the performance of their duties.
Procedure and sessions		
Rules of Procedure		
2.1.1 The Legislature's rules of procedure reflect and support the actual practice and culture of the Legislature.	2	There is a strong alignment between the standing orders and continuing resolutions of the Assembly. The standing orders require that in the third year of an Assembly the Standing

Benchmark	Rating	Commentary
		<p>Committee on Administration and Procedure must inquire into and report on the operation of the standing orders and continuing resolutions ‘with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice’ (see standing order 16).</p> <p>Once each Assembly, pursuant to continuing resolution 8A (paragraph 2A), the Speaker must appoint a suitably qualified person to conduct an assessment of the implementation of the Latimer House Principles in the governance of the ACT with the report on the assessment being tabled in the Assembly and referred to the Standing Committee on Administration and Procedure for inquiry and report. There have been two such reviews with a third currently underway (as at June 2018). See: https://www.parliament.act.gov.au/Publications/review-of-latimer-house-principles</p>
2.1.2 Only the Legislature may adopt and amend its rules of procedure.	2	Section 21 of the Self-Government Act provides that the Assembly ‘may make standing rules and orders with respect to the conduct of business’. Only the Assembly is granted this power.
2.1.3 The Legislature’s rules, procedures and practice shall be reviewed regularly to enhance parliamentary effectiveness and relevance.	2	See 2.1.1.
2.1.4 Changes to the Legislature’s rules of procedure shall be adopted with near unanimity.	2	There is no requirement for changes to the rules of procedure to be adopted with unanimous or ‘near unanimous’ support. However, throughout the 30 years of the Assembly’s practice, changes to procedures have been overwhelmingly supported by unanimity or near-unanimity. ⁵
2.1.5 The Legislature’s rules of procedure shall allow Members to raise genuine and succinct points of order for the Presiding Officer to consider and decide.	2	Points of order are permissible pursuant to standing order 72.

⁵ Since 1989, 84 percent of motions moved in the Assembly proposing new standing orders or amendments to existing standing orders have been agreed to (70 percent of those motions were agreed to without a vote of the Assembly being called).

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2.1.6 The Legislature’s rules, procedures and practice shall be accessible to Members and to the public.	2	The Assembly’s standing orders and continuing resolutions and its <i>Companion to the Standing Orders</i> are publicly available via the Assembly’s website. Members of the public were invited to make submissions to the 2018 Standing Committee on Administration and Procedure inquiry relating to the relevance and best practice of the standing orders. Although the majority of submissions received were from internal sources, at least one member of the public made a submission.
Presiding Officers		
2.2.1 The Legislature shall select or elect Presiding Officers pursuant to criteria and procedures clearly defined in the Constitution and/or rules of procedure.	2	Section 21(2) of the Self-Government Act (the ACT’s effective constitution) provides that the Assembly may make standing rules and orders for the election of the presiding and deputy presiding officers. These procedures are set out in standing orders 2, 4 and 5.
2.2.2 The Presiding Officer maintains order so that the Legislature carries out its functions effectively and Members have full opportunities to participate and be heard in accordance with the Legislature’s rules, procedures and practice.	2	Standing order 37 provides that ‘order shall be maintained in the Assembly by the Speaker’.
2.2.3 The Presiding Officer decides all questions of procedure, and in doing so is guided by previous decisions and practice.	2	The Speaker interprets, and rules on, the standing orders and matters of practice and procedure. The Speaker is guided by previous decisions and parliamentary practice. Where the Assembly’s standing orders and practices do not offer sufficient guidance in relation to a question of procedure or the conduct of business, the matter shall be decided in accordance with the practice at the time prevailing in the House of Representatives in the Parliament of the Commonwealth of Australia (see standing order 275). The Assembly has published the Companion to the Standing Orders of the Legislative Assembly for the ACT , which sets out previous decisions (including relevant Speaker’s rulings), practice and procedure of the Assembly.

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Benchmark	Rating	Commentary
2.2.4 Punishments (such as orders to leave the chamber) are imposed on Members during proceedings only to the extent necessary to uphold the Presiding Officer's proper authority and ability to chair proceedings.	2	<p>The suspension of a member from the service of the Assembly may only occur on a substantive motion in the Assembly (see standing order 203).</p> <p>Other 'punishments' that may be imposed on members such as censure or no confidence may only occur by substantive motion.</p> <p>The Assembly does not have the power to fine or imprison a person (see s 24(4) of the Self-Government Act).</p>
Convening sessions		
2.3.1 The Legislature shall meet regularly, at intervals sufficient to fulfil its responsibilities.	2	<p>It is the practice of the Assembly that towards the end of each year, a sitting calendar, with scheduled sittings days for the subsequent year, is established by resolution of the Assembly.</p> <p>Standing order 27 provides that unless otherwise ordered, the Assembly is to meet at 10am on each scheduled sitting day.</p> <p>Since its establishment in 1989, the Assembly has meet on at least 34 days each year with the exception of 2012 (29 sitting days) and 2016 (28 sitting days). Experience has shown that the sitting pattern has allowed for a frequency of the Assembly's sittings has been 'sufficient to fulfil its responsibilities'.</p>
2.3.2 The Legislature shall have procedures for calling itself into regular session.	2	See 2.3.1
2.3.3 The Legislature shall have procedures for calling itself into extraordinary or special session.	2	The resolution that is passed at the end of a sitting year (see 2.3.1) includes a provision that where an absolute majority of the Assembly write to the Speaker out-of-session requesting a special meeting be held (i.e. one that is not included in the sitting calendar), the Speaker will convene the sitting as requested.

Benchmark	Rating	Commentary
2.3.4 Provisions and qualifying requirements for the Executive branch to convene a special session of the Legislature shall be clearly specified.	2	<p>Standing order 36 provides that a motion for the purpose of fixing the next meeting of the Assembly may be moved by a Minister at any time without notice.</p> <p>The executive cannot unilaterally declare that a special session is to be held.</p> <p>Contained within the resolution that is passed at the end of each year to establish the sitting calendar for the subsequent year is a provision that requires that the Speaker can only "fix an alternative day or hour of meeting on receipt of a request in writing from an absolute majority of members ...".</p>
Agenda		
2.4.1 Legislators shall have the right to vote to amend the proposed agenda for debate in accordance with the rules of procedure.	2	Any member may move to suspend so much of standing orders as would allow an item for debate to be dealt with at a time other than that set out on the Notice Paper (i.e. that diverges from the order of precedence provided for on the Notice Paper).
2.4.2 Legislators in the lower or only house shall have the right to initiate legislation and to offer amendments to proposed legislation.	2	The Assembly is unicameral—the initiation of legislation and moving of amendments to proposed legislation is the right of all members (with the exception of bills or amendments which relate to the financial initiative of the executive such as appropriation bills or amendments which impose of the finances of the Territory—see s 65 of the Self-Government Act).
2.4.3 A substantial proportion of the Legislature's time is set aside for it to consider business proposed by non-Government Members.	2	<p>One third of each sitting week (a substantial portion) is set aside for non-executive members' business (Wednesdays). See standing order 77(a).</p> <p>77(b)-77(c) also provide a set amount of time for Crossbench Executive Members' business and Assembly business (i.e. for committee related business and business related to the administration of the Assembly). Since self-government, there have been 487 bills introduced by non-government members.</p>

Benchmark	Rating	Commentary
2.4.4 There shall be an annual parliamentary calendar to promote transparency	2	See 2.3.1
Debate		
2.5.1 The Legislature shall establish and follow clear procedures for structuring debate and determining the order of precedence of motions tabled by Members.	2	<p>There are clear procedures for the precedence of business set out in standing orders 77, 77A and 78. Standing order 16(a)(iii) provides that the Standing Committee on Administration and Procedure will ‘arrange the order of Members’ business, Assembly business and Crossbench Executive Members’ business’.</p> <p>The procedure for notice of motion is set out in standing orders 101-112.</p>
2.5.2 The Legislature shall provide adequate opportunity for legislators to debate Bills prior to a vote.	2	<p>The Assembly does provide adequate opportunity for the debate of bills prior to a vote. Bills move through a number of different stages of consideration and debate (1. Presentation; 2. In-principle; 3. Detail) as provided for in standing orders 167-194.</p> <p>Standing order 192 provides that If a Member in charge of a bill, or a Member acting on behalf of that Member, declares that a bill is urgent, the question “That this bill be considered an urgent bill” shall be put. If the question is agreed to, the Member may forthwith move a motion specifying the time which shall be allotted to the various stages of the bill. Debate on any question shall be subject to standing order 69(f) (which provides for certain time limits in relation to debate on urgent bills).</p> <p>Standing order 172 provides that ‘The question “That this bill be agreed to in principle” shall not be determined by the</p> <p>Assembly during the sitting period at which the bill is first introduced, except in the case of a bill declared to be an urgent bill’.</p> <p>It is very rare for a bill to be declared an urgent bill.</p>
Voting		

Benchmark	Rating	Commentary
2.6.1 Plenary debates and votes in the Legislature shall be public.	1.5	<p>With the exception of votes in relation to the election of the Speaker, Deputy Speaker, Chief Minister and Leader of the Opposition (which require a secret ballot—see standing orders 2, 3, 5 and 5B), all votes of the Assembly are made publicly known.</p> <p>All proceedings of the Assembly are open to the public, Hansard Debates and video of proceedings are publicly available via the website.</p>
2.6.2 Members in a minority on a vote shall be able to demand a recorded vote.	2	Any member may call for a vote (a division) pursuant to standing 153 and the results of a vote is recorded in the Minutes of Proceedings (standing order 164).
2.6.3 Only legislators may vote on issues before the Legislature.	2	Only MLAs are entitled to vote on issues before the Assembly. See s 18 of the Self-Government Act.
Petitions		
2.7.1 The Legislature shall have procedures to allow for the meaningful consideration of petitions.	2	<p>Standing orders 83-100C provide a basis for the meaningful consideration of petitions.</p> <p>Where a petition receives 500 or more signatures it is referred to the relevant standing committee for inquiry and report. The Government must formally respond to every petition irrespective of the number of signatories.</p>
Records		
2.8.1 The Legislature shall maintain and publish readily accessible records of its proceedings, in a standard and consistent format.	2	<p>The Assembly produces Hansard transcripts of its proceedings, the Minutes of Proceedings, the Notice Paper, the Daily Program, Questions Paper, Bills List and other relevant documents (committee reports) on its website. https://www.parliament.act.gov.au/</p> <p>These documents are provided in standard and consistent format (html, Word documents, PDF documents).</p>

Benchmark	Rating	Commentary
Committees		
Organisation		
3.1.1 The Legislature shall have the right and sufficient resources to form permanent and temporary Committees.	2	<p>The Assembly has procedures in place for the establishment of both standing (permanent) and select (temporary) committees (see standing orders 215-254D).</p> <p>Resources to support committees are provided as part of a standalone appropriation to the Office of the Legislative Assembly. Under ss 20-20AA of the Financial Management Act, the Speaker must transmit to the Treasurer the 'recommended appropriation' for the Office. Where the Treasurer departs from the recommended appropriation, the Treasurer must provide a statement of reasons for the departure.</p>
3.1.2 The Legislature's assignment of Committee Members on each Committee shall include both majority and minority party Members and reflect the political composition of the Legislature.	2	<p>Standing order 221 provides that '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'. It has been the practice that all Assembly committees have been comprised of both major and non-majority members.</p> <p>Throughout the history of the Assembly, there has been only one occasion where the Standing Committee on Public Accounts has been chaired by a government member (the vast majority have been chaired by an opposition member and on one occasion a member of the crossbench).</p> <p>Of the current 11 standing and select committees in the Assembly, six are chaired by a non-government member.</p>
3.1.3 The Legislature shall establish and follow a transparent method for selecting or electing the Chairs of Committees.	2	<p>A transparent method for electing chairs and deputy chairs of committees is provided for in standing order 225.</p>

Benchmark	Rating	Commentary
3.1.4 Once established, Committees shall meet regularly in a timely and effective manner.	2	<p>The frequency of meetings is a matter for individual committees to determine. It is the Assembly practice that committees do meet regularly and in a manner commensurate with the references and business before the committee.</p> <p>Detailed statistics of committee activity, which demonstrate the regularity of meetings and the reporting history of Assembly committees, are at Attachment A.</p>
3.1.5 All Committee votes and substantive decisions, and the Committee’s reasons for them, are made public in an accessible and timely manner.	1.5	<p>Minutes of all committee proceedings, including the results of particular votes are maintained. However, not all minutes of a committee may be made publicly available without the committee tabling them in the Assembly. There may be occasions where it might be in the interests of the Assembly or the public that deliberations of a committee are not made publicly available.</p> <p>Upon presentation of the report of a committee, standing order 253 requires that minutes or extracts of the relevant minutes are tabled in the Assembly.</p>
Powers		
3.2.1 Committees shall have the power to summon persons, papers and records, and this power shall extend to witnesses and evidence from the Executive branch, including officials.	2	<p>Standing order 239 provides that committees have the power to send for persons, papers and records. Standing order 255 permits the summoning of witnesses by committees. There have been two occasions since 1989 where a person has been summoned to appear before a committee (most recently in 2019). In the overwhelming majority of cases, witnesses have complied with requests made of them, which is encouraging to the extent that it can be regarded as an indicator of the deference paid to the legislature, the sense of legitimacy that it enjoys, and perhaps even the reasonableness of its requests.</p> <p>Summonses are a last resort.</p>
3.2.2 There shall be a presumption that the Legislature will refer legislation to a Committee, and	1	<p>There is no requirement that legislation is to be referred to a policy committee for inquiry and report. However, the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) examines: 1. all bills; 2. all amendments to any bills; and 3. subordinate</p>

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Benchmark	Rating	Commentary
any exceptions must be transparent, narrowly-defined, and extraordinary in nature.		legislation. The committee must consider various rights issues as well as other matters provided for in the committee's resolution of appointment . See also standing order 182A relating to legislative amendments receiving scrutiny from the committee.
3.2.3 Committees shall scrutinize legislation referred to them and have the power to recommend amendments or amend the legislation.	1	See 3.2.2
3.2.4 Committees shall have the right and sufficient resources to consult and/or employ experts.	2	<p>There are sufficient resources for committees to consult or employ experts. These arrangements are provided for in standing order 238, which enables the Speaker to appoint persons with specialist knowledge (either to supply information which is not readily available or to explain matters of complexity within the committee's inquiry) upon such terms and conditions as the Speaker may determine. In the overwhelming majority of cases, these requests are approved.</p> <p>Each year a budget specialist is appointed by the Select Committee on Estimates. The Assembly's Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) engages two legal advisers to provide expert advice on scrutiny of bills and subordinate legislation. The annual select committee on estimates engages a specialist budget advisor to assist the committee with its work.</p>
3.2.5 Committees shall seek and receive submissions from the public about the business before them and provide reasonable time for written submissions to be prepared.	2	Where there are public inquiries established either by a resolution of the Assembly or by self-referral, committees may call for public submissions. It is the long-standing practice that submitters will be given reasonable time to prepare submissions and for the relevant committee to have sufficient time to properly consider submissions.

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Benchmark	Rating	Commentary
<p>3.2.6 Committees hear evidence from people who wish to be heard, if practicable, or at least ensure that hearings cover the diverse perspectives of submitters.</p>	<p>2</p>	<p>The underlying principle that ‘diverse perspectives’ are heard is an important one, where it is construed as part of project to reduce privileged access to ‘insiders’ or ‘the usual suspects’ and to expand the legitimacy of community participation.</p> <p>However, the value of diversity can come into tension with other values such as whether or not a point of view conforms to moral and ethical expectations in the broader community. It is up to committee to determine how these tensions are resolved.</p> <p>Just because a viewpoint is sufficiently divergent from the mean, doesn’t of itself, confer additional value on the viewpoint and there are occasions where it may be appropriate to intentionally exclude certain viewpoints from public inquiry processes on the grounds that they are socially divisive, morally reprehensible or scientifically dubious.</p> <p>All inquiries are advertised in tradition media, social media and via the Assembly website.</p> <p>Where written submissions are called for, it is the general practice that no restrictions are placed on who may make a submission (i.e. all persons wishing to ‘be heard’ via a written submission will generally have that course available to them). However, it is up to committees as to who may be invited as a witness before a committee as part of a public inquiry.</p>
<p>3.2.7 Committees hear evidence in public unless there is good reason to hear particular submissions in closed session.</p>	<p>2</p>	<p>It is the Assembly’s practice that committees will take all evidence in connection with a public inquiry in a public forum, except where there are compelling reasons to take evidence <i>in camera</i>.</p> <p>In April 2019, the Assembly resolved that hearings conducted in connection with an inquiry into school violence must be conducted <i>in camera</i>. This is the first time such a resolution has been passed (although there have been other occasions where committees themselves have determined to receive evidence in camera). The resolution establishing the terms of reference for the inquiry was passed on the basis of particular harms that could be caused to witnesses and others were certain evidence to be given in a public forum. See Item 10,</p>

Benchmark	Rating	Commentary
		paragraph 3, of the Minutes of Proceedings: https://www.parliament.act.gov.au/data/assets/pdf_file/0010/1348543/MoP094P.pdf
3.2.8 Legislatures shall protect informants such as whistle-blowers or public servants and witnesses presenting relevant information to Committees about corruption or unlawful activity.	2	Witnesses before committees are protected by a number of aspects of parliamentary law, including the freedom of speech protection under Article 9 of the Bill of Rights. It is also a contempt of the Assembly to interfere with or to molest a witness (see standing order 276(j)-(k)). The <i>Public Interest Disclosure Act 2012</i> also provides a range of statutory protections for whistleblowers.
3.2.9 Only Legislators appointed to the Committee, or authorised substitutes, shall have the right to vote in Committee.	2	Only members that are appointed to a committee by the Assembly are permitted to vote in committee proceedings (see standing order 228).
Political parties		
4.1.1 Any restrictions on the legality of political parties shall be narrowly drawn in law and shall be consistent with the International Covenant on Civil and Political Rights.	2	The legality of political parties is addressed in the Electoral Act (Part 7). There are no material restrictions imposed on the legality of political parties and none that would be inconsistent with the International Covenant on Civil and Political Rights.
4.1.2 The public and private funding of political parties and candidates shall be transparent and accountable.	2	The Electoral Act sets out relevant provisions that apply in relation to the funding of political parties (see part 14), which are both transparent and accountable. It is also critical that funding of political parties is done in a sufficiently timely manner so as to ensure accountability to the electorate. Voters have a right to know who is funds parties and candidates as part of the process of granting consent through elections. With today's technology, there is no good technical reason why real-time disclosures of donations to the various political actors within a system of parliamentary democracy cannot be implemented. It may be worth giving consideration to the inclusion of a timeliness criterion within this benchmark.

Benchmark	Rating	Commentary
Party Groups		
4.2.1 Criteria for the formation of parliamentary party groups, and their rights and responsibilities in the Legislature, shall be clearly stated in the Rules.	2	<p>There are several references in the standing orders to the formation of party groups (for instance, the leader of the largest non-majority party is recognised as the Opposition Leader (standing order 5B) and there are requirements to ensure that party groupings are proportionally represented on committees (standing order 221).</p> <p>Particular speaking rights (and associated time limits), are granted to MLAs on the basis of whether they belong to the government, opposition or crossbench via standing order 69.</p> <p>Statute law also recognises the rights and responsibilities of MLAs from different parties (for instance, prior to the appointment of Officers of the Assembly (the Auditor-General, the Electoral Commissioner, the Integrity Commissioner) and the Clerk of the Assembly, the Chief Minister, the Leader of the Opposition and ‘the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party.</p>
4.2.2 The Legislature shall provide adequate resources and facilities for party groups pursuant to a clear and transparent formula that does not unduly advantage the majority party.	1	<p>The Assembly does not adopt a ‘formula’ to determine the allocation of resources for party groups within the Assembly.</p> <p>However, resources are generally provided on the basis that each individual non-executive MLA receives more or less the same level of support (ministers are given additional support in recognition of their Executive functions). The Speaker, Opposition Leader and Leader of the Crossbench also receive additional support in recognition of their special roles.</p> <p>The Chief Minister makes staff salary determinations in accordance with the <i>Legislative Assembly (Members Staff) Act 1989</i> (LAMS Act). The relevant determination makes provision for the staffing allocation (an amount to employ or engage staff, contractors or consultants) provided to individual MLAs and additional amounts for the Leader of the</p>

Benchmark	Rating	Commentary
		Opposition, Deputy Leader of the Opposition, Crossbench member, Government Whip and Opposition Whip. A separate determination is made for the Speaker who also receives additional funding above that provided to MLAs.
Cross-party groups		
4.3.1 Legislators shall have the right to form interest caucuses around issues of common concern.	2	There is no impediment to members forming interest caucuses around issues of common concern and the general principle of freedom of association applies in this respect. There is an acknowledgement that such caucusing can break down traditional polarities in the parliamentary environment. It is up to individuals and collectives within the parliament to organise and maintain such arrangements.
4.4.1 The Legislature shall ensure adequate facilities and allocation of resources for the Opposition, including the leader.	2	<p>The notion of 'adequacy' is difficult to determine objectively. However, several points speak in favour of a resource allocation regime that complies with the spirit of the benchmark.</p> <p>Through determinations made by the Chief Minister under the LAMS Act, the Opposition Leader receives additional staff resources than other non-executive MLAs. The Opposition Leader receives a staff salary allocation of \$658k per annum while a member receives \$177k per annum. See relevant determination.</p> <p>The Opposition Leader receives the same annual salary as a government minister (\$117k in addition to the base rate of pay for an MLA of \$168k). See relevant determination of the Remuneration Tribunal.</p> <p>The Leader of the Opposition is also provided with additional accommodation and office facilities.</p>
Parliamentary staff		
General		

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Benchmark	Rating	Commentary
5.1.1 The Legislature shall have an adequate non-partisan professional staff to support its operations including the operations of its Committees.	2	<p>The <i>Legislative Assembly (Office of the Legislative Assembly) Act 2012</i> (the OLA Act) provides for an independent, non-partisan professional staff to support the operations of the Assembly and its committee. The ‘adequacy’ of the professional staff within the Office of the Legislative Assembly can be contested from time to time. However, the Office enjoys advantageous budgetary arrangements in comparison whether all other public sector organisations in the ACT. It is, for instance, entitled to ‘roll-over’ any unexpended funds from one year to the next, rather than returning them to consolidated revenue. It is also subject to specialised budget protocols and relevant provisions of the Financial Management Act, which are discussed elsewhere in this assessment.</p> <p>Together, these arrangements are evidence of the ‘adequacy’ of the support arrangements.</p>
5.1.2 The Legislature, rather than the Executive branch, shall control the parliamentary service and determine the terms of employment. There shall be adequate safeguards to ensure non-interference from the Executive.	2	<p>The Office is not subject to the direction of the executive in the performance of its statutory functions (see s 8 of the OLA Act).</p>
5.1.3 The Legislature shall draw and maintain a clear distinction between partisan and non-partisan staff.	2	<p>Through the LAMS Act and the OLA Act, there are two distinct and separate statutory bases for the employment of political and non-political support staff.</p>
5.1.4 Members and staff of the Legislature shall have access to sufficient research, library, and ICT facilities.	2	<p>Through the Office, all non-executive members are provided with ICT, accommodation, library and research facilities, which are, broadly speaking, regarded as sufficient to the support the roles and functions of the Assembly</p> <p>Whether or not facilities are ‘sufficient’ in each and every case will sometimes be the subject of debate between members, the Office, and Treasury/the Government.</p> <p>However, it is worth pointing out that there is a unique budgetary process that is given effect in the Financial Management Act (s 20AB) to ensure that the weight of Assembly opinion is considered on such a question. The Speaker must consult with the relevant standing committee and the Clerk on the budget for the Office of the Legislative Assembly</p>

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Benchmark	Rating	Commentary
		(which provides many of the facilities mentioned), the Speaker then writes to the Treasurer with a recommended appropriation. Where the Treasurer presents an appropriation bill that varies from the recommended appropriation, the Treasurer must provide a statement of reasons to the Assembly.
5.1.5 The Legislature shall take measures to ensure that women are represented at all levels of administration.	0	<p>There are no measures in place to ‘ensure that women are represented at all levels of administration’.</p> <p>As with elsewhere in the Australian public sector, the merit principle is applied in relation to all appointments at all levels of administration.</p> <p>While there is no barrier to encouraging women to apply for particular positions within a public sector organisation, any measure that is designed to ‘ensure’ that one category of person over another is considered for a position on the basis of an attribute (e.g. sex or gender) unrelated to a person’s merit, cannot, under current legislative arrangements be adopted.</p> <p>The implementation of measures to ‘ensure’ that women are represented at all levels of administration’ would almost certainly contravene the <i>Discrimination Act 1991</i>, which establishes that a person’s sex and a person’s gender identity are ‘protected attributes’.</p> <p>Section 8 of that Act, <i>inter alia</i>, provides that:</p> <ul style="list-style-type: none"> • A person directly discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more protected attributes. • A person indirectly discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more protected attributes.

Benchmark	Rating	Commentary
		It is also observed that this benchmark would appear to conflict with benchmark 5.3.1, which proposes that 'Recruitment and promotion of non-partisan staff shall be on the basis of merit and equal opportunity ' and 5.2.2 which proposes that 'recruitment procedures... shall not discriminate... recruitment of staff on the basis of race, ethnicity, religion, gender, disability...'. Recruitment
5.2.1 The Legislature shall have adequate resources to recruit staff sufficient to fulfil its responsibilities. The rates of pay shall be broadly comparable to those in the public service.	2	The rates of pay payable to staff of the Office are the same as those payable to persons occupying the same job classifications as those working in the public service. Financial resources are provided by way of a standalone appropriation to the Office and the Speaker must consult with an all-party committee (the Standing Committee on Administration and Procedure) prior to making a 'recommended appropriation' to the Office (thereby giving members an opportunity to express a view on the adequacy of funding and associated resources).
5.2.2 The Legislature shall have transparent and objective recruitment procedures that shall not discriminate in its recruitment of staff on the basis of race, ethnicity, religion, gender, disability, or, in the case of non-partisan staff, party affiliation.	2	The Office's recruitment procedures are governed by the relevant provisions of the OLA Act, the Public Sector Management Act, the Public Sector Management Standards 2016, and the Discrimination Act and the Office does not discriminate on the basis—positively or negatively—of any protected attribute including race, ethnicity, religion, gender, or disability.
Organisation and management		
5.4.1 The head of the parliamentary service shall have a form of protected status defined in legislation or in the Constitution to prevent undue political pressure.	1	The independence of the Office is protected from executive interference by way of s 8 of the OLA Act, which 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'.

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Benchmark	Rating	Commentary
		<p>However, other than convention and practice, there are no legislative protections affording a broader protection from political interference.</p> <p>This could be remedied by the inclusion of an additional provision in the OLA Act to protect the Office, the Clerk, and staff of the Office from broader political influence or pressure and not just interference on the part of the executive.</p>
5.4.2 The remuneration of the head of the parliamentary service shall be set by an independent body or mechanism.	2	The Clerk is remunerated in accordance with a determination made by the independent Remuneration Tribunal pursuant to s 9(4) of the OLA Act.
5.4.3 The Legislature should, either by legislation or resolution, establish a corporate body responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.	2	<p>Section 6 of the OLA Act establishes the statutory functions of the Office including to provide a range of administrative and advisory services to members. Section 6(1)(f) provides that it is a function of the Office to provide 'business support functions, including administering the entitlements of members who are not part of the Executive'.</p> <p>The ACT Public Service administers this function in relation to members of the executive.</p>
5.4.4 All staff shall be subject to a code of conduct.	2	All staff of the Office are subject to a Code of Conduct (See https://legislation.act.gov.au/ni/2018-704/)
Legislative function		
General		
6.1.1 The approval of the Legislature is required for the passage of all legislation, including budgets.	2	By reason of s 22 of the Self-Government Act, the Assembly has the power to make laws 'for the peace, order and good government of the Territory', including budgets. All statutes, including appropriation legislation/budgets, must be passed by the Assembly to become operative.

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Benchmark	Rating	Commentary
6.1.2 The Legislature shall have the power to enact resolutions or other non-binding expressions of its will.	2	Resolutions are a key feature of Assembly proceedings and are addressed in relevant standing orders (see chapter 11).
6.1.3 The Legislature shall scrutinize secondary, delegated or subordinate legislation including its authority and scope.	2	<p>The resolution of appointment of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) provides that the committee shall:</p> <p>(1) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):</p> <p>(a) is in accord with the general objects of the Act under which it is made;</p> <p>(b) unduly trespasses on rights previously established by law;</p> <p>(c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or</p> <p>(d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;</p> <p>(2) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee...</p>
6.1.4 The Legislature shall provide adequate resources for legislators to draft legislation or amendments to any legislation.	2	The resources of the Parliamentary Counsel's Office make its resources available, as required, to draft legislation and amendments on behalf of all members.
6.1.5 The Legislature shall encourage the process of equality impact assessment with respect to the development of legislation, policies and budgets.	0	The Assembly has not, by resolution or by legislation, expressed a formal view on encouraging the adoption of 'equality impact assessments' in relation to legislation, policies and budgets.

Benchmark	Rating	Commentary
		<p>Sidebar: Under the doctrine of the financial initiative of the executive, the framing of budgets is a matter for the Executive and the methods, values and policy choices that inform the development of a budget is a matter for the executive. Where the legislature disagrees with the choices of the executive (whether on the grounds of inequality or any other grounds) it can refuse to pass budget legislation.</p> <p>Whether information about the impact of legislation, policies or budgets on equality is itself a policy question that is within the prerogative of the legislature to advance.</p> <p>The electoral process is responsible for selecting individuals and groups to represent the community via a grant of consent. Whether or not particular members, or a preponderance of members, support a particular program of equality assessment is a matter for the members and their electors, and does not inhere as fundamental function of the legislature.</p> <p>The way in which such values around equality are given democratic expression is via the election of candidates who stand on platforms supporting these values, not via the adaptation of the institutional features of the legislature to comport with such values.</p>
Legislative procedure		
6.2.1 In a bicameral Legislature, there shall be clearly defined roles for each chamber in the passage of legislation.	NA	The Assembly is unicameral.
6.2.2 The Legislature shall have the right to override an Executive veto.	NA	In the ACT’s form of government there is no provision for an executive veto.
6.2.3 The Executive shall transmit Bills and other documents for parliamentary action for timely distribution to Members.	2	<p>The standing orders make provision for the transmission of bills and notice of presentation (see standing order 168).</p> <p>Sidebar: It is not only the Executive that is responsible for the development of bills (non-executive members also present bills). Where a bill is presented in the Assembly—whether</p>

Benchmark	Rating	Commentary
		by a minister or a non-executive MLA—the Parliamentary Counsel’s Office publishes it on the legislation register at https://legislation.act.gov.au .
6.2.4 The Legislature shall establish procedures for systematic monitoring of the effective implementation and consequences of legislation.	0	There is no systematic monitoring of ‘effective implementation and consequences of legislation’. However, through debate, the work of Assembly committees and the use of question time, the Assembly is able to examine these matters in an ad hoc fashion. It would be open to the Executive to consider an arrangement whereby it report on these matters (through, for instance, annual reports) to the Assembly. It is also a function that could be given to the Auditor-General in the context of its performance audit program.
6.2.5 Only the Legislature shall be empowered to determine and approve the budget of the Legislature.	1	The doctrine of the financial initiative of the executive (embodied in s 65 of the Self-Government Act) prevents the Assembly from determining its budget. However, through the development of budget protocols between the executive and the Assembly and the operation of ss 20-20AA of the FM Act, the Assembly through the Standing Committee on Administration and Procedure and the Speaker have a high degree of influence over the amount of funding that is included in the stand alone appropriation bill for the Office. Under the protocols, the Speaker is given the opportunity to appear with the Clerk before the budget committee of cabinet.
The public and legislation		
6.3.1. Opportunities shall be given for public input into the legislative and Committee process, including the budget process.	1	So far as the Assembly is concerned, the budget is examined annually by a select committee on estimates and as part of the public inquiry process, members of the public are invited to (and do) make submissions and give evidence. It is not, however, a requirement that all bills must be examined and reported on by the relevant policy standing committee as occurs, for instance, in New Zealand and Queensland parliaments.

Benchmark	Rating	Commentary
6.3.2 Information shall be provided to the public in a timely manner regarding matters under consideration by the Legislature.	2	The Parliamentary Counsel's Office publishes all bills presented in the Assembly via its website (www.legislation.act.gov.au). On occasion the government or a non-executive member will make an exposure draft available to the public for comment prior to presentation. The Assembly's own website provide details of committee proceedings and chamber proceedings including hearing schedules, the Notice Paper and Daily Program, Hansard transcripts, and live webstreaming of proceedings.
Oversight function		
General		
7.1.1 The Legislature shall have legislation, a constitutional provision or practice that ensures the size of the Cabinet is in proportion to the size of the Legislature.	2	The Self-Government Act contains provisions in relation to the number of members that may be appointed to the executive (s 41 of the Act provides that the number is not to exceed 5 until provision is made). Provision has been made under the Australian Capital Territory (Ministers) Act 2013 . Under the provision, a maximum of 9 ministers (which, together, form the cabinet) there may be no more than 9 ministers (this is 36% of the membership of the 25-member Assembly).
7.1.2 The Legislature shall have mechanisms to obtain information from the Executive branch sufficient to exercise its oversight function in a meaningful and timely manner. There shall be clear and effective procedures requiring the Executive to provide timely responses to oral and written questions and Parliamentary Committee reports and recommendations.	2	The Assembly has a number of mechanisms to obtain information from the Executive, including: <ul style="list-style-type: none"> • Questions without notice (See standing order 113(b) and standing order 113B) • Questions on notice (See standing order 113(a)—ministers have 30 days to answer questions on notice) • Order for the production of documents held by the Executive (see standing order 213A) • The power of committees to send for persons, paper and records (standing order 239)

Benchmark	Rating	Commentary
		<ul style="list-style-type: none"> Procedure for making claims of public interest immunity (continuing resolution 8B)
7.1.3 The oversight authority of the Legislature shall include effective oversight of the military, security and intelligence services.	NA	The Assembly as a local/state/territory level legislature does not have military, security or intelligence functions. However, the Australian Federal Police (AFP), a Commonwealth agency, delivers community policing services to the ACT and although the AFP does appear before Assembly committee in various contexts, accountability is potentially not as strong as it would be were policing performed pursuant to an ACT statute.
7.1.4 The oversight authority of the Legislature shall include effective oversight of state-owned enterprises.	2	The Assembly has oversight for state-owned enterprises. There is just one state-owned enterprise in the ACT (a water utility). The <i>Territory-Owned Corporations Act 1990</i> provides the legislative basis for Territory-Owned corporations and there are a number of provisions in that Act which provide for Assembly and committee oversight. The <i>Annual Reports (Government Agencies) Act 2004</i> requires that Territory-owned corporations are to prepare an annual report on the operations of the entity each financial year (see s 7D), which is tabled in the Assembly and inquired into and reported on by the relevant Assembly committee.
7.1.5 The oversight authority of the national Legislature shall include effective oversight of compliance with international treaties and obligations, including international human right instruments and the Sustainable Development Goals (SDGs).	NA	These functions do not fall within the remit of a local/state/territory legislature.
7.1.6 The Legislature shall establish a position of independent ombudsman, or similar office.	2	The <i>Ombudsman Act 1989</i> provides that the Commonwealth Ombudsman is also the ACT Ombudsman. The ACT Ombudsman is an independent 'Officer of the Assembly' (s 4A) and has complete discretion in the exercise of the Ombudsman's functions (s 4B).

Benchmark	Rating	Commentary
7.1.7 The Legislature shall establish a Human Rights Commission, or similar office, with the mandate to protect against human rights violations.	2	<p>The <i>Human Rights Commission Act 2005</i> establishes the ACT Human Rights Commission which as the function, <i>inter alia</i>, of receiving complaints and ‘providing a fair and accessible process for resolving complaints’ and identifying, inquiring into and reviewing issues relation to matters that may be complained about’.</p> <p>The ACT has also enacted the <i>Human Rights Act 2004</i>, which codifies a broad range of human rights.</p>
7.1.8 The Legislature shall receive annual reports and scrutinize the activities of all independent constitutional bodies, such as human rights commissions, anti-corruption bodies and ombudsmen and, where feasible, follow-up on issues arising from their reports.	2	<p>The <i>Annual Report (Government Agencies) Act 2004</i> provides that the Integrity Commission, the Human Rights Commission, the Ombudsman, the ACT Integrity Commission and all other statutory agencies are to prepare an annual report, which is tabled in the Assembly and scrutinised by relevant Assembly committees pursuant to Assembly resolution. There are prescriptions in the legislation for timeliness and the precise content of reports.</p>
7.1.9 The Legislature shall ensure that independent constitutional bodies receive adequate resources and the work of such institutions are not subject to political pressure from the Executive.	2	<p>All these bodies are funded by appropriation (see more in sidebar).</p> <p>Each Act governing the operation of these bodies have explicit statutory protections protecting them from interference by the executive.</p> <p>Sidebar: The question of whether or not ‘adequate resources’ are granted to bodies such as the Auditor-General, Ombudsman, Human Rights Commission etc. is difficult to assess in strict terms and often the subject of political debate (as noted elsewhere in respect of the Office of the Legislative Assembly and MLAs). The financial initiative of the executive requires that the executive frame a budget (including funding for agencies that fall into the categories mentioned) and then it is up to the legislature to either vote for or against the appropriation on the basis of its own view as to the adequacy, or otherwise, of the proposed funding/resource allocation.</p>
Financial and Budget Oversight		

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Benchmark	Rating	Commentary
7.2.1 Budget approval and scrutiny procedures shall be clearly specified in the rules of procedure, the Constitution or relevant legislation	2	Section 57-65 of the Self-Government Act codify the powers of the Assembly and the Executive in relation to the ACT's finances. Part 2 of the Financial Management Act establishes requirements for appropriation and budget approval. There are additional requirements around appropriation and budget consideration in the standing orders (see, for instance, standings orders 58, 69(d), 69(e), 180, 200, 201, 201A).
7.2.2 The Legislature shall have a reasonable period of time in which to adequately scrutinize and debate the proposed national budget.	2	The practice of the Assembly is that following presentation of the appropriation bills, a select committee on estimates is establishing to inquire into and report on the proposed appropriations. Following the presentation of the committee's report, the Assembly proceeds to debate the report, the government's response to the report together with the bills as they stand. At the detail stage of consideration, it is the practice that the Assembly proceeds to debate the bills line-by-line. The time that elapses between the presentation of the budget and its passage is typically about 8 weeks. There are two weeks of estimates committee hearings. Debate on the appropriation bill will typically take place over 3 days and all members are able to participate in the debate on each of the particular budget lines that are contained within the appropriations.
7.2.3 Oversight Committees shall provide meaningful opportunities for minority or opposition parties and independent MPs to engage in effective oversight of government expenditures.	2	By reason of standing order 221, Assembly committees are to 'comprise representatives of all groups and parties in the Assembly as nearly as practicable proportional to their representation in the Assembly'. Through its committees, including the Standing Committee on Public Accounts and the Select Committee on Estimates (both chaired by an Opposition MLA), members have meaningful opportunities to provide oversight in relation to government expenditure.
7.2.4 In addition to the draft annual budget, the Legislature shall receive and assess medium-term and annual budget strategies and be informed of the main assumptions that underlie the annual budget's revenue and expenditure projections.	1	In addition to the annual budget (which contains out-year funding strategies / budgets) and appropriation, the Treasurer also provides a mid-year budget update. Section 20A(2) of the Financial Management Act provides that the Treasurer must present the budget review for a financial year to the Legislative Assembly no later than 15 February in the financial year. Section 20B(1) of the Financial Management Act states that the

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Benchmark	Rating	Commentary
		<p>“purpose of the budget review for a financial year is to give updated information to allow the assessment of the government’s financial performance against the financial policy objectives and strategies set out in the financial policy objectives and strategies statement for the Territory budget for the financial year.”.</p> <p>Section 30E of the Financial Management Act provides that each directorate:</p> <p>(1) Within 45 days after 31 December in each financial year, each Minister must—(a) prepare a half-yearly performance report for each directorate for which the Minister is responsible; and (b) present the report to the Legislative Assembly.</p> <p>(2) The report must include—(a) a progress report on delivery of outputs; and (b) an explanation of any significant variations from performance criteria.</p> <p>There is no parliamentary budget officer responsible for providing direct advice to the Assembly in relation to the assumptions, reasonableness and outlook associated with the government’s budget.</p>
7.2.5 The Legislature shall receive regular in-year budget reports and an audited annual financial statement from the government within 12 months after the end of the fiscal year.	2	Financial statements are contained in annual reports produced by government directorates and public sector agencies and are examined by the relevant standing committees of the Legislative Assembly.
7.2.6 The Legislature shall have access to sufficient financial scrutiny resources and/or independent budget and financial expertise to ensure that financial oversight is conducted effectively.	2	It is the practice that the Assembly’s annual estimates committee engages (in accordance with standing order 238) an independent economic adviser to provide expert advice on the Government’s budget and appropriation bills.
7.2.7 There shall be an independent, non-partisan Supreme or National Audit Office whose reports are tabled in the Legislature in a timely manner.	2	The <i>Auditor-General Act 1996</i> established the Office of Auditor-General who is an independent ‘Officer of the Assembly’ and has ‘complete discretion in the exercise of the auditor-general’s functions’ (see ss 6A and 7). Reports are all tabled in a timely manner pursuant to s 17(4) of the Act.

Benchmark	Rating	Commentary
<p>7.2.8 The Supreme or National Audit Office shall be provided with adequate resources and legal authority to conduct audits in a timely manner.</p>	<p>2</p>	<p>As an Officer of the Assembly, the appropriation for the Audit Office is subject to requirements of the Financial Management Act which provide that the Speaker must consult with the Auditor-General before making a 'recommended appropriation' to the Treasurer.</p> <p>Where the appropriation bill differs from the 'recommended appropriation', the Treasurer must provide a statement of reasons as to the variation (See ss 20AB-20AC).</p> <p>The Auditor-General is also subject to the Budget Protocols Agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly, which establish particular budgetary procedures for the development of the budget and appropriation for particular independent statutory officers.</p> <p>Unlike other government agencies, the Audit Office is permitted to rollover up to 10 percent of its appropriation from one financial year to the next where it has not been expended in a given year (other agencies must return unspent appropriation to consolidated revenue).</p>
<p>7.2.9 All reports of the Supreme or National Audit Office shall stand referred to the Public Accounts Committee, or a designated Committee, for further report.</p>	<p>1</p>	<p>The resolution of appointment of the Standing Committee on Public Accounts requires that it examine 'all reports of the Auditor-General which have been reported to the Assembly'. In the period between November 2016 (when the Ninth Assembly commenced) and April 2019, there have been 26 reports of the Auditor-General. Of these, the Standing Committee on Public Accounts is conducting inquiries in relation to four of these reports. 21 reports have been 'noted' by the committee. 14 public hearings have been conducted during the period.</p> <p>While the Assembly satisfies the technical letter of the benchmark in that all reports are referred to the committee, given it is clearly the spirit of the benchmark that the preponderance of referrals are, in fact, substantively inquired into and reported on by the committee, a score of 1 has been applied.</p> <p>It must be noted that it is for public accounts committee, as with all Assembly committees, to determine how it approaches its remit and there may be valid reasons behind whether or</p>

Benchmark	Rating	Commentary
		<p>not each audit report is the subject of substantive inquiry and report. For instance, it could be the case that a committee's attention is drawn to particular areas of audit activity and determine to focus its attention of those areas to the exclusion of others.</p> <p>See:</p> <p>https://www.audit.act.gov.au/reports-and-publications/audit-reports#AuditReports2016</p> <p>https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts</p>
No confidence and impeachment		
7.3.1 In bicameral systems, only a popularly elected house shall have the power to bring down the government.	NA	The Assembly is unicameral.
7.3.2 The Legislature shall have mechanisms to impeach or censure the Executive branch, or express no-confidence in the government.	2	These mechanisms are all available to the Assembly under the standing orders (see standing order 81, 81A) and the conventions of Westminster parliamentary practice.
7.3.3 If the Legislature expresses no confidence in the government, the government is obliged to offer its resignation. If the head of state agrees that no other alternative government can be formed, a general election should be held in an appropriate time frame that is clearly specified in the Constitution or in any other related law.	2	<p>No provision has been made in the Self-Government Act for a representative of the Crown to whom advice is given about the exercise of the Executive function (as applies in others states, the Commonwealth and the Northern Territory).</p> <p>Under the conventions of the Westminster system the practice provided for in the benchmark is the practice that has applied in the Assembly.</p> <p>There have been two successful motions of no confidence moved against the Chief Minister in the Assembly's history with the Chief Minister subsequently resigning and another member being elected Chief Minister.</p>

Benchmark	Rating	Commentary
		While there is no provision in the constitutional arrangements of the ACT for an election to be called within 'an appropriate timeframe' where 'no other alternative government can be formed', the Self-Government Act does provide a circuit breaker mechanism at s 16 whereby the Governor-General may dissolve the Assembly and a new election be called where the Assembly is 'incapable of effectively performing its functions' or 'is conducting its affairs in a grossly improper manner'.
Representational function		
8.1.1 The Legislature shall be organised in such a way as to enable the substantive representation of women in its work.	1	<p>The precise intention of this benchmark is somewhat unclear.</p> <p>The Assembly has not adopted a <i>specific</i> organising principle (or practice) that is directed towards 'the substantive representation of women in its work'.</p> <p>However, this is not to say that women and the interests of women in the ACT have not been 'substantively represented'.</p> <p>Through the electoral process and the performance of the Assembly's democratic functions the interests of women are substantively represented by both male and female members depending on the particular issues that come before the Assembly.</p> <p>In 2016, the Assembly was the first Australian legislature where a majority of women were elected (currently 56% of Assembly members are women). Three of the Assembly's seven Speakers have been women and three of the ACT's seven Chief Ministers have been women.</p>
8.1.2 The Legislature shall provide all legislators with adequate and appropriate resources to enable them to fulfil their constituency responsibilities.	2	Resources are provided via the annual Appropriation (Office of the Legislative Assembly) Act and are subject to provisions of the FM Act in relation to the a 'recommended appropriation' being given to the Treasurer by the Speaker following consultation with the Standing Committee on Administration and Procedure (ss 20-20AA). This enable provision by the Office of non-executive members' salaries, staff salary allocations, ICT equipment,

Benchmark	Rating	Commentary
		accommodation. Through the relevant Remuneration Tribunal determination members are provided, in addition to their salary, a car allowance.
9.1.1 The Legislature shall have the right to seek and receive development assistance to strengthen the institution of Parliament.	NA	As a local/state/territory legislature, the Assembly is not in need of development assistance.
9.1.2 The type of assistance, budget and the use of development assistance received by the Legislature shall be determined by the Legislature in a transparent and accountable manner.	NA	See 9.1.1
9.1.3 Members and the staff of Parliament shall have the right to receive technical and advisory assistance, as well as to network and exchange experience with individuals from other Legislatures.	2	<p>Technical and advisory assistance in relation to parliamentary practice and procedure is provided by the Office of the Legislative Assembly pursuant to s 6 of the OLA Act.</p> <p>Members and staff participate in professional development opportunities through a number of formal and informal mechanisms (e.g. Commonwealth Parliamentary Association, the Australian and New Zealand Association of Clerks-at-the-Table, the Australasian Study of Parliament Group, the Presiding Officers and Clerks Conference).</p>
Citizens and the press		
10.1.1 The Legislature shall be accessible and open to citizens and the media, subject only to demonstrable public safety and work requirements.	2	<p>The Assembly is both open and accessible to the citizens and the media. All of its proceedings are open to the public (with the exception of private meetings of committees and where in camera evidence is taken by a committee).</p> <p>The Assembly provides accommodation for media personnel who cover the proceedings of the Assembly.</p>
10.1.2. The Legislature shall be accessible and open to persons with disabilities.	1	<p>The Assembly is accessible and open to persons with disabilities.</p> <p>However, the Speaker's chair and the front bench of the Government and the Opposition are not wheelchair accessible.</p>

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10.1.3 The Legislature should ensure that the media are given appropriate access to the proceedings of the Legislature without compromising the proper functioning of the Legislature and its rules of procedure.	2	All of the Assembly's proceedings (except for the few minor exceptions listed earlier) are made available to the public at-large and the media via its website, which includes transcripts of proceedings, live audio-visual feeds, audio-visual replays, and an array of other Assembly documents including committee reports, the notice paper, the daily program, minutes of proceedings, bills list, questions notice paper etc.
10.1.4 The Legislature shall have a non-partisan media relations facility.	2	The Office of the Legislative Assembly has a non-partisan Public Affairs Officer who can direct media inquiries to relevant non-partisan staff in the Office of the Legislative Assembly. In practice, the Clerk will handle the vast majority of media inquiries. See also 10.1.1.
10.1.5 The Legislature shall promote the public's understanding of the work of the Legislature.	2	It is a statutory function of the Office of the Legislative Assembly to provide 'public education about the functions of the Assembly and committees' (s 6(2)). The Office has a parliamentary education and public affairs capability which engages with schools, members of the community, and the media to promote the work of the Assembly.
10.1.6 The Legislature shall identify demographic groups whose perspectives are not well represented in parliamentary decision-making and make efforts to increase their participation.	1	On behalf of the Assembly, the Office uses various engagement techniques (some ad hoc, others systematic) to invite participation from a variety of individuals and groups, particularly through the committee system. Members themselves encourage participation amongst various demographic groups.
10.1.7 The Legislature shall have a regularly updated and accessible website to enhance and promote information sharing and interaction with citizens and the outside world. ⁷	2	See 10.1.3
Languages		
10.2.1 Where the Constitution or parliamentary rules provide for the use of multiple	NA	There is no such requirement.

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Benchmark	Rating	Commentary
working languages, the Legislature shall make every reasonable effort to provide for simultaneous interpretation of debates and translation of records.		
Ethical Governance		
Transparency and integrity		
11.1.1 Legislators should maintain high standards of accountability, transparency, responsibility and propriety in the conduct of all public and parliamentary matters including strict adherence to codes of conduct, and interest disclosure rules.	2	<p>Continuing resolution 5 of the Assembly contains the <i>Code of conduct for all Members of the Legislative Assembly for the Australian Capital Territory</i>, which all MLAs are required to affirm at the commencement of each Assembly or where a new member is elected during the term of an Assembly.</p> <p>Section 15 of the Self-Government Act provides that ‘A member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract’.</p> <p>Complaints against the code of conduct or requirements relating to the declarations of members’ interests can be investigated and reported on by the Assembly Standards Commissioner (a former Supreme Court Justice) pursuant to continuing resolution 5AA.</p> <p>Continuing resolution 6A provides for the appointment of an Ethics and Integrity Adviser who is responsible for advising MLAs on ethical conduct which potentially impacts of the effective performance of their official duties.</p>
11.1.2 The Legislature shall approve and enforce codes of conduct, including rules on conflicts of interest and the acceptance of gifts.	2	See 11.1.1

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Benchmark	Rating	Commentary
11.1.3 Legislatures shall require legislators to periodically, fully and publicly disclose their financial and other relevant interests.	2	Continuing resolution 6 establishes requirements in relation to the declaration of the private interests of members, which are published on the Assembly website. https://www.parliament.act.gov.au/members/declarations-of-interest
11.1.4 There shall be mechanisms to prevent, detect, and bring to justice legislators and staff engaged in corrupt practices.	2	Upon commencement of the <i>Integrity Commission Act 2018</i> , all MLAs, staff of the Office, staff of Members will be subject to the jurisdiction Integrity Commission, which is charged with investigating and reporting on corruption. The Commission has substantial powers, including compulsory questioning and search and seizure powers.
11.2.1 There shall be an effective FOI regime to give the public access to information held by public authorities.	2	The <i>Freedom of Information Act 2016</i> provides a statutory basis for FOI in the ACT.

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Attachment A: consolidated committee statistics 2017-2018

Financial year	Meetings	Meetings supported by Chamber Support	Total number of meetings	Public hearings	Reports	Reports produced by Chamber Support	Total reports
1989-1990	165	45	210	57	18	11	29
1990-1991	185	54	239	45	16	24	40
1991-1992	90	29	119	23	12	12	24
1992-1993	141	52	193	34	18	28	46
1993-1994	144	48	192	53	3	31	34
1994-1995	126	37	163	36	16	18	34
1995-1996	113	48	161	61	12	25	37
1996-1997	129	40	169	59	11	21	32
1997-1998	109	45	154	45	35	19	54
1998-1999	-	-	327	-	61	20	81
1999-2000	-	-	293	-	57	21	78
2000-2001	-	-	228	-	41	15	56
2001-2002	-	-	126	-	38	19	57
2002-2003	230	38	268	81	31	19	50
2003-2004	222	41	263	62	40	20	60
2004-2005	152	35	187	38	27	20	47
2005-2006	231	34	265	61	18	15	33
2006-2007	232	36	268	69	21	16	37
2007-2008	206	36	242	59	15	17	32
2008-2009	221	31	252	61	23	13	36
2009-2010	264	47	311	74	21	20	41
2010-2011	230	37	267	57	25	16	41
2011-2012	287	46	333	95	23	16	39
2012-2013	182	28	210	54	21	11	32
2013-2014	191	32	223	57	13	14	27
2014-2015	178	34	212	60	17	19	36
2015-2016	159	29	188	47	26	14	40
2016-2017	161	26	187	32	16	17	36
2017-2018	289	34	323	84	22	14	36

Types of meetings – activity

Consolidated statistical return	Total
Total number of meetings	323
Number of private meetings	226
Number of private meetings with full attendance by committee members	158
Number of public hearings	84
Number of public hearings with full attendance by committee members	59
Number of site visits/study tours	12
Number of other kinds of meetings (briefings, round tables, workshops)	1

Hours of meetings

Consolidated statistical return	Total
Hours of committee meetings [total]	474:31
Hours of private meetings	142:22
Hours of public hearings	310:31
Hours of site visits/study tours	19:47
Hours of other kinds of meetings	1:51

Inquiry outcomes

Consolidated statistical return	Total
Number of witnesses	817
Number of submissions	898
Number of referrals	29
Number of reports presented	36
Number of statements made under SO246A	44
Number of statutory appointments considered	136
Number of bills considered	61
Items of subordinate legislation considered	398

Standing Committees

Activity	Administration and Procedure*	Economic Development and Tourism	Education, Employment and Youth Affairs	Environment and Transport and City Services	Health, Ageing and Community Services	Justice and Community Safety (JACS)	JACS (legislative scrutiny role)*	Planning and Urban Renewal	Public Accounts
Number of committee meetings (total)	20	19	27	29	23	38	14	30	38
Number of private meetings	20	13	21	21	14	23	14	23	23
Number of public hearings	0	6	6	6	9	11	0	7	14
Number of site visits/study tours	0	0	0	2	0	4	0	0	0
Number of other kinds of meetings	0	0	0	0	0	0	0	0	1
Hours of committee meetings (total)	9:43	19:46	28:46	30:23	37:45	45:17	10:48	47:11	54:42
Hours of private meetings	9:43	4:47	5:29	10:59	7:58	9:52	10:48	21:42	15:13
Hours of public hearings	0	14:59	23:17	17:14	29:47	30:33	0	25:29	37:38
Hours of site visits/study tours	0	0	0	2:10	0	4:52	0	0	0
Hours of other kinds of meetings	0	0	0	0	0	0	0	0	1:51
Number of witnesses	0	34	74	44	82	80	0	57	81
Number of submissions	11	5	39	45	87	32	0	36	100
Number of referrals	3	2	3	5	3	2	0	5	3
Number of reports presented	2	2	2	4	2	1	12	4	2
Number of statements made under SO246A	2	4	8	7	5	5	0	11	2
Number of statutory appointments considered	0	3	33	24	3	59	0	1	13
Number of bills considered	0	0	0	0	0	0	61	0	0
Items of subordinate legislation considered	0	0	0	0	0	0	398	0	0

* Committees supported by Chamber Support.

Select Committees

Activity	2016 ACT Election and Electoral Act	Estimates 2017-2018	Estimates 2018-2019	Independent Integrity Commission	Independent Integrity Commission 2018	Privileges 2018 [#]
Number of committee meetings (total)	13	20	7	20	18	2
Number of private meetings	7	11	6	11	14	2
Number of public hearings	3	6	1	11	4	0
Number of site visits/study tours	3	3	0	0	0	0
Number of other kinds of meetings	0	0	0	0	0	0
Hours of committee meetings [total]	21:46	44:04	8:55	88:00	23:24	0:33
Hours of private meetings	8:31	6:16	8:24	3:59	14:40	0:33
Hours of public hearings	9:25	28:53	0:31	84:01	8:44	0
Hours of site visits/study tours	3:50	8:55	0	0	0	0
Hours of other kinds of meetings	0	0	0	0	0	0
Number of witnesses	30	70	4	234	24	0
Number of submissions	24	487	0	16	8	0
Number of referrals	0	1	0	0	1	1
Number of reports presented	1	1	1	1	0	0
Number of statements made under SO246A	0	0	0	0	0	0
Number of statutory appointments considered	0	0	0	0	0	0

* Committees supported by Chamber Support.

Privileges 2018 report circulated out of session