



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

(Reference: [Inquiry into Financial Management Bill 2021 \(No 2\)](#))

**Members:**

**MRS E KIKKERT (Chair)  
MR M PETTERSSON (Deputy Chair)  
MR A BRADDOCK**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 18 FEBRUARY 2022**

**Secretary to the committee:  
Mr S Thompson (Ph: 620 50435)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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## **Privilege statement**

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the Committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

*Amended 20 May 2013*

**The committee commenced at 9.31 am.**

**DUNCAN, MR TOM**, Clerk of the Legislative Assembly for the ACT, Office of the Legislative Assembly

**SKINNER, MR DAVID**, Senior Director, Office of the Clerk, Office of the Legislative Assembly

**THE CHAIR:** Welcome to the public hearing of the Standing Committee on Public Accounts inquiry into the Financial Management Amendment Bill 2021 (No 2). Today, the committee will be hearing evidence from the Office of the Legislative Assembly; the ACT Ombudsman; the ACT Auditor-General; the ACT Integrity Commission; the ACT Electoral Commission; and the ACT government.

Before we begin, on behalf of the committee I would like to acknowledge that we meet today on the land of the Ngunnawal people. We respect their continuing culture and the contribution they make to the life of this city and this region.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web streamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

In the first session today, we will hear from the Office of the Legislative Assembly. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

**Mr Duncan:** I fully acknowledge and understand the privilege statement.

**Mr Skinner:** I, too, understand the privilege statement.

**THE CHAIR:** Would you like to make a brief opening statement?

**Mr Duncan:** I would like to make a brief opening statement. Thank you, Madam Chair, for inviting the office to give evidence today. As you would have seen from the submission we made to the committee, the office does not support the Financial Management Amendment Bill 2021 (No 2) in its current form.

The office's objection is not about the general issue about insourcing that the government is seeking to address in the bill; the objection is in defence of the more fundamental principle that the administrative support arm of a parliament should, so far as possible, be independent of and separate from the regular public service, including in relation to staffing, procurement and contracting. Key to upholding the principle is that the executive and its ministers cannot direct the Clerk and the staff of the office in performing their functions.

As noted in our submission, the principle of administrative and institutional separation for parliamentary administrations is clearly embodied in the Latimer House principles

that we unanimously agreed to in the Assembly in 2008, in its continuing resolution 8A. It is my strong view that the bill, by subjecting the office to its terms, undermines that principle that was agreed to by the Assembly.

There is already explicit provision for the office's independence from the executive and ministers at section 8 of the OLA act. It states, in the clearest terms:

The clerk and the office's staff are not subject to direction by the Executive or any Minister in the exercise of their functions.

Importantly, through sections 6 and 10 of the OLA act, the Clerk has a statutory function for the management of the office to provide impartial advice and support to the Legislative Assembly and its committees and members of the Assembly. The bill as it currently stands is in direct opposition to these statutory provisions. The bill would give the Chief Minister the unreviewable power to determine an insourcing framework not only for the regular public service but also for the Office of the Legislative Assembly and, I note, the officers of the Assembly. I draw your attention to proposed new section 128 of the bill. It would also allow the Chief Minister the unreviewable power to direct the office in relation to its obligations under the framework and, importantly, any other matters under the relevant part. The committee can see this in proposed new section 129.

These powers, so far as they purport to apply for the office, are entirely at odds with the combined effects of sections 6, 8 and 10 of the OLA act. If passed, they would place the office in a position of accountability and responsiveness not to the Assembly, the Speaker or the Standing Committee on Administration and Procedure, but to the Chief Minister and the government of the day. Such an outcome is not in keeping with the Latimer House principles and would significantly weaken the carefully crafted separation between the legislative and executive arms of government that already exist and have been in place for some time in the ACT.

It also flies in the face of the Assembly's longstanding approach to legislating on such matters. In the past, the Assembly has been at pains to exclude ministers from issuing directions to the office in other areas of general administration and to protect the independence of the office through distinct and separate arrangements.

I will give the committee a few examples. Under the Annual Reports (Government Agencies) Act, the office is not explicitly subject to annual reporting directions issued by the minister; see section 8(2) of that act. Under the Government Procurement Act, the minister must not give directions to the office, must not ask the Government Procurement Board for a report about the office or ask for information about its operations.

Under the Government Procurement Regulations, the office is not an entity to which the minister is able to give direction about the management of procurement activities—see section 13(3) of that act—and under the Financial Management Act, which this bill purports to amend, there must be a separate appropriation for the Office of the Legislative Assembly and, where the Treasurer does not include the appropriation recommended by the Speaker, they must provide an explanation to the Assembly.

As noted in our submission, when passing the OLA act back in 2012, all members from all parties were enthusiastic supporters of such an approach. They were particularly supportive of the operational independence of the office's administration. When that bill was introduced, then Speaker Shane Rattenbury stated:

Given that the legislature relies so heavily on the advice and support given by the parliamentary support agency it is only appropriate that a legislative framework, which codifies its functions and asserts its independence from executive interference, is appropriate.

To date, this has not occurred.

This bill seeks to remedy that situation.

In contrast, the Financial Management Amendment Bill 2021 (No 2), which your committee is now examining, seeks to turn back the clock to a time when the government was able to direct the parliamentary administration as though it were just another government directorate. We understand it is the government's submission to the committee that the office's concerns about the impact of the framework and the associated powers of the Chief Minister can be considered after the primary statutory legislation has been amended by this bill. That, in my view, is putting the cart before the horse.

The fact remains that the power of the direction and the power to determine a framework under the bill contain no statutory limitations that would prevent a current or future government from seeking to direct the office and the Clerk in ways that could substantially affect its independent operation. This is a point that was alluded to in the JACS committee's legislative scrutiny report No 12, in which the committee states:

There are no criteria set out in the Bill limiting the content or substantive effect of the framework or even considerations involved in its determination.

In essence, the bill in its current form is a blank cheque that could be imposed at any point in the future to impose the will of the executive on the office.

It ought to be noted by proponents of the bill that the provisions as they stand are not limited to the current policy of encouraging insourcing but could equally be used by a future government with a different philosophical outlook to encourage outsourcing. As noted at the outset, the office does not have a policy view on these matters. Instead, it approaches the issues of staffing and contracting on the basis of value for money and fitness for purpose in the context of a very small public sector agency that is solely responsible for serving the legislative arm of government.

In conclusion, the point is that what the government thinks about how the office ought to make decisions in these matters should not be a relevant consideration. Under the Financial Management Act, the office is accountable to the Speaker for the office's administration of its finances—section 31 of the act—and the Standing Committee on Administration and Procedure is involved in the consideration of the recommended appropriation of the office and for advising the Speaker on issues of concern or

interest.

I put it to members that every time legislation passes that gives additional power to the executive, that comes at the expense of the parliament or its administration; the parliament gets a little bit weaker, and the norms of institutional independence and separation become a little bit fainter. For this reason, I advocate that the committee considers recommending that the provisions including the office in the scope of the bill be removed entirely. Thank you, Madam Chair, for the opportunity to make an opening statement.

**THE CHAIR:** Thank you, Mr Duncan. That was a great opening statement. Mr Duncan, do you believe in democracy?

**Mr Duncan:** Passionately, Madam Chair.

**THE CHAIR:** Do we live in a democracy here in Canberra and Australia?

**Mr Duncan:** I believe we do, yes.

**THE CHAIR:** What impact do you think that passing the amendment bill would have on our democracy?

**Mr Duncan:** The effect of the bill makes it very unclear as to what the state of the law is. You, as legislators, have a very important role to pass laws for the peace, order and good government of the territory, which leads to a very good democracy. We have an act, the OLA act, which says that the Clerk and the staff of the office are not subject to the direction of the executive; yet this bill has a clause in it that says that it is subject to the direction of the executive.

I would put it to you as legislators that you want to pass laws that are clear and understandable, and this muddies the waters significantly. It also diminishes the way that the parliament operates by ensuring that the executive has some role over the legislature. We operate in a system where we have a separation of powers; we have the judiciary, the legislature and the executive, and they operate independently of each other. There is a system of checks and balances which, as you have alluded to in your question, promotes a democracy.

The danger we are facing here is that, as I said towards the end of my statement, each and every time we have legislation that gives additional power to the executive and takes that power away from the legislature, it weakens the democracy.

**MR PETTERSSON:** Mr Duncan, could you tell me what functions are currently outsourced by the OLA?

**Mr Skinner:** I might answer that one, Mr Pettersson. The functions of the office are contained in the OLA act. The bulk of the functions are at section 6, which have a whole range of the things you would expect to see around providing support to committees, building administration and so on. There are also powers under the OLA act at section 10 relating to the management of the office. The Clerk has management powers. The Clerk also has some functions under the Financial Management Act, at

section 31, which provide that he is responsible for the financial management of the office. There are a few different sources of the Clerk's and the office's powers. In the context of supporting the legislature, those functions are at section 6, and you will see a listing of them in the OLA act.

**MR PETTERSSON:** Could you give me a layman's summary of the services that have been outsourced?

**Mr Duncan:** If you are after a list of the outsourced functions, we can certainly provide that to the committee. There are some things that I will not be able to provide; that is, members sometimes outsource their staffing functions. Members have the right to employ staff and consultants. Are you after a list of all of the consultants that have been employed by members? As far as we know, that would be subject to the direction of the executive as well, because that is caught under the Financial Management Act. I approve them under section 31 of the Financial Management Act. When you or any of your colleagues wish to employ a consultant, that may be caught, and it may be subject to the direction of the executive as well.

**MR PETTERSSON:** I am still curious, though, in that I am aware of some things that have been outsourced, and I find it somewhat surprising that I cannot get a straightforward answer here. We will go through some of them. Are IT services outsourced?

**Mr Duncan:** We have an agreement with Shared Services whereby they provide IT services, and we pay for half of the salary of an IT officer that visits your offices from time to time. We did have our own IT operation way back, when we were in the old building. Now I think it is fair to say that we use Shared Services. I think it is now called a different title; I have lost track of the title. Certainly, that is outsourced.

**MR PETTERSSON:** What about the provision of security around the building?

**Mr Duncan:** The day-to-day security is done by attendants, which you would be aware of. We used to have 24-hour security in the building, but we had some budget cuts many years ago and we reduced that to after-hours security. A patrol comes past the building three or four times a night to check the security. Yes, we do have an outsourced security service for the after-hours security for the building.

**MR PETTERSSON:** Cleaners?

**Mr Duncan:** Cleaners have been outsourced for the whole time that the Assembly has been in operation.

**MR PETTERSSON:** You mentioned consultants before. Can you give some examples of the consultants that the Assembly engages?

**Mr Duncan:** The Speaker engages specialist advisers to help the Assembly. We have two legal advisers for the scrutiny of bills and subordinate legislation committee. We have a Commissioner for Standards. We have an ethics and integrity adviser. We are doing a review of the committee office, as you would probably be aware, and we have engaged Rosemary Laing as a consultant to undertake that review, and we have



engaged another company to do that. Those sorts of consultants are engaged. All of these consultants are listed in our annual report, Mr Pettersson, if they are over a certain value. I do not have my annual report here. We have Hansard transcription services. Your wonderful words in the Assembly are sent off to the court reporting service and they transcribe those words before editing; that is an outsourced service.

Chillers and maintenance of certain key equipment in the building are outsourced. We have a building manager, but the building manager manages a whole range of electrical, plant and lighting. That sort of equipment is maintained to make sure that the building runs smoothly to provide services to members. That is all outsourced by way of different contracts. As I said, it will be listed in the annual report, but I will happily give that information to the committee.

**MR PETTERSSON:** Wonderful. In terms of these decisions that are made and signed off on by you as the Clerk, who are you accountable to for those decisions?

**Mr Duncan:** The Clerk is responsible ultimately to the Speaker, under the Financial Management Act, and the administration and procedure committee advises the Speaker on members' entitlements and facilities. That committee meets about 10 times a year; from time to time various matters are raised about how the office is being administered.

Twice a year I appear before committees. I appear before your committee in relation to the annual report; and your committee most recently, but before that an estimates committee, for the appropriation. I meet with the Speaker once every week, so I have those lines of accountability. I do not have a direct supervisor per se, like a normal director-general does. I have head of service powers, a bit like Kathy Leigh, but I do not have that direct line of accountability like a director-general would, for instance, to a minister.

I do have some semblances of that under the Financial Management Act. I am responsible for providing a budget for Madam Speaker to send to Treasury; I am responsible to Madam Speaker for providing an annual report to the Assembly—those sorts of things that, under statute, I am required to do.

**MR PETTERSSON:** Going to the specifics of the bill, in terms of the insourcing framework, do you have any opposition to having to consider whether any decisions that you make are in accordance with the framework or is it just the directions from the Chief Minister that are problematic?

**Mr Duncan:** I do not know what is in the framework, Mr Pettersson. I have not seen the framework. I hope that the committee has seen the framework. I hope that the committee is looking very closely at the framework before it approves this bill.

My main objection is to giving a blank cheque to a Chief Minister to direct an independent office. If you have passed a law that says an office shall be independent—and the Assembly has done that; the Assembly has done it not just for the Office of the Legislative Assembly but for the Electoral Commissioner, the Integrity Commissioner, and the Auditor-General—and for good reasons, then my objection is: why would you pass a law saying that the office is subject to the

direction of the executive? It just does not make sense to me.

I do not know what is in the framework. I have no idea what is in the framework. I note that there are two discussion papers being circulated in the government's submission to your committee. I hope that the committee has seen the two discussion papers. I do not know—someone knows—what powers the Chief Minister is intending to exercise in relation to the independent offices.

**Mr Skinner:** Irrespective of what is in the framework, that is probably not the issue that the office is concerned with; it is the statutory change that is being proposed. It could be across other areas of administration. Ultimately, the content of the framework is neither here nor there; it is the issue of including in an enactment a power for the executive to decide how certain decisions ought to be influenced and then to provide direction to an independent statutory officer whose primary statutory function is to support the parliament, not the executive or any other policy settings that the executive might wish to run with, which are entirely legitimate for executives to do in relation to the regular public service. That is the issue, and it is an issue of deep principle.

**MR PETTERSSON:** I want to be very clear: is it your view that the Chief Minister can give you a direction as to who you can hire and/or what services you can procure?

**Mr Skinner:** Under the bill?

**MR PETTERSSON:** Yes.

**Mr Skinner:** On the face of the provisions that are in the bill, the Chief Minister can give a direction on any other matter pursuant to the part, which is a very broad power, and can also provide direction in relation to all agencies' obligations under this framework. As the Clerk pointed out in his opening statement, this sort of statutory hook is really a device by which to later impose some as yet unsighted notifiable instrument. It places the Clerk and the office in a position of accountability and subject to some notion of responsibility to executive government. That is not the legislative scheme that the legislature, over a great many years, has envisaged for the office. They are entirely at odds.

As the Clerk pointed out, this legislative hook could be used at some future point to implement a scheme to favour outsourcing. We are not really concerned with the philosophical position on outsourcing or insourcing; we are saying that these matters need to be kept separate from parliamentary administration. If government wants to do these things, for whatever philosophical reasons it wants to do them, it can do them with respect to its regular public service.

**THE CHAIR:** With respect to your experience, Mr Duncan, with other parliaments across the world, are you aware of any parliaments that are doing the same thing as the ACT government is proposing to do through their amendments in this bill?

**Mr Duncan:** No, I am not aware of anything in this sort of sphere.

**Mr Skinner:** It is fair to say, Madam Chair, that parliaments and parliamentary

administrations jealously guard their independence, not because they wish to be exceptional in the scheme of the public sector but because there are very sound institutional reasons for doing that, and they go back for centuries. One of the reasons that we try to make sure about our lines of accountability through the Speaker and to the plenum in the Assembly is that that is the arm of government that is in fact responsible for holding the executive to account and the government to account.

In some respects this bill seeks now to interject executive direction in relation to the parliament's administration. That is a reversal of the normal lines of institutional separation that you would expect—and they are exactly what is reflected in the Latimer House principles, which every member of the Assembly has supported over a great many years.

The office is in the position of scratching its head a little bit as to what the genesis or the rationale for seeking to include the office in this bill is. I would imagine officers of the Assembly—the Auditor-General, the Electoral Commissioner, and the Integrity Commissioner—will raise similar issues about how they might be able to acquit their statutory functions. They are the concerns. They are not concerns about insourcing or outsourcing; they are concerns about principle.

**THE CHAIR:** Do you see an erosion of our democracy if this amendment in the bill passes?

**Mr Skinner:** I probably would not phrase it in those terms. As the Clerk said, every time a parliament decides to limit the independence of the advisory arm that it has—which, in our situation, is the Office of the Legislative Assembly—and every time it seeks to dilute the independence or run across the independence, it strengthens the executive, and a little bit of the parliament and the legislature's strength is lost. We have been parliamentary officers for many years; we see parliaments as being critical to a strong system of accountable and responsible government. I would not want to talk about erosion of democracy, but it certainly would be a retrograde step as far as we are concerned in maintaining appropriate separations in those key democratic institutions.

**MR BRADDOCK:** I would like to move on to the topic of notifiable instruments. I note in your submission you strongly advise that these should be in the form of disallowable instruments. Can you please expand on that, and whether it is normal for this level of power to be included in a notifiable instrument and not in a disallowable one?

**Mr Duncan:** Yes, we certainly drew attention to it. We thought it was probably more a matter for the justice and community safety legislative scrutiny committee. I note that in their report they have remarked—it is quite a wide power to give a minister, and yet not to be subject to disallowance. A notifiable instrument will just tell the Assembly what the minister has decided.

Given the broad nature of the power that has been given to the Chief Minister, as David pointed out, the Chief Minister can give a direction not only in relation to section 129 of the bill, but any other matter for this part, which is very wide ranging, and I am not quite sure what direction he might be able to give.

If the Assembly is going to give this power to the Chief Minister, it should be by way of a disallowable instrument, so that the Assembly is aware of the limitations of the power and, if necessary, can amend it or disallow it. I think it is good practice, when you are giving significant powers to the executive, that it should be subject to the scrutiny of the parliament.

**Mr Skinner:** Just to be clear, noting the disallowable instrument is good practice, but the remedy we see as important here is to remove the provisions as they relate to OLA in the bill. That is step 1. Step 2, in any event, whether it is to the regular public service or anyone else, is that that sort of power of direction ought to be through a disallowable instrument so that the proper review processes of the parliament can be brought to bear. That is good practice.

**Mr Duncan:** I thought of something for Mr Pettersson; I just want to add to my answer.

**THE CHAIR:** Of course.

**Mr Duncan:** One of the other outsourced functions is the provision of legal advice. From time to time committees seek legal advice from me and ask me to seek legal advice. Sometimes the Speaker asks for separate legal advice. That is an outsourced function as well, where we cannot go to the Solicitor-General, because there is a conflict of interest. I would hate to think that the Chief Minister would be able to have any say in which legal advice was going to be provided to an Assembly committee or to the Speaker. I thought I would add that to the list.

**MR PETTERSSON:** I do not think anyone disagrees with that. What you are being asked to do, or being directed to do, is to evaluate whether the services should be provided by the public sector or an external provider. No-one is trying to make the decision for you; you are just being asked to consider things. Earlier, when asked about your decision-making processes, you said that you consider value for money. Why is it that you consider value for money?

**Mr Skinner:** Because it is in the Government Procurement Act.

**Mr Duncan:** The law requires that, Mr Pettersson.

**Mr Skinner:** That is the Clerk operating within a statutory framework and exercising judgement and delegating those decision-making powers. This is the executive reaching in to the operations and decision-making and setting up parameters under a notifiable instrument that nobody has seen. It is an entirely different species of lawmaking.

**MR PETTERSSON:** I understand those concerns, and potentially some of the ways this is going about being achieved. Don't worry; that advice has not gone unheard. I just wanted to respond by saying that if it appears that the Clerk operates in a vacuum, it is not correct.

**THE CHAIR:** It is also important that a committee should have the opportunity to

outsource legal advice if a committee feels that is necessary, given the many issues that we come across. Gaining legal advice from the government itself is a conflict of interest, so it is important for a committee to look at outsourcing that expert advice. A committee should not be under the control of government if a committee wants to go about getting expert advice from an external expert. Anyway, we will move on. That is for another discussion.

On behalf of the committee, I thank the Clerk and his staff for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days.

**Short suspension.**

**MCKAY, MS PENNY**, Acting ACT Ombudsman  
**MACLEOD, MS LOUISE**, Acting Deputy ACT Ombudsman

**THE CHAIR:** Welcome, on behalf of the committee. In this session we will hear from the Acting ACT Ombudsman. Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm, for the record, that you understand the privilege implications of the statement?

**Ms McKay:** I have read the statement, and I am content with that.

**Ms Macleod:** I have read the statement, and I am content as well.

**THE CHAIR:** Would you like to make a brief opening statement or may we now proceed to questions?

**Ms McKay:** I have a brief opening statement.

**THE CHAIR:** Yes, please.

**Ms McKay:** Firstly, I would like to acknowledge the Ngunnawal and Ngambri people, the traditional custodians of the Canberra region, and pay my respects to their Elders, past, present, and emerging. We thank the committee for the opportunity to be here today to contribute to your inquiry into the Financial Management Amendment Bill 2021 (No 2).

As you know, the bill proposes to introduce part 9A, designed to require an evaluation prior to outsourcing or contracting work to determine if the work should be performed by ACT public servants or an external provider. It also provides that the Chief Minister may make directions under part 9A.

Last month I made a submission to you regarding concerns that we held about how the bill would apply to my office. As the ACT Ombudsman, I am an officer of the Assembly—but I am also the Commonwealth Ombudsman—funded by the ACT government under a services agreement to deliver the ACT ombudsman service in accordance with the Ombudsman Act of the ACT. This arrangement places us in a fairly unique position.

The bill is cast to apply to officers of the Assembly but provides an exemption in section 129(2) for services or works provided by the commonwealth or a state or an entity of the commonwealth or a state. Likewise, our services agreement with the ACT says that we are to comply with the legislation applying to officers of the ACT Assembly; but it also recognises that we are a commonwealth entity that is required to comply with the commonwealth legislation, including the commonwealth resource management framework.

Since making our submission, we have received advice that the proposed exemption in the bill, which is that section 129(2), may well operate to exclude our office from part 9A of the bill. But it is not without doubt. It is on this basis, potentially out of an

abundance of caution, that we simply ask that this point be clarified to avoid any conflict or confusion in our responsibilities, going forward.

There are a few ways of going about that: firstly, by including a specific exemption in the bill excluding our office from part 9A whilst the ACT ombudsman function is performed by the Commonwealth Ombudsman. You could add a note clarifying that part 9A does not apply to our office or you could include text in the explanatory statement specifically excluding our office from the operation of part 9A of the act.

In terms of looking further ahead, should at some point the ACT ombudsman service not be provided by the Commonwealth Ombudsman or a commonwealth entity, I would share some of the concerns raised in the submission by my fellow officers of the Assembly, particularly in relation to the potential fettering of the ombudsman's independence and discretion, as well as conflicts of interest that may arise when undertaking oversight work in a small jurisdiction.

I appreciate the committee's close consideration of these issues, and I am happy to take any questions you might have.

**THE CHAIR:** Were you consulted about this amendment to the bill previously?

**Ms McKay:** No, we were not. We received a letter on 9 December last year, I believe that was from the committee, asking for our views; but we were not aware of the bill before that.

**THE CHAIR:** And how did you feel when you received that notice from the committee?

**Ms McKay:** It was good to be advised. And we were happy to provide our views.

**THE CHAIR:** Have you had any contact with the ACT government since then? Have you tried to reach out to them or have they tried to reach out to you since, asking for your consultation or advice or feedback?

**Ms McKay:** Ms Macleod might assist.

**Ms Macleod:** Yes, we have had discussions with the relevant area within CMTEEDD post our submission, and they did note that we probably would have concerns and that there would be an opportunity to participate here today and there may even be a further roundtable provided by the minister to consult on the bill.

**THE CHAIR:** Have you been given the two discussion papers that the government has passed around to the unions and who else they have given it to? Were you given any of the two discussion papers?

**Ms Macleod:** No, we have not.

**THE CHAIR:** Did you ask for them?

**Ms Macleod:** We did not know they existed.

**MR PETTERSSON:** I was hoping you could tell the committee what services or functions of your office are currently outsourced.

**Ms McKay:** Under the Ombudsman Act in the ACT, I think it is section 30AB, we are able to engage contractors and consultants to do work in our office. We did have a look at the numbers before we appeared today. It is relatively few that we use in the ACT space; but we may well use a consultant or a contractor in a number of circumstances. Maybe if we are conducting an own-motion investigation that requires a particular skill that we do not have in the office, we certainly look at the office first and see if we could fill that bill. But if we needed a particular skill, say an actuary or something of that nature, we would get a contractor or a consultant to assist.

In terms of our corporate functions such as the internal audit program, we certainly engage external people to conduct our internal audit program and sometimes we use contractors to fill gaps, pending recruitment processes, so that we can keep the wheels turning.

**MR PETTERSSON:** And what about in the, I guess, normal functions of the office: cleaners, IT—

**Ms McKay:** I do not think we directly engage cleaners but we—

**Ms Macleod:** No, the cleaners are engaged by the building owners. We occupy a floor under a commercial lease and the cleaners, for example, are engaged by the building owners. In respect of IT, as the Ombudsman indicated, the majority of staff are public servants employed under the Commonwealth Public Service Act. As the Ombudsman indicated, if there is a particular skillset we do not have at any given time, for a particular project, we may engage a consultant or a contractor to meet that need, but as a matter of course they are public servants.

**Ms McKay:** We would particularly do that if it was not a skillset that we needed for a long time or on an ongoing basis. If we needed a skillset for a particular activity or a particular short period of time, we are more likely to engage a contractor to do that.

**MR BRADDOCK:** My first question is: should this bill apply to the ombudsman; are you even able to comply or is it impractical for you to comply with it?

**Ms McKay:** I think probably both those things. I think that, in terms of are we able to comply, we see that there would be some conflict with the commonwealth resource management framework that we have to operate under; so that may be difficult for us.

In terms of practicality, there are also some issues for us. Whilst we have a dedicated ACT team within our office, there are other functions that are serviced by the ACT team that are spread across our office: corporate functions, complaint-handling functions, those sorts of things. So it is quite difficult in some of those things that are spread across our office to identify exactly the portion that they would be doing with respect to the ACT. So it might be difficult and impractical for us to apply it as well.

**MR BRADDOCK:** Just to go back a step, where it is in conflict with the



commonwealth regulations, is it, therefore, impossible for you to comply with the ACT framework under this bill? Should it apply to your office?

**Ms McKay:** It would be extremely difficult, yes, and in fact it would be in conflict with our services agreement as well. Our services agreement says that we need to act under the commonwealth framework; so it would be difficult for us to do both because, of course, the commonwealth framework encourages competition and we would not be able to give preference to ACT public servants under that framework.

**THE CHAIR:** On behalf of the committee, I thank the Acting ACT Ombudsman and the Acting Deputy Ombudsman and their staff for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee's secretary within five working days. We will take a brief suspension and return to hear from the ACT Integrity Commission. Thank you, ladies.

**Hearing suspended from 10.18 to 10.37 am.**

**ADAMS, MR MICHAEL**, ACT Integrity Commissioner  
**HOITINK, MR JOHN**, Chief Executive Officer, ACT Integrity Commission

**THE CHAIR:** Welcome, Mr Adams and Mr Hoitink. In this session we will hear from the ACT Integrity Commission. Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm, for the record, that you understand the privilege implications of the statement?

**Mr Adams:** Yes, I do understand the privilege document.

**Mr Hoitink:** I also understand the privilege requirements.

**THE CHAIR:** Would you like to make a brief opening statement or may we follow through to questions?

**Mr Adams:** Can I just very briefly state the issue which I have? There are ways of solving it, but the issue is this: the only concerns I have, as Integrity Commissioner, are where we are conducting an investigation or where we have confidential information, which we, of course, have a great deal of and on which we do not wish to be compromised by the need to get specialist assistance within government. But paying the rents, all those things can be easily—can I use the word?—“insourced”. For example, if we need specialist consultation information—say, forensic accounting or legal advice—it is very difficult to maintain the integrity of our systems if we get those from within government. So that is my only issue with this.

This can be solved by changing the act to provide, say, on certification by the Integrity Commissioner, that the integrity of its systems require outsourcing or something like that, because it will always be a case-by-case situation; and that would be fine.

The other way is by doing it through the framework, the Chief Minister’s framework. The really difficult thing about the framework is that, unless the framework contains a general exclusion based on case-by-case decision, there would have to be a different framework for each particular case. The problem there is we would have to notify the Chief Minister as to the problem when, of course, we might not want to do that because it may involve the Chief Minister or it may involve the relevant government department.

Although I thought at first the framework might be a solution, because the framework is ad hoc in the sense that it does state general principles, it implies that it is case by case because you have to put up a case on each occasion and then a decision is made by the Chief Minister. The framework is a statutory instrument effectively; so that goes into the public record. For us, that is a real problem. I do not think the framework works. I assume there would be a generic framework and then sub-procedures dealing with each particular case.

The general framework would outline those things which were mentioned in the second reading speech on general principles that would apply to the use of this program. Then each particular case would, as required by the act, be considered. If an exclusion could be put in the generic part of the framework—we could agree on words and maybe have it second-looked at by the inspector or if it is just the commissioner’s certification in a submission—I think that would be a solution. I must say that the better solution is the statutory one, simply because it cannot be changed ad hoc, whereas the framework can be.

Anyway, if it is only a very limited range of cases that I am concerned with where integrity of information and integrity of an investigation needs protection, which is pretty well every case—we can manage that—then I am not otherwise concerned with the policy which the legislation is designed to enact. Is that clear?

**THE CHAIR:** Absolutely, yes. That was very clear and it does raise a bit of concern as well because the confidentiality of your work requires the uttermost integrity. If you had to put forward a business case to the executives to outsource consultation or extra support into your investigation, it does, from my point of view, jeopardise your investigation quite a lot.

**Mr Adams:** Yes.

**THE CHAIR:** Were you consulted by the ACT government when they were going through the process of amending this bill at all, Mr Adams?

**Mr Adams:** No, only with the final bill. I am happy to help, to discuss with the draftsperson or with someone in Attorney-General’s or someone in CMTEEDD what a good form of words would be, because we do not want to go any wider than is necessary. I would be happy to assist with the drafting of an exception.

But we were not consulted. I suspect because the issue was not appreciated, which of course I understand. We are a tiny agency in a much larger public service.

**THE CHAIR:** A tiny agency but very important and crucial in today’s society.

**Mr Adams:** I hope so.

**THE CHAIR:** Have they since reached out to you asking for your feedback or any time to consult with them, moving forward?

**Mr Adams:** We did get, and I did send, an email, but I am now not certain who reached out to us.

**Mr Hoitink:** We received initial information via the Clerk of the Assembly.

**Mr Adams:** It was not through the departmental means, it was through the Clerk of the Assembly. It was obviously going to have to be a discussion about its terms, such as we are now having. But we were never given an opportunity to put in a contribution at the earlier stage, which probably would have been good. I just assumed it was overlooked because we are a special case and people were just looking

at the general way this would apply across the public service.

**MR PETTERSSON:** I was hoping you could tell the committee what services or functions you have actually outsourced.

**Mr Adams:** So far we have not, but our active investigations are at a hearing stage. One example might be—and the act supposes this will happen—we might need outside counsel for the conduct of hearings, particularly public hearings. My preference is to keep these hearings in-house. I think that they are better controlled, both from the point of view of expenditure but also in a policy sense, to keep this expertise and develop this expertise in the Integrity Commission. But that may well not be possible. For example, if there is a conflict of interest, it might be necessary to brief outside counsel. That would be one example which we have not yet reached.

I do not want to go into details but we have two other matters that might require forensic accounting skills. The problem is—and I suppose this is typical of the public service really—you cannot have all the skills you need; otherwise you would have double the public servants and half of them not doing any work until the problem arose. So you obviously have to, as it were, employ people ad hoc. That is another potential area.

There is a third area. I am just going to have to be careful here—how will I put this?—the integrity of computer systems in a government agency. We have a level of expertise but not the kind of particular expertise, I think, that would be necessary for that particular matter. We are probably six months from that stage but I am anticipating that we will need some expert assistance there.

For outside counsel, you could put a general case that we need outside counsel. But where there are private hearings, you do not publicise what they are about or their scope or anything, of course. Public hearings are already in the public arena. For those cases, there is no problem. Does that answer your question?

**MR PETTERSSON:** Nearly, and thank you; it was very thorough. What about when it comes to ongoing running of your facilities, cleaners, general IT staff?

**Mr Adams:** No, we do not have a problem. There will be an issue relating to the general integrity of Shared Services, which provides all our computer resources at present. If we get telecommunications interception, that all has to change because of the commonwealth requirements.

In all events, even under the present system, there are 35 people who have access to our information. It is audited so that you can check—and, of course, they should not be looking—but that is not an altogether desirable system. I am shortly going to have discussions about how we can limit that access and, I suppose, put a few extra locks on the door, if you follow what I mean.

**MR PETTERSSON:** Just very specifically on cleaners. Are the cleaners—

**Mr Adams:** No problem. John, we do not have any problem, do we, with that? We are happy with—

**Mr Hoitink:** No. We do have outsourced contract cleaners but they have to be security cleared.

**MR BRADDOCK:** Just to clarify, from my understanding, you would have no issue if the framework was guidance-only for your office?

**Mr Adams:** No, no problem, only if it becomes mandatory and requires, then, disclosure of sensitive material. That is the only problem.

**THE CHAIR:** Mr Adams, I was just wondering have you read the government submission to this inquiry?

**Mr Adams:** No. I have read the second reading speech. It is not called the second reading speech here. I cannot think of the particular term for it. I have read that. That is the speech which introduced the legislation.

**THE CHAIR:** The government put in a submission, and it is on the ACT Legislative Assembly's website.

**Mr Adams:** I am sorry, I have not seen that.

**THE CHAIR:** That is okay. Please read it afterwards. If I could just read a small portion of what they said in the submission, and I would love your feedback on that. The ACT government said that the bill does not impact on the independent and impartial exercise of the statutory functions of the Office of the Legislative Assembly and the officers of the Assembly who are subject to the Financial Management Act, being the Auditor General, the Integrity Commissioner and the Electoral Commissioner; rather the bill provides for the establishment of the insourcing framework. What is your response to that note from the government saying that there is not conflict with your work?

**Mr Adams:** It is generalised and did not look particularly at what follows once you say the Integrity Commission, for example, is independent. That was a broadbrush description. As such, of course, it does not impact on us. It is only in its application that it is capable of impacting on us. For us, that is nub of the issue that needs to be looked at.

**MR PETTERSSON:** I was wondering if you could walk the committee through the current decision-making processes you might follow when it comes to the decision of insourcing or outsourcing.

**Mr Adams:** How would I start? We get information, let us call it a report, which raises issues of corruption. We then assess it. We would not outsource an assessment of whether or not we ought to conduct the investigation or refer it to someone else or dismiss it at that stage. Let us say we then have an investigation. At that stage we have to look at what the scope of the investigation is and therefore what the resources are for it. Thus far no question of outsourcing has arisen.

The stage of some of the investigations might need expert outside information; but we

have not reached the stage of determining it. If we do, the nature of that work simply cannot be done in-house. Then it would require us to attend to outsourcing.

For private hearings, if we need outside counsel at that stage—thus far, although I can tell the committee we are looking at something like 30 private hearings, putting the train on the line—when we actually get to do them, it requires COVID solutions to problems. But none of those require outside counsel at present.

One may well require public hearings, as I see it now, potentially. Then we would have to seriously consider whether we get outside counsel or do that in-house. It is a matter for me, and I have not yet needed to grapple with it. So naturally I am not making a decision at this stage. In other words, this is not an immediate problem for us. But we are on the way to needing a solution, probably in terms of the next two months or so.

**MR PETTERSSON:** I have one follow-up. How would that decision-making process work for something like cleaners?

**Mr Adams:** I must confess the problem of cleaners has simply not occurred to me. I think I would look at them in this way: it is difficult to think of any cleaner being affected by someone who was concerned with knowing about an investigation. We are talking about relatively senior public servants, politicians. How would they know even who the cleaner was? In other words, it is a theoretical problem. A cleaner could get information, seek out who was interested and then act wrongly in disclosing it.

In terms of real risk, providing they have been security cleared, I do not have a problem with having cleaners insourced. But I would need to discuss that with Mr Hoitink. Off the cuff, I do not see this as necessary for outsourcing. John, did you give this some thought or did it just kind of happen?

**Mr Hoitink:** No. We went through the normal procurement processes in relation to cleaners. We went through a number of different providers—again, in line with the Procurement Act—and decided on a particular cleaner to undertake the cleaning out of hours, out of office hours. But that person has also had to have a security clearance.

**Mr Adams:** I do not think cleaners anyway would be intended to be covered by this, because they are not public servants, are they? Almost all cleaners would be outsourced within government, would they not, I would have thought?

**MR PETTERSSON:** Not to make light of the situation, but that is kind of the point.

**Mr Adams:** I see. I suppose I would say this: if cleaners became available within the public service, I cannot myself think of a problem that that would raise for us. Does that answer the question?

**MR PETTERSSON:** Perfect. Thank you.

**THE CHAIR:** Thank you, Mr Adams and Mr Hoitink. On behalf of the committee, I thank the Integrity Commissioner and his staff for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the

committee secretary within five working days? We will take a brief suspension and return to hear from the ACT Audit Office.

**Short suspension.**

**SHARMA, MR AJAY**, Acting Auditor-General, ACT Audit Office

**THE CHAIR:** Welcome, Mr Sharma. In this session we will hear from the ACT Audit Office. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

**Mr Sharma:** I have read and fully understand the privilege statement.

**THE CHAIR:** Mr Sharma, would you like to make a brief opening statement?

**Mr Sharma:** I would like to thank the committee for the opportunity to be a witness at the public inquiry today. The main thrust of the submission provided by the Auditor-General is to make the committee aware of the powers provided in the Auditor-General Act for the Auditor-General to undertake audits in an independent manner. The audit act states that the Auditor-General is not subject to direction from anyone in relation to the way in which audits are to be carried out. This ensures that the Auditor-General is able to resource and deliver audits of the highest quality.

While the bulk of the audit work is undertaken in-house, and the Auditor-General retains the responsibility for the audit reports, the audit office engages experts from time to time to assist with some of the complex areas of audit work. Under the auditing standards, the office must ensure that the audit team has relevant qualifications, skills and experience. To provide value for money to the territory, the office does not permanently employ these experts but contracts them in as required through a competitive procurement process.

Some of the experts used on financial audits include actuaries—for example, to review estimates of superannuation liabilities et cetera—taxation, accounting advice and IT experts. To meet the whole-of-government reporting timetable, we also hire trained financial auditors from firms during the peak reporting period, which is three months of the year around July to September, to supplement our resourcing.

For performance audits, similarly, we need subject matter experts from time to time, depending on the scope of that audit, or any other expertise that we do not retain in-house. To comply with the quality control standards, we also have to engage external quality reviewers to avoid any conflicts of interest in terms of adding to the quality of those audits. Due to the nature of our work being mainly auditing the work of ACT government agencies, we are unable to use staff and resources from other agencies. This is to avoid both the perception of conflict and actual conflict.

The amendment in the proposed bill allows the Chief Minister to determine an insourcing framework and requires the Auditor-General to evaluate against that framework. The Chief Minister can also give direction to the Auditor-General in relation to compliance with the insourcing framework. As noted in our submission, at this time we do not have any further detail on the criteria and threshold. But we would like to emphasise the need for the Auditor-General to continue to be independent in respect of resourcing and delivering audits to the Legislative Assembly.



**THE CHAIR:** Thank you, Mr Sharma. Were you aware of this amendment in the bill before it was tabled in the Assembly?

**Mr Sharma:** As far as I am aware, we were not.

**THE CHAIR:** Have the Chief Minister, his office or the ACT government reached out for your feedback or to have time to consult?

**Mr Sharma:** No, not at this stage.

**THE CHAIR:** Have you reached out to the ACT government with the concerns you have regarding the amendment in the bill?

**Mr Sharma:** Not directly at this stage. We have provided this submission. We have also reached out to the Chief Minister's directorate to get further information on the insourcing framework and whether there is more information. At this stage we have not been advised of any further information.

**THE CHAIR:** When did you reach out to them, Mr Sharma?

**Mr Sharma:** It would have been about a week ago.

**THE CHAIR:** You have not heard anything from them yet?

**Mr Sharma:** Not at this stage.

**MR PETTERSSON:** In your opening statement you spoke of some of the specialist advisers that the office needs. Could you talk about some of the other potential outsourcing that might be occurring—common ones like IT and cleaning: are either of those occurring in the office?

**Mr Sharma:** They would relate to our professional services division, not the financial or performance audits. There is the whole-of-government framework in terms of Shared Services engaging, as part of our accommodation, any cleaning services, any provision of IT equipment and the like. Those are provided by ACT government services. We do not necessarily procure for those things ourselves. However, we do have an internal audit committee. The committee would do about two audits of our corporate services, including financial audits and performance audits, in terms of looking at the quality of work. That is convened through our audit committee, and there would be outsourcing of that work. However, we use the government's internal audit procurement panel to source consultants to do those reviews.

**MR PETTERSSON:** Just to clarify, you said that the ACT government provides the cleaning services?

**Mr Sharma:** It would be part of the accommodation arrangements. We do not necessarily do the procurement ourselves.

**MR BRADDOCK:** Would it be acceptable to your organisation if the framework was guidance only, for you to follow where applicable, such as for cleaners, but not for the

more sensitive matters?

**Mr Sharma:** There would have to be clarity provided as to which parts it would apply to. Particularly in relation to audit services, it is important that it does not create any perception that it would apply to that area as well, or if there is another process through which we would need an exemption to that guidance.

**MR BRADDOCK:** Are you saying there would be guidance for you; you would then have the discretion as to whether it should apply or not?

**Mr Sharma:** I think that would be prudent. I am not sure whether you are saying that there would be something in the framework itself or whether we would appreciate an exemption from this amendment in the bill. There are two ways in terms of approaching this, and our preference would be, to avoid any perception of such matters, that there would be something in the legislation itself that provides us with the exemption, particularly in relation to the audit services.

We would be more inclined to look at insourcing for the professional services division. Most of the work that gets done over there is similar to the corporate and administration work of other ACT government agencies.

**THE CHAIR:** On behalf of the committee, I thank the Acting Auditor-General for his attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days.

**Hearing suspended from 11.09 to 11.37 am.**

**CANTWELL, MR DAMIAN AM CSC**, Electoral Commissioner, ACT Electoral Commission

**THE CHAIR:** In this session we will hear from the ACT Electoral Commissioner. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

**Mr Cantwell:** Yes, I understand the privilege implications of the statement.

**THE CHAIR:** Would you like to make a brief opening statement?

**Mr Cantwell:** I will make a very brief statement. I would refer the committee to the formal submission made by the commission. It is a very brief submission as such. Essentially, it outlines the concerns that the commission has with the proposed bill, in particular the insourcing framework, noting that we have yet to be consulted on the framework and, indeed, the details of the evaluation tool.

Our concern rests with the potential that the framework may impinge unduly upon the commission's statutory independence in the execution of its core mission—in particular, the delivery of electoral services. Otherwise the statement is pretty straightforward. We also strongly wish to engage with the drafters of the evaluation tool and the framework as it progresses forward, if the bill is passed.

**THE CHAIR:** You mentioned that you have not yet heard anything from the ACT government. Have you tried to reach out to the ACT government in regard to this amendment?

**Mr Cantwell:** We engage with government in a range of areas. This is not one on which we have received any invitation to engage. I understand, from reading the explanatory notes to the bill—in fact, it may have been the presentation speech made by the minister—that it referred to some consultation processes, a draft paper or a consultation paper. I have not received that. I cannot speak for other such independent authorities, but I have not received any such draft on which I can engage. That is where it is at, at the moment.

**THE CHAIR:** Have you or your office sent out an invitation asking to have a consultation with them?

**Mr Cantwell:** No. Other than what I have read on the bill, as it was tabled in the Assembly, I know nothing of this. There is literally no engagement with my office by anyone inquiring as to my views, other than to this point being asked to speak to the inquiry, and to make such a submission. Other than that, we are paddling in the dark here.

**THE CHAIR:** How do you feel about that, Mr Cantwell?

**Mr Cantwell:** There is a lot going on. I am not seeking to be recriminatory in any way. In particular, over the Christmas-new year period, and with everyone working

remotely, I understand the challenges. We are equally challenged. I am not raising such a concern in that regard. I am simply stating that, should the bill be passed, the commission would wish very much to be engaged in the drafting or detail of the tool and the insourcing framework, so as to seek to avoid any untoward or undue impingement upon the commission's independence.

**THE CHAIR:** Have you read the ACT government's submission to the inquiry, which is different from what they presented in the Legislative Assembly?

**Mr Cantwell:** No, I have not.

**THE CHAIR:** I was going to ask you if you are aware of clause 4 of the bill. The government pretty much states that, under clause 4, it does not conflict with any of the officers of the Legislative Assembly. What is your opinion about that?

**Mr Cantwell:** The commission's view is clear, as I have stated. I can offer the inquiry no legal advice or interpretation of the act, either the Electoral Act or the Financial Management Act. The committee inquiry, the government and the Assembly will, of course, seek their own such advice.

The commission's advice to the inquiry is that, in so far as there may be an impact upon the discretion of commission members in the execution of their duties, as they relate in particular to the delivery of core services, such as the conduct of elections, we have not received the detail of what has been proposed. It may give rise to some concerns about the impact upon our independence. That is our viewpoint.

Again, I am not informed by, as you say, the submission by the government in this regard. I would happily go back and look at that. I have not had reference to that at this point. As I said, with respect to engagement to this point, we have been notified of the fact that it was tabled in the Assembly, that the inquiry was being stood up, an invitation to address it, and indeed make a submission, as we have.

Our view is informed by some consideration of the act. I cannot offer such advice to the committee inquiry as such. Again, I note that the inquiry would seek its own advice in these considerations.

**THE CHAIR:** Would you be able to elaborate a little bit more on how it would impact your work?

**Mr Cantwell:** The Electoral Act provides for discretion by the commission in the performance of its duties—in particular, its core functions, such as provision of electoral services, provision of ballots, conduct of ballots; that is, elections. It also provides independent, complete discretion, as defined under section 6 and section 7 of the Electoral Act, in the provision of advice on electoral matters and the provision of education and community engagements.

Again, notwithstanding that we have not seen the detail of what is being proposed or have yet to receive, or be consulted about, the detail of the framework or the evaluation tool, there is potential, in our view, that that causes some risk of conflict with independence as defined in the Electoral Act.

**MR PETTERSSON:** I was hoping you could tell the committee what services or functions are actually outsourced by the commission currently.

**Mr Cantwell:** There is a range of such services and functions. You will appreciate that it is a small office staff. We have a very small entity number. As you also well know, a lot of our electoral services are underpinned by ICT—in particular, EVACS, the electronic voting and counting system.

Our services that we engage include a range of providers, and external providers, that are specialists or have written the software underpinning such ICT systems. The outline of those systems and the functions they provide to elections is outlined in our annual reports and included in such reports as the 2020 election report. We engage those vendors and providers in a lot of those electoral services where they are ICT based. They are the organisations or the companies that have such resident expertise and experience in providing such services or providing such ICT software and the like.

We engage through the standard ACT procurement protocols and requirements, meeting all of the requirements to do so. We have a range of services; again, I would refer the inquiry to the detail in the annual report or our election 2020 report for the nature of those services.

**MR PETTERSSON:** I understand the unique nature of an election and an election year. In terms of ongoing requirements around the office, for example, your regular IT work or your regular cleaning of the office, how are they provided for?

**Mr Cantwell:** They are contracted under the standard ACT arrangements. For instance, at the moment we are in Customs House; we will soon move to Nara House. We fit in with the building arrangements provided by the ACT Property Group or ACT government services.

When I talk or refer to vendors and providers that underpin our electoral services, I am referring in particular to those unique electoral services that we provide. In all other respects, we use whatever government procurement or government standard services are in place for such routine corporate governance or business services.

**MR BRADDOCK:** If the framework was not to be statutorily applied to you but was just guidance for you, would that be acceptable to you, if we were to make those amendments to the legislation?

**Mr Cantwell:** I would have to consider that carefully, and probably seek further advice once I saw a refined draft bill or legislation.

**MR BRADDOCK:** That is fair enough. I am talking about the intent to leave the final discretion up to you, as to the guidance: if you wished to follow it, you could; if you needed to, because you had reasonable grounds, you could also go down your desired path.

**Mr Cantwell:** As you phrased it there, that would give us the requisite latitude, as already described and legislated for in the Electoral Act, to provide our electoral

services with that due, independent discretion, and it would remove any risk, as we have alluded to the committee inquiry, of such impost or impingement arising. That sounds quite workable. Again, as we have outlined in our written submission, this really turns on the detail of the insourcing framework and the evaluation tool. If there is such discretion permitted, that would, on the face of it, seem to be an acceptable alternative.

**THE CHAIR:** Are you at all concerned about the principle? I understand where Mr Braddock is coming from. If the bill passes, you would be very much open to working with the ACT government to make sure that the insourcing framework is working accordingly, regarding how your office functions, Mr Cantwell. Are you also concerned about the principle of amending the bill? We want to make sure that the executive and Elections ACT are completely separate.

**Mr Cantwell:** Insofar as you have asked me to speak about the principle behind the nature of the proposed bill, I have no reservations or concerns about the principle, as I understand it; that is, as it is outlined in the explanatory notes and the bill. Our concern, as I have expressed, is only with what sits around the nature of its impingement upon the independence of the commission. It is something which the commission—and, indeed, the Assembly—would wish to protect.

Of course, we are bound by the Electoral Act and other acts across the ACT. As it sits at the moment, that Electoral Act describes the nature of that independence; and, indeed, complete discretion in the performance of our core duties—in particular, as they relate to the delivery of elections. Notwithstanding those concerns that we have expressed today, I think I understand the nature of what is trying to be achieved here. But I must put on the record the commission's concerns about any risks to the statutory independence, as currently legislated, of the commission from government, and in the provision of electoral services.

**THE CHAIR:** The government states that the directions under section 129A are to be notifiable instruments. However, the Clerk of the Legislative Assembly, Mr Duncan, proposes that it be made a disallowable instrument, rather than a notifiable instrument. Is that something that you would also recommend?

**Mr Cantwell:** As I understand what is being discussed there, that would also appear to be a better alternative to a notifiable instrument. In amending the proposed bill, if that is what is being considered, we could work with the drafters of those amendments, as we recommend in our submission, to ensure that the wording of those amendments, in either the way you propose there or other ways, address our concerns to ensure workable independence or statutory independence. We would be happy with that process. Indeed, we would wish very much to engage with the drafters of such amendments to the bill, as you have outlined.

**THE CHAIR:** Do you have any final words for us, Mr Cantwell?

**Mr Cantwell:** No. I am happy to have had the opportunity to speak with you today. We look forward to working with CMTEDD and government as you may refine what is being proposed here and what is being discussed. We wish to engage and collaborate. The interests that we are seeking to protect here, of course, are those that

are legislated, and protect the independence of the commission.

**THE CHAIR:** On behalf of the committee, I thank the Electoral Commissioner for his attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days.

**Short suspension.**

**GENTLEMAN, MR MICK**, Minister for Corrections, Minister for Industrial Relations and Workplace Safety, Minister for Planning and Land Management and Minister for Police and Emergency Services

**WEST, DR DAMIAN**, Deputy Director-General and Secure Local Jobs Registrar; Workforce Capability and Governance; Chief Minister, Treasury and Economic Development Directorate

**NOUD, MR RUSSELL**, Executive Group Manager; Industrial Relations and Public Sector Employment; Workforce Capability and Governance; Chief Minister, Treasury and Economic Development Directorate

**MATTHEWS, MS EMMA**, Senior Director; Secure Employment, Industrial Relations and Public Sector Employment; Workforce Capability and Governance; Chief Minister, Treasury and Economic Development Directorate

**THE CHAIR:** In this session we will hear from the Minister for Industrial Relations and Workplace Safety, and officials. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

**Mr Gentleman:** Yes, I do.

**Mr Noud:** Yes, I understand the implications of the statement.

**Dr West:** I, too, acknowledge and understand the statement.

**Ms Matthews:** I understand the privilege implications of the statement.

**THE CHAIR:** Would you like to make a brief opening statement, Minister, or may we proceed to questions?

**Mr Gentleman:** Thank you, Chair, if I could. I advise that the government has significant resources. We are a big employer in the ACT. We want to make sure that our employees have the opportunity to be secure in their jobs and grow in their jobs as well. We want to grow the capability of the public service, and the capacity and capability of the city, especially as we continue to respond to, and recover from, the COVID-19 pandemic. The pandemic has shown us the importance of safe and secure work for the economy. It has shown us the value of our public service, who have done an incredible job over the last two years in dealing with the pandemic.

The government has an ambitious agenda when it comes to secure employment. As well as the work we are doing to create the framework under this bill, we also have the insourcing task force and the secure local jobs code. We have provided a submission to the committee, and we are happy to talk to that during questioning.

**THE CHAIR:** Thank you. Mr Gentleman, have you read the submissions from the Office of the Legislative Assembly and officers of the Assembly?

**Mr Gentleman:** Yes, I have.



**THE CHAIR:** They are very concerned about separating their independence, the sacredness of the confidentiality of their work and the ability to have integrity in their roles. However, the amendment in this bill suggests they might not be able to have that. What is your response?

**Mr Gentleman:** I do not agree with the comments. The bill is a legislative position to allow the framework to occur. The framework, as it comes out, does not suggest any particular decision. It just requires office holders to look at their decision-making process with a view to changing what we have done in the past in regard to outsourcing.

There are some areas where we have simply always outsourced. The government has a view that we need to reconsider that and look, where possible, at where we could insource. This bill just sets out a framework; it is about allowing the framework to go forward. We will be presenting the framework for consultation a little bit later on.

**THE CHAIR:** With respect to the idea, Minister, of having this framework, and allowing the executive, the Chief Minister, to have an impact on how decisions are made by the Office of the Legislative Assembly and officers of the Assembly, does that change at all?

**Mr Gentleman:** It does not tell them what decisions to make. It simply suggests that they should look at the framework when making those decisions. It will still be up to those, as they are called, independent people to make their decisions. The bill creates the framework for the decision-making to be considered. The framework will be a regulatory instrument. It will not predetermine decisions; rather, it will ensure that prudent questions are asked about the best way something can be done. The GSO advice that we had, in preparing this bill, and after the Clerk's letter, was strongly that we could go ahead with this. Of course, they will still make those independent decisions.

**THE CHAIR:** You say, Minister, that they have the independence to make these decisions. However, you are giving them a guideline, with a framework, as to how to go about making the decisions. Is that really being independent or is it subjecting executives to making sure their decisions are based on a framework; therefore, they do not actually have independence?

**Mr Gentleman:** They do. They still make that decision.

**THE CHAIR:** Based on a framework that you are giving them.

**Mr Gentleman:** They will have to consider that framework.

**THE CHAIR:** Is that independence and being separate from the government?

**Mr Gentleman:** Yes; that is my view and the GSO's view.

**THE CHAIR:** If we are looking at the Legislative Assembly as having a separate power from the executive, and from the ACT government, and you are giving them a framework and a guideline to work with, and telling them, "No, you cannot work

outside this guideline,” is that being separate and independent, and expressing respect for the integrity that they have in their roles?

**Mr Gentleman:** Yes, they have to think of many things when they make decisions. This is just one part of their thinking process. As I said, we are not telling them which way to make the decision. But they must be compliant with the Financial Management Act. It is no different from when they consider other laws, in that they have to operate in a lawful way. It is no different from the way they consider other laws when making decisions.

**THE CHAIR:** You are making changes in the amendment bill in that they have to be subject to the framework. Therefore, they really do not have independence. They do not have the ability to freely decide on what they see fit regarding their role and their work, because they have to work within this framework. You say that they do have the ability to be independent but, really, at the end of the day, they do not. They are subject to a framework that has not been decided on, with respect to what it will look like.

**Mr Gentleman:** As I said, they have to consider all laws and operate in a lawful way. If there is a law in place, they would have to consider that law. Let me go to officials in our directorate to give you some more detail on how we would operate lawfully.

**Dr West:** As overlaid and discussed by the minister, with the application of the evaluation tool, we do not see that it would dictate an outcome. We are merely asking, once the evaluation framework which this bill would give application to has been developed, for a statutory office holder to evaluate a decision and use the framework to consider whether or not a particular part of their enterprise should be insourced or remain outsourced. They would still hold the decision-making power, but they would be asked to consider and use the evaluation tool to inform that decision in a consistent and thorough manner.

We do not see that that interferes with the exercise of any discretion of those statutory officers. As the minister mentioned, they would still be the individual taking the decision. We will be asking, through the evaluation framework, that they consider a range of elements to inform the decisions that they take.

**THE CHAIR:** If one of these officers decides to have outsourced expert advice or contract out some of their work, they would have to write a business case to seek approval from the executive. Would that jeopardise the integrity of their work? They have to work within this framework that you are making them subject to, rather than allowing them to make their own decisions based on the work that they do. Some of their work is considered to be very confidential and it cannot be publicised. However, under the amendment bill, they would have to make a case to make sure that the outsourcing of this work is appropriate. You are therefore jeopardising the integrity of their work.

**Mr Gentleman:** I would not agree with that interpretation at all. The decision will still sit with them. They will be the independent decision-makers.

**THE CHAIR:** They are. However, they have to work within the framework that you

are setting out for them.

**Mr Gentleman:** No, the framework will ask them to look at certain aspects of employment when making the decision. The decision is still up to them.

**THE CHAIR:** I feel like we are just going around in circles here.

**MR PETTERSSON:** Minister, I was wondering if you could tell the committee how commonplace outsourcing is across the ACT government.

**Mr Gentleman:** It has been very commonplace over many years. The government has taken a decision to ensure that we look at the decision-making tree when looking at employment for the ACT. As I said at the beginning, we want to make sure that we have secure jobs where people can grow and the capacity of our public service can grow as well. Rather than simply doing what has been done over many years, we are asking people to consider what should be done into the future and whether or not that work can be done within a directorate, for example, rather than purchasing from a private sector provider.

**MR PETTERSSON:** Why is it important to include the independent officeholders in this line of thinking as well?

**Mr Gentleman:** We consider that all people that employ in the way that the public service employs—and that we have some, if you like, financial management of—should think about these options when they go to insource or outsource into the future.

**MR BRADDOCK:** I have a supplementary on something that was said earlier. Minister, you mentioned some GSO advice to the extent that the view presented was that this would not necessarily bind the officers of the Assembly. Is it possible to obtain a copy of that advice?

**Mr Gentleman:** I would have to take that on notice.

**MR BRADDOCK:** The second thing is: can you please justify to me why it is proposed to be a notifiable instrument and not a disallowable instrument?

**Mr Gentleman:** Yes. We have certainly looked at the difference between DIs and NIs in this. We want to make sure that we can deliver what we have promised in the election campaign and the PGA in a timely manner. It goes to that law. So I will take that bit on notice and come back to you on that.

**MR BRADDOCK:** I have one further question. Which clause within the legislation is the government of the view that allows the latitude for the officers of the Assembly to actually have discretion whether they need to follow the framework or not?

**Mr Gentleman:** It is under the Financial Management Act.

**MR BRADDOCK:** Yes, but which particular clause? I am reading the amendments. They do talk about compliance of the agency and a requirement for an evaluation to be undertaken. Clause 129A has the “Chief Minister may give directions”. I am trying

to ascertain what clause can the officers of the Assembly point to that gives them discretion as to whether the framework should apply or not.

**Mr Gentleman:** No, it is not in this bill. I will throw over to officials at 220 London Circuit to see if they can provide that for you.

**Dr West:** The scope and the facilitative provisions that you are referring to, Mr Braddock, will be contained in the framework itself in the NI.

**MR BRADDOCK:** So it will be a notifiable instrument which we do not have the ability to do anything further about. Thank you for clarifying that.

**MR PETTERSSON:** When does the government plan to release the framework itself?

**Dr West:** I can take that, Minister, if that would assist? Mr Pettersson, we have the first draft of the framework. It is very much a series of question sets around the various themes that will be part of the decision, interspersed with linking text. The framework, in and of itself, is relatively straightforward and uncontroversial. We are just working through some final edits on that, and our expectation is that we will release the final consultation version of the framework in the next fortnight or thereabouts.

I also remind the committee that the government has already, when introducing the bill, agreed to consult on the framework itself. We will do that broadly and widely, including with the statutory officeholders.

**Mr Gentleman:** I have, of course, assured the committee that we will get that framework out for consultation.

**THE CHAIR:** I have a quick follow-up question. The Audit Office had not been consulted prior to this inquiry. They actually reached out to the ACT government last week, but they have not heard anything. You say on paper, and you say it now, that you are consulting with stakeholders, but it seems to me that it is just the unions, the directors-general and the departments being consulted, not the officers of the Legislative Assembly. They are the ones who have a real concern about the impact of the amendments in this bill, if passed. So I am wondering why have you not reached out to them?

**Mr Gentleman:** As I said earlier, this bill creates a framework for decision-making to consider. Whilst they were not consulted on this bill—and they are, of course, now consulting through your committee or working through your committee—they certainly will be, on the framework. The framework is the key piece that will ask them to have a look at particular aspects when making decisions.

So this bill that you are looking at now is really only the legislative tool to allow the framework to occur. It is quite a small definition, if you like. It is the framework that has the really important parts in it. Most certainly they will be consulted, as I have promised, during that framework production. Of course, that framework will be out and through before the bill is re-debated in the chamber.

**THE CHAIR:** Regardless, Minister, of whether the bill is about the insourcing framework or not, I think that the main issue that the Office of the Legislative Assembly is concerned about is the principle of the bill. It is the principle of making sure that the parliament—the Legislative Assembly—is actually separate from the government. If I go back to their point, one of their issues, No 12, says:

The structure of government in the Territory as set out in the *Australian Capital Territory (Self-Government Act 1988)* ...—the effective constitution of the ACT—recognises the separate and distinct functions performed by the Executive and Legislative branches of the government.

We have this act that separates the executive and the legislative branches. It is an act. However, your amendment bill actually closes that and you are enforcing a framework by the executive that the Legislative Assembly has to work under when they should be separate.

**Mr Gentleman:** Yes, I have heard your interpretation. Can I point out maybe—and the committee might like to consider—the Commonwealth Public Governance Performance and Accountability Act 2013 in section 10 defines a commonwealth entity to include a parliamentary department. The commonwealth parliament, through sections 101 and 102, has given the finance minister the ability to make rules prescribing matters, including for commonwealth entities, which includes parliamentary departments. Amongst the finance minister’s rule-making powers, it has the power to make rules in relation to the proper use and management of public resources.

In this regard, I think the changes made through our bill, and the subsequent regulatory instrument, will create a framework similar to the powers that the commonwealth has given their minister. As I mentioned, it would be the FMA. The bill that you have in front of you at the moment is an amendment to the FMA.

Also, as I said earlier, these entities must conform to normal ACT legislation. If there is a piece of legislation in place, they would be prescribed to conform to that.

**THE CHAIR:** Interesting.

**Mr Gentleman:** I will just go back to the statement. The framework will ask them to have a look at how they are making these decisions. It does not tell them which way to make the decision.

**THE CHAIR:** I trust that they are making the correct decisions.

**MR BRADDOCK:** I have a question going back to my last one. Why is the statement, which gives the officers of the Assembly the latitude, sitting in the framework, which is a notifiable instrument, but not in the legislation?

**Mr Gentleman:** I will go to officers from 220 London Circuit for that.

**Dr West:** I am not clear on the question, I am sorry, Mr Braddock. Are you saying the

latitude—

**MR BRADDOCK:** In the previous answer you said that the authority which gave the Officers of the Assembly the latitude to either follow the framework or not would rest within the framework itself, not the legislation. So I am asking: why is it sitting in the framework and not in the legislation itself?

**Dr West:** Simply because that is the model we have adopted. The way the framework will work is that, for in-scope procurements, it will ask the relevant directorate—in this case, in the Clerk’s case, OLA—to bring together a package of information to be considered which looks at a whole range of factors related to that procurement and looks at that from the filter: should or should not something be insourced or not? That looks at all the factors—social benefit, economic, environmental—and it looks also at readiness, capability within the service and timing. So it might be that something is not readily able to be insourced now but it might later on. All those factors are very much the spoke to that particular procurement.

That is where the needs of the Clerk, the Auditor-General, the DPP or any of the statutory officeholders are brought into play. They will have particular sets of circumstances where they will need to operate in a particular way. In the auditor’s case, it may well be that their business model suits the outsourcing of an actuarial or an audit function because we cannot recruit that. It just makes sense in those circumstances.

That is what the function of the evaluation framework is. It is to act in a disruptive way to interrupt an automatic decision that we have always outsourced that and we always should. It is meant to stop that conversation, have a look at, “Is there an alternative?” If there is not an alternative, then it will proceed to be outsourced in the way that it always has. It is not an edict that everything must be outsourced or insourced. It is a disruptive element in the chain of thought that says, “We always outsource that.” It will look to stop that and have a conversation about how it might be looked at differently.

**MR BRADDOCK:** I am not arguing against the merits of the framework. I will rephrase the question. What would be the impact if the bill was amended to preserve the independence of those officers and to treat the framework as guidance only to those officers?

**Dr West:** In the opinion of the Solicitor-General, it is not a conflict of laws in the way described.

**MR BRADDOCK:** I look forward to seeing that.

**Dr West:** It is not a breach of laws in the way the Chair described it earlier.

**Mr Gentleman:** Chair, if I could just clarify some of the comments you made earlier? In relation to the independence point, whether it is the Assembly or another entity, if something is insourced, it will mean the staff are employed directly by that independent entity when previously that work was done by external agencies. Given their unique roles, I would have thought it was better for them to engage staff directly

and minimise any conflict that arises when using external companies.

There are all these things that we have to go through when we are tendering an outsourcing to seek the financial viability of companies and people. I would have thought it would be a logical decision to have that securely within your own decision-making power.

**THE CHAIR:** I am pretty sure that they have said that they actually do that. They make sure, if they do not have the expert within their entity or whatever, they will actually give out that work. However, they also stated that on many occasions, when they do not have the expert advice that they need for a particular case or investigation, they have to outsource it.

**Mr Gentleman:** This should not affect their operation at all then.

**THE CHAIR:** However, it is the principle behind it, Minister. It is allowing them to work within the framework and not giving them the respect that they need as an independent, separate entity from the ACT government. That is their main issue.

**Mr Gentleman:** Russell, you were going to say something there.

**Mr Noud:** The concept behind that is that it might say, “They might still need to outsource that particular independent advice.” But part of the conversation might be to say, “There might be insufficient work or volume for that part of the service to insource that particular work.” It might be that across the service, or with multiple directorates, there is more than enough work, and a saving can be made and an efficiency is gained by joining the dots across the service to be able to bring in a function that is outsourced by multiple directorates in a small way. It might build a bigger case; but it might not. That is what the whole function of the evaluation framework is, to have that bespoke conversation about what applies and how it might work in that context.

**THE CHAIR:** Why does it need the legislative to change then? Why can it not be just the framework, as Mr Braddock mentioned before, to establish how these decisions should be made in-house, instead of changing law to make sure that independent officers outside the ACT government are subject to the framework that they should—

**Mr Gentleman:** We make laws all the time for the benefit—I am sorry.

**THE CHAIR:** Go on.

**Mr Gentleman:** We make laws all the time for the benefit of Canberrans. As I mentioned in my opening statement, this is in relation to trying to get better, secure employment across the ACT for everyone, for the benefit of the whole Canberra community. We will continue as a parliament to make laws well into the future that will affect many different operations of government and the way the community operates as well.

**MR PETTERSSON:** I have got a quick supplementary. I was wondering why the insourcing framework is not statute law but, instead, would be a notifiable instrument.

**Mr Gentleman:** I will go to officers from 220 London Circuit.

**Mr Noud:** That is an option. The view taken is that we anticipate that at least for the first few years of operation we will need to come back and adjust the framework based on our learnings as we use it. So we are not anticipating that we will get this 100 per cent right on day one of the framework. Over time and with use, the framework will have to apply to hundreds and hundreds of different situations, all of them different in their own way. As we build information and knowledge of how all that applies across the service, we are anticipating that we will tweak the framework as we go along.

That is best done through an NI over time so that those adjustments can be made. We would, of course, consult on those adjustments as we proceed. But the best way to allow that flexibility for the short term, to make sure the framework is operating in the best way we can, the view taken was to do that through an NI.

**THE CHAIR:** Given the time, I have a quick question. Can the Office of the Legislative Assembly and officers of the Assembly be exempt from the amendments of this bill? That is for you, Minister.

**Mr Gentleman:** If the bill was amended?

**THE CHAIR:** Can they be exempt from the amendments of the bill?

**Mr Gentleman:** The bill is an amendment to the Financial Management Act. Are you suggesting that we change the bill to exempt independent officers like the office of the parliament, for example?

**THE CHAIR:** It is their recommendation from their submissions, yes. Have you read their submissions, Minister?

**Mr Gentleman:** If that is something that the committee would like to make a recommendation on, I would imagine we could certainly have a look at it; but it is not the intent. The intent, as I mentioned in opening, is to ensure that we can get as much of this work done as possible across the territory.

**THE CHAIR:** However, you have not reached out to these important stakeholders who will have a deeply significant impact on the role of their work. You have not reached out to them.

**Mr Gentleman:** They are having comment at the moment through this inquiry, and of course the important part of this work is the framework that I have discussed earlier. We will be, of course, working with them and all the stakeholders during the construction of that framework. It will be ready to go before this bill is re-debated in the chamber.

**THE CHAIR:** In the interest of time, we will close the session. On behalf of the committee, I thank the minister and officials for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the



committee secretary within five working days. Thank you, Minister. Thank you, officials.

**The committee adjourned at 12.35 pm.**