
**Status of the Clerk: are Mozambique and
Tanzania the most appropriate role models for
the Northern Territory?**

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Introduction

In considering the status of the Clerk this paper is concerned to assess the effectiveness of parliamentary governance in the Northern Territory (NT). Over the past 27 years achieving Statehood has been touted as the 'holy grail' when it comes to constitutional development for the NT. However, during this same period the very basis for such, the legislature's democratic governance structure, has been significantly eroded.¹

Successive amendments to the statutory provisions underpinning the status of the Department of the Legislative Assembly (DLA) and the Clerk have effectively diminished their independence. Following the latest round of amendments, effective as of 1 January 2012, the continued existence of the Department is now subject to its on-going inclusion in the Administrative Arrangements Order; appointment and dismissal of the Clerk has been delegated to the Chief Minister; and, as is the case with other Agency CEO's, under the new Act the Clerk is required to be supportive of and responsive to the policies and priorities of the government.²

The lack of any formal mechanism which ensures the independence of the legislature and inhibits interference by the executive necessarily undermines the notion of democratic governance in the NT, and is an issue the Clerk has repeatedly commented on in the Department's Annual Reports of recent years.³ As the Clerk approaches retirement age resolving this issue, such that his successor's capacity to fulfil the role of an impartial and independent advisor is in no way diminished, has become a matter of some urgency. In light of renewed calls to progress the Territory's bid for equality within the Australian

¹ Legislative Assembly of the Northern Territory, *Annual Report 2011-12*, Darwin: Legislative Assembly of the Northern Territory, 2012, 10-11

² See for example, *Public Service Amendment Act (No 2) 1980* (NT) s 18A as compared to *Public Sector Employment and Management Act 2011* (NT), ss 2A, 3, 7, 19, 19A, 20-24

³ Legislative Assembly of the Northern Territory. *Annual Report 2011-12*, 10-11

Commonwealth, ensuring a more appropriate separation of powers between the executive and the legislature would seem to be an important starting point.⁴

The significance of the NT's predicament is perhaps best highlighted by way of a brief overview of the role of the Clerk and consideration of the *Latimer House Guidelines* and the Commonwealth Parliamentary Association's (CPA) *Recommended Benchmarks for Democratic Legislatures*. The latter also provides the context for a detailed analysis of the rise and fall in the status of the Clerk and assessment of the effectiveness of parliamentary governance in the NT. Finally, a review of mechanisms designed to safeguard the independence of the Clerk elsewhere in the Commonwealth provides the basis for a range of options the NT may wish to consider to redress its somewhat anomalous governance structure.

Role of the Clerk

As is the case elsewhere, the Clerk of the NT has a dual role: chief executive of the DLA, responsible for the management and employment of parliamentary services staff required to support and assist in the general administration of the operations of the House, and principal advisor to the Speaker on parliamentary law and the procedures of the House.⁵ As per the Clerk's duty statement, provision of "authoritative, impartial and professional advice...on parliamentary practice"⁶ is not limited to the Speaker but includes "Ministers and Members...Committees, Committee members and other Presiding Officers."⁷

⁴ Hon John Elferink, MLA, "Options for the Northern Territory to become a State", Inquiry Reference from Attorney-General to the Standing Committee on Legal and Constitutional Affairs, 6 December 2012, <http://www.nt.gov.au/lant/parliamentary-business/committees/legal%20and%20constitutional%20affairs/inquiries.shtml>

⁵ Department of the Legislative Assembly, "Job Description: Clerk of the Legislative Assembly", Darwin, NT: Legislative Assembly of the Northern Territory (February 2007): 1; see also Nicolas Besley, ed., "Comparative Study: The Role of the Clerk or Secretary General", *The Table*, v.78 (2010):114-150

⁶ Department of the Legislative Assembly, "Job Description: Clerk of the Legislative Assembly", 1

⁷ Ibid

As the arbiter and “guardian of democracy on the floor of Parliament”,⁸ it is expected that the Speaker will detach themselves from government activity and discharge their duties with a high degree of impartiality.⁹ Moreover, as May points out:

Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised.¹⁰

One such convention involves ensuring that the Speaker has access to frank, fearless, non-partisan advice and is “supported by an independent and impartial Secretariat, insulated from outside influence.”¹¹ Similarly, it is common practice for the Speaker and the Assembly to be directly involved in the appointment and dismissal of the Clerk.¹² Acknowledging the importance of the Clerk’s advisory role, both the Commonwealth *Parliamentary Services Act* and the ACT’s *Legislative Assembly (Office of the Legislative Assembly) Act* incorporate the specific requirement that a person is not to be appointed to the position of Clerk unless:

the Presiding Officer making the appointment is satisfied that the person has extensive knowledge of, and experience in, relevant Parliamentary law, procedure and practice.¹³

Latimer House Guidelines

At the 2003 Commonwealth Heads of Government meeting in Abuja, Nigeria, Prime Minister John Howard joined other Heads of Government in endorsing the *Latimer House*

⁸ P.D.T. Achiary, “Independence of Parliament Secretariat”, Association of Secretaries General of Parliaments, (2010):1

⁹ see for example: I.C. Harris, ed., *House of Representatives Practice*, 5th ed. Canberra, ACT: Department of the House of Representatives, 2005, 163-165

¹⁰ Erskine May, *Parliamentary Practice*, 23rd ed. Trowbridge, Wiltshire: The Cromwell Press Ltd, 2004, 220

¹¹ P.D.T. Achiary, “Independence of Parliament Secretariat”, 1

¹² See for example Appendix 1 – *Manner of Appointment*

¹³ *Parliamentary Services Act 1999* (Cth) s 58 <http://www.comlaw.gov.au/Details/C2012C00228> (3 September 2012); *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (ACT) s 9 http://www.legislation.act.gov.au/b/db_44064/ (1 October 2012)

Guidelines which specify the Commonwealth Principles on the accountability of and relationship between the three branches of Government.¹⁴ In identifying ‘good practice’ for governing relations between the executive, the legislature and the judiciary, the guidelines aim to protect and promote “the fundamental political values of the Commonwealth.”¹⁵

With regards to upholding democracy and democratic law-making processes, section VII of the guidelines specifically states that “Parliament should be serviced by a professional staff independent of the public service.”¹⁶; thereby limiting undue political interference and reinforcing the separation of the legislature from the executive.

CPA Benchmarks for Democratic Legislatures

Following endorsement of the *Latimer House Principles*, the CPA in conjunction with the World Bank Institute (WBI) began working towards the development of “Parliamentary Standards for Democratic Legislatures.”¹⁷ Incorporating the recommendations of “some 26 previous CPA workshops”¹⁸, the resulting benchmarks were the outcome of a 2006 study group hosted by the Bermudan Parliament and supported by the “United Nations Development Programme, the European Parliament and the National Democratic Institute for International Affairs.”¹⁹

¹⁴ Commonwealth Parliamentary Association “Commonwealth (Latimer House) Principles on the Three Branches of Government,” (2004): 1-24 <http://www.cpahq.org>

¹⁵ *Ibid*, 15

¹⁶ *Ibid*, 22

¹⁷ Commonwealth Parliamentary Association, “Benchmarks for Democratic Legislatures” Plenary - 28 September 2007: 53rd Commonwealth Parliamentary Conference, New Delhi, India. *The Parliamentarian*, Issue Four, (2007): 324; see also Lisa von Trapp, “Benchmarks and Self-Assessment Frameworks for Democratic Parliaments: A Background Publication Prepared for the International Conference on Benchmarking and Self-Assessment for Democratic Parliaments.” Brussels/New York: United Nations Development Programme, (March 2010): 11

¹⁸ Lisa von Trapp, “Benchmarks and Self-Assessment Frameworks for Democratic Parliaments”, 17

¹⁹ Commonwealth Parliamentary Association. “Recommended Benchmarks for Democratic Legislatures.” A Study Group Report sponsored by the Commonwealth Parliamentary Association and World Bank Institute, (18/10/2011): 1 <http://www.cpahq.org>

Of the eighty-seven benchmarks that seek to address the main features of a “fully functioning and empowered democratic parliament”²⁰, five are particularly pertinent to the following analysis of the status of the clerk in the NT:

1. The Legislature shall have an adequate non-partisan professional staff to support its operations including the operations of its committees.
2. The Legislature, rather than the executive branch, shall control the parliamentary service and determine the terms of employment.
3. The head of the parliamentary service shall have a form of protected status to prevent undue political pressure.
4. Legislatures should, either by legislation or resolution, establish corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.
5. All staff shall be subject to a code of conduct.²¹

The Rise and Fall in the Status of the Clerk in the Northern Territory

In 1974 the NT Legislative Council was replaced by a fully elected Legislative Assembly.²²

The first Clerk of the new Assembly, F. H. Walker, was seconded from the senior ranks of the NT public service with other administrative and personnel support provided by the Department of the Chief Minister.²³ Although this arrangement continued through to 1980, in 1976 the *Public Service Ordinance* was amended to formally acknowledge the Speaker as the head of the Legislative Assembly with:

²⁰ Lisa von Trapp, “Donor Consultation on Parliamentary Development and Financial Accountability - Report”, Brussels: Department for International Development (UK), United Nations Development Programme, World Bank Institute, (2007): 20

²¹ Commonwealth Parliamentary Association. “Recommended Benchmarks for Democratic Legislatures”, 6-7

²² Legislative Assembly of the Northern Territory. “History of the NT Parliament”

<http://www.nt.gov.au/lant/about-parliament/history-of-nt-parliament.shtml>

²³ Dean Jaensch and Deborah Wade-Marshall, *Point Of Order! The Legislative Assembly of the Northern Territory 1974-1994*, (Darwin, NT: Legislative Assembly of the Northern Territory and North Australia Research Unit, Australian National University, 1994, 183-5

all the powers of, or exercisable by other Departmental Heads under this Ordinance and the regulations so far as it relates to employees employed as staff of the legislative Assembly as if those employees were in a Department for which he is responsible.²⁴

Following the conferral of self-government on 1 July 1978, a comprehensive review was undertaken of the staffing arrangements and functions of the Assembly. Notably, the review acknowledged the importance of ensuring the independence of the legislature from the executive.²⁵ Chief Minister at the time, Paul Everingham, subsequently introduced the *Public Service Amendment Bill* on 21 August 1980 which sought to establish an independent Department of the Legislative Assembly.²⁶

Noting that the amendment was similar to section 9 of the *Commonwealth Public Service Act*,²⁷ the House was advised that the proposed section 18A:

vests the Speaker with ministerial and necessary Public Service Commissioner-type powers and the Clerk of the Assembly with Chief Executive powers in respect of the deemed department. It also provides for the Clerk and Deputy Clerk of the Assembly to be appointed by the Administrator on a recommendation of the Speaker.²⁸

In commending the Bill to the House, the Chief Minister pointed out that the legislation “will remove any suspicion of political interference in the operation of the Assembly and will accord with usual Australian parliamentary practice.”²⁹ Supported by the opposition, the Bill was assented to on 9 January 1981.³⁰

²⁴ *Public Service Ordinance 1976* (NT) s 19(8)

²⁵ Jaensch and Wade-Marshall, *Point of Order*, 184

²⁶ Legislative Assembly of the Northern Territory, “Parliamentary Record” (21 August 1980): 65

²⁷ *Public Service Act 1922* (Cth) s 9

²⁸ Legislative Assembly of the Northern Territory, “Parliamentary Record” (21 August 1980): 65;

²⁹ *Ibid*

³⁰ *Public Service Amendment Act (No 2) 1980* (NT) s 18A

The lack of staff with parliamentary experience was also noted as a matter of concern for the new Assembly. The practice of seconding senior public servants to the positions of Clerk and Deputy Clerk for three or four year terms was considered to be particularly inappropriate and a concerted effort was made to address the situation.³¹ In 1983 the Assembly was successful in attracting H. G. (Guy) Smith, former Usher of the Black Rod of the Australian Senate, to the position of Clerk. Two years later Ian McNeill, also with considerable experience in the Australian Senate, was appointed to the position of Deputy Clerk.³² These two appointments marked a significant step forward in the development of a corporate governance structure for the NT legislature. Following the retirement of Guy Smith, on 24 May 1993 the Administrator, the Hon Austin Asche, appointed Ian McNeill to the post of Clerk; a position he still holds today.³³

Public Sector Employment and Management Act (PSEMA)

Barely two months later, in July of 1993, the *Public Service Act of 1980* was repealed and replaced by the *Public Sector Employment and Management Act (PSEMA)*.³⁴ Whilst acknowledging that the introduction of the PSEMA represented “a major overhaul of employment and management arrangements for most of the government’s workforce”,³⁵ the Minister for Public Employment, Shane Stone, noted that “no aspect of the bill could be described as radical.”³⁶ However, for the DLA, the veracity of this claim is somewhat questionable given the ensuing consolidation of employment arrangements within the public sector “based on the concept of a single employer – that is, the Territory government.”³⁷

³¹ Ian McNeill, Clerk: Legislative Assembly of the Northern Territory, *Interview with author 13 September 2012*

³² *Ibid*

³³ Robyn Smith, “The Enigmatic Parliament – Why the Northern Territory Could Never Achieve Statehood”, *Australasian Parliamentary Review*, v. 25, No. 2 (Spring 2010): 64

³⁴ *Ibid*; see also *Public Sector Employment and Management Act 1993 (NT)*

³⁵ Legislative Assembly of the Northern Territory, “Parliamentary Record No 14” (26 November 1992), 7244

³⁶ *Ibid*, 7254

³⁷ *Ibid*, 7247

Although introduction of the PSEMA did not entirely eradicate the statutory safeguards to the independence of the Legislative Assembly from the NT Public Service and the Government, as provided for by section 18A of the former *Public Service Act*, it certainly undermined them. For example, although the Speaker was still deemed to be the ‘Commissioner’ for the purposes of employees of the DLA, they were no longer acknowledged as the responsible minister for the Department. Rather, the appropriate minister for an agency was defined as that “allotted by an Administrative Arrangements Order”, which in the case of the DLA was, and still is, the Chief Minister.³⁸

Of particular concern was the lack of any specific provisions within the new Act for the appointment of the Clerk or the Deputy Clerk. Whereas section 19 still provided for the Administrator to appoint persons to the position of Chief Executive Officer, the mechanism for doing so in the case of agencies other than those detailed in Schedule 1 (namely, the Police Civil Employment Unit, Ombudsman’s Office and Auditor-General’s Office) was not entirely clear.³⁹ That Schedule 1 neither acknowledged the status of the Clerk and Deputy Clerk as ‘officers of the Assembly’⁴⁰ nor included them along with the Ombudsman and Auditor-General was also considered to be a serious error and omission.⁴¹

The failure of the PSEMA to fully appreciate and accommodate the remit of the agency was further demonstrated with the subsequent introduction of the *Public Sector Principles and Code of Conduct*, which required that “employees shall provide full support to the Government of the day regardless of which political party or parties are in office.”⁴² In the case of parliamentary officers this was clearly untenable and placed staff in breach of the *Code of Conduct* on a daily basis.

³⁸ *PSEMA 1993* s 3,

³⁹ *Ibid*, s 19 and Schedule 1

⁴⁰ *Legislative Assembly (Powers and Privileges) Act 2011* (NT), s 3

⁴¹ Ian McNeill, *Interview with author*.

⁴² Northern Territory Office of the Commissioner of Public Employment, “Public Sector Principles and Code of Conduct”, Darwin, NT: Northern Territory Government, 1993: 8

Nevertheless, successive attempts to highlight issues both with the Act and the Code of Conduct fell on deaf ears. To an extent this reflects what appears to be a general lack of appreciation, or clear understanding, of the doctrine of the separation of powers in the NT. Over the years this has been “amply and oft demonstrated...across the whole of the public sector including at its highest levels.”⁴³ Indeed, repeated suggestions that the governance structure of the legislature would benefit from the introduction of a Parliamentary Services Act have been “dismissed as almost a frivolous notion intended to satisfy the whimsical fantasies of a small group of public sector separationists.”⁴⁴

In some respects this type of response is not that surprising. When the PSEMA was introduced it was accompanied by the *Public Sector Employment and Management (Transition and Savings) Act* which preserved both pre-existing agencies and the employment terms and conditions of “persons holding office immediately before the commencement of this Act as Departmental Heads or Chief Executive Officers.”⁴⁵ Given the continuing employment of Clerk McNeill, the ramifications of the PSEMA were yet to be fully realized.

However, it should be noted that the transitional provisions did not extend to the position of Deputy Clerk, with the past three Deputy Clerks appointed pursuant to the PSEMA. Given the redeployment provisions of the PSEMA this has already led to an instance whereby the advice of the Speaker and the Clerk was overridden resulting in a supernumerary from another agency, with no parliamentary experience, being appointed to the position.⁴⁶ As pointed out by the Clerk, this is a highly undesirable practice which threatens the independent nature of the parliamentary service.⁴⁷

⁴³ Robyn Smith, “The Enigmatic Parliament”, 66

⁴⁴ Ibid

⁴⁵ *Public Sector Employment and Management (Transition and Savings) Act 1993* (NT) ss 5, 6

⁴⁶ Ian McNeill, *Interview with author*.

⁴⁷ Ibid

Review of PSEMA

In 2009 a review of the PSEMA was commenced as a major component of the government's *Northern Territory Public Sector Reform and Revitalisation Package*.⁴⁸

Since the transitional arrangements, which hitherto had protected the independent status of the DLA and the Clerk, were expected to lapse with the introduction of the Amendment Bill, the Department entered into discussions with the Office of the Commissioner for Public Employment (OCPE) in an effort to ensure that any proposed amendments incorporated appropriate provisions in respect of both the DLA and the Office of the Clerk.

The OCPE subsequently sought advice from the Solicitor-General's Office of the NT.⁴⁹ Acknowledging that the provisions of the repealed section 18A were more comprehensive than that currently provided for under the PSEMA, Solicitor for the NT, Greg Macdonald, made a number of observations:

- Including the DLA in the general definition of an 'Agency' as a unit of government administration, office or statutory corporation identified in the Administrative Arrangements Order (AAO), rather than establishing the Department within the Act, was noted as potentially problematic as the AAO is much easier to amend than an Act of Parliament.
- Although section 3 of the *Legislative Assembly (Powers and Privileges) Act* clearly identifies the status of the Clerk and the Deputy Clerk as 'officers of the Assembly' this was not reflected in the PSEMA.
- In the absence of any other legislative provisions concerning appointment of the Clerk, the importance of appointing the Clerk pursuant to the provisions of section 19 of the PSEMA which provided for appointments to be made by the Administrator on the

⁴⁸ Northern Territory Office of the Commissioner of Public Employment, "Review of the Public Sector Employment and Management Legislation", Darwin, NT: Northern Territory Government, 2009, 3

⁴⁹ Megan Townsend, Principal Consultant Employee Relations, Office of the Commissioner for Public Employment, "Re: PSEMA Enquiry – Commissioner includes Speaker" (email to Greg Macdonald, Solicitor for the Northern Territory, Solicitor-General's Chambers, 7 June 2010): 1-4

advice of the Executive Council was highlighted. Since the PSEMA failed to detail the mechanism for appointments by the Administrator, other than those listed in Schedule 1, it was suggested that, in accordance with tradition, the process would need to be commenced on the basis of a request from the Speaker. Importantly, it was further noted that elsewhere this tradition has been incorporated into statute - s 58 of the *Parliamentary Service Act 1999* (Cth) was cited as an example.

- Although it was suggested that appointment of the Deputy Clerk could be effected in a similar manner, as highlighted previously, the precedent for tradition and convention to be overridden by the application of the redeployment provisions of the PSEMA had already been established.
- The failure of the *Public Service Code of Conduct* to adequately reflect the general requirement for the independence of parliamentary services staff from the government of the day was also identified as an issue of concern.⁵⁰

On the basis of this advice the Department was quietly confident that any proposed amendments would rectify the obvious errors and omissions of the PSEMA. However, when the draft *Public Sector Employment and Management Amendment Bill* was circulated for comment in September of 2010 it was evident that the advice had been largely ignored.⁵¹

The Amendment Bill neither recognised the Department's unique status nor included any provisions which would ensure its independence from the executive arm of government. Appointments by the Administrator were to be restricted to those specified in Schedule 1: the Police Commissioner, Ombudsman and Auditor-General. All other Chief Executive Officers, including the Clerk as Chief Executive of the DLA, were to be appointed and

⁵⁰ Greg Macdonald, Solicitor for the Northern Territory: Solicitor-General's Chambers, "Re: DOJ Advice" (email to Robyn Smith, Executive Officer to the Clerk: Legislative Assembly of the Northern Territory, October 2010): 11

⁵¹ Ken Simpson, Commissioner for Public Employment: Northern Territory Office of the Commissioner for Public Employment, "Re: Draft Public Sector Employment and Management Amendment Bill", (correspondence to Mr Ian McNeill, Clerk, Legislative Assembly of the Northern Territory, 21 September 2010)

dismissed by the Chief Minister.⁵² Of particular concern was the proposed inclusion of a new clause requiring Chief Executive Officers to exercise their management and strategic leadership functions in a manner that “is responsive to government policies and priorities.”⁵³

Current Status of the DLA and the Clerk

In spite of further representations from the DLA, the Amendment Act as circulated was duly passed and assented to on 31 August 2011 and came into effect on 1 January 2012.⁵⁴ In the absence of any other Act establishing the DLA, its continued existence is now subject to on-going nomination in the AAO.⁵⁵ Given the tendency for the AAO to be overhauled every time there is a change of Government, the only guarantee the Department has that it will remain a distinct agency in its own right is the government of the day’s adherence to convention and tradition.⁵⁶

Indeed, the only comfort for staff of the Legislative Assembly was the introduction of a new *Code of Conduct* in December 2011. Section 12, which takes precedence over any other sections in the *Code* relating to contact with Ministers, Ministerial Staff and MLA’s, acknowledges the requirement for staff to:

- a) provide professional advice and support for the Parliament independently of the Executive Government of the NT;
- b) provide non-partisan and impartial advice and services to the Parliament, parliamentary committees and to all Members of the Legislative Assembly; and

⁵² *Public Sector Employment and Management Act 2011* (NT), ss 19, 19A, Schedules 1 & 2

⁵³ *Ibid*, s 24

⁵⁴ *Ibid*, Endnotes

⁵⁵ *PSEMA 2011* s7

⁵⁶ Department of the Chief Minister, “New Public Sector Agency Arrangements.” Darwin NT: Department of the Chief Minister, 4 September 2012, 1-20. The recent change of Government in August of 2012 resulted in the abolition of some agencies, the creation of an additional 10 agencies and, in a couple of instances, existing agencies being subsumed into other departments.

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- c) maintain appropriate confidentiality about dealings with the Parliament, with parliamentary committees and with Members of the Legislative Assembly.⁵⁷

Following the introduction of the Amendment Act an update issued by the Acting Commissioner for Public Employment noted that:

It is important to understand that the changes to the Act do not affect the pay and conditions of any NTPS employee. Nor have the basic rights or protections of employees reduced...In fact most employees will notice little change on 1 January 2012.⁵⁸

Needless to say, this statement was certainly not applicable in the case of the Clerk since his tenure is now based on a four year 'Executive Contract of Employment'.⁵⁹ Although there is a potential for renewal, this will now be determined by the Chief Minister leaving appointment and re-appointment of the Clerk open to interference by the executive.⁶⁰ As the Speaker is still deemed to be the 'Commissioner' in respect of employees of the DLA, it is assumed, but not guaranteed, that they will still have some part to play in the Clerk's appointment.⁶¹

Similarly, the provisions of the amended PSEMA fail to acknowledge the Clerk's dual role as both administrative head of the DLA and chief advisor to the Speaker. In respect of his functions and performance as Chief Executive Officer, the Clerk is now subject to the direction of, and responsible to, the Chief Minister as the minister responsible for the

⁵⁷ Northern Territory Office of the Commissioner for Public Employment. "Code of Conduct Employment Instruction Number 12." Darwin, NT: Office of the Commissioner for Public Employment, 14 December 2011, 5

⁵⁸ Mike Burgess, Acting Commissioner for Public Employment, "A Message to all NTPS Employees about Forthcoming Changes to the *Public Sector Employment Management Act*." Darwin, NT: Office of the Commissioner for Public Employment, 19 August 2011, 1

⁵⁹ *PSEMA 2011*, ss 2A, 19A, 20

⁶⁰ Coggan, Michael. "Top jobs go as new NT Government sworn in." <http://www.abc.net.au/news/2012-09-04/nt-government-swear-in-preview-and-ps-job-cuts/4241952>: In the week following the recent Territory election six senior public servants were sacked including the Under-Treasurer, Public Employment Commissioner and the CEO's of four departments.

⁶¹ *PSEMA 2011*, s 3

agency.⁶² Needless to say, the expectation that he will exercise his management and leadership functions in a manner that is responsive to the policies and priorities of the government of the day contravenes the requirements of his role as chief advisor to the Speaker, and the expectation that he will abide by the provisions of section 12 of the *Code of Conduct* as outlined above.⁶³

Clearly this is an untenable and unworkable situation which further highlights the failure of the Act to recognise or accommodate the unique role of the Clerk or that of the DLA. It is particularly concerning to note that the cumulative effect of legislative amendments over the past 20 years has essentially removed the checks and balances designed to ensure parliamentary democracy in the NT.

Status of the Clerk Elsewhere in the Commonwealth

To determine the extent to which the parliamentary governance structure of the NT differs from other jurisdictions, a review of 66 Commonwealth legislatures was undertaken. The primary objectives being to:

1. ascertain how the Office of the Clerk is established elsewhere, the manner in which the Clerk is appointed and associated tenure; and
2. identify options that have the capacity to effectively restore the independent status of the Clerk and ensure the democratic governance structure of the NT legislature.

Establishment of the Office of the Clerk

As summarised in Appendix 1, there are only ten instances (15%) where the Office of the Clerk is not specifically established under some form of legislation: the NT, the Bahamas, Barbados, Cameroon, Kiribati, Mauritius, Mozambique, the Seychelles, South Africa and

⁶² Ibid, ss 22, 23, 24

⁶³ Ibid

Tonga. Of the 57 jurisdictions with statutory provisions, the preferred mechanism for establishing the Office of the Clerk is within the constitution (62.5%). Some form of Legislative Assembly or Parliamentary Services Act is the next favoured method (28.5%).

The remaining 9% includes Manitoba where the Office is established under section 32 of the *Civil Service Act 2004*; New Zealand which has the *Clerk of the House of Representatives Act 1988*; Samoa where the control and administration of the Legislative Assembly is prescribed under Part XXXVII of the *Standing Orders*; in the Solomon Islands the Office of the Clerk is provided for under section 2 of the *Provincial Government Act 1997*; and, as is the case in New Zealand, the United Kingdom has the *Clerk of the Parliaments Act 1824*.⁶⁴

Manner of Appointment and Dismissal

Of the 66 jurisdictions reviewed there were eighteen instances where it was not possible to clearly identify the manner of appointment or dismissal; other than it being a merit based, public service appointment of no fixed term.⁶⁵ In all bar one of the remaining 48 jurisdictions, the Clerk is appointed and dismissed pursuant to the provisions of the establishment act or in conjunction with an accompanying parliamentary services act. In Cyprus, however, the Clerk is elected by the House and subsequently appointed and dismissed by the President under section 7 of the *Rules of Procedure of the House of Representatives*.⁶⁶ Although legislation establishing the Office of the Clerk may provide for the manner of appointment and dismissal, in the absence of a parliamentary services act the general terms and conditions of employment of the jurisdiction's equivalent of the PSEMA apply.

In the vast majority of cases (92%), the Speaker and/or the Assembly have a central role in both recommending or directly appointing and dismissing the Clerk; the four exceptions

⁶⁴ Appendix 1

⁶⁵ Ibid see entries marked with an asterix.

⁶⁶ Ibid

being the NT, Brunei & Darussalam, Malaysia, and Tanzania where appointment and dismissal of the Clerk is determined solely by the Head of State. In the case of Brunei & Darussalam, as with the Federal Parliament of Canada, the Clerk is required to make and subscribe to an oath declaring their allegiance to the Speaker.⁶⁷

Term of Appointment

In most instances (93%) the Clerk's term of appointment is not fixed and reflects the notion that appointment until retirement enhances the independence, neutrality and stability of the position, and that as on-going staff of the House "their role transcends the contemporary and temporary."⁶⁸ However, as noted in Appendix 1, there are a number of exceptions to this model.

The Clerks of Australia's Federal Parliament are appointed under similar provisions to those relating to the Auditor-General: a 10 year, non-renewable term designed to achieve the maximum degree of independence.⁶⁹ In Vanuatu the Clerk is appointed for a period of five years, which may be renewed for one additional five year term. In India the Clerk is appointed on a contract basis for an initial period of two years, extendable one year at a time with the usual term in office being co-terminous with that of the Speaker which lasts for five years.⁷⁰ In both the NT and Papua New Guinea the Clerk is appointed on the basis of a four year contract with the potential for renewal. In Samoa the Clerk is appointed for a three year term, however whether or not this is renewable is unclear.

⁶⁷ *Constitution of Brunei & Darussalam 1984* s 50 <http://www.worldstatesmen.org/Brunei1984.PDF> (4 September 2012); *Parliament of Canada Act 1985* s 49

⁶⁸ I.C. Harris, ed., *House of Representatives Practice*, 203; see also Ugo Zampetti, "The Role of the Secretary General in the Administration of Parliament." Association of Secretaries General of Parliaments. (2000): 1-14

<http://www.asgp.info/Resources/Data/Documents/CFYVHJIAMYFJSDMEGYQLFHLPCUSSP.pdf>

⁶⁹ *Parliamentary Services Act 1999* (Cth) s 58, <http://www.comlaw.gov.au/Details/C2012C00228> (3 September 2012); see also *Auditor-General Act 1997* (Cth), schedule 1, <http://www.comlaw.gov.au/Details/C2012c00445> (3 September 2012)

⁷⁰ Appendix 1; see also: Association of Secretaries General of Parliaments. "The Office of the Secretary General." (2009): 1-14 <http://www.asgp.info/en/publications/constitutional/default.aspx>

Other Studies

The results cited above concur with those of a number of other comparative studies relating to the Clerk in both Commonwealth and non-Commonwealth jurisdictions. For example, the Association of Secretaries General of Parliament's 1984 study which incorporated responses from 12 Commonwealth and 33 non-Commonwealth jurisdictions; its 2008 study based on responses from 25 European countries, 3 from the Middle East, 2 from the Americas, 2 from Asia, 1 from Maghreb and 1 from Oceania; or the Society of Clerks-at-the-Table's 2010 study of 24 Commonwealth jurisdictions.⁷¹

Options for the Northern Territory

As noted previously, a key requirement of the Clerk as chief adviser to the Speaker and head of the parliamentary staff is the capacity to fulfil his or her duties with "integrity, professionalism and neutrality [which] is best achieved when the Clerk is afforded some form of protected status to prevent undue political pressure."⁷² However, given the preceding discussion, it is evident that the current status of the NT Clerk is at odds with both best practice and what might be considered the norm elsewhere in Australia, the Commonwealth and, indeed, many other parts of the world.

Based on practices elsewhere in Australia there are essentially three options available to the NT which would re-instate the independence of the DLA and that of the Clerk, provide a more appropriate foundation for the future constitutional development of the Territory, and in varying degrees meet the recommended benchmarks for democratic legislatures highlighted in the introductory section of this paper.

⁷¹ See for example: Antonio M. De Guzman "The Role of Secretaries-General of Parliaments", *Constitutional and Parliamentary Information*, 1st Series - no. 144 (4th Quarter, 1985): 154-193 <http://www.asgp.info/Resources/Data/Documents/ZXMEYVVEURKQBFKMKMSLTUTIYXCOIU.pdf>; Alain Delcamp, "The Autonomy of Parliaments: Responses to a Questionnaire." Association of Secretaries General of Parliaments. (2008): 1-22 <http://www.asgp.info/Resources/Data/Documents/SCXIBTVVZDYXHILYXLQZGDNUJULNRM.doc>; Nicolas Besley, ed. "Comparative Study: the role of the Clerk or Secretary General." *The Table* 78 (2010): 114-150

⁷² Commonwealth Parliamentary Association. "Administration and Financing of Parliament." A Study Group Report sponsored by the Commonwealth Parliamentary Association and World Bank Institute. (18/10/2011): 8-9 <http://www.cpahq.org>

Option 1: Amend the PSEMA

The simplest option would be to re-visit section 18A of the *Public Service Amendment Act* of 1980 and amend the PSEMA to:

- a) establish the DLA as an autonomous instrumentality;
- b) acknowledge the Speaker as both the responsible minister and commissioner in respect of the DLA and associated staff;
- c) acknowledge the dual role of the Clerk; and
- d) provide for the both the appointment and dismissal of the Clerk by the Administrator on the recommendation of the Speaker, and subsequent approval of the House, for an indefinite period.

Although re-instating section 18A, or a modified version of it, has the potential to limit interference by the executive and effectively protect the independent status of the DLA and the Clerk, it still falls short of the *Latimer House Guidelines* which suggest that Parliament should be serviced by staff independent of the public service. Then too, unless amendments to the PSEMA are accompanied by an increased awareness, on the part of MLA's and senior public servants, of the importance of ensuring a more appropriate separation between the executive and legislative branches of government, there is no guarantee that future attempts to 'streamline' the public service will not again see the removal of such.

Option 2: Establish a Parliamentary Services Act

As highlighted above, it is common practice for the principle of parliamentary independence to be institutionalized within a jurisdiction's constitution. Whilst this is not currently an option for the NT, as the CPA report into the *Administration and Financing of Parliament* points out:

parliamentary autonomy can be expressed in legislation that establishes corporate bodies responsible for providing Parliament with the necessary property, staff and services.⁷³

Moreover, a number of independent reviews of the effectiveness of parliamentary governance structures support the view that administrative autonomy and independence of the legislature from the executive is “a defining condition of parliamentary democracy.”⁷⁴ Establishing a Northern Territory Parliamentary Services Act, similar to that operating in Queensland, Victoria, South Australia and at the Commonwealth level, would not only resolve the NT’s current dilemma but provide the basis for the development of a robust and democratic corporate governance structure.

The viability of establishing a stand-alone parliamentary service for a small legislature employing less than 45 staff is, however, somewhat questionable. As the ACT found when considering the most appropriate legislative basis for its Legislative Assembly’s support agency, the benefits of a “cadre of well-qualified, competent and loyal staff experienced in parliamentary procedures”⁷⁵ has to be weighed up against the development and maintenance of “an entirely separate set of governance and administrative arrangements in parallel with the existing [public] service.”⁷⁶

Option 3: Establish a Legislative Assembly (Office of the Legislative Assembly) Act

The ACT’s recently introduced *Legislative Assembly (Office of the Legislative Assembly) Act*⁷⁷ is essentially a compromise between the limitations of attempting to accommodate

⁷³ Commonwealth Parliamentary Association. “Administration and Financing of Parliament,” 3

⁷⁴ See for example: Sir Kevin Tebbit, *Review of the Management and Services of the House of Commons*, London, UK: House of Commons Commission, 2007, 3

⁷⁵ Commonwealth Parliamentary Association. “Administration and Financing of Parliament,” 10

⁷⁶ Tom Duncan, “Enshrining Independence – The Establishment of the Office of the Legislative Assembly.” Paper presented to the 43rd Presiding Officers and Clerks Conference, Solomon Islands, (2012): 9

⁷⁷ *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (ACT)
http://www.legislation.act.gov.au/b/db_44064/ (1 October 2012)

the remit of the DLA and the Clerk in the PSEMA, and the inevitable complications associated with establishing a stand-alone parliamentary service in a small legislature.⁷⁸

Key features of the Act relevant to the NT's current situation include:

- a) establishment of an Office of the Legislative Assembly as an autonomous instrumentality;
- b) codification of the roles, functions and independence of the office and that of the Clerk; and
- c) provisions for the appointment, suspension and termination of the Clerk by the Speaker.⁷⁹

Apart from the Clerk, all other staff of the Office of the Legislative Assembly remain ACT public servants. The rationale for maintaining a single public sector employment framework in the case of small legislatures includes: staff mobility to ensure officers of the Legislative Assembly a reasonable prospect for career progression, and the fact that being part of the wider public service effectively increases the potential recruitment pool available to the office of the Legislative Assembly.⁸⁰ As noted by the Clerk of the ACT, introduction of the *Legislative Assembly (Office of the Legislative Assembly) Act* "provides for a robust legislative and administrative framework for the legislature's support agency and gives effect to the separation of powers doctrine within the constraints of the ACT's constitutional system."⁸¹

Since the constitutional system and size of the NT legislature is not dissimilar to that of the ACT, it is suggested that development of a Territory specific Legislative Assembly Act

⁷⁸ Tom Duncan, "Enshrining Independence",9

⁷⁹ ACT Parliamentary Counsel. "Legislative Assembly (Office of the Legislative Assembly) Bill 2012 Explanatory Statement" presented by Shane Rattenbury MLA and Speaker of the Legislative Assembly for the Australian Capital Territory. (February 2012): 1-22

⁸⁰ Ibid, 6

⁸¹ Tom Duncan, "Enshrining Independence",10

would be the most effective and viable means of restoring the legislature's democratic governance structure. In providing for administrative autonomy and independence from the executive, this option would re-instate the 'proper' status of the Clerk and go a long way towards meeting the CPA's *Recommended Benchmarks for Democratic Legislatures*.

Concluding Comments

In considering the status of the Clerk this paper has been concerned to assess the effectiveness of parliamentary governance in the NT against the *Latimer House Guidelines* and five of the CPA benchmarks. Following the conferral of self government in 1978 a concerted effort was made to develop a robust, democratic and effective administrative framework for the DLA.

However, the evidence indicates that the cumulative effect of successive amendments to the statutory provisions underpinning the independent status of the DLA and that of the Clerk has significantly eroded the democratic basis of the legislature's governance structure over the past 20 years. Indeed, given the latest round of amendments, the doctrine of the separation of powers between the legislature and the executive now rests somewhat precariously on the government of the day's adherence to convention and tradition.

Consideration of the means by which the Office of the Clerk is established elsewhere in the Commonwealth, the preferred manner of appointing and dismissing the Clerk, and the Clerk's associated tenure, serves to highlight the fact that when it comes to best practice and what might be considered the norm elsewhere in Australia, the Commonwealth and many other parts of the world, the NT is clearly something of an anomaly. In light of renewed calls to progress the Territory's bid for Statehood and achieve equality within the Australian Commonwealth, it is argued that to do so without first establishing an appropriate basis for such, an effective and democratic system of parliamentary governance, is akin to putting the cart before the horse.

Based on practices elsewhere in Australia, three options were considered as a means of addressing the NT's current lack of checks and balances to minimise the potential for undue political interference by the executive in the operations of the legislature. On the one hand, the PSEMA could simply be amended. However, it is argued that given the experience of the DLA to date this is not necessarily the most effective solution over the long term. On the other hand, the NT could establish a stand-alone parliamentary service. With regards to achieving the CPA's *Recommended Benchmarks for Democratic Legislatures* this would certainly be the preferred option. Nevertheless, it does present a number of challenges for such a small legislature and is not deemed to be the most viable option.

Taking into consideration the constitutional system and size of the NT legislature, introduction of statutory provisions based on the ACT's *Legislative Assembly (Office of the Legislative Assembly) Act* is considered to be more viable. Representing the middle ground between the uncertainty of adequately accommodating the remit of the agency and that of the Clerk within the PSEMA, and the establishment of a Parliamentary Services Act similar to that of Australia's larger jurisdictions, development of a Territory specific Legislative Assembly Act, whilst maintaining the agency's links with the wider public service, is considered to be the most effective and prudent course of action for the Northern Territory.

Appendix 1: Status of Clerks of the Commonwealth

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
Antigua & Barbuda	Established under s 43 of the Antigua and Barbuda Constitutional Order 1981	Merit based civil service appointment. No fixed term.
Australia: <ul style="list-style-type: none"> <li data-bbox="188 560 327 587">• Federal <li data-bbox="188 663 367 724">• New South Wales <li data-bbox="188 801 383 828">• Queensland <li data-bbox="188 940 353 967">• Tasmania <li data-bbox="188 1043 327 1070">• Victoria <li data-bbox="188 1131 412 1158">• West Australia 	<ul style="list-style-type: none"> <li data-bbox="450 560 958 587">Parliamentary Services Act 1999 (Cth) s 58 <li data-bbox="450 663 1099 756">Constitution Act 1902 (NSW) s 47; Public Sector Employment and Management Act 2002 (NSW), s 158A <li data-bbox="450 801 1010 828">Parliamentary Services Act 1988 (Qld) ss 18-22 <li data-bbox="450 940 949 967">Parliamentary Privilege Act 1898 (Tas) s 3 <li data-bbox="450 1043 1005 1070">Parliamentary Administration Act 2005 (Vic) s 8 <li data-bbox="450 1131 1099 1224">Western Australia Constitution Act 1889 s 35; see also Parliamentary and Electorate Staff (Employment) Act 1992 (WA) 	<ul style="list-style-type: none"> <li data-bbox="1128 560 2101 624">Appointed/dismissed by Speaker/President following consultation with members of the House for a ten year period. Appointees are not eligible for reappointment. <li data-bbox="1128 663 2101 727">Appointed/dismissed by the Governor on the advice of the Speaker/President following consultation and approval of Executive Council. No fixed term. <li data-bbox="1128 801 2101 896">Appointed/dismissed by Governor by commission on the recommendation of the Minister after consultation with Committee of the Legislative Assembly and the Speaker. No fixed term. <li data-bbox="1128 940 2101 1003">Appointed/dismissed by the Governor on the recommendation of the Speaker/President. No fixed term. <li data-bbox="1128 1043 2063 1107">Appointed/dismissed by the Governor in Council, on the recommendation of the Speaker/President. No fixed term. <li data-bbox="1128 1131 2101 1195">Appointed/dismissed by the Governor on the advice of the Speaker/President. No fixed term.

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
<ul style="list-style-type: none"> • ACT • South Australia • Northern Territory 	<p>Legislative Assembly (Office of the Legislative Assembly) Act 2012 s 9</p> <p>Constitution Act of 1934, s 58; see also Parliament (Joint Services) Act 1985</p> <p>None identified</p>	<p>Appointed/dismissed by the Speaker on the advice of the administration and procedure committee in consultation with Chief Minister, Leader of the Opposition and leader/s of any other registered party where at least two members of the Legislative Assembly are members of that party, and in accordance with the merit principles set out in s 65 of the Public Sector Management Act 1994. No fixed term.</p> <p>Appointed/dismissed by the Joint Parliamentary Services Committee, of which the Speaker is <i>ex officio</i> member. No fixed term.</p> <p>Appointed/dismissed by the Chief Minister. Merit based public service appointment. Executive contract of 4 years with possibility of renewal.</p>
The Bahamas	None identified	Merit based public service appointment. No fixed term.
Bangladesh	Parliament Secretariat Act 1994 s 3	Appointed/dismissed by Head of Government following consultation with Speaker. No fixed term.
Barbados	None Identified	Merit based public service appointment. No fixed term.
Belize	National Assembly Staff Act 2000 s 5	Appointed/dismissed by the Governor-General on the advice of the National Assembly Staff Committee, chaired by the Speaker/President. No fixed term.
Botswana	Established under Constitution of the Republic of Botswana 1966 s 70	Merit based public service appointment. No fixed term.
Brunei & Darussalam	The Constitution of Brunei & Darussalam 1984 s 50	Appointed/dismissed by the Sultan and Yang di-Pertuan, required to make and subscribe an oath declaring allegiance to Speaker. No fixed term.

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
Cameroon	None identified	Appointed/dismissed by the Bureau of the National Assembly chaired by the Speaker. No fixed term.
Canada <ul style="list-style-type: none"> <li data-bbox="185 491 327 515">• Federal <li data-bbox="185 632 349 687">• British Columbia <li data-bbox="185 788 344 812">• Manitoba <li data-bbox="185 890 331 914">• Quebec <li data-bbox="185 992 412 1016">• Saskatchewan 	<p data-bbox="441 491 1099 592">Parliament of Canada Act 1985 s 49; see also Parliamentary Employment and Staff Relations Act 1985</p> <p data-bbox="441 632 958 655">British Columbia Constitution Act 1996 s 39</p> <p data-bbox="441 788 815 812">The Civil Service Act 2004 s 32</p> <p data-bbox="441 890 1021 914">Act Respecting the National Assembly 2012 s 28</p> <p data-bbox="441 992 1099 1054">Legislative Assembly and Executive Council Act 2007 ss 70 & 79</p>	<p data-bbox="1122 491 2096 592">Appointed/dismissed by the Governor in Council on the advice of the Speaker and Executive Committee. Required to make and subscribe an oath declaring allegiance to Speaker under s 49 of Parliament of Canada Act. No fixed term.</p> <p data-bbox="1122 632 2096 694">Appointed/dismissed by Lieutenant Governor in Council on resolution of the Legislative assembly. No fixed term.</p> <p data-bbox="1122 788 2096 850">Appointed/dismissed by Lieutenant Governor in Council on resolution of the Legislative assembly. No fixed term.</p> <p data-bbox="1122 890 2096 952">Appointed/dismissed by resolution of the Legislative Assembly on a proposal of the Premier. No fixed term.</p> <p data-bbox="1122 992 2096 1054">Appointed/dismissed by the Board of Internal Economy on the recommendation of the Speaker. No fixed term.</p>
Cyprus	Established under s 72 of the Constitution of the Republic Cyprus 1960; Rules of Procedure of the House of Representatives s 7	Elected by the House and subsequently appointed/dismissed by the President. No fixed term.
Dominica	Established under s 39 of the Constitution of the Commonwealth of Dominica 1978	Merit based public service appointment. No fixed term.

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
Fiji Islands	Constitution Amendment Act 1997 (Fiji) s 84	Appointed/dismissed by Constitutional Offices Commission following consultation with the Speaker. No fixed term.
Gambia	Constitution of Republic of Gambia 1997 s 94	Appointed/dismissed by the National Assembly. No fixed term.
Ghana	Constitution of the Republic of Ghana 1992 s 124; Parliamentary Services Act 1993 clause 14	Appointed/dismissed by the Parliamentary Service Board, chaired by the Speaker, in consultation with the Public Services Commission. No fixed term.
Grenada	Established under s 36 of the Grenada Constitution 1973	Merit based public service appointment. No fixed term.
Guyana	Constitution of the Co-Operative Republic of Guyana Act 1980 ss 57 & 158	Appointed/dismissed by the President on the advice of the Speaker. No fixed term.
India	Constitution of India 1949 s 98	Appointed/dismissed by the President following consultation with the Speaker. Two years, extendable for one year at a time.
Jamaica	Constitution of Jamaica 1962 s 47	Appointed/dismissed by the Governor-General on advice of the Speaker/President. No fixed term.
Kenya	The Constitution of Kenya 2010 ss 127 & 128	Appointed/dismissed by the Parliamentary Service Commission, chaired by the Speaker, with approval of relevant House. No fixed term.
Kiribati	None identified	Merit based public service appointment. No fixed term.
Lesotho	Established under s 65 of the Constitution of Lesotho 1993	Merit based public service appointment. No fixed term.
Malawi	Constitution of the Republic of Malawi 1994, ss 55 & 189	Merit based public service appointment on advice of the Speaker. No fixed term.

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
Malaysia	Constitution of Malaysia 1957 s 65	Appointed/dismissed by the Yang di-Pertuan Agong (Head of Federation). No fixed term.
Maldives	Constitution of the Republic of Maldives 2008 s 104	Appointed/dismissed by the People's Majlis. No fixed term.
Malta	Established under s 64 of the Constitution of Malta 1964	Merit based public service appointment. No fixed term.
Mauritius	None identified.	Merit based public service appointment. No fixed term.
Mozambique	None identified.	Merit based public service appointment. No fixed term.
Namibia	The Constitution of the Republic of Namibia 1990 s 52	Appointed/dismissed by the Speaker. No fixed term.
Nauru	The Constitution of Nauru 1968 s 33	Appointed/dismissed by the Speaker. No fixed term.
New Zealand	Clerk of the House of Representatives Act 1988 ss 2, 3, 7,10, 11, 14	Appointed/dismissed by the Governor-general on the recommendation of the Speaker following consultation by the Speaker with the Prime Minister, the Leader of the Opposition and such other members of the House of Representatives as the Speaker considers desirable. No fixed term.
Nigeria	National Assembly Service Commission Act 2000 ss 7, 9,11	Appointed/dismissed by the National Assembly Service Commission chaired by the Speaker. No fixed term.
Pakistan	Constitution of the Islamic Republic of Pakistan 2011 s 87	Appointed/dismissed by the Speaker with the approval of the President. No fixed term.
Papua New Guinea	Constitution of the Independent State of Papua New Guinea 1975 s 132; see also Parliamentary Services Act 1997	Appointed/dismissed by the Head of State on advice of the Speaker and National Executive Council. Four year renewable term.

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
Rwanda	Constitution of the Republic of Rwanda 2003 s 73	Appointed/dismissed by the Speaker/President. No fixed term.
St Kitts and Nevis	Established under s 35 of the Federation of Saint Kitts and Nevis Constitutional Order of 1983	Merit based public service appointment. No fixed term.
St Lucia	Established under s 38 of the Constitution of Saint Lucia 1979	Merit based public service appointment. No fixed term.
St Vincent and the Grenadines	Established under s 35 of the Constitution of Saint Vincent and the Grenadines 1979	Merit based public service appointment. No fixed term.
Samoa	The Control and Administration of the Legislative Department is prescribed under Part XXXVII of the Standing Orders.	Appointed/dismissed by the Head of State on the recommendation of the Speaker after consultation with the Prime Minister and Leader of the Opposition. Three year term – unclear whether or not this may be renewed.
Seychelles	None identified.	Merit based public service appointment. No fixed term.
Sierra Leone	The Constitution of Sierra Leone 1991 s 82; The Parliamentary Services Act 2007 s 2	Appointed by the President acting in consultation with the Speaker and Public Service Commission. No fixed term.
Singapore	Constitution of the Republic of Singapore 1991 s 51	Appointed/dismissed by the President following consultation with the Speaker and Public Service Commission. No fixed term.
Solomon Islands	The Provincial Government Act 1997 s 2	Appointed/dismissed by the Speaker with the consent of the Assembly. No fixed term.
South Africa	None identified.	Appointed/dismissed by the House on the recommendation of the Speaker. No fixed term.

Country	Legislation Establishing the Office of the Clerk	Manner of Appointment and Dismissal
Sri Lanka	Constitution of the Republic of Sri Lanka 2011 s 65	Appointed/dismissed by the President with the approval of the Assembly. No fixed term.
Swaziland	Constitution of the Kingdom of Swaziland Act 2005 s 132	Appointed/dismissed by the Parliamentary Service Board, chaired by the Speaker, in consultation with the Civil Service Commission. No fixed term.
Tanzania	Constitution of the United Republic of Tanzania 1998 ss 87, 88	Appointed/dismissed by the President. No fixed term.
Tonga	None identified.	Merit based public service appointment. No fixed term.
Trinidad and Tobago	Established under s 72 of the Tobago House of Assembly Act 1996	Merit based public service appointment. No fixed term.
Tuvalu	Constitution of Tuvalu 1986 s 115; Parliamentary Rules of Procedure 2008, s 8	Merit based public service appointment. No fixed term.
Uganda	Administration of Parliament Act 1997 ss 9-10	Appointed/dismissed by the Parliamentary Commission chaired by the Speaker. No fixed term.
United Kingdom	Clerk of the Parliaments Act 1824 s2	Appointed/dismissed by the crown on the recommendation of the Prime Minister following consultation with the Speaker. No fixed term.
Vanuatu	Parliament (Administration) Act 2005 s 15	Appointed/dismissed by the President on the advice of the Parliamentary Management Board chaired by the Speaker. Five year term may be reappointed but only for one more five year term.
Zambia	National Assembly Staff Act 1991 s 3	Appointed/dismissed by the President on advice and approval of the Assembly. No fixed term.

* Unclear who appoints the Clerk/Secretary General or to what extent appointment is influenced by the Speaker or the Assembly

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