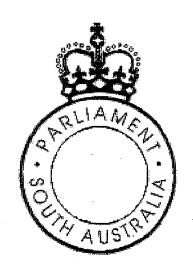
Chamere Rodrigues



HOUSE OF ASSEMBLY

BENCHMARKING PARLIAMENTARY PERFORMANCE

October 2009

Introduction

"Democracy requires that those who are freely elected have the power to effectively fulfill their constitutional responsibilities....

There have been many... initiatives to define and monitor the democratic character of elections, there have been fewer efforts to define standards for institutions that result from a democratic electoral process....Legislative bodies that fail to perform their representative and oversight functions breed public cynicism and ultimately reduce popular support for the democratic system itself.

...just as there is no single, international body that certifies the democratic nature of a given electoral process, there can be no one arbiter of whether a legislature functions properly. It is hoped, however, that, through the discussion of standards, an international consensus on the functioning of democratic legislatures will emerge, thereby helping legislatures become more open, independent, accountable and responsive.

...a legislature must demonstrably adhere to standards across the entire spectrum of legislative life, specifically with respect to the organization, procedures, functions and values of the legislature... Selective adherence to... standards does not assure the emergence of a democratic legislature, and may in fact serve as a façade or cover for non-democratic practice... Different countries evolve their legislatures and legislative practice in different ways, and there is no single institutional form through which the standards... can be met. The true measure of a legislature is how well it makes public policy on behalf of the citizens its members represent, and the quality of its oversight of the executive." [Toward the Development of International Minimum Standards for the Functioning of Democratic Legislatures – National Democratic Institute for International Affairs (NDI) 2006]

Benchmarking Frameworks

A number of agencies with responsibilities for the promotion of democracy have developed frameworks for assessing improvements in governance –

NDI - Toward the Development of International Minimum Standards for the Functioning of Democratic Legislatures.- developed from studies by the Association of Secretaries General of Parliament (ASGP), the CPA's Commonwealth Principles on the Separation of the Three Branches of Government, the work of the CPA study group on benchmarks for democratic legislatures, and the IPU.

International IDEA – Assessing the Quality of Democracy – An Overview of the International IDEA Framework, 2008 – was developed as an alternative framework for assessment using context specific information.

IPU – Evaluating Parliament – a self assessment toolkit for parliaments – Inter - Parliamentary Union, 2008 – draws on International IDEA's State of Democracy Assessment Methodology.

CPA – Recommended Benchmarks for Democratic Legislatures – was developed by a Commonwealth Parliamentary Association study group in 2006 from a range of earlier works including the NDI's Toward the Development of International Minimum Standards for the Functioning of Democratic Legislatures.

Which Benchmarking Framework to Apply?

NDI (National Democratic Institute for International Affairs)

The NDI's Toward the Development of International Minimum Standards for the Functioning of Democratic Legislatures acknowledges that its criteria are derived from the work of the CPA study group on benchmarks for democratic legislatures, the ASGP studies and work of such groups as Organization for Security and Cooperation in Europe, the Organization of American States, and the Southern African Development Community's Parliamentary Forum. The framework seems to be directed towards emerging democratic jurisdictions or those in the process of reforming their democratic institutions. It is also very much aligned to the operations of national rather than regional legislatures. However, its commentary on the criteria for each benchmark provided valuable guidance in the application of the chosen benchmark framework.

International IDEA (International Institute for Democratic and Electoral Assistance) The International IDEA framework claims to apply a context specific methodology that avoids comparisons between legislatures or the ranking of legislatures. However, the application of the benchmarking framework required "qualitative judgments" and "quantitative measures" (How much? How well? How effective?) and could only be undertaken by "country based assessment teams" undertaking "wide public consultations, including a national workshop to validate the findings". The assessment process also contained elements of the dubious 'deliberative polling' methodology. This methodology was beyond the capacity of the House of Assembly to apply.

IPU (International Parliamentary Union)

The IPU's Evaluating Parliament – a self assessment toolkit for parliaments proposed an assessment based on "universal democratic values and principles, this toolkit is relevant to all parliaments, whatever political system they adhere to, whatever their stage of development". However, the methodology required the assessment be undertaken by Members of the legislature and as with the International IDEA framework it required Members to make qualitative judgments and apply quantitative measures. Again the framework is relevant to national rather than regional legislatures. As the benchmarking exercise was to be undertaken by the House of Assembly Procedure Office this methodology was not appropriate.

CPA (Commonwealth Parliamentary Association)

The CPA Recommended Benchmarks for Democratic Legislatures framework methodology allowed its application by any Member, officer or group with a working knowledge of the legislature and required confirmation of certain functions or adherence to certain practices or principles of democratic process. A small number of the benchmarks required qualitative or quantitative responses. As the Procedure Office of the House of Assembly of the Parliament of South Australia were to undertake the benchmarking exercise the CPA's largely 'dispassionate' methodology was identified as an appropriate one to be applied by officers of the legislature.

Malcolm Lehman Clerk House of Assembly 9 October 2009

Benchmarking the Parliament of South Australia – October 2009	
I GENERAL	
l Elections	
1.1.1 Members of the popularly elected or only House shall be elected by direct universal and equal suffrage in a free and secret ballot.	YES Note: Constitution Act 1934 Electoral Act 1985 – attendance at a poll is compulsory
1.1.2 Legislative elections shall meet international standards for genuine and transparent elections.	YES
1.1.3 Term lengths for Members of the popular House shall reflect the need for accountability through regular and periodic legislative elections.	YES Note: s.28, 28A Constitution Act 1934 (4 year fixed terms)
1.2 Candidate Eligibility	
1.2.1 Restrictions on candidate eligibility shall not be based on religion, gender, ethnicity, race or disability.	YES Note: s.52 Electoral Act 1985
1.2.2 Special measures to encourage the political participation of marginalized groups shall be narrowly drawn to accomplish precisely defined, and time-limited, objectives.	YES Note: No special measure imposed by legislature (political parties may have pre-selection quotas)
1.3 Incompatibility of Office	
1.3.1 No elected Member shall be required to take a religious oath against his or her conscience in order to take his or her seat in the Legislature.	YES Note: s.42 Constitution Act 1934 / Oaths Act 1936
1.3.2 In a bicameral Legislature, a legislator may not be a Member of both Houses.	YES Note: s.43A Constitution Act 1934

1.3.3 A legislator may	VEO
not simultaneously serve in	YES
the judicial branch or as a	Note: s.44, 45 Constitution Act 1934
civil servant of the executive branch.	Note: 6.44, 40 Constitution Act 1934
1.4 Immunity	
1.4.1 Legislators shall have immunity	YES
for anything said in the course of the	
proceedings of Legislature.	Note: s.9 Constitution Act 1934 (parliamentary privilege).
1.4.2 Parliamentary immunity shall not	YES
extend beyond the term of office; but a	
former legislator shall continue to enjoy	
protection for his or her term of office.	
1.4.3 The executive branch shall have no	YES
right or power to lift the immunity of a	. — -
legislator.	
1.4.4 Legislators must be able to carry	YES
out their legislative and constitutional	152
functions in accordance with the	
constitution, free from interference.	
1.5 Remuneration and Benefits	
1.5.1 The Legislature shall provide	YES
proper remuneration and reimbursement	125
of parliamentary expenses to legislators	Note: Parliamentary Remuneration Act 1986 /
for their service, and all forms of	Remuneration Tribunal
compensation shall be allocated on a	
non-partisan basis.	
1.6 Resignation	
1.6.1 Legislators shall have the right to	YES
resign their seats.	. =0
	Note:s.30 Constitution Act 1934
1.7 Infrastructure	
	YES
1.7.1 The Legislature shall have adequate physical infrastructure to enable	
	YES Note: Parliament House offices / IT network / Remuneration Tribunal / Electorate and Global

II. ORGANIZATION OF THE LEGISLATURE	
2.PROCEDURE AND SESSIONS	
2.1 Rules of Procedure	
2.1.1 Only the Legislature may adopt and amend its rules of procedure.	YES / NO
<u>'</u>	Note: s.55 Constitution Act 1934 (Houses shall prepare and adopt SOs – Governor to approve).
2.2 Presiding Officers	
2.2.1 The Legislature shall select or elect	YES
presiding officers pursuant to criteria and procedures clearly defined in the rules of procedure.	Note: SO 5-9 / s.34 Constitution Act 1934.
2.3 Convening Sessions	
2.3.1 The Legislature shall meet regularly, at intervals sufficient to fulfill its	YES
responsibilities.	Note: s.7 Constitution Act 1934.
2.3.2 The Legislature shall have procedures for calling itself into regular	YES
session.	Note: s.7 Constitution Act 1934.
2.3.3 The Legislature shall have	NO
procedures for calling itself into extraordinary or special session.	Note: SO 57 provides for the earlier meeting of the House (within a 'session') on advice of a Minister
2.3.4 Provisions for the executive branch to convene a special session of the	YES
Legislature shall be clearly specified.	Note: s.6(b) Constitution Act 1934
2.4 Agenda	
2.4.1 Legislators shall have the right to	YES
vote to amend the proposed agenda for debate.	Note: SO 78-81

2.4.2 Legislators in the lower or only House shall have the right to initiate	YES
legislation and to offer amendments to proposed legislation.	Note: SO 80A
2.4.3 The Legislature shall give legislators adequate advance notice of session	YES
meetings and the agenda for the meeting.	Note: s.6(2) Constitution Act 1934 / SO37, 102 / Notice Paper.
2.5 Debate	
2.5.1The Legislature shall establish and follow clear procedures for structuring	YES
debate and determining the order of precedence of motions tabled by Members.	Note: SO 102, 183, 185, 193, 195.
2.5.2 The Legislature shall provide adequate opportunity for legislators to	YES
debate bills prior to a vote.	Note: SO 110, 113
2.6 Voting	
2.6.1Plenary votes in the Legislature shall be public. 1	YES
	Note: Secret ballot allowed for Presiding Officer & committee membership.
2.6.2 Members in a minority on a vote shall be able to demand a recorded vote.	YES
2.6.3 Only legislators may vote on issues before the Legislature.	YES
2.7 Records	
2.7.1 The Legislature shall maintain and publish readily accessible records of its	YES
proceedings.	Note: SO 58, 59.
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3. COMMITTEES	
3.1 Organization	
3.1.1 The Legislature shall have the right to form permanent and temporary	YES
committees.	Note: SOs / Parliamentary Committees Act 1991
3.1.2 The Legislature's assignment of committee Members on each committee	YES (by practice)
shall include both majority and minority party Members and reflect the political composition of the Legislature.	Note: Select Committees - no provision for political composition. Standing Committee - no provision except for Statutory Officers Cttee (1 must be Minister, 2 must be non-Govt - s.15H Parliamentary Committees Act 1991) & Aboriginal Lands Parliamentary Standing Cttee (2 must be Govt, 2 must be Opposition - s.5 Aboriginal Lands Parliamentary Standing Committee Act 2003). s.24(2) Parliamentary Committees Act 1991 requires that on committees with 5 members a quorum must comprise one Opposition Member
3.1.3 The Legislature shall establish and	YES
follow a transparent method for selecting or electing the chairs of committees.	Note: Select Cttee SO 328 / Parliamentary Committees Act 1991.
3.1.4 Committee hearings shall be in public. Any exceptions shall be clearly	YES
defined and provided for in the rules of procedure.	Note: SO 338 / s.26 Parliamentary Committees Act 1991.
3.1.5 Votes of committee shall be in	NO
public. Any exceptions shall be clearly defined and provided for in the rules of procedure.	Note: SO 338 / s.26 Parliamentary Committees Act 1991
3.2 Powers	
3.2.1 There shall be a presumption that	YES
the Legislature will refer legislation to a committee, and any exceptions must be transparent, narrowly-defined, and extraordinary in nature.	Note: SO 244 – Committee of the Whole
3.2.2 Committees shall scrutinize legislation referred to them and have the	YES
power to recommend amendments or amend the legislation.	Note: SO 244 (Committee of the Whole). Referral to a Select or Standing Committee is the exception – Committees can recommend amendments.

3.2.3 Committees shall have the right to consult and/or employ experts.	YES
	Note: Committee of the Whole - SO 324 / Select
	Committees - SO 324 / Standing Committees -
	s.32 & 33 Parliamentary Committees Act 1991.
3.2.4 Committees shall have the power to summon persons, papers and records,	YES
and this power shall extend to witnesses	Note: Committee of the Whole - No / Select
and evidence from the executive branch,	Committees - SO335 / Standing Committees s28
including officials.	Parliamentary Committees Act 1991.
3.2.5 Only legislators appointed to the	VEO
committee, or authorized substitutes, shall	YES
have the right to vote in committee.	
3.2.6 Legislation shall protect informants and witnesses presenting relevant	YES
and witnesses presenting relevant information to commissions of inquiry	Note: Whistleblowers Protection Act 1993
about corruption or unlawful activity.	Note: Whistieblowers Protection Act 1993
4. POLITICAL PARTIES, PARTY GROUPS	AND CROSS PARTY GROUPS
4.1 Political Parties	
4.1.1The right of freedom of association	YES
shall exist for legislators, as for all people.	
4.1.2 Any restrictions on the legality of	YES
political parties shall be narrowly drawn	125
in law and shall be consistent with the	
International Covenant on Civil and	
Political Rights.	
4.2 Party Groups	
4.2.1 Criteria for the formation of	YES
parliamentary party groups, and their	. 20
rights and responsibilities in the	Note: s.36 to 46 Electoral Act 1985
Legislature, shall be clearly stated in the	
rules.	
4.2.2 The Legislature shall provide	YES
adequate resources and facilities for party	
groups pursuant to a clear and	Note: Only parliamentary group formally
transparent formula that does not unduly	recognised by the Legislature with allocated
advantage the majority party. ²	resources (office suite, additional allowances) is the Opposition (recurrent funding from Executive).

4.3 Cross Party Groups	
4.3.1 Legislators shall have the right to form interest caucuses around issues of	YES
common concern.	Note: No Legislative imposed restrictions.
5. PARLIAMENTARY STAFF	
5.1 General	
5.1.1 The Legislature shall have an adequate non-partisan professional staff	YES
to support its operations including the operations of its committees.	Note: s.58 Constitution Act 1934 / s.32, 33 Parliamentary Committees Act 1991.
5.1 .2 The Legislature, rather than the executive branch, shall control the	YES
parliamentary service and determine the terms of employment.	Note: s. 8 to 27 Parliament (Joint Services) Act 1985 (for Joint Parliamentary Service employees only)
5.1 .3 The Legislature shall draw and maintain a clear distinction between	YES
partisan and non-partisan staff.	Note: s71 & 72 Public Sector Act 2009.
5.1 .4 Members and staff of the Legislature shall have access to sufficient	YES
research, library, and ICT facilities.	Note: 'sufficient' is a subject term.
5.2 Recruitment	
	YES
adequate resources to recruit staff sufficient to fulfill its responsibilities. The rates of pay shall be broadly comparable to those in the public service.	Note: Parliament (Joint Services) Act 1985 and public sector HR policy nexus (HA).
5.2.2 The Legislature shall not discriminate in its recruitment of staff on	YES
the basis of race, ethnicity, religion, gender, disability, or, in the case of non-partisan staff, party affiliation.	Note: HA Staff Code of Conduct, Clerk's Statement (HA) / Merit Selection Policy (HA).
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5.3 Promotion	
5.3.1 Recruitment and promotion of non- partisan staff shall be on the basis of	YES
merit and equal opportunity.3	Note: HA Staff Code of Conduct, Clerk's Statement (HA) / Merit Selection Policy (HA).
5.4 Organization and Management	
5.4.1The head of the parliamentary service shall have a form of protected	YES
status to prevent undue political pressure.4	Note: s.58 Constitution Act 1934
5.4.2 Legislatures should, either by legislation or resolution, establish	YES
corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service. ⁵	Note: Appropriation Acts / Parliamentary Remuneration Act 1986 / Parliamentary Committees Act 1991 / Parliament (Joint Services) Act 1985 / Remuneration Tribunal
5.4.3 All staff shall be subject to a code of conduct.	YES
	Note: HA only
III. FUNCTIONS OF THE LEGISLATURE	
6. LEGISLATIVE FUNCTION	
6.1 General	
6.1.1 The approval of the Legislature is required for the passage of all legislation,	YES
including budgets.	Note: Constitution Act 1934
6.1.2 Only the Legislature shall be empowered to determine and approve the	NO
budget of the Legislature.	Note: The Executive determines the quantum of the budget, the Legislature approves it. The only source of funding is the Consolidated Account of the Executive so it is inevitable that the Executive, at Budget bi-laterals, Cabinet approval or legislative stages, will exert its influence.
6.1.3 The Legislature shall have the power to enact resolutions or other non-binding expressions of its will.	YES

6.1.4 In bicameral systems, only a popularly elected House shall have the	YES
power to bring down government.	Note: Both Houses popularly elected.
6.1.5 A chamber where a majority of Members are not directly or indirectly elected may not indefinitely deny or reject a money bill	N/A
6.2 Legislative Procedure	
6.2.1 In a bicameral Legislature there shall be clearly defined roles for each	YES
Chamber in the passage of legislation.	Note: s.10 Constitution Act 1934
6.2.2 The Legislature shall have the right to override an executive veto.	NO .
	Note: No specific provisions. It is arguable that an Executive veto (refusal or failure to enact a decision of the Legislature) other than the Reserve powers of the Governor exists.
6.3 The Public and Legislation	
6.3.1. Opportunities shall be given for	YES
public input into the legislative process.	Note: Legislative – Electorate Offices, Petitions, Committee Inquiries. Executive – public consultations, statutory reviews, policy development mechanisms.
6.3.2 Information shall be provided to	YES
the public in a timely manner regarding matters under consideration by the Legislature.	Note: Website / Notice Paper / Media
7. OVERSIGHT FUNCTION	
7.1 General	
7.1.1 The Legislature shall have mechanisms to obtain information from	YES
the executive branch sufficient to exercise its oversight function in a meaningful way.	Note: Committee inquiries, Estimates Committees, agency reporting requirements, calls for papers, FOI requests, Questions.
7.1.2 The oversight authority of the Legislature shall include meaningful oversight of the military security and intelligence services.	N/A

7.1.3 The oversight authority of the Legislature shall include meaningful	YES
oversight of state owned enterprises.	Note: Statutory Authorities Review Committee / Economic and Finance Committee / Public Works Committee / Estimates Committees.
7.2 Financial and Budget Oversight	
7.2.1 The Legislature shall have a reasonable period of time in which to	YES (see Note)
review the proposed national budget. ⁶	Note: Does not comply with OECD best practice guidelines.
7.2.2 Oversight committees shall provide meaningful opportunities for minority or	YES / NO(see Note)
opposition parties to engage in effective oversight of government expenditures. Typically, the Public Accounts Committee will be chaired by a Member of the opposition party.	Note: Estimates Committees, Standing Committees. However, Govt majorities so no Opposition Committee Chairs.
7.2.3 Oversight committees shall have access to records of executive branch	YES
accounts and related documentation sufficient to be able to meaningfully review the accuracy of executive branch reporting on its revenues and expenditures.	Note: Budget Papers / Mid-year budget statement / Budget Outcomes / Agency annual reports.
7.2.4 There shall be an independent, non-partisan supreme or national audit	YES
office whose reports are tabled in the Legislature in a timely manner.	Note: Public Finance and Audit Act 1987.
7.2.5 The supreme or national audit office shall be provided with adequate	YES
resources and legal authority to conduct audits in a timely manner.	Note: Public Finance and Audit Act 1987
7.3 No Confidence and Impeachment	
7.3.1 The Legislature shall have mechanisms to impeach or censure officials of the executive branch, or express no-confidence in the government.	YES
	

7.3.2 If the Legislature expresses no confidence in the government the government is obliged to offer its resignation. If the head of state agrees that no other alternative government can be formed, a general election should be held.

YES

Note: By convention not legislative requirement.

8. REPRESENTATIONAL FUNCTION

8.1 Constituent Relations

8.1 .1 The Legislature shall provide all legislators with adequate and appropriate resources to enable the legislators to fulfill their constituency responsibilities.

NO

Note: Remuneration Tribunal Determinations / other electorate resources determined and provided by Executive.

8.2 Parliamentary Networking and Diplomacy

8.2.1 The Legislature shall have the right to receive development assistance to strengthen the institution of parliament.

N/A

8.2.2 Members and staff of Parliament shall have the right to receive technical and advisory assistance, as well as to network and exchange experience with individuals from other Legislatures.

YES

Note: Members - Party organisations, donors, peak bodies and lobby groups, CPA etc. Staff - ANZACATT, SOCATT etc.

IV. VALUES OF THE LEGISLATURE

9 ACCESSIBILITY

9.1 Citizens and the Press

9.1.1 The Legislature shall be accessible and open to citizens and the media, subject only to demonstrable public safety and work requirements.

YES

Note: Public Gallery / Committee hearings.

9.1.2 The Legislature should ensure that the media are given appropriate access to the proceedings of the Legislature without compromising the proper functioning of the Legislature and its rules of procedure.

YES

Note: Same as public plus PH office space / access to all PPs, records and procedural information.

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9.1.3 The Legislature shall have a non- partisan media relations facility.	NO
9.1.4 The Legislature shall promote the public's understanding of the work of the	YES
Legislature.	Note: Parliamentary Education Unit programs.
9.2 Languages	
9.2. 1 Where the constitution or parliamentary rules provide for the use of multiple working languages, the Legislature shall make every reasonable effort to provide for simultaneous interpretation of debates and translation of records.	N/A
10 ETHICAL GOVERNANCE	
10.1 Transparency and Integrity	
10.1.1 Legislators should maintain high standards of accountability, transparency	YES
and responsibility in the conduct of all public and parliamentary matters.	Note: No legislative or formal provisions. However, no legal immunity other than parliamentary privilege.
10.1.2 The Legislature shall approve and enforce a code of conduct, including	NO / YES (see Note)
rules on conflicts of interest and the acceptance of gifts.	Note: No Code of Conduct / Members of Parliament (Register of Interests) Act 1983.
10.1.3 Legislatures shall require legislators to fully and publicly disclose	YES
their financial assets and business interests.	Note: Members of Parliament (Register of Interests) Act 1983.
10.1.4 There shall be mechanisms to prevent, detect, and bring to justice	YES
legislators and staff engaged in corrupt practices.	Note: Members - No independent authority to investigate corruption but the Joint Committee on a Code of Conduct for Members of Parliament (2003) noted 'The conduct of a Member of the South Australian Parliament is highly regulated and, in the Committee's view, the following provisions provide effective methods of investigation and adjudication of complaints.' (see Report para 4.4). Staff – HA Staff Code of Conduct

Endnotes

- 1 The Study Group noted that one possible exception to this may be the election of officers.
- 2 The Study Group considered it best practice for legislatures to provide party groups with funding allocations and allow each party group to make their own decisions on the types of facilities they require. The Study Group recognized the special circumstances of small and/or under-resourced jurisdictions.
- 3 Rather than banning political activity by non-partisan staff, the Study Group recommended that all staff be subject to a code of conduct and that staff are assessed on their conduct annually. A code of conduct should make clear what is acceptable staff behaviour and serve to prevent staff from using their position to influence the functioning of the Legislature in a political manner.
- 4 This benchmark was taken directly from the recommendations of the previous CPA's Study Group on 'The Financing and Administration of Parliament', held in Zanzibar, Tanzania, on May 25-29, 2005.
- 5 This benchmark was taken directly from the recommendations of the previous CPA's Study Group on 'The Financing and Administration of Parliament', held in Zanzibar, Tanzania, on May 25-29, 2005.
- 6 The Study Group made reference to the Organization for Economic Co-operation and Development best practice guidelines which suggest presentation of the draft budget to the Legislature no less than three months prior to the start of the fiscal year. (OECD Best Practices for Budget Transparency, 2001)

BENCHMARKING OF PARLIAMENTARY PERFORMANCE

WORKSHOP, 6 NOVEMBER 2009-10-21

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