LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

(Reference: Inquiry into review of implementation of the Latimer House principles)

Members:

MADAM SPEAKER (Chair)
MR B SMYTH
DR C BOURKE
MR S RATTENBURY

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 9 APRIL 2015

Secretary to the committee:
Mr T Duncan (Ph: 6205 0173)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 10.31 am.

BURMESTER, MR BILL, Professorial Fellow, ANZSOG Institute for Governance and Policy Analysis

THE CHAIR: I will open the proceedings. It is a public hearing into the report on the implementation of Latimer House principles in the ACT, prepared by the Institute for Governance and Policy Analysis. I welcome Mr Bill Burmester, one of the authors of the report. You have been given a pink sheet, with the riot act written thereon?

Mr Burmester: Yes, I have.

THE CHAIR: And you understand the implications of that. I have some questions myself, but is there an opening statement that you would like to make, Mr Burmester, about the report?

Mr Burmester: Yes, I would like to say a few things. First of all, I apologise that some of my colleagues could not join the meeting. Mark Evans, the director, was called away. The vice-chancellor decided that he was more important than the committee, I am afraid.

THE CHAIR: We will note that down!

Mr Burmester: Meredith is out of town and Richard Reid had a teaching engagement, so unfortunately they could not make it. The institute was pleased to get the commission to do this report. We found it very interesting and particularly relevant to the work that the institute does on governance more broadly. It actually fits in with a number of things which are referenced to some extent in the paper, such as our recent survey of democracy that was done with the museum at Old Parliament House.

Overall, the report is very positive, particularly in regard to the structures and practices that have occurred. It has a number of recommendations for improvement but there were only two cautionary lessons from the study. The first was that having structures in place is fine and necessary but there also has to be a commitment and people need to perceive that the system is working, and that was not uniform across every aspect of our form of government.

The second one was something that we have perceived from our broader studies of democratic practice in Australia, which is that there are changing perceptions of citizens, and that means that authorities and structures need to vary and change over time. So the lesson is that the Assembly and the form of governance we adopt in the ACT will need to evolve over time. It is a bit of a challenge for the future rather than a deficiency at the moment. That is all that I want to say as an opening comment.

THE CHAIR: Thank you for that. I will start at the conclusion. Your report's final recommendation is that there should be a review of the data needs for future studies, essentially. Could you expand on that, and on what sorts of data you think we need that we do not have at the moment?

Mr Burmester: I am pretty sure that most of the data does exist. It is the accessibility

and structuring that we were most concerned about. The terms of the study were fairly limited in terms of the budget we had. You could spend a lot of time assembling data, which we tried to do in a rudimentary sense, but we think there is a much richer set of data that could be developed and drawn upon if there were resources to do it. So we have done our survey and drawn our conclusions from what we did access. But we felt that if there was a broader set of data readily available the next review would be better placed to draw comparisons.

The ultimate goal would be that the Assembly would identify and have agreement about a set of indicators that are regularly updated throughout the term so that when the review comes around it is looking at whether the indicators have progressed in a particular way. I think that is part of it.

With respect to the Assembly itself, its data is pretty good. It is probably the best we have seen from legislatures around Australia. But some of the other stuff from the statutory office holders, the court systems and so on, is buried data. In regard to extracting things from the Human Rights Commission, we could do it from their annual reports, but it was not written for this purpose; therefore it is an extraction process. If we developed a set of indicators that were then regularly fed in to by all and sundry, the players in the game, we would have a ready source and it would be available. It would be a rich source for citizens to look at and it could be maintained on the Assembly's website.

THE CHAIR: Off the top of your head, what sorts of indicators are you looking for and what sorts of things are there where you think data exists but you would have to mine it in a particular way to get the indication?

Mr Burmester: In each of the three branches of governance you could develop a set of indicators. The court system have only recently started producing reports of their performance and the outcomes of their consideration of cases. So you would need to massage that to get a set that showed, for example, speed and efficiency of the court relative to other jurisdictions. That goes to performance. There should be something about independence, how many times higher courts overturn their decisions and how many challenges there were. But you could develop a suite that could be populated from the data that already exists, rather than, after the event, trying to extract that data from sometimes not very friendly data.

THE CHAIR: That sort of information is not currently available through the review of government services?

Mr Burmester: It was not at the time we did it. We think it will be part of the landscape in the future, but having to extract it from resources takes time and effort, if it was populated at the same time. If the annual reports, for example, were able to identify and report on the same items or indicators that the Assembly wanted for its review then it would be standard practice to do it. In the commonwealth, which I am very knowledgeable about, the annual report requirements were specified so that you could extract particular things—freedom of information, a whole set of things that had been added by the Senate over time to say, "This is what we want departments to report on." I think the ACT could do that. It needs a process to identify the key indicators that you would want from each player in the game. You would then have

them record it, whether it is through the annual reporting process or a regular reporting process. That means the Assembly could look at the data as it evolves and say, for example, "Why are our courts taking longer than courts in other jurisdictions?"

THE CHAIR: I thought we were asking that already.

Mr Burmester: Yes. It is about doing the comparison to see whether ACT times are coming down. If there were real-time indicators, that would be of benefit to the citizens and the Assembly.

THE CHAIR: I was surprised, when you used that example, that it was not already available through ROGS data.

Mr Burmester: It may well be. To extract it and present it was beyond what we could afford to contribute to this exercise. In our proposal we indicated that some of it would be done pro bono, which was fine. That was what the institute was interested in doing. But there is a limit to that, and we think we could have done a richer review if we had had more time and more data available.

THE CHAIR: You gave some examples of what we should be seeing in the courts. You said that it was difficult to extract information in the form that you were looking for from the Human Rights Commission. What sorts of things were you looking for there?

Mr Burmester: In the ACT—this is partly particular to the ACT—the Human Rights Commission is a combination of five commissioners or commissions. Their annual report, if you go to it, is reporting across a whole span of things. Some of those may not be of interest to a Latimer House set of principles, but things about citizens' rights and human rights should be readily available. Just extracting that data from the annual reports, let alone going back to the source data and getting that from the commission—which we did not attempt; we just used the published information—was problematic because you could not work out what the complaints were about. They had not been categorised in a way that made it easy to track how many cases came in for a particular concern. And were there repeat concerns? So it was reported at a very high level.

A good indicator would have been: is there a particular issue that is constantly popping up in regard to human rights in the ACT? If that is the case, that is really rich data that the political process could then take on and examine. You cannot get that from the gross data. You need to go to the more detailed data. It has to be recorded in a particular way and you would have to work with the commission to work out exactly what you could get and how you could get it.

If each of the agencies was given a set of indicators or measures that you wanted and they recorded them, that is happening as part of their business rather than somebody coming along after the event and saying, "It would be nice if this had been written down in this particular way."

MR RATTENBURY: There was quite a discussion about the potential for corruption.

Mr Burmester: Yes.

MR RATTENBURY: The observation is that it appears to be low in the ACT. There have not been many instances, but you warn against complacency, which I think the committee would agree with. I was interested in recommendation 4. You talk about using existing integrity bodies to perhaps fill a gap. There is a discussion about resourcing—whether we need a full-scale ICAC and whether we can afford it. You allude to giving investigative powers to existing integrity bodies. Did you have particular examples in mind, in terms of both the bodies and the powers?

Mr Burmester: We did not go to full recommendations about how we would structure such an approach, but we think it is an area that should be investigated. What was at the back of our mind in writing that recommendation was that the existing bodies could be commissioned to do particular work regularly. The Electoral Commission is a very small organisation, I have to say, in the ACT. For it to do a wholesale, deep investigation into electoral funding, for example, would be difficult with its current resources. But if it was periodically commissioned and resourced to do a particular study then that might be the way to overcome the ongoing costs of a standing institution. I think the powers that the Electoral Commission already has may well be adequate. I did not investigate that fully. It certainly has some—

MR RATTENBURY: So then there would be capacity.

Mr Burmester: Yes, and looking at the powers and saying, "Having a power but never exercising it, structures in place, practice isn't happening." It is the same with the Auditor-General. You could commission the Auditor-General, every year, to investigate one aspect of potential corruption in the ACT administration. So over five years they would be looking at five areas of corruption. They would be commissioned to do it. They would have to make a special report.

At the moment the auditor relies on public interest disclosures that might trigger things, and they have done that where that has come up. But corruption is about hiding; that is why independent commissions have been found to be useful in other jurisdictions. They can actually look for the hidden problem. It will not always become public through the current processes in the ACT. So if you gave the Auditor-General a commission to do a particular thing once a year, a review, and if one of them had to be particularly focused on an area of potential corruption, that might be a way around it.

MR RATTENBURY: One other option that has been flagged with me is the possibility of the ACT subcontracting the New South Wales ICAC to do particular things. Do you have a view on that? It is one idea among several possible ones, but what about the prospect of using an interstate body?

Mr Burmester: That would be fine.

THE CHAIR: We already do that with the Ombudsman, I suppose.

MR RATTENBURY: Exactly.

Mr Burmester: Yes, and the standards commissioner for the Assembly, for example, is a part-time appointment and is only employed when there is an issue to be examined. In a similar way, the individual who came in to do it could be particularly commissioned. We stated this in terms of existing structures because they have investigative powers, usually. You would need to examine whether they are broad enough, but that gives you the institutional structure in which to undertake the work. Who actually was commissioned to do it would be up to the public officer at the time.

DR BOURKE: Yes. Is the purpose of the recommendation to detect corruption or prevent corruption?

Mr Burmester: The best way to deter corruption is to be seen to be chasing it. The notion of an ICAC existing is a good deterrent. That is why they exist. But equally they have to be able to achieve something, if they exist, and pursue and use their powers to uncover actual cases. So it is part of each. You are trying to say, "We are concerned about corruption. We do not want corruption in the ACT. Therefore we are going to have investigations into potential problems." And equally if you do find and discover corruption has existed, then you can prosecute, stamp it out and so on. I am not quite sure that—

DR BOURKE: Do you think that the evidence from New South Wales where they have had an ICAC for, what, 20 years, an active public accounts committee, an active police force, but where they continue to uncover large-scale corruption would be indicative that these are effective tools to prevent corruption?

Mr Burmester: The answer to that is: nothing will be perfect but a commission or a particular set of powers to ensure that the matter is being looked at has to be better than just pretending or ignoring the situation. I think there is a comment in here that we were a bit flummoxed by the Australian government Public Service Commissioner saying there is very little corruption in the Australian public service. Is that really the case? What investigations did he undertake to make that statement or did he rely on his *State of the Service Report*, which is people's perception of what is happening? It is not a real test of whether there is corruption in Customs.

There was a case of corruption in the Bureau of Statistics. A guy collected $20,000 by leaking sensitive economic data to a market trader. You might say that is small scale but if they are the ones that are popping up is there something systemic? Only last night Alan Kohler on the ABC said that there is an awful lot of foreign exchange trading happening one minute before or in the last minute before the bureau releases its data. Somebody is getting information early.

MR RATTENBURY: For the third month in a row.

Mr Burmester: Sorry?

MR RATTENBURY: For the third month in a row.

Mr Burmester: Yes.

DR BOURKE: Certainly those issues are relevant to the commonwealth, the cases you described, but there are also examples which we read about in the newspaper where people have been detected behaving fraudulently in the ACT public service as well. And I do not dispute your point that detection is important and is a useful part of prevention. You talked about the Auditor-General before. Does not the ACT Auditor-General already have the power to initiate investigations and audits of their own volition, which is my understanding of the Auditor-General?

Mr Burmester: Yes they do, either of their own volition or in response to somebody coming forward through public interest disclosure, which is a powerful mechanism but in—

THE CHAIR: Sorry, you said "is not" or "is" powerful?

Mr Burmester: It is a powerful mechanism that the auditor can use information they have received to then launch a general inquiry. I think that approach could be extended where the auditor is specifically required to investigate an area of corruption in a way that independent commissions would. They start digging because they have got some broad suspicions or concerns but not necessarily any upfront disclosures by people or they have come across stuff in a general audit. I think it is saying, throughout this report, there are structures there. In the ACT they are well established, well developed, but we can improve them further.

DR BOURKE: They need some tasking?

Mr Burmester: Yes, and resources to undertake particular tasks. So if you want to investigate fraud in a particular way, then either they reduce their general audit or performance audit and focus on that or you give them additional funding specific for a purpose and they undertake that work.

THE CHAIR: That might be that you might need someone more specialised to do a fraud-type inquiry rather than a standard forensic audit?

Mr Burmester: For example—

DR BOURKE: The AG does have resources and does outsource.

THE CHAIR: Yes. The audit office outsources all the time, but you might have to pay slightly above the odds to get someone to do a sort of forensic audit rather than just a standard performance audit?

Mr Burmester: Yes.

THE CHAIR: I want to, if I could, go back to the point that Mr Rattenbury made about the New South Wales ICAC. I suppose this is sort of expressing my prejudices, but I would not mind your view. One of the things that occur to me about the New South Wales ICAC is that it ventilates a lot of issues but in many cases in ventilating the issue it taints the evidence in terms of prosecution. How would you see that? What do we need to do to avoid that happening? You can name and shame people but they still sort of live high on the hog. I am not sure that the public is satisfied that

somebody might be identified as having been corrupt but because of the way the ICAC ventilates the allegations then it is sometimes hard to get a prosecution. I think that the public may not be satisfied that someone is not doing time and there is a public perception that perhaps they should be doing time.

Mr Burmester: It was not something that we particularly considered. I think that is a dilemma that any integrity agency would have, and it goes to the intent or the philosophy of the organisation. Is ultimate prosecution and retribution the goal or is it a bit more of a deterrent? We have aired this thing. This person is now tainted. Everyone, the public, forms a perception that the person is not to be trusted even if there was not an actual prosecution in a court. So I am not sure you can ever resolve that. I think it would depend on cases in particular.

But if you look at the New South Wales recent examples, there were a lot of MPs who resigned and left the political process because they had been investigated rather than because they had been prosecuted. So I think the deterrent works simply by having a watchdog in place, as much as an ultimate prosecution. That is a judgement that communities need to make. Is a prosecution the only and ultimate goal that you are seeking to achieve? And, if so, you then would have to build the legal processes to ensure that that was possible. I am not a lawyer so I cannot really speculate on how you could best position the process to protect the legal process.

THE CHAIR: I was wondering whether we could go to an area which, after the publications report, was ventilated quite a lot in the Legislative Assembly. The report speaks about judicial review and the circumstances in which judicial review might be removed, and I was wondering whether you could elaborate on that a little, because it was a contentious issue at the time. Coincidentally, in the Assembly it was a matter of debate and there were various parties who sort of hung their hat on particular courses of action essentially being endorsed by this report.

Mr Burmester: Recommendation 6 on page 29. Throughout this report and the Latimer House principles there are tensions: tension between government control and the legislature exerting power. Judicial review is exactly the same in that people should be entitled to have some review of the court process that they are being subjected to or the legal decision-making process in the community.

However, it became apparent that in some cases individuals pursuing their own judicial review imposed quite significant costs on the community. The decision made by the government and passed by the Assembly, you would say, is in the community interest. That is what the purpose of governments and parliaments is, to protect the community interest. If judicial review then perverts that into narrow, sectional interest imposing a broader and quite significant cost—I think we quote the GDE, which Jon Stanhope claimed cost $20 million more because of the processes it went through—

THE CHAIR: That probably did not also count the legal costs involved.

DR BOURKE: And I might seek a correction to the report, where it says repeatedly that there were challenges by a group of Aranda residents. It was actually the Save the Ridge committee, which was an O'Connor-based organisation.

THE CHAIR: Says an Aranda resident.

DR BOURKE: That organisation was formed in 1999, as I understand, by a group of concerned conservationists.

Mr Burmester: The balance is: where you get that tension, to what extent do you allow for judicial review? We were told that constitutionally you cannot remove judicial review entirely. It goes to limiting the circumstances and processes so that the outcome, which might be judged by community wellbeing as opposed to individual outcome, needs to be balanced in some way.

We thought that, as had already been announced, there would be limitations in the case of the light rail. If the Assembly, the parliament of the community, is agreeing to that limitation on other people's rights, then that seems to be the only appropriate way that you should curtail judicial review. In other words, you have to get the Assembly's approval to limit people's legal entitlements. You would hopefully want to have the debate and convince the Assembly that the community good outweighed the concerns of the individual.

That is a political process, and we have said, "Where there is a potential for significant cost on the community then let us have a debate about it and put it back to the parliament to settle the issue." And that is the legitimate thing. We would not see it happening in every case. This is for significant infrastructure and significant developments that the government has made on behalf of the citizens.

THE CHAIR: I asked the question because I have probably been on both sides of the argument at various times.

Mr Burmester: I think there was one article written from the planning side—maybe it was architects, developers or someone—that we had proposed a rather significant curtailment of due process. That is not the intention. We are saying that the due process is: if it gets all too hard it is for the Legislative Assembly to determine the matter rather than having an endless and often fruitless pursuit through courts.

THE CHAIR: The example you give about the Giralang shops being extraordinarily expensive for a group of people—

Mr Burmester: And the government, because in the last High Court challenge by two businesses the costs were awarded against the ACT government. The whole judicial process was funded by the taxpayer. Not even just Giralang people who might have an interest in it but people in Curtin were funding a fight over Giralang shops.

THE CHAIR: I suppose then the question is: where is the sweet point at which there has been enough discussion and enough airing of the issues to say, "We are making this decision and we are curtailing people's rights, and that is a matter for the legislature"?

Mr Burmester: That is a political judgement. I do not think that Giralang has been the focus of an election campaign, but the light rail has been. So the difference in those two circumstances would need to be taken into account by the processes in the

Assembly.

THE CHAIR: Indeed.

MR RATTENBURY: I want to ask about legislation processes. They come up in a number of places, but page 31 of the report, towards the bottom of the page, says that concerns were raised that current practices in the timing of debates for government legislation do not facilitate widespread public consultation. It goes on to say that the usual practice is for debate to be held in the second sitting week following introduction.

I just want to check exactly what you meant there. We have a standing order that prevents a bill from being debated in the same sitting period in which it is introduced, so necessarily there must be a recess of the Assembly before a bill is debated. Did you mean the second sitting week of a two-week block or did you mean the next week after it has been introduced?

Mr Burmester: That is probably my shorthand from information that I gained from the Clerk of the Assembly.

THE CHAIR: I think I may have commented on this.

Mr Burmester: The point the report is making is that there is a time frame in which legislation proceeds. Non-government members expressed the view that that time was too short for them to undertake consultation. The argument here was that the government can claim—we did not check it out fully—that in most cases the consultation has occurred through the government process of drafting and developing the legislation. From a government point of view, the consultation has happened. But an opposition point of view, or an Assembly point of view, is that that is always through the government lens; how about an independent consultation process after the proposition is fully and clearly on the table?

It is just a matter of balance. The view of the opposition is that lawmaking would actually be enhanced if there were greater capacity for non-government consultation to occur after the black-letter law has been presented for consideration.

This goes to my opening comment: the structures are in place and the practice is often very good, but the perception of the people involved is that it could be improved. In this case, what would be lost if there were a further round of consultation on legislation from the government? Would it really and unnecessarily delay the government's legislative program?

That is again a matter for the Assembly to consider. We do not have a position on it; we are saying that there is a perception that some people in the Assembly are not convinced that the legislation process is the best it could be.

MR RATTENBURY: That goes to a question I want to ask you. Back on page 27 there is a discussion about the fact that very little legislation goes to committee in the Assembly. My experience in the six years that I have been here is that that seems to be the culture of this place, whereas in other parliaments legislation regularly goes off

to committees. I do not know why we have that culture.

DR BOURKE: It is interesting that you should make that point, Mr Rattenbury, because I am chairing a committee hearing this afternoon into your medicinal cannabis bill.

THE CHAIR: I think the point is that it is more of an exception than a rule.

DR BOURKE: There was also the asbestos legislation which was referred to PAC last year.

MR RATTENBURY: I can think of three or four examples in the last couple of years. We have done probably 50 pieces of legislation in a year, and it is literally one or two, other than what goes on through the scrutiny of bills committee.

THE CHAIR: Which is not policy based and does not look at policy.

MR RATTENBURY: No.

DR BOURKE: Do you think that reflects a lack of contention or a lack of interest in committees reviewing legislation?

Mr Burmester: I cannot make a call on that, but I would say that one of the comments that we did receive was that members of the committees are very busy because you are a small Assembly and people are on several committees and they do not become specialists. Expanding the Legislative Assembly to 25 will either increase the number of members on committees or decrease the number of committees that they are on and therefore they can focus on their work to an appropriate extent.

MR RATTENBURY: Hopefully there will be more of the latter.

Mr Burmester: We say in several places that expanding to 25 is actually an opportunity for the Assembly to reconsider some of these things. So how they do that and what capacity that brings would be beneficial if it is done properly. We were not critical of the current committee system as such but there is an opportunity, again, to improve it beyond what it currently does.

MR RATTENBURY: I am just interested in the fact that it does not seem to be the culture of this place, and why that has evolved. I do not have the answer; I am just thinking out loud.

THE CHAIR: I think that you are right, though, that it is not in the culture of this place. Over time, you would probably see that there have been many motions to refer contentious legislation to committees which have failed. I can think of 10 times when I have attempted to do that in my career. And there is not an appetite for it.

Mr Burmester: It would be useful to do a comparison with other unicameral systems. It could be that there is only one Assembly, whereas in the Senate it is a separate house. An upper house, in many states, does have a balance of power that does not necessarily always favour the government in the lower house. It could be that those

practices have evolved in those jurisdictions.

THE CHAIR: Actually, as an example of that, in the New Zealand parliament their standing orders almost mandate the reference of legislation to a committee for inquiry. Sometimes that inquiry reports that "there is nothing to see here" and sometimes there is a pause while somebody goes away and looks at it. And that is a unicameral parliament.

Mr Burmester: So they have actually created a structure reflecting the fact that it is not going to happen though a higher house.

THE CHAIR: They have to do it there and then.

Mr Burmester: They have to do it there. So the opportunity is for the ACT to say, "Let's change the culture and refer bills for policy consideration," but it goes to the capacity of the committee system.

MR RATTENBURY: I do note that, in terms of this issue of just enough time, prior to 2008 bills used to be introduced on a Tuesday and debated on a Thursday. I think that the new standing order we brought in in 2008 has at least changed that practice.

THE CHAIR: That was not common, but it did happen, and it can still happen; you can suspend standing orders. But you have to have agreement.

MR RATTENBURY: The other interesting lived experience I now have in my capacity is that members of the opposition will seek a briefing on a piece of legislation the day before it is due to come into the Assembly, so you can come in and suddenly find at the last moment that there is a push to defer a bill. Thinking about how we use the committees more effectively might be a way of avoiding some of that.

Also, you made a reference on page 18 to the lack of private members' business this term. Were any particular barriers identified or was that just the way this term has gone?

Mr Burmester: No, there seem to be no barriers.

THE CHAIR: Private members' legislation as opposed to private members' business.

MR RATTENBURY: Yes. My question is: did anyone say that there is a real problem that we are not doing it or is that just the politics of this term?

Mr Burmester: It just seems to be the politics of this term in that the statistics reveal this issue. We had a look at it; there did not seem to be an apparent reason for it. I think we used the word "surprising" because part of the business of a parliament is to consider non-government matters as well as government matters.

The independence of the parliament from the government would be a key indicator. If you have been watching the show about the House of Commons you would have seen the extent to which people try to get private members' bills up to be considered by the House of Commons. They queue for weeks, there are ballots—there is a whole range

of things—and there is always a full schedule. In the ACT we had none this term, compared to previous terms.

THE CHAIR: And we are fortunate in that we do have access to proper drafting. I would say that, from my experience as someone who has attempted to legislate from opposition a lot, unless it is a very discrete, one-off issue, it is very complex to do. Even with the assistance of parliamentary counsel there is not the composite number of wise heads to say, "You have not thought about the implication of that for this piece of legislation." You lack the capacity.

Cabinet has a coordination process, to look at something from a number of perspectives. Sometimes you do something that looks like it is well drafted—and is well drafted—but it is not the lack of drafting, it is the lack of capacity to see it from all angles that makes legislation from opposition very difficult—speaking from experience.

Sometimes it is easy and you can say, "Here is a discrete thing that I want done," and you can do it, and oftentimes it is clunky. Sometimes what you want to change is actually something in regulation and then you make a piece of legislation to change the regulation, which is really clunky.

Mr Burmester: I think the last phrase in that recommendation 2 was behind our thinking on this. The parliament needs to be able to deliberate on a broad range of things, not necessarily just the government's agenda. If a parliament is only deliberating on government agendas it is limiting its capacity.

The whole point of the tension between governments and parliaments was that parliaments are independent. They should have a right to pursue interests and matters beyond what the government does. As I said, in most jurisdictions this will be a key indicator of the independence of the parliament.

DR BOURKE: Just on a different topic, on page 9 you talk about the citizen engagement methods of the ACT public service, such as time to talk, and that this style of things can be used more by the Assembly. Personally, I think it is a great idea, but do you think there could be a higher level of public suspicion where such engagement is initiated by politicians or done in a political context rather than a public service context?

Mr Burmester: This is all a new area for democracies around the world—how do growing expectations by citizens of greater engagement and greater involvement actually get actioned within our existing structures? The first round of that was to go and ask people, but it was controlled and initiated by the government of the day, so they are responding to a government agenda.

There are now emerging newer practices in some jurisdictions where the decision-making is actually provided to citizens in certain circumstances. In Paris, for example, a sizeable portion of the municipal infrastructure budget was determined by the citizens. These are evolving practices. This goes to one of the final recommendations, which is that the ACT and the way it engages with its citizens needs to keep evolving in line with the practices that emerge in democracies around the world.

We did a survey with the Museum of Australian Democracy. It showed that there is a fair degree of disenchantment with the political process as it is played out in the daily media, but people are still interested in the political process of getting their interests and their concerns considered. We are forecasting at the institute that there will need to be an evolving way in which citizens are more broadly engaged in thinking that a vote every four years is going to make it a reasonable democracy. There are other matters in the interim that they want to be involved in and concerned with. How we do that and whether it is initiated by the public service, as distinct from politicians, will have to be worked out. I think the ACT is probably uniquely placed to try some of these things. It is a fairly well-off community, a fairly well-educated community, and a fairly small community in which these things can be tried and tested so that we can find something that suits the citizens of the ACT.

DR BOURKE: Speaking of engagements, you talk about the ACT register of lobbyists on page 23. Do you have any comments on its effectiveness or scope?

Mr Burmester: No. I have to say that we did not look very far into that, other than to note that it was mirroring other jurisdictions. I think the ACT had some aspects that were noteworthy and in advance of some of the other jurisdictions.

THE CHAIR: It applies beyond the executive, which is probably the most stand-out point.

Mr Burmester: Yes. It had a broader scope than other jurisdictions and therefore was an improvement on those.

THE CHAIR: Just on that, I suppose there is a bit of an issue in that the definition of "lobbyist" is fairly narrow. As the Speaker I have had representations from people who have said, "I'm a lobbyist and I have to register, but there are a whole lot of people who work in the same space who don't because of the nature of their employment." They might be directly employed by an advocacy group and therefore they are not "lobbyists", when that is what they are doing all of the time. I think that we have adopted the standard definition and I am not quite sure we actually get everybody. Have you done any work in that space outside of this?

Mr Burmester: No, I have not. I would be a bit reluctant to form an opinion on that at this point. You are quite right: the range of people presenting to government or to members of parliament is quite extensive from local community interest groups.

THE CHAIR: And the number of people who are lobbyists is quite narrow in that.

Mr Burmester: Yes, it is at the far extreme; so you get an individual representation from a voter.

THE CHAIR: And that is an individual representation; that is not lobbying.

Mr Burmester: Yes. So where is the continuum? Where do you draw the line?

THE CHAIR: Yes.

DR BOURKE: And if that does not happen on a daily basis, we are not doing our job.

Mr Burmester: Exactly.

THE CHAIR: That is right.

Mr Burmester: Attending a community meeting?

THE CHAIR: Yes, and it would be ridiculous to say, "You can't talk to me until you register on a lobbyist register." That would be anti-democratic, but at the same time I am not quite sure where you draw the line.

DR BOURKE: I might just turn to committees. You have had a bit to say about that, which I think has also been relatively well aired in the Assembly. On page 27 it says, "The likelihood of close scrutiny of poor performance is diminished with evenly balanced committees." I draw to your attention the recent report into Aboriginal and Torres Strait Islander employment in the ACT public service which came out of the health and community services committee, which I chair. It was quite critical of government performance in that area. The public accounts committee investigation into asbestos, which I talked about recently, also produced a number of recommendations which did not agree with government policy. I would say that there is a significant history in this Assembly of committees producing reports which are critical of government performance, regardless of the balance on committees. There is an option for dissenting committee members in committees to provide a dissenting report, which you note. But it is also possible for dissenting members to crash a report and to end up with no report. Do you have any comments about that?

Mr Burmester: The concern that was raised with us in this area was that, in fact, having balanced committees between government and non-government members meant that they could be a dead hand; they just could not pursue business, if that was what they were inclined to do. That was a concern that was raised with us. We responded by saying that in some particular circumstances maybe that really is an issue and the way that the committees operate needs to be further considered.

It is not unusual for the government to have control of committees. In most jurisdictions that would be the standing practice. The use of dissenting reports seems to occur in other jurisdictions more often. We did not interview those other jurisdictions to find out what their perceptions and concerns were. Maybe they would be the same as those of non-government members—that the control by the government of the committee makes the whole thing a pointless exercise, or potentially can make it a pointless exercise.

This goes to the practice and the consensus building that can occur within a parliament. We say that, in terms of the budget for the statutory agencies and officers of the parliament that now goes through the parliament, having a process that arrives at a budget does not necessarily mean that everyone agrees with it. Nevertheless, there has to be a degree of consensus for that to have credibility and broad community acceptance.

I think the same applies here. If the committees were seen to be adding value to the process then the government should welcome that, as much as the opposition having the opportunity to broaden the deliberations of the committee. It goes to the actual perceptions and degree of consensus that can emerge beyond the formal agreements or the formal structures. That is a hard thing to do and it is up to only the individuals involved.

You cannot write a rule that says, "Committees should fully consider everyone and be really nice to everyone." It is not going to work. But you can say, "In the practice of committees do people have the prospect of having influence on government?" Parliamentary committees are a key part of the interface between the government and the parliament.

DR BOURKE: And certainly the way in which consensus and, indeed, compromise can be developed in a private space, which is essentially the committee room, rather than in an open space, which is on the floor of the Assembly.

Mr Burmester: Yes. Getting a degree of consensus about process does not mean you are going to have a consensus about the policy issue. If everybody is satisfied that there has been a good process, that their voice has been heard and that their representations have been considered, it means people have confidence in the process, even though the outcome may not be what they want. The committees are a key part of that. They exercise a process and an opportunity for that agreement about process to occur, not necessarily agreement about a policy issue.

DR BOURKE: Thank you.

THE CHAIR: As there is nothing further, thank you very much, Mr Burmester, for attending today and answering our questions. It may be that members have some extra thoughts and we might call on you with some questions on notice, but at this stage I cannot think of any that may arise.

Mr Burmester: I was prepared to say—and I forgot to say it at the start—that if there are questions to take on notice, Mark Evans's expertise is in the survey of democracy and things like that and, had we got into that, he could have taken them on notice. We are quite happy to take anything further on notice.

THE CHAIR: Thank you.

The committee adjourned at 11.28 am.