

## Submission - Legislative Assembly for the Australian Capital Territory

### Background

The ACT Integrity Commission Bill 2018 was passed on 29 November 2018. It followed the conduct of two select committee inquiries—1. Inquiry into an [Independent Integrity Commission 2018 \(Dissolved\)](#); and 2. [Inquiry into the establishment of an Integrity Commission for the ACT](#).

The Office of the Legislative Assembly made submissions to both of these inquiries (available on the Assembly website) addressing a range of matters including about the importance of upholding and protecting the powers, privileges and immunities of the Assembly.

The second select committee recommended that the Assembly's Standing Committee on Administration and Procedure consider the arrangements necessary for an independent process to advise on claims of parliamentary privilege that arise during Commission investigations and present a proposal to the Assembly.

Against that background, the Standing Committee on Administration and Procedure developed a protocol for dealing with claims of parliamentary privilege in the form of a motion for a continuing resolution (continuing resolution 4A) which the Assembly agreed to on 29 November 2018 (Attachment A).

Later, the Assembly passed an amendment bill directed towards addressing the sorts of issues that emerged in the course of a dispute between the Legislative Council of Western Australia, the WA Corruption and Crime Commission and the WA Department of Premier and Cabinet concerning access to email documents of former members of the Legislative Council.

### Source of the Assembly's privileges

By reason of s 24 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth), the Assembly, its committees, and its members have the same powers, privileges and immunities as the House of Representatives, its committees and members. Accordingly, the *Parliamentary Privileges Act 1987* (Cth) applies to the Assembly, its committees, and its members.

### Integrity Commission Act

Section 7 of the *Integrity Commission Act 2018* (the Integrity Commission Act) provides that the enactment does not affect the law relating to the privileges of the Assembly or of another Australian parliament or their houses.

Section 177 of the Integrity Commission Act provides that if a claim of parliamentary privilege is made during the exercise of the Commission's functions, 'it must be dealt with by the Assembly'.

Section 178 provides that parliamentary privilege is expressly waived in relation to MLAs' declarations of interests in order that the Integrity Commission may consider such material in making a finding, opinion or recommendation about the disclosure or non-disclosure of a given matter. The waiver is required as the declarations regime is provided for by way of continuing resolution and is, therefore, a proceeding in Parliament for the purposes of Article 9 of the *Bill of Rights 1689* and s 16 of the Parliamentary Privileges Act.

The Integrity Commission Act also contains a number of provisions relating to handling ‘Assembly information’ (for more information on this, see under the heading Integrity Commission Amendment Bill 2022 below).

## Continuing resolution 4A

The resolution has the following features:

- It affirms the right of members to make a claim of parliamentary privilege in the course of the exercise of a power or function by the Integrity Commission.
- Claims may be made during the course of a public examination or where the Commission seeks to exercise a power to inspect, examine, make a record of, copy, or take possession of information, data, records or documents that have been prepared or received by the Assembly, its members, staff of members or the Office of the Legislative Assembly in connection with the roles and functions of the Assembly, its committee or its members.
- Establishes a process for making claims, for disputing claims and for adjudicating claims of privilege through the appointment, by the Speaker, of an independent legal arbiter and the application of the three-step assessment.<sup>1</sup>

## Integrity Commission Amendment Bill 2022

On 9 June 2022, the Speaker introduced the Integrity Commission Amendment Bill (later passed by the Assembly) which amended the Integrity Commission Act in order to clarify arrangements for handling potentially privileged information.

The explanatory statement to the Bill, notes that:

Section 8 of the *Integrity Commission Act 2018* (the Act) provides among other things that, with the exception of the express statutory waiver of privilege provided for at section 178, the Act does not affect the law relating to the privileges of the Legislative Assembly or of any other Australian parliament.

Section 177 of the Act provides that a claim of parliamentary privilege made in the course of the exercise of the Commission’s functions must be dealt with by the Assembly. In accordance with section 177 of the Act and the Assembly’s power to make rules and orders pursuant to section 21 of the Self Government Act, the Assembly has passed a resolution establishing a procedure for dealing with such claims. Assembly continuing resolution 4A provides that:

- a member or former member is entitled to make claims in relation to parliamentary privilege if the Integrity Commission or a person acting under the direction of the Commission seeks to exercise a power to inspect, examine, make a record of, copy, or take possession of ‘Assembly information’ that is held by the Assembly, an Assembly committee, a member or a former member,

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<sup>1</sup> It is based on the test (sometimes called the ‘Breen test’) developed by the NSW Legislative Council Privileges Committee in 2004. See NSW Legislative Council Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary privilege and seizure of documents by ICAC* No 2, Report No 28, March 2004, p 8.

- or that is held by another person or entity on behalf of the Assembly, an Assembly committee, a member or a former member; and
- it is the right of the Assembly to determine claims of parliamentary privilege over material sought to be seized or accessed by the Integrity Commission regardless of the form of the material or the means by which the Commission seeks seizure or access.

Where claims are made that are not accepted by the Commission, an independent legal arbiter is appointed by the Speaker to assess and determine them on behalf of the Assembly.

While it is clear enough that the Act does not abrogate the Assembly's privileges, certain features of the Act relating to the provision of information to the Commission—through, for example, examinations, preliminary inquiry notices, warrants, and information requests—potentially obscure the obligations that are imposed on the Commission, witnesses before the Commission, and others to ensure that the Assembly's procedures for making and determining parliamentary privilege claims are complied with and to avoid possible contempts being committed against the Assembly.

The lack of specific statutory provisions for handling potentially privileged material may place those who are the subject of the exercise of one or more of the Commission's information gathering powers (for instance the head of service or a director general) in a difficult position.

On one hand, refusal to provide information sought by the Commission may, in certain circumstances, be treated as a possible contempt against the Commission. On the other hand, the provision of information to the Commission relating to 'proceedings in Parliament' may enliven the Assembly's contempt power.

A statutory remedy is needed to prevent such difficulties from arising.

These are not academic concerns. Conflicts have been observed in other jurisdictions between integrity-styled commissions, legislative chambers and the Executive. Most recently, a protracted dispute between the Legislative Council of Western Australia (WA), the WA Corruption and Crime Commission (CCC), and the WA Department of Premier and Cabinet has caught the attention of parliaments across Australia.

The dispute arose in the course of the CCC seeking to access email documents of former Members of the Legislative Council that had been held on an ICT system administered by the government department. The material had not been the subject of any determination by the Legislative Council as to whether the documents, or any part of the documents, were protected by parliamentary privilege. Instead, in responding to the CCC's notices of production, the department had purported to itself determine whether or not parliamentary privilege applied to the documents, an approach that was rejected by the Legislative Council and ultimately led to litigation in the Supreme Court of Western Australia.

In *President of the Legislative Council of Western Australia v Corruption and Crime Commission [No 2] [2-21] WASC 22*, Justice Hall held that:

Whether privilege applied to any particular document was a question to be determined either by Parliament itself or by the courts or by some person authorised to do so by Parliament or a court. The recipient of the notices was not authorised to make a determination of whether parliamentary privilege applied to any of the documents for the purpose of deciding which documents were required to be delivered to the CCC. Nor could the recipient authorise another person or body to do so.

The method used to determine privilege in this case was not one in which Parliament or the courts were involved, nor was it authorised by either Parliament or a court. The question of which documents were subject to privilege was not, therefore, lawfully determined. Accordingly, the production of the documents and the receipt of them by the CCC on the incorrect assumption that privilege had been lawfully determined should not have occurred.

To avoid similar problems emerging in the ACT jurisdiction, the Integrity Commission Amendment Bill 2022 seeks to introduce additional arrangements for the handling of potentially privileged information to guard again inadvertent breaches or possible contempts against the Assembly. It also seeks to reduce the possibility of disputes arising between the Legislative Assembly, the Commission, heads of public sector entities and others who may be regarded as holding information that is potentially protected by parliamentary privilege.

Among other matters, the Bill makes provision for 'Assembly information', a broad class of information into which material covered by parliamentary privilege will necessarily fall. It establishes particular arrangements for handling such information in relation to the exercise of the following powers and functions by the Commission, including:

- requests for information from heads of public sector entities;
- preliminary inquiry notices;
- search warrants; and
- examination summonses.

Importantly, the amendments in the Bill do nothing to prevent the Commission from investigating matters that arise in connection with Members of the Legislative Assembly or staff. Nor does the Bill prevent the Commission from accessing documents or things that are not covered by parliamentary privilege.

## **Memorandum of Understanding between OLA and CMTEDD**

After a select committee on Privileges report in 2002 made comments about how Member data should be stored and accessed, a further report of the Standing Committee on Administration and Procedure in November 2003 (Report No. 4) made the following recommendation:

The committee recommends that a memorandum of understanding be developed between the ACT Executive, through the relevant Minister (at the present time, the Treasurer), and the Legislative Assembly, through the Speaker, which clearly affirms that:

- a) there is distinct separation of the roles and functions of the executive and legislative arms in the ACT's system of Government, requiring that the Assembly have managerial and institutional autonomy with regard to the operation of its IT network and data storage;
- b) in terms of InTACT's development, servicing and maintenance of the Legislative Assembly's IT network and data storage, InTACT reports not to the ACT Executive but to the Speaker via the Clerk of the Assembly;
- c) the ACT Executive undertake not to interfere in the administration and operation of the Assembly's IT network and data storage; and
- d) information stored on and communicated via the Assembly's network will not be passed on to personnel operating under the direction of the ACT Executive (ie InTACT and departmental officials) without the specific agreement of the Clerk and having regard to matters of parliamentary privilege.

Subsequently, an MoU was entered into between the Speaker and the relevant Minister – see Attachment B for the current memorandum, which is currently in the process of being updated.

Whilst the MoU primarily deals with the administrative and financial details of the provision of IT services to the legislature, it does contain the following section, which may be relevant to your inquiry:

#### **6.2. Privacy and security issues**

- 6.2.1. DDTs will ensure security and privacy for the ACT Legislative Assembly's electronic information and data is in accordance with the DDTs Cyber Security Policy.
- 6.2.2. The ACT Legislative Assembly will have visibility of the security and privacy of its electronic data. DDTs staff involved in supporting the ACT Legislative Assembly's IT systems will be baseline vetted to hold this position of trust.
- 6.2.3. To maintain the privacy and security of the ACT Legislative Assembly's electronic information and systems, the Assembly and DDTs will work together to logically separate the Assembly's computing environment from the whole of government network by maintaining the Assembly's computing systems as a separate 'organisational unit'.
- 6.2.4. Given the privilege afforded parliaments, information hosted or gathered by DDTs, or by providers contracted on their behalf, including that generated in monitoring the performance, usage and security of the ACT Legislative Assembly's computing systems, will not be provided to or shared with any other party—including Executive directorates or agencies—without specific permission from the ACT Legislative Assembly.

## Attachment A – Assembly continuing resolution of 29 November 2018

### Continuing resolution 4A

#### Claims of parliamentary privilege that arise during the exercise of the ACT Integrity Commission's powers and functions

**4A**

This resolution provides for dealing with claims of parliamentary privilege that arise during the exercise of the ACT Integrity Commission's powers and functions.

#### Resolution agreed by the Assembly

29 November 2018 (Amended 30 March 2021)

#### Preamble

(1) The Assembly:

- (a) reserves all its powers, privileges and immunities, and those of its Members, derived from all sources of law;
- (b) affirms that parliamentary privilege attaches to all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly or an Assembly committee, including to documents and information falling within the scope of "proceedings in Parliament" as provided for in article 9 of the Bill of Rights 1689 and section 16 of the Parliamentary Privileges Act 1987 (Cth);
- (c) acknowledges that, pursuant to the Integrity Commission Act 2018, statutory powers and functions have been vested in the ACT Integrity Commission to investigate and report on corruption in the ACT and that the Commission is empowered, subject to that Act, to investigate allegations of corrupt conduct involving a Member of the Legislative Assembly;
- (d) notes that section 7 the Integrity Commission Act does not affect the law relating to the privileges of the Legislative Assembly;
- (e) notes that section 177 of the Integrity Commission Act provides that claims of parliamentary privilege that are made in the exercise of the Integrity Commission's functions must be dealt with by the Assembly;

- (f) declares, for the avoidance of doubt, the right of the Assembly to determine claims of parliamentary privilege over material sought to be seized or accessed by the Integrity Commission regardless of the form of the material or, the means by which the Commission seeks seizure or access;
- (g) acknowledges that there may be occasions where the exercise of the Commission's powers and functions gives rise to a claim of parliamentary privilege; and
- (h) resolves that where such a claim is made, it will be addressed and resolved in accordance with the arrangements and principles provided for in this continuing resolution.

**Seeking Assembly information**

- (2) Where the Integrity Commission or a person acting under the direction of the Commission seeks to exercise a power to inspect, examine, make a record of, copy, or take possession of "Assembly information" that is held by the Assembly, an Assembly committee, a Member or a former Member, or that is held by another person or entity on behalf of the Assembly, an Assembly committee, a Member or a former Member, an "affected Member" is entitled to claim that parliamentary privilege applies to the information.
- (3) An "affected Member" is a Member about whom Assembly information relates or to whom the Commission addresses an inquiry pursuant to the exercise of a power or function by the Commission.
- (4) "Assembly information" includes all information, data, records and "documents" that have been prepared or received by the Assembly, its members, staff of Members or the Office of the Legislative Assembly in connection with the roles and functions of the Assembly, its committees and its Members.
- (5) "Document" means any record of information, and includes—
  - (a) anything on which there is writing; or
  - (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them; or
  - (c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or
  - (d) a drawing, map, photograph or plan.
- (6) Where Assembly information is sought by the Commission that relates to a former Member's time as a Member, the Commission must notify the Speaker of the Assembly who shall consider whether issues of parliamentary privilege arise.

- (7) In order to protect the powers, privileges and immunities of the Assembly, its committees, its Members (including former Members in relation to their time as a Member), the Speaker may seek to make a claim in relation to parliamentary privilege in the same way as an affected Member.
- (8) The Commission must advise an affected Member that they are entitled to make a claim relating to parliamentary privilege prior to the purported exercise of a compulsory power to inspect, examine, make a record of, copy, or take possession of Assembly information that is held by the Assembly, an Assembly committee or a Member, or that is held by another person or entity on behalf of the Assembly, an Assembly committee or a Member. Where a claim is to be made, it must be notified by the affected Member to:
  - (a) the Commission or a person acting under the direction of the Commission in writing; and
  - (b) the Speaker in writing.
- (9) In the first instance, a claim may be made in general terms and verbally.
- (10) Where an affected Member makes a claim in relation to parliamentary privilege, the Commission or a person acting under the direction of the Commission must not inspect, examine, access, make a record of, copy, or take possession of Assembly information over which a claim has been made until such time as parliamentary privilege has been determined not to apply pursuant to this resolution or a claim has been withdrawn. Any Assembly information that is the subject of a claim must be placed in the secure custody of the Clerk of the Legislative Assembly.
- (11) Where an item of Assembly information is held in a digital form, either within the Assembly precincts or by a third-party such as on a computer network or storage device that is administered by the ACT Government or a person or firm contracted on behalf of the Territory by the ACT Government, steps must be taken to secure the information via suitable encryption technology with access being granted solely to the Clerk until such time as it is made available to an Independent Arbiter.
- (12) Within five calendar days of a claim having been made by an affected Member that parliamentary privilege applies to a document, the affected Member must write to the Speaker and the Commissioner advising of the scope and basis of the claim. The Speaker must provide the affected Member's written advice of a claim to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (13) Where an affected Member makes a claim in relation to parliamentary privilege over a document, the Commissioner must notify the affected Member and the Speaker whether or not the Commission intends to dispute the claim. The notification may be given verbally in the first instance. Where no such notification is given, any item of Assembly information the subject of the claim will be returned to the affected Member and may not be inspected, examined, or copied by the Commission.

- (14) Within five calendar days of the receipt of the affected Member's written advice outlining the scope and basis of the claim, the Commissioner must either give notification that the claim is not disputed or write to the Speaker and the affected Member advising of the scope and basis of the dispute of the claim. The Speaker must provide the Commissioner's written advice of a dispute to the Standing Committee on Administration and Procedure within five calendar days of receipt.
- (15) The Speaker must appoint an Independent Legal Arbiter to adjudicate any claim that is disputed by the Commissioner. Upon the appointment of an Arbiter, the Clerk must hand over custody to the Arbiter any item of Assembly information that is the subject of the disputed claim. The Clerk must return any item of Assembly information to the affected Member over which there is an undisputed claim. The Speaker may make available to the Arbiter a secure space within the Legislative Assembly precincts to facilitate examination of any document that is the subject of a claim.
- (16) Upon appointment, the Speaker must make the affected Member's and the Commissioner's written advices available to the Arbiter. The Arbiter may seek written submissions from the affected Member and the Commissioner in which any additional reasons for or against a claim or related information may be stated.
- (17) The Arbiter must review each item of Assembly information that is the subject of a claim and determine whether or not the item falls within the scope of the "proceedings in Parliament". Where there is a large volume of material that is the subject of a claim, the Arbiter may receive assistance from a person, or persons, acting under the direction of the Arbiter to review the material.
- (18) Where the Arbiter determines that an item of information does fall within the scope of "proceedings in Parliament", it is protected by parliamentary privilege and it will be returned to the affected Member and may not be inspected, accessed, examined, or copied by the Commission.
- (19) Where the Arbiter determines that an item of information does not fall within the scope "proceedings in Parliament", it is not protected by parliamentary privilege and it will be provided to the Commissioner (subject to any other lawful requirement that may have been imposed).
- (20) The Arbiter's determination must: be in writing; include reasons; and be transmitted by the Arbiter to the affected Member, the Commissioner, and the Speaker. The Speaker is required to provide a copy of the Arbiter's determination to the Standing Committee on Administration and Procedure within five calendar days of its receipt.

#### **Examination or questioning**

- (21) Where a Member (an affected Member) appears under summons to give evidence before the Commission, they are entitled to decline to answer a question on the basis that the information in answer to the question is protected by parliamentary privilege.

- (22) Where a claim is made by an affected Member that the information in answer to a question is protected by parliamentary privilege, it is open to the Commissioner to:
  - (a) withdraw the question; or
  - (b) advise the affected Member that the Commissioner intends to dispute the claim of parliamentary privilege.
- (23) Where an affected Member makes a claim relating to parliamentary privilege under examination, the affected Member must advise the Speaker and the Commissioner in writing as to the scope and basis of the claim within five calendar days of the claim being made. The Speaker must provide the affected Member's written advice to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (24) Where the Commissioner disputes a claim made by an affected Member under examination, the Commissioner must advise the Speaker and the affected Member in writing as to the scope and basis of the dispute of the claim within five calendar days of the receipt of the affected Member's written advice of a claim. The Speaker must provide the Commissioner's written advice to the Standing Committee on Administration and Procedure within five calendar days of its receipt.
- (25) Where the Speaker receives advice from the Commissioner that a disputed claim of parliamentary privilege has arisen in the course of an examination, the Speaker must appoint an Independent Legal Arbiter to adjudicate the claim. The Speaker must provide to the Arbiter the affected Member's written claim and the Commissioner's written dispute of the claim.
- (26) The Arbiter may seek written submissions from the affected Member and the Commissioner in which any additional reasons for or against a claim or related information may be stated.
- (27) Where the Arbiter determines that the information sought by the Commissioner, by way of a question asked under examination, does fall within the scope of "proceedings in Parliament", an immunity from the provision of that information to the Commission will operate by reason of parliamentary privilege.
- (28) Where the Arbiter determines that the information sought by the Commissioner, by way of a question asked under examination, does not fall within the scope of "proceedings in Parliament", no immunity by reason of parliamentary privilege will operate.
- (29) The Arbiter's determination must: be in writing; include reasons; and be transmitted by the Arbiter to the affected Member, the Commissioner, and the Speaker. The Speaker is required to provide a copy of the Arbiter's determination to the Standing Committee on Administration and Procedure within five calendar days of its receipt.

(30) In determining a question of parliamentary privilege in relation to a question that is posed or information that is sought during an examination, the Arbiter may express the determination:

- by way of specific questions that, if asked, would or would not engage the privilege;
- by way of more general areas of inquiry that, if explored, would or would not engage the privilege; or
- in some other way that clarifies the limits of the operation of parliamentary privilege.

#### **Making a determination**

(31) The Arbiter may, but is not bound to, apply the following test to determine whether or not Assembly information that is sought pursuant to a compulsory production power or information that is sought pursuant to a compulsory examination falls within "proceedings in Parliament".

**STEP 1:** Was the Assembly information that is sought by the Commission **brought into existence** in the course of, or for purposes of or incidental to, the transacting of business of the Assembly or an Assembly committee?

YES → Falls within the scope of "proceedings in Parliament" and parliamentary privilege applies.

NO → Move to step 2.

**STEP 2:** Has the Assembly information that is sought by the Commission been **subsequently used** in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly or an Assembly committee?

YES → Falls within the scope of "proceedings in Parliament" and parliamentary privilege applies.

NO → Move to step 3.

**STEP 3:** Is there any contemporary or contextual evidence that the Assembly information that is sought by the Commission was **retained or intended** for use in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly or an Assembly committee?

YES → Falls within the scope of "proceedings in Parliament" and parliamentary privilege applies.

NO → The Assembly information does not fall within the scope of "proceedings in Parliament" and is not immune from production / the information sought by the Commissioner in the course of an examination is not covered by parliamentary privilege.

(32) In determining whether or not parliamentary privilege applies to an item of Assembly information , the Arbiter must have regard to:

- the written claim made by the affected Member;
- the written dispute of the claim by the Commissioner;
- any transcript of an examination of the affected Member in which a claim relating to parliament privilege has arisen;
- any written submission made by the affected Member or by the Commissioner;
- applicable law relating to parliamentary privilege;
- the Assembly's standing orders and continuing resolutions;
- reports of an Assembly committee or of a committee of either House of the Commonwealth Parliament relating to parliamentary privilege; and
- any other matter that the Arbiter considers to be relevant.

(33) Assembly information that may fall within the scope of "proceedings in Parliament" may include (but is not confined to):

- (a) notes, draft speeches and questions prepared by a Member for use in the Assembly or an Assembly committee;
- (b) correspondence received by a Member from a constituent where the Member has raised or is intending to raise a matter in the Assembly or an Assembly committee;
- (c) correspondence prepared by a Member where the Member has raised or intends to raise a matter in the Assembly or an Assembly committee;
- (d) information as it relates to words said or actions done in the course of a proceeding of the Assembly or an Assembly committee; and
- (e) submissions and other material provided to a Member as part of a Member's participation in an Assembly committee.

(34) In some cases the question will turn on what has been done with an item of information or document, or what a Member intends to do with the document or information, rather than what is contained in the document or the substance of the information, or where the document or information is held.

(35) Documents or information that are unlikely to be within the scope of "proceedings in Parliament" include material relating to a Member's travel or entitlements, or party-political material.

- (36) In determining a claim, the Arbiter may speak with the affected Member who has made a claim or with the Commissioner. The Arbiter may permit the affected Member to view a document in the presence of the Arbiter.
- (37) The Arbiter must only determine the question of whether an item of Assembly information sought by the Commission is protected by parliamentary privilege and no other question.
- (38) The Arbiter must consider, determine and report on a determination relating to a claim of parliamentary privilege in a timely manner.

#### **Requirements for appointing an Arbiter**

- (39) The Independent Legal Arbiter must be a King's Counsel, Senior Counsel, or a retired judge or justice of the Supreme, Federal or High Court and the Speaker must consult with the Standing Committee on Administration and Procedure prior to making an appointment. The Arbiter will be paid a fee approved by the Speaker.

#### **Memorandum of understanding**

- (40) For the purposes of facilitating the effective administration of this resolution, the Speaker may enter into a memorandum of understanding with the Integrity Commissioner in relation to parliamentary privilege and the exercise of the Commission's powers. A memorandum of understanding must not be inconsistent with this resolution and must be tabled in the Assembly on the first available sitting day following its finalisation.

#### **Recusal of the Speaker or a member of the Standing Committee**

- (41) Where the Speaker makes a claim of parliamentary privilege in relation to the exercise of a power or function by the Commission (except where the Speaker is making a claim pursuant to paragraph (7) of this resolution), the Speaker must recuse themselves from the exercise of the Speaker's functions pursuant to this resolution and the Deputy Speaker will instead perform the functions.
- (42) Where a member of the Standing Committee on Administration and Procedure makes a claim of parliamentary privilege in relation to the exercise of a power or function by the Commissioner, the Member must recuse themselves from any consideration by the committee of the matter."

**Attachment B – Memorandum of Understanding between OLA and  
CMTEDD, November 2021**



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# Memorandum of Understanding

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Between

The Office of the  
Legislative Assembly (OLA)

and

Digital, Data and  
Technology Solutions, a  
Division of Chief Minister,  
Treasury and Economic  
Development Directorate  
(CMTEDD)

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November 2021

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## **1. BACKGROUND**

- 1.1. This Memorandum of Understanding (MOU) relates specifically to non-standard provision of services above and beyond the Simplified Billing Arrangements (SBA) provided to the ACT Legislative Assembly by Digital, Data and Technology Solutions (DDTS).
- 1.2. It recognises the specific requirements that must be applied in relation to the provision of ICT services to the ACT Legislative Assembly given its role and functions.
- 1.3. In the context of this MOU, the "ACT Legislative Assembly" includes the non-Executive members and their staff, and staff of the Office of the Legislative Assembly. ICT service delivery to the Executive and their staff is within the standard provision of service and is the responsibility of the ACT Government.

## **2. PARTIES**

- 2.1. The parties to this Memorandum of Understanding (MOU) are the Office of the Legislative Assembly (OLA) and Digital, Data and Technology Solutions (DDTS) within Chief Minister Treasury and Economic Development Directorate (CMTEDD).
- 2.2. The contact officers for this MOU are:
  - i) Executive Manager, Business Support, Office of the Legislative Assembly; and
  - ii) Executive Group Manager, Digital, Data and Technology Solutions

## **3. STATEMENT OF INTENT**

- 3.1. The MOU articulates the roles and responsibilities of both parties and arrangements with regards to payment.
- 3.2. This MOU does not create any legal obligations between the parties.

## **4. VALUES AND BEHAVIOURS**

All personnel, whether employees, consultants or contractors will provide services in the name of the respective parties in a manner that is consistent with the ACTPS values—of respect, integrity, collaboration, and innovation—outlined in the Public Sector Management Standards.

### **4.1. Respect**

- 4.1.1. The parties will implement the MOU in good faith and with mutual respect for each other's professional judgment.
- 4.1.2. The parties will ensure that this document is made available to ensure that all relevant staff are aware of this MOU and its goals.

### **4.2. Integrity**

4.2.1. The parties acknowledge that it is always in their mutual interests to strive to achieve and maintain a high standard. The parties will attempt at all times to negotiate with each other in good faith on their shared or overlapping responsibilities, conduct and action.

4.2.2. The parties acknowledge that it is in their mutual interests to maintain high standards of governance. The parties will:

- i) be open and transparent in dealings with each other
- ii) always negotiate with each other in good faith
- iii) maintain appropriate governance in accordance with the law and policy

#### 4.3. Collaboration

4.3.1. This MOU is underpinned by a shared commitment to effective collaboration, typified by such signature behaviours as working together towards shared goals and genuine engagement with colleagues in the ACT Public Service and with the broader community.

4.3.2. The parties will:

- i) share resources in an equitable and fair manner
- ii) consult on matters of mutual interest
- iii) share information as authorised or permissible by law
- iv) work to resolve differences at the lowest possible level.

#### 4.4. Innovation

4.4.1. This MOU encourages efficient and effective use of public sector resources with an emphasis on best practice, innovation, and continuous improvement.

4.4.2. The parties will:

- i) share knowledge and experiences, including from review or audit processes; and
- ii) look for opportunities to support the development of staff.

### 5. REVIEW AND TERM OF MEMORANDUM OF UNDERSTANDING

5.1. It is intended that technical solutions to deliver on this MOU be piloted/tested prior to full implementation of the arrangements. On completion of the 6-month pilot (starting from date of acceptance of the MOU by the OLA), the MOU will be reviewed to ensure it remains fit for purpose.

5.2. The parties will review this MOU as necessary or annually in June.

5.3. This MOU is valid from date of acceptance to 30<sup>th</sup> June 2023.

## 6. ROLES AND RESPONSIBILITIES

### 6.1. Communication

- 6.1.1. The ACT Legislative Assembly recognises that DDTs must plan for, and implement, changes to the shared standard operating environment and business systems to ensure the ongoing availability and integrity of the network.
- 6.1.2. DDTs will consult with the ACT Legislative Assembly prior to implementing any substantive changes that will affect the operation of business systems or the handling of Assembly information and data. This may include, but is not limited to, the use of cloud services to store or process Assembly information.
- 6.1.3. If the ACT Legislative Assembly does not agree to a proposed change, both parties will work cooperatively to find a viable alternative solution.

### 6.2. Privacy and security issues

- 6.2.1. DDTs will ensure security and privacy for the ACT Legislative Assembly's electronic information and data is in accordance with the [DDTS Cyber Security Policy](#).
- 6.2.2. The ACT Legislative Assembly will have visibility of the security and privacy of its electronic data. DDTs staff involved in supporting the ACT Legislative Assembly's IT systems will be baseline vetted to hold this position of trust.
- 6.2.3. To maintain the privacy and security of the ACT Legislative Assembly's electronic information and systems, the Assembly and DDTs will work together to logically separate the Assembly's computing environment from the whole of government network by maintaining the Assembly's computing systems as a separate 'organisational unit'.
- 6.2.4. Given the privilege afforded parliaments, information hosted or gathered by DDTs, or by providers contracted on their behalf, including that generated in monitoring the performance, usage and security of the ACT Legislative Assembly's computing systems, will not be provided to or shared with any other party—including Executive directorates or agencies—with specific permission from the ACT Legislative Assembly.

### 6.3. Support issues

- 6.3.1. The ACT Legislative Assembly and DDTs will continue to work together to deliver first and second level user support in keeping with [Annex A](#), which relates to the deployment of a dedicated onsite DDTs support officer to the Assembly.
- 6.3.2. DDTs recognises that sittings of the ACT Legislative Assembly can extend beyond normal office hours. This necessitates close liaison between DDTs and the Assembly's ICT Manager to ensure business critical systems remain available outside normal office hours on sitting days. DDTs will consider the ACT Legislative Assembly's sitting calendar when scheduling works that may impact on the availability or performance of the Assembly's IT network and business critical systems. If after hours support is required, the Assembly understands that this will incur charges for time and materials.

6.3.3. DDTs acknowledge the significant role of the ACT Legislative Assembly and will provide a high priority support service in the event of ICT failure to minimise disruptions during Assembly sitting days, estimates committee hearing days, or, on days in between a two-week Assembly sitting period. Support will be provided in line with the [DDTS Support Services](#).

6.3.4. In addition to those systems that enable the ACT Legislative Assembly and its committees to sit, DDTs recognises the importance of protective security systems to the proper functioning of the Assembly and will provide high priority support to such services.

## 7. DISPUTE RESOLUTION

7.1. As a general principle the parties intend that dispute resolution should in the first instance involve a meeting between the parties at the lowest appropriate level to clarify the issue and reach a prompt resolution through discussion. If no resolution can be achieved at this level the matter should be referred:

- i) first by the individuals in dispute to their line manager/s for resolution; and
- ii) if a matter cannot be resolved, it should be escalated to the relevant Executive Branch Manager for decision; and
- iii) if a matter remains unresolved or cannot be agreed at Executive Branch Manager level, the responsible Executive Group Manager for DDTs and <LA Representative> will meet to settle a final position on the matter.

## 8. PAYMENTS

8.1. DDTs acknowledge that members of the ACT Legislative Assembly and their staff require a high level of service and a range of products to effectively perform their role as elected representatives of the community. This includes the timely introduction of new and emerging technologies to improve existing business processes and systems. Complex projects to implement these changes will be undertaken by DDTs on a fee-for-service basis, the details of which will be negotiated on a project-by-project basis.

8.2. The ACT Legislative Assembly acknowledges that all the services and products offered through the ACT Government network will be operated cost effectively and in a way that ensures the availability, confidentiality and integrity of the network.

8.3. Costs associated to a dedicated onsite support officer will be invoiced separately from the Simplified Billing Arrangements and detailed in [Annex A](#).





## ANNEX A

### Dedicated Onsite DDTs Service Delivery Officer to the ACT Legislative Assembly:

1. This document describes the arrangements for the provision by DDTs Service Desk of an ICT Service Delivery Officer (SDO), ITO2, for on-site support to the ACT Legislative Assembly.
2. The SDO will provide first and second level support services directly to ACT Legislative Assembly. During unanticipated absences, first and second level services will be provided through the ICT Service Desk.
3. The SDO will provide support during business hours 8:30am to 4:51pm on regular working days. Support during sitting weeks will be 8:30am to 4:51pm.
4. Support outside of the standard business hours of 8:30am to 4:51pm will be provided at the request of OLA, with staffing costs billed separately to the OLA at the appropriate rate (inclusive of all applicable loadings and allowances).
5. DDTs will be responsible for:
  - i) Providing a suitably experienced ITO2 who understands the nature and responsibilities of working in the ACT Legislative Assembly environment.
  - ii) Providing the systems, applications, tools, resources, and administrative access for the SDO to perform their role.
  - iii) Providing supervision of the SDO, including:
    - Flex sheet management
    - Administration of leave in HR systems
    - Conducting and reviewing of Personal Development Plans
    - Provision of training (scheduling in consultation with Agency)
    - Inclusion in team meetings and DDTs town halls
  - iv) Providing replacement staff for planned absences.
  - v) Allowing for an adequate hand-over period for SDO rotations.
6. ACT Legislative Assembly will be responsible for:
  - i) Providing direction as to the priorities of the SDO on any given day.
  - ii) Providing a calendar of sitting weeks and notice of any changes as soon as possible.
  - iii) Providing feedback to DDTs supervisors with regards to attendance, behavior, and work product in preparation for bi-annual performance reviews.
  - iv) Providing the SDO training on the ACT Legislative Assembly unique working environment.
  - v) Providing the SDO with physical access to sites and equipment as required.
7. ACT Legislative Assembly and DDTs Service Desk Managers will consult directly on any matters that may impact on the effective provision of SDO services.
8. ACT Legislative Assembly may cease this agreement by giving 3 months' notice in writing to the Executive Group Manager DDTs.
9. DDTs will invoice ACT Legislative Assembly on a quarterly basis (July, October, January, April) at 60% of the rate of pay of an ITO2 (at the highest increment) in accordance with the [Technical and Other Professional Enterprise Agreement](#) at the time.